



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(revised 03/25/11)

Board Clerk Use Only

Meeting Date: 10/13/11
Agenda Item #: R.9
Est. Start Time: 10:15 am
Date Submitted: 9/15/11

Agenda Title: Amending MCC Chapters 29 and 33-38 Relating to Fire Flow and Fire Apparatus Access, Temporary Health Hardship Dwelling, and Exclusive Farm Use Requirements

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date: October 6 & 13, 2011 **Amount of Time Needed:** 5 minutes
Department: DCS **Division:** Land Use Planning
Contact(s): Chuck Beasley
Phone: 988-5050 **Ext.** 22610 **I/O Address:** 455/116
Presenter Name(s) & Title(s): Chuck Beasley, Senior Planner and Lisa Estrin, Planner

General Information

1. What action are you requesting from the Board?

Conduct a public hearing and approve the proposed amendments to the Multnomah County Building Regulations Chapter 29, and to Zoning Code Chapters 33 through 38. These amendments have been recommended by the Planning Commission to the Board for approval.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

This proposed ordinance incorporates three groups of amendments recommended by the Planning Commission: PC 10-007, *Amendments Relating to Access and Fire Flow Standards*; PC 2011-1397, *Amending Temporary Health Hardship Dwelling Requirements*; and PC 2011-1395 and PC 10-006, *EFU Zone Amendments for Consistency with the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Implementation of HB 3099 (2009)*. The Planning Commission Resolutions recommending these building and zoning code amendments are attached.

Access and Fire Flow Standards

The amendments in sections 1, 2, and 8 of the proposed ordinance repeal outdated County fire regulations and reduce duplicative procedures by relying on each structural fire service agency to implement fire protection regulations in accordance with their expertise and equipment. The County expanded its "mission" to include fire service regulation when the County adopted standards in 2004 to ensure adequate fire flow and access on rural properties. These regulations were intended to

address a gap in State fire regulations caused by the applicability of those regulations to urban areas only. This resulted in the current situation where the County and fire districts jointly administer fire regulations. The State amended the code in 2007 making it applicable in rural areas, thereby removing the need for separate County regulations.

Sections 1 and 2 of the ordinance amend MCC Chapter 29 to repeal the County fire flow and access standards and adopt the updated Oregon Fire Code (OFC). Determination of compliance with the fire regulations will be the fire service provider's responsibility. In the few areas of the County that fire service is not available the building official has authority to determine compliance with the OFC. The amendments in section 8 remove separate County driveway standards and defer to fire provider standards or standards in the Oregon Fire Code. This eliminates occasional conflicts between the County and fire service provider standards.

Health Hardship Dwellings

The primary objectives of the amendments in Sections 3 through 6 are to reduce the processing cost and time needed to permit temporary health hardship dwellings and to expand the allowable dwelling type to include certain recreation vehicles. Requests for health hardship dwellings are processed as administrative land use decisions in all zone districts except the Exclusive Farm Use (EFU) zone. Changing the EFU permit process to administrative review results in an approximately 75% reduction in processing fees and potentially greater than 30 day reduction in processing time. While the number of these permits issued is low, the changes will help the county better respond to citizens' needs that do arise.

The proposed amendments also define related terms, consolidate related standards for all zones into one code section, and clarify standards to improve administration. It requires that the temporary dwelling is located within 100 feet of the existing dwelling to render the dwelling compatible with adjacent farm or forest uses pursuant to ORS 215.296 & OAR 660-06-0025(5). It eliminates the requirement for posting of a \$1,000 penal bond that was imposed in the past to ensure removal of the dwelling when the hardship ends, and reduces the amount of time allowed for removal of the temporary dwelling from 6 months to 30 days.

EFU HB 3099 and RLUIPA (Religious Land Use and Institutionalized Persons Act)

Sections 9 through 12 of the proposed ordinance incorporate changes to the EFU zone district to bring the County zoning code into conformance with amendments to state statutes pursuant to HB 3099 (2009) and amendments to state administrative rules. More specifically, the proposed ordinance incorporates changes made by the State Legislative Assembly in HB 3099 together with the conforming rule amendments adopted by the Oregon Land Conservation and Development Commission (LCDC). In addition, the proposed ordinance incorporates a second amendment to LCDC rule adopted in response to a judicial decision and intended to conform that rule to the RLUIPA. Details on the foregoing changes to statute and administrative rule are presented further below.

Notably, state law requires the County to adopt ordinances incorporating changes to state land use laws and rules. In addition, the statutes and rules incorporated in this proposed ordinance are currently in effect and apply directly to land use applications submitted to the County until such time that the County adopts conforming amendments to its land use ordinances. Thus, the proposed ordinance is intended to satisfy the County's statutory obligation to adopt ordinances incorporating changes to state land use laws and rules and to provide for local implementation of state regulations rather than direct application of such regulations.

The changes to state regulations referenced above affect several uses occurring in the County's EFU zone, including uses by the Open Door Baptist Church and School and the Skyline School. The uses and facilities of these two entities are impacted by the changes to state land use regulation, and consequently by this proposed ordinance, due to the proximity of these uses and facilities to the urban growth boundary (UGB) as explained below. The specific impact concerns the facilities. While the facilities can be maintained and altered under the amended regulations, future expansion is limited unless a goal exception is approved. Because goal exceptions involve amendment of the County's comprehensive plan, the Skyline School site may be precluded from pursuing this option because its facilities are located in a Rural Reserve.

Although the Skyline School did not participate in the hearings conducted by the Planning Commission, the Planning Commission did receive testimony from the Open Door Baptist Church in opposition to the proposed ordinance during each of three hearings.

