

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. _____

Amending MCC Chapters 33, 35 and 36 Relating to Forest Practices Setbacks, Fire Safety Zones, and Clustering Requirements in the Commercial Forest Use Zones and Declaring an Emergency.

(Language ~~stricken~~ is deleted; underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in MCC 33.0140, 35.0140, 36.0140, 37.0710, and in ORS 215.110.
- b. Land use provisions in the Commercial Forest Use (CFU) zones serve the purpose of, among other things, conserving and protecting designated lands for the continued commercial growing and harvesting of timber, as well as reducing the risk, and minimizing the impacts, of wildfires. Consistent with those purposes, development in the CFU must maintain a certain amount of separation from property lines (Forest Practices Setbacks), and firebreaks are required around structures (Fire Safety Zones).
- c. Planning Commission Resolution No. PC 2018-10625 relates to Forest Practices Setbacks, Fire Safety Zones, and clustering requirements in the CFU zones. Generally, the ordinance: (1) amends the standards for Forest Practices Setbacks and Fire Safety Zones in the CFU zones to clarify how replacement, restoration, alteration, maintenance of, and addition to, certain existing development is regulated; and, (2) readopts accessory structure clustering provisions that were inadvertently deleted in 2017 through adoption of Ordinance 1242.
- d. The existing CFU standards addressing the Forest Practices Setbacks and Fire Safety Zones for certain development that does not meet current setbacks will benefit from further clarification. Under current code, for those types of development, a property owner may maintain nonconforming Forest Practices Setbacks of less than 30 feet, and, in certain development situations, the Primary Fire Safety Zone is required “to the extent possible within the existing setbacks.” The ordinance amends those provisions to clarify that where a nonconforming Forest Practices Setback of less than 30 feet existed on the date that the relevant code was last amended, that setback may be maintained. Where there is such a nonconforming setback, for certain types of development, the Primary Fire Safety Zone is required only to the full extent of that nonconforming setback as it existed on the date that the relevant code was last amended. The relevant code amendments occurred through Ordinance 1079 (effective August 26, 2006) and Ordinance 1179 (effective May 21, 2011), and those effective dates are referenced in this

ordinance. In addition, the amendments clarify the intent of the current code by making clear that, where at least a portion of a replaced or restored dwelling will be within 100 feet of the existing dwelling, rather than in the same location, current setback standards must be met.

- e. Ordinance 1242, adopted February 23, 2017, more clearly delineated the features and facilitates that may be approved for accessory structures and provided additional opportunities for the siting of small accessory structures, fences, and retaining walls. Prior to enactment of Ordinance 1242, accessory structures permitted under the Allowed Use provisions in the CFU zones were required to be located within 100 feet of the dwelling. The phrase “located within 100 feet of the dwelling” previously used in the CFU zones was deleted from the code when that language was inadvertently removed within Ordinance 1242. This ordinance corrects that inadvertent removal by inserting the same phrase back into Accessory Structure provisions applicable to Allowed Uses within the CFU zones.
- f. The Planning Commission held a public hearing on September 10, 2018, during which all interested persons were given the opportunity to appear and be heard. No public testimony was provided at that hearing. Notice of the Planning Commission’s hearing was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. In addition, the written individual notice required in ORS 215.503 (commonly referred to as “Ballot Measure 56 notice”) was mailed on August 21, 2018.
- g. The Planning Commission’s recommendation is sound and derives from the proper execution of its duties and authority.
- h. The Planning Commission has also recommended combining, reconciling, and reorganizing ten existing chapters of zoning and certain development regulations, including MCC Chapters 33, 35 and 36, into one new chapter, Multnomah County Code Chapter 39, *Zoning Code of Multnomah County, Oregon*. This ordinance provides direction on how these amendments will be added and codified when Chapter 39 becomes effective.

