

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 18 to Provide a Definition of Agricultural \* ORDINANCE NO. 2016-006  
Exempt Buildings and Reducing Setbacks in the \*  
Forest Use 2 ("F2") Zone for the Haner Park \*  
Subdivision.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-16-000021-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Definitions; and Chapter 18.40, Forest Use Zone (F-2) to provide a definition of agricultural exempt buildings and reduce setbacks in the F-2 Zone for Haner Park Subdivision; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on Month Day, 2016 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on Month Day, 2016, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.04.030, Definitions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.40.100, Yards and Setbacks, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

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Section 3. FINDINGS. The Board adopts as its findings Exhibit "C", attached and incorporated by reference herein.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ALAN UNGER, Chair

\_\_\_\_\_  
TAMMY BANEY, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
ANTHONY DEBONE, Commissioner

Date of 1<sup>st</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	___	___	___	___
Alan Unger	___	___	___	___
Tammy Baney	___	___	___	___

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2016.

“\*\*\*\*” Denotes portions of this Section not amended by Ordinance 2016-006.

**Section 18.04.030. Definitions.**

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"Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities. A structural building permit is not required for agricultural buildings or equine facilities receiving special assessment for farm use.

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(Ord. 2016-006 §1, 2016; Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1995; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 §§1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 §2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)

**18.40.100. Yards and Setbacks.**

- A. The front yard setback shall be 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector and 100 feet from a property line fronting on an arterial.
- B. Each side yard setback shall be a minimum of 25 feet except:
  - 1. All parcels or lots with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet; and
  - 2. Tracts 1-58 -located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum side yard of 25 feet as long as the side yard abuts the Forest Use 2 zone.
- C. Rear yards shall be a minimum of 25 feet, except:
  - 1. All parcels or lots with rear yards adjacent to zoned forest land shall have a minimum rear yard of 100 feet; and
  - 2. Tracts 1-58 located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum rear yard of 25 feet as long as the rear yard abuts the Forest Use 2 zone.
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.  
(Ord. 2016-006 §2, 2016; Ord. 95-075 §1, 1995; Ord. 94-008 §19, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991; Ord. 83-037 §11, 1983)

## FINDINGS

The Deschutes County Planning Commission held a public hearing on **Month Day**, 2015 to consider legislative plan amendments to Deschutes County Comprehensive Plan and legislative amendments to Deschutes County Code (DCC) Title 18.<sup>1</sup>

The Planning Commission closed the hearing on **Month Day**, 2015 and forwarded a recommendation of adoption to the Board of County Commissioners (Board). The Board held hearings on **Month Day**, 2015. The written record was left open until 5:00 p.m. on **Month Day**.

### I. BACKGROUND

In 2014, the Board of County Commissioners (Board) directed the Community Development Department (CDD) to conduct a public outreach campaign to understand community, stakeholder, and landowner opinions about Deschutes County farm designations and land uses. In May 2014, the Planning Division conducted community conversations in locations throughout the county. Meetings were held in Alfalfa, Bend, Brothers, La Pine, Sisters, and Terrebonne; each one provided an overview of Deschutes County's agricultural lands program with details focusing on its history, relevant Comprehensive Plan policies, and recent land use trends. A variety of public engagement techniques were utilized to generate public comments including facilitated exercises, and questionnaires.

The Board held two joint work sessions with the Planning Commission on June 26, 2014 and September 25 respectively, to discuss the results of the agricultural lands program public outreach campaign. Following those discussions, both commissions requested additional information. Specifically, they asked about opportunities to expand housing options in the Exclusive Farm Use (EFU) zone. Staff evaluated HB 2229 and coordinated with former Planning Director John Anderson and the Oregon Department of Land Conservation and Development in Winter 2015. Based on their input, it was determined HB 2229 in its present form prevented Deschutes County from initiating legislative amendments to change EFU zoning.

As a result, staff focused on minor modifications relating to resource zoned lands. During the development of the Planning Division's FY 2015-2016 work program, the Planning Commission and the Board supported initiating the following amendments:

- Comprehensive Plan amendment recognizing non-resource lands process allowed under State law to change EFU zoning;
- Zoning code amendment providing a definition of agricultural and equine exempt buildings; and,
- Zoning code amendment, reducing setbacks in Forest 2 (F2) zone, for Haner Park Subdivision and an adjoining three acre tax lot.

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<sup>1</sup> A public notice was published in the *Bulletin* on **Month Day**, 2015.

Ordinance 2015-016 formally adopts amendments in DCC Title 18 to provide a definition of agricultural and equine exempt buildings and a setback reduction in the Forest Use Zone (F-2) for Haner Park Subdivision and an adjoining three acre tax lot.

