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REVIEWED
BOW
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Titles 18, 19
and 20 of the Deschutes County Code
and PL-17 for Consistency with Title
22 of the Deschutes County Code and
Declaring an Emergency. *

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MARY SUE PENNOLLOW
COUNTY CLERK

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ORDINANCE NO. 95-050

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

Amendments to Title 18
County Zoning Ordinance

Section 1. Section 18.108.060(A), "Application - Amendment of a
Development Plan," of the Deschutes County Code is amended to read as
follows:

"18.108.060 Amendment of a Development Plan

A. Application. Application for an amendment to an
approved development plan within a PC Zone shall be made
subject to Deschutes County Code Title 22, the Uniform
Development Procedures Ordinance, and zoning ordinance. The
criteria shall be the same as for a change of zone. [The
Planning Director or Hearings Body shall conduct the initial
hearing. Any approval shall automatically be reviewed by the
Planning Commission.]

Section 1A. Section 18.120.010, "Nonconforming Use," of the
Deschutes County Code is amended to read as follows:

"18.120.010 Nonconforming uses.

Except as otherwise provided in this title, the lawful
use of a building, structure or land existing on the
effective date of this title or any amendment thereto may be
continued although such use or structure does not conform
with the standards for new development specified in this
title. A nonconforming use or structure may be altered,
restored or replaced subject to this section. No
nonconforming use or structure may be resumed after a one
year period of interruption or abandonment unless the resumed
use conforms with the provisions of this title in effect at
the time of the proposed resumption.

A. Expansion or Replacement of a Non-conforming
Structure.

1. Non-Conforming Structure. For the purposes of this

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section, a nonconforming structure is one that was lawfully established and violates current setbacks of this title but conforms with respect to use.

2. Replacement or Expansion without Additional Encroachment in Setback Area. A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the pre-existing nonconforming structure or may be expanded with an addition that does not project into the setback area at any point along the footprint of the structure, subject to all other applicable provisions of this title.

3. Replacement or Expansion with Additional Encroachment in Setback Area. Replacement or expansion of a non-conforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or pre-existing structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or pre-existing structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or pre-existing structure; and (4) meets the variance approval standards set forth in Section 18.132.025(A)(1), (A)(2), (A)(3) and (A)(4).

Such replacements or expansions must conform with all other applicable provisions of this title.

B. Verification of Nonconforming Use. [Upon application] Subject to the procedures set forth in Chapter 22.40, the Planning Division will verify whether or not a use constitutes a valid non-conforming use in accordance with the provisions of this section and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use. The burden of proof shall be on the applicant to demonstrate its lawful existence. The applicant shall demonstrate all of the following:

1. The nonconforming use was lawful on the effective date of the provisions of this title prohibiting the use.

2. The nonconforming use was actually in existence on the effective date of the provisions of this title prohibiting the use, or had proceeded so far toward completion that a right to complete and maintain the use would be vested.

3. The nonconforming use has not been interrupted for a period in excess of one year or was never abandoned.

C. Maintenance of a Nonconforming Use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to paragraph (E) below.

D. Restoration or Replacement of a Nonconforming Use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:

1. Restoration is made necessary by fire, natural disaster or other casualty.

2. The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction.

3. The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.

E. Alteration of a Nonconforming Use. Any alteration to a nonconforming use permitted under this section shall also be subject to all applicable provisions of this title, including site plan review. Alteration does not include expansion of a use or structures associated with that use or a change in use.

1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.

2. In all cases other than that described in (1) above, alteration of a nonconforming use or any physical improvements may be permitted by the Hearings Officer when both of the following criteria are met:

a. The alteration is necessary to reasonably continue the nonconforming use.

b. The alteration will have no greater adverse impact on the neighborhood.

F. Procedure.

1. [Except as set forth in Subsection F(2) and F(3) of this section,] [a]Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the procedures for a [land use action] declaratory ruling under Title 22, the Deschutes County Uniform Development Procedures Ordinance.