Multnomah County Ordains as Follows:

Section 1. MCC 33.2056, 33.2256, 33.2456, 35.2056, 35.2256 and 36.2056 are amended as follows:

- § 33.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**
- § 33.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**
- § 33.2456 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**
- § 35.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**
- § 35.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**
- § 36.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|--|---|---|---------------------------|--|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| Replaced or restored dwelling in same location &/or less than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling | May maintain current nonconforming setback(s) if less than 30 ft. to property line | 30 | 30 | Property owner is encouraged to establish Primary to the extent possible |
| Replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling | <p>May maintain current nonconforming setback(s) if less than 30 ft. to property lines</p> <p><u>Nonconforming setback(s) of less than 30 ft. to property lines that existed as of August 26, 2006 may be maintained</u></p> | 30 | 30 | <p>Primary is required, <u>except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of August 26, 2006, Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006 to the extent possible within the existing setbacks</u></p> |
| At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling | <p>May maintain current nonconforming setback but shall increase to 30 ft. if less than 30 ft.</p> <p align="center"><u>N/A</u></p> | 30 | 30 | Primary required; Maintenance of vegetation in the Secondary is required to the extent possible |

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|-----------------------------------|--|---|---------------------------|--|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| * * * | | | | |
| Addition to an existing structure | <p>May maintain current nonconforming setback(s) if less than 30 ft. to property lines</p> <p><u>Nonconforming setback(s) of less than 30 ft. to property lines that existed as of May 21, 2011 may be maintained</u></p> | 30 | 30 | <p><u>Primary is required, except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of May 21, 2011,</u></p> <p><u>Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006 to the extent possible within the existing setbacks.</u></p> |

* * *

Section 2. MCC 33.2020, 33.2220, 33.2420, 35.2020, 35.2220 and 36.2020 are amended as follows:

§ 33.2020 ALLOWED USES.
 § 33.2220 ALLOWED USES.
 § 33.2420 ALLOWED USES.
 § 35.2020 ALLOWED USES.
 § 35.2220 ALLOWED USES.

(A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:

* * *

(T) Accessory structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this district, located within 100 feet of the dwelling, and is a structure identified in the following list:

* * *

Section 3. On the date that Multnomah County Code Chapter 39 becomes effective, MCC 39.4110 shall be amended as follows:

§ 39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|--|--|---|---------------------------|--|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| Replaced or restored dwelling in same location &/or less than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling | May maintain current nonconforming setback(s) if less than 30 ft. to property line | 30 | 30 | Property owner is encouraged to establish Primary to the extent possible |

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|--|---|---|---------------------------|--|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| Replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling | <p><u>Nonconforming setback(s) of less than 30 ft. to property lines that existed as of August 26, 2006 may be maintained</u></p> <p>May maintain current nonconforming setback(s) if less than 30 ft. to property lines</p> | 30 | 30 | <p>Primary is required, <u>except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of August 26, 2006, Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006 to the extent possible within the existing setbacks</u></p> |
| At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling | <p>May maintain current nonconforming setback but shall increase to 30 ft. if less than 30 ft. N/A</p> | 30 | 30 | Primary required; Maintenance of vegetation in the Secondary is required to the extent possible |
| ***** | | | | |

| Use | Forest Practice Setbacks | | | Fire Safety Zones |
|-----------------------------------|--|---|---------------------------|---|
| Description of use and location | Nonconforming Setbacks | Front Property Line Adjacent to County Maintained Road (feet) | All Other Setbacks (feet) | Fire Safety Zone Requirements (FSZ) |
| Addition to an existing structure | <p><u>Nonconforming setback(s) of less than 30 ft. to property lines that existed as of May 21, 2011 may be maintained</u></p> <p>May maintain current nonconforming setback(s) if less than 30 ft. to property lines</p> | 30 | 30 | <p><u>Primary is required, except that if there was a nonconforming Forest Practice setback of less than 30 feet to property lines as of May 21, 2011,</u></p> <p><u>Primary is required to the full extent of the nonconforming Forest Practice setback as it existed on August 26, 2006 to the extent possible within the existing setbacks</u></p> |
| * * * * * | | | | |

Section 4. On the date that Multnomah County Code Chapter 39 becomes effective, MCC 39.4070 shall be amended as follows:

§ 39.4070 ALLOWED USES

* * *

(T) Accessory Structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling, and is a structure identified in the following list:

* * *

Section 5. This ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared. Sections 1 and 2 of the ordinance take effect immediately upon being signed by the County Chair pursuant to Section 5.50 of the Multnomah County Home Rule Charter. Sections 3 and 4 shall take effect on the date that Multnomah County Code Chapter 39 becomes effective.

FIRST READING and ADOPTION: _____

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Katherine Thomas, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director, Department of Community Services