- The definition of the agricultural and equine exempt building is located in DCC 18.04.030, Definitions (Exhibit A of Ordinance 2015-006)
- The setback reduction is located in DCC 18.40.100, Yards and Setbacks (Exhibit B of Ordinance 2015-006)

## **II. REVIEW CRITERIA**

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing legislative text amendments. Nonetheless, since Deschutes County is the applicant, it bears the responsibility for justifying that the Title 18 text amendment amendments in Ordinance 2015-006, are consistent with the Comprehensive Plan.

## **III. FINDINGS**

The parameters for evaluating these specific amendments are based on an adequate factual base and supportive evidence demonstrating consistency with Statewide Planning Goals. The following findings demonstrate that Ordinance 2015-005, Exhibits A and B comply with applicable statewide planning goals and the Deschutes County Comprehensive Plan.

### **Proposed Text Amendments / Ordinance 2015-006**

The proposed text amendments are detailed in Ordinance 2015-006 and Exhibits A and B, with additional text identified by underline and deleted text by ~~strike through~~. The following chapters in the Comprehensive Plan contain goals and/or policies that require findings demonstrating that the text amendments remain consistent with them.

#### **A. Agricultural and Equine Exempt Buildings**

State law (ORS 455.315) allows exemption from the requirement for a building permit and inspections under Oregon State Structural Specialty Code (electrical, plumbing, and mechanical permits are always required). Since 2001, the authority to approve an agricultural exempt building resides with the Building Official. A formal application requires the County Planning Division to provide input on whether the property is a farm. Deschutes County's zoning ordinances do not define "farm" or provide a basis for making a determination on whether a property constitutes a farm.

Until the late 1990s, the Oregon Uniform Building Code (UBC) defined farm as "farm use" – the same as in ORS 215.203 (the EFU Zone). However, when the state changed to the International Building Code (IBC), "farm" was not defined. "Farm use" is defined in Deschutes County Code and ORS 215.203 as:

*"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry,*

*fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described above. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).*

CDD's internal policy is a property must be receiving farm deferral and zoned EFU to qualify. Below are approaches used by other central, eastern and western Oregon counties. Most provide clear and objective standards to determine what constitutes a farm for the purposes of making decisions on agricultural exempt buildings.

- Crook County

Agricultural Exempt Building: Property must qualify for "farm use" (land must be currently employed for the primary purpose of obtaining profit in money). The property must also either be at least 80 acres in size or currently employed in a farm use and that such use has produced at least \$40,000 in gross annual income in at least 2 of the previous 5 years.

Equine Exempt Building: Same as above but the structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows; storage of hay; and property owners must own at least one equine or have the applicable land use approval for an equine facility (such as riding lessons, training, schooling, boarding) in the zone.

- Jackson County

Agricultural Exempt Building: Property must be receiving farm deferral.

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

- Jefferson County

Agricultural Exempt and Equine Building: Property automatically qualifies if it is located in the EFU zone and in farm deferral.

- Klamath County

Agricultural and Equine Exempt Building: Property automatically qualifies if it is either located in the EFU zone or if not, in farm deferral.

- Lake County

Agricultural Exempt Building: Property must qualify for “farm use” (land must be currently employed for the primary purpose of obtaining profit in money).

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

Staff is proposing a definition for agricultural and equine exempt building that applies to property receiving farm deferral, regardless of the underlying zone. According to the Oregon Department of Revenue, if land is in an EFU zone and is used primarily to make a profit by farming, it qualifies for special farm-use assessment. If land is not in an EFU zone but is used as farmland, it may receive the same assessment given to all qualifying EFU farmland.

This text amendment is consistent with Agricultural Lands, Policy 2.28, which states:

*Support a variety of methods to preserve agricultural lands, such as:*

- a. Support the use of grant funds and other resources to assist local farmers;*
- b. Work cooperatively with irrigation districts, public agencies and representatives and land owners;*
- c. Encourage conservation easements, or purchase or transfer of development rights programs;*
- d. Control noxious weeds;*
- e. Encourage a food council or ‘buy local’ program.*

Allowing property owners with farm deferral status to receive agricultural exempt buildings helps preserve agricultural lands because income that would otherwise go towards obtaining a building permit can be spent on the farm.

#### **B. Haner Park Setback**

Deschutes County is proposing text amendments reducing the setbacks in Haner Park subdivision and an adjoining three-acre tax lot that constitute an island of Forest Use 2 (F2) zone. This F2 zone is surrounded by Deschutes National Forest lands zoned Forest Use 1. This subdivision and the remnant parcel were platted prior to State enabling land use legislation. The subdivision is surrounded by federal land. No other changes to the Forest Use 2 zone are proposed.

This text amendment is consistent with Forest Lands, Section 2.3 and its goals and policies. The emphasis of this section is on forest management and conservation. Policy 2.3.5 is the only policy remotely related to the text amendment:

*Uses allowed in Forest zones shall comply with State Statute and Oregon Administrative Rule.*



Any proposed use must still comply with the F2 zone development standards, which are consistent with State Statute and administrative rules.