



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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**TO:** Deschutes County Planning Commission

**FROM:** Matthew Martin, Associate Planner

**DATE:** August 6, 2015

**SUBJECT:** Staff Follow Up to Public Hearing on County Land Use File No. 247-15-000256-TA - Text Amendments to Make "housekeeping" Changes to the Deschutes County Code.

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The Planning Division brought a package of text amendments to the Planning Commission (Commission) for a public hearing on July 9, 2015. These "housekeeping" text amendments are an effort to correct noted errors and provide clarification to existing land use regulations and policies. The Commission conducted the hearing, left the written record open until July 30, 2015, and directed staff to revise the text of several of the proposed amendments. Below are summaries of revisions to the identified exhibits:

- **Exhibit C:** Retains "District" in reference the Community Facilities Limited District that was deleted in original proposal. (Revised Exhibit C Attached)
- **Exhibit G:** Specifies new structures or additions to existing structures shall be set back a minimum of 100 feet from the ordinary high water mark of the river and not exactly 100 feet as originally proposed. (Revised Exhibit G Attached)
- **Exhibit L:** Moves amendment to section 22.08.010, Application Requirements. In addition, revision corrects requirement that the hearings officer deposit must be received prior to the application being deemed complete rather than after being deemed complete as originally proposed. (Revised Exhibit L Attached)
- **Exhibit M:** Specifies the proposed required notice of decision, rather than the entire decision, may be sent to designated representative of a group, organization, group of petitioners or similar collection of individual participants. (Revised Exhibit M Attached)
- **Exhibit N:** Further simplifies the language of appeal fee payment options stating the fee shall be paid by method that is acceptable to Deschutes County. (Revised Exhibit N Attached)

The Commission also requested additional information on a couple of topics. Below is a summary of the requested information:

- **Exhibit O:** The Commission expressed concern that this proposed amendment related to processing Land Use Board of Appeals (LUBA) remands could potentially prolong review and decisions indefinitely and questioned if this is what the County wants or intends. I offered to follow up with legal counsel for clarification and the response was the purpose of this amendment is simply to reflect the applicable provisions of Oregon Revised Statute (ORS)

215.435. In fact, in *PLOEG v. TILLAMOOK COUNTY*, 43 Or LUBA 4, 9 (2002) the Land Use Board of Appeals (LUBA) stated:

“We agree with the county that, under the statute, the applicant controls the timing of proceedings on remand. Absent a local provision that establishes some deadline or limit consistent with the statute, the county has no authority to terminate proceedings on remand or require the applicant to submit a new application.”

With that said, legislation recently enacted by the Oregon Legislature established time limits for final local decisions on remand. This new legislation and the possibility of inclusion in the proposed amendments are discussed below.

- **Section 18.108.055, Town Center District:** The Commission requested background information on the creation of the Town Center (TC) District. The TC District, along with related comprehensive plan and zoning ordinance provisions, were applicant initiated through plan amendment (PA-07-6) and text amendment (TA-07-6) applications. These applications were approved and adopted by the Board of County Commissioners via Ordinance 2008-015.

## **ADDITIONAL INFORMATION**

- **New LUBA Remand Legislation:** Oregon Legislature recent passed House Bill (HB) 2830 amending the LUBA remand procedures. In summary, the amendment extends the 90-day review time period to 120-days upon request from the applicant that the county proceeds with review. The amendment also provides opportunity for this time period to be extended an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. If the county does not receive the request to proceed from the applicant within 180 days of the effective date of the final order or the final resolution of the judicial review or if not resolved through mediation prior to the expiration of the 365-day extension, the county shall deem the application terminated. (HB 2830 Attached)

With the Commission public hearing and written record now closed, inclusion of this change to State law with the currently proposed amendments before the Commission would require a new public hearing and related notice. Instead, staff intends on presenting this information at the subsequent proceedings before the Board of County Commissioners (BOCC) for consideration. Staff is open to discussion and a recommendation from the Commission on this matter.

## **NEXT STEPS**

Staff recommends the Commission commence deliberations and consider a recommendation to the BOCC. Following the Commission recommendation, a public hearing is required before the BOCC for final decision. The hearing will be held on a date yet to be determined.