[2. Applications to expand, alter, restore or replace a nonconforming use shall in all cases be subject to a public hearing consistent with the requirements of Title 22, the Deschutes County Uniform Development Procedures Ordinance.]

2[3]. After a decision has been rendered on an application for a verification of a non-conforming use (including any appeals provided for under Title 22 and under state law), the applicant shall not be entitled to reapply under Section 22.28.040 for another verification determination involving the same use of the property."

Section 2. Section 18.136.010, "Authorization to Initiate Amendments," of the Deschutes County Code is repealed and replaced to read as follows:

"18.136.010 Amendments

This title may be amended as set forth in this Chapter. The procedures for text or legislative map changes shall be as set forth in Chapter 22.12 of this code. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of Title 22 of this code."

Section 3. Section 18.136.020, "Procedure for Zoning Amendments," of the Deschutes County Code is repealed.

Section 4. Section 18.136.030, "Rezoning Standards," is renumbered Section 18.136.020.

Section 5. A new section 18.136.030, "Resolution of Intent to Rezone," is added to Chapter 18.136 as follows:

"18.135.030 Resolution of Intent to Rezone

A. If from the facts presented and findings and the report and recommendations of the Hearing Officer, as required by this Section, the County Commission determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions that the County Commission may feel necessary to prevent speculative holding of property after rezoning. Such a resolution shall not be used to justify "spot zoning" or to

create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.

B. The fulfillment of all conditions, stipulations and limitations contained in the resolution on the part of the applicant shall make such a resolution a binding commitment on the Board of County Commissioners. Upon completion of compliance action by the applicant, the Board shall, by ordinance, effect such rezoning. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including any time limit placed in the resolution, shall render the resolution null and void automatically and without notice, unless an extension is granted by the Board.

C. Content of Site Plan. Where a site plan is required pursuant to Chapter 19.92, it shall include location of existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggerations, except where noted, including locations, area and design of signs and all landscaping."

Section 6. Section 18.140.080, "Revocation," of Title 18, as amended, is further amended to read as follows:

"18.140.080 Revocation.

A. The [Planning Director or] Hearings Body may revoke or modify any permit granted under the provisions of this title on one or more of the following grounds:

[A]1. A permit may be revoked on the basis of fraud, concealment, misrepresentation or inaccurate information supplied on the application or offered by the applicant or his representative at a public hearing.

[B]2. A permit may be revoked on the basis that the use for which such permit was granted has ceased to exist or has been suspended for one year or more.

[C]3. A permit may be revoked or modified on the basis that the use for which the permit was granted was so exercised as to be detrimental to the public health, safety or welfare, or in such a manner as to constitute a nuisance.

4. A permit may be revoked or modified on the basis that the conditions or terms of such permit have been substantially violated.

[D]5. Any permit granted pursuant to this title shall become null and void if not exercised within the time period specified in such permit or, if no time period is specified in the permit, within two years from the date of approval of said permit. [The Planning Director or Hearings Body shall hold a public hearing on any proposed revocation after giving written notice to the permittee and other affected persons as set forth in Deschutes County Code Title 22, the Uniform Development Procedures Ordinance. The Planning Director or Hearings Body shall render his decision within 45 days after the conclusion of the hearing. Appeals from the action of the Planning Director or Hearings Body shall be filed in the manner provided in Deschutes County Code Title 22, the Uniform Development Procedures Ordinance.]

B. Procedures for revocations shall be as set forth in Title 22 of this code."

Amendments to Title 19
Bend Urban Area Zoning Ordinance

Section 7. Section 19.96.010, "Verification of Nonconforming Use," of the Deschutes County Code is amended to read as follows:

"19.96.010 Verification of Nonconforming Use.

Subject to the procedures set forth in Chapter 22.40, upon application the Planning Division will verify whether