Below is a summary of the proposed changes to the County code as set forth in Sections 9 through 12 of the ordinance.

- Greyhound Kennels, Solid Waste Disposal Sites, Golf Courses, and Model Aircraft

The breeding, kenneling and training of greyhounds for racing is deleted from the list of outright uses in the EFU zone. Dog kennels generally continue to be allowed subject to conditional use standards. Solid waste disposal sites ordered by the Environmental Quality Commission are no longer allowed in EFU. The amendments allow for model aircraft landowners and operators to charge fees for use of the site, and make minor clarifying wording changes to the wetland management use. Solid waste sites and golf courses were not included in the County EFU district; therefore no ordinance amendments are needed.

- Public and Private Rural Schools

This change defines a school as providing for grades K – 12, and adds the limitation that it primarily serves the rural area by prohibiting new schools and limiting expansion of existing schools within three miles of the UGB. DLCD staff described the grade range as intended to codify case law interpretation that the "schools" use means traditional educational facilities. The rural service element reflects existing administrative rule language that applies to community centers, and limits the potential for urban schools to be established in rural areas within three miles of the UGB. The procedure for expansion of schools is changed from the allowed to the conditional use process and subject to additional criteria, including demonstration that the use will be compatible with farming in the area.

- Nonconforming Schools

Expansion of schools that became nonconforming through adoption of the regulations will be subject to Community Service use criteria, including compatibility with nearby farm use, and compliance with standards for off-street parking, yard set backs, design review, and sign codes.

- Limitations on Assembly of People within Structures

The result of these amendments is that all uses that involve assembly of larger numbers of people within structures located on EFU land within three miles of the UGB are regulated in the same way. New and existing churches, parks, playgrounds, community centers, hunting and fishing preserves, and campgrounds within three miles of a UGB are limited in capacity to a lower "rural" intensity unless a goal exception is approved, or unless the structure(s) are included in an approved master plan.

- Farm Compatibility

These changes bring the farm compatibility criteria used to consider whether proposed Conditional Uses or Community Service Uses could impact nearby farm or forest uses into closer alignment with the state provisions of ORS 215.296.

3. Explain the fiscal impact (current year and ongoing).

None

4. Explain any legal and/or policy issues involved.

County Counsel assisted staff and the Planning Commission in assessing consistency of the proposed ordinance with the legal requirements in the subject statutes and rules. Counsel has advised that the proposed ordinance is consistent. In addition, Counsel considered the testimony of the Open Door Baptist Church and School (Open Door) in opposition to the proposed ordinance and provided a legal assessment of those arguments to the Planning Commission that is summarized here:

1. In response to Open Door's assertion that the proposed ordinance is not consistent with the changes to state statutes and rules, Counsel submitted a legal memorandum to the Planning Commission explaining that the proposed ordinance is consistent with the changes.
2. Open Door believes the changes to statute and rule conflict with existing state law governing the alteration of nonconforming uses. Open Door suggests that while the nonconforming use law would allow expansion of Open Door's facilities, the subject changes to land use regulation create a conflict of law because these changes substantially limit the rights of nonconforming uses to expand. Counsel testified before the Planning Commission that expansion under the nonconforming use law is limited and not without bounds. In addition, Counsel advised that, "on their face," the subject changes to statutes and rules do not conflict with the nonconforming use statute.
3. Open Door believes the changes to statute and rule conflict with the prohibition in the RLUIPA against imposing substantial burdens on the exercise of religion. In response, Counsel testified before the Planning Commission that, "on their face," the subject changes to statutes and rules do not conflict with the RLUIPA. While Counsel did not foreclose the possibility that the changes in land use regulation could potentially be *applied* in a manner inconsistent with the RLUIPA, such circumstances present a fact-specific inquiry that cannot be addressed with any certainty in a legislative setting.
4. Lastly, Counsel reminded the Planning Commission of the context within which this proposed ordinance arises:
 - a. state law requires the County to adopt ordinances incorporating changes to state land use laws and rules;
 - b. until such time as the County adopts an implementing ordinance, the subject changes in state statutes and rules apply directly to land use applications submitted to the County;
 - c. the proposed ordinance is consistent with the subject changes to state statutes and rules and does not, on its face, conflict with any state or federal law;

As such, Counsel concluded his testimony before the Planning Commission by advising that Counsel sees no basis for the county to forego its statutory obligation to adopt the subject changes to state statutes and rules and sees no basis for amending or revising the proposed ordinance. Accordingly, Counsel recommended that the Planning Commission recommend the

proposed ordinance to the Board of County Commissioners for Multnomah County.

5. Explain any citizen and/or other government participation that has or will take place.

The fire code amendments were developed in coordination with the six county fire service providers in meetings that took place in August and September of 2010. The proposed amendments incorporate recommendations of participants in this outreach effort. Staff is continuing to coordinate with the service providers in developing implementation strategies. The Planning Commission conducted work sessions in May 2010, and again in April 2011, followed by a public hearing in June 2011. Multnomah County Rural Fire Protection District #14 attended the work sessions to answer Planning Commission questions. No public attended the hearing.

Individual property owner notification (Ballot Measure 56 Notice) was mailed to all owners of property in the EFU zone in February 2011. This notice summarized the changes in the proposed ordinance and provided information about how to participate in the initial public hearing. One property owner, the Open Door Church participated in the March, April, and June Commission hearings. Staff also worked with Department of Land Conservation and Development staff to ensure consistency of the proposed amendments to state regulations.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date:

9/15/11