Attachments: Revised Exhibit C  
Revised Exhibit G  
Revised Exhibit L  
Revised Exhibit M  
Revised Exhibit N  
HB 2830

## Title 17. SUBDIVISIONS

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### Table A MINIMUM DESIGN STANDARDS

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#### Notes:

- (1) Design shall be in accordance with Oregon Department of Transportation Design Standards.
- (2) Design shall be in accordance with AASHTO standards.
- (3) Pavement widths are variable, depending on such factors as anticipated traffic volumes, and whether the road section involves turn lanes, bike lanes, and whether frontage roads border an arterial or collector, etc.
- (4) The required base depth may be increased when a C.B.R., or R-value is required by the Road Department.
- (5) Cul-de-sac bulb to be constructed with a 45-foot minimum radius.
- (6) Increase in grade of 2 percent may be allowed in unusually steep areas.
- (7) No curb for rural frontage roads.
- (8) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28' width required (including the required 4' striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided.
- (9) The larger of the two widths is necessary if a shoulder bikeway is required (4' for collector and 5' for arterial).
- (10) 20' allowed for cul-de-sac's and roads with low anticipated traffic volumes. 24' width required for circulator and primary subdivision access roads.
- (11) Sidewalks required for new subdivisions and partitions, within Unincorporated Communities, that result in an average lot size of 11,000 square feet or less.
- (12) Widths are variable, but in no case shall a swale be less than 6 feet in width. Swales shall conform as much as practicable to DEQ best management practices for non-underground injection control (UIC) systems such as grassy or vegetated bioswales designed (sized) to mitigate anticipated storm water runoff.
- (13) Where drainage swales are not required, the standards for drainage in Title 17, Chapter 17.48 shall still apply.
- (14) 6-foot sidewalks required on both sides of Highway 97 between South 11th Avenue and Central Avenue intersections. Includes pedestrian crossing improvement at B Avenue and C Avenue intersection (see Terrebonne Comprehensive Plan Map D-3).
- (15) 5-foot curbless sidewalks with a drainage swale required on both sides of the road.
- (16) 5-foot curbless sidewalks with drainage swales required in Terrebonne from West 19th Street to 15th Street on the south side of C Avenue (see Terrebonne Comprehensive Plan Map D-3), or those roads in Tumalo designated for sidewalks (see Tumalo Comprehensive Plan Map D2).
- (17) 5-foot curbless sidewalks with drainage swales required along school frontage on B Avenue and 5th Street (see Terrebonne Comprehensive Plan Map D-3).
- (18) Where allowed, parking must be off pavement.
- (19) 40 feet immediately adjacent to arterial road, or 60 feet when frontage road is separated from arterial by private land.
- (20) In the ~~Neighborhood Commercial, Community Facility, Community Facility Limited and Residential Center Districts, where a paved multi-use path is not required in Figure 16 (Non-Motorized Plan) of Title 23,~~ sidewalks at least five feet wide shall be installed at the time of development. The sidewalks shall be property line tight and meet ADA accessibility requirements. ~~The sidewalks shall be connected to the required paths identified on Figure 16, the Non-Motorized Plan.~~
- (21) 10-foot sidewalks required on both sides of US Highway 97 between First/Reed and 6th Street intersections.
- (22) Rather than a continuous paved parking shoulder, parking in designated pullout areas can be provided along the collectors for access to open space, parks and residential lots.
- (23) The minimum width is 8 ft. However, 8 ft. wide multiuse paths are not recommended in most situations because they may become over-crowded. They should only be constructed as short connectors, or where long term usage is expected to be low, and with proper horizontal and vertical alignment to assure good sight distances. 10 ft is the standard width for a two-way multi-use path but they should be 12 ft wide in areas with high mixed-use. Optimum width should be based on the relative use by cyclists and pedestrians. High use by skaters may also require greater width.

## Chapter 18.67. TUMALO RURAL COMMUNITY ZONING DISTRICTS

### 18.67.080. Standards for All Districts.

- A. Solar Setback. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- B. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by the applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- C. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the applicable provisions of DCC 18.116.
- D. Lot Coverage. Except where otherwise noted, the primary and accessory buildings located on any lot or parcel shall not cover more than 30 percent of the total lot or parcel.
- E. Building Height. Except where otherwise indicated, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- F. Rimrock Setback. Setbacks from the rimrock are subject to the applicable provisions of DCC 18.116.160.
- G. River setback. All new structures or additions to existing structures ~~within shall be set back a minimum of~~ 100 feet from the ordinary high water mark of designated streams and rivers ~~are subject to the applicable provisions of~~ obtain a setback exception in accordance DCC 18.120.030. For the purpose of DCC 18.67.070, decks are considered part of a structure.  
(Ord. 97-033 §2, 1997)

## **Chapter 22.08. GENERAL PROVISIONS**

### **22.08.010. Application Requirements.**

- A. Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
- B. Applications for development or land use actions shall:
  - 1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
  - 2. Be completed on a form prescribed by the Planning Director;
  - 3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria; and
  - 4. Be accompanied by the appropriate filing fee, unless such fees are waived by the Board of County Commissioners.
  - 5. Include an affidavit attesting to the fact that the notice has been posted on the property in accordance with DCC 22.24.030(B).
- C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
  - 1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
  - 2. Applications for development proposals sited on lands owned by the state or the federal government.
- D. A deposit for hearings officers' fees may be requested at any time prior to the application being deemed complete and, if the application is heard by a hearings officer, the applicant will be responsible for the actual costs of the hearings officer.

(Ord. 96-071 §1B, 1996; Ord. 95-045 §3, 1995; Ord. 90-077 §1, 1990)

## **Chapter 22.28. LAND USE ACTION DECISIONS**

### **22.28.020. Notice of Decision.**

~~A-Notice of a~~ Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the notice of decision for a group, organization, group of petitioners or similar collection of individual participants.  
(Ord. 90-007 §1, 1990)

## Chapter 22.32. APPEALS

### 22.32.015. Filing appeals.

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.
- B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.
- C. If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body's decision.
- D. The appeal fee shall be paid by method that is acceptable to Deschutes County~~by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

(Ord. 99-031 §15, 1999; Ord. 98-019 §2, 1998; Ord. 96-071 §1G, 1996; Ord. 95-045 §32, 1995; Ord. 94-042 §2, 1994; Ord. 91-013 §11, 1991; Ord 90-007 §1, 1990)

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### 22.32.024. Transcript Requirement.

- A. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.
- B. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.
- C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
- D. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.

(Ord. 96-071 §1G, 1996)

## Enrolled House Bill 2830

Sponsored by Representative HELM; Representatives GOMBERG, MCLAIN

CHAPTER .....

### AN ACT

Relating to remand of local land use decision; amending ORS 215.435, 215.437, 227.181 and 227.182.

#### **Be It Enacted by the People of the State of Oregon:**

##### **SECTION 1.** ORS 215.435 is amended to read:

215.435. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a county, the governing body of the county or its designee shall take final action on an application for a permit, limited land use decision or zone change within [90] **120** days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the [90-day] **120-day** period established under this subsection shall not begin until final resolution of the judicial review.

*[(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand.]*

*[(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.]*

**(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.**

**(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.**

**(3) The [90-day] 120-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.**

**(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

##### **SECTION 2.** ORS 215.437 is amended to read:



215.437. (1) If the governing body of a county or its designee fails to take final action on an application for a permit, limited land use decision or zone change within [90] **120** days as provided in ORS 215.435, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the county or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section.

**SECTION 3.** ORS 227.181 is amended to read:

227.181. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within [90] **120** days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the [90-day] **120-day** period established under this subsection shall not begin until final resolution of the judicial review.

*[(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand.]*

*[(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.]*

**(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand, but if the city does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the city shall deem the application terminated.**

**(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The city shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.**

(3) The [90-day] **120-day** period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

**SECTION 4.** ORS 227.182 is amended to read:

227.182. (1) If the governing body of a city or its designee fails to take final action on an application for a permit, limited land use decision or zone change within [90] **120** days as provided in ORS 227.181, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the city or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section.

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**Passed by House April 16, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 10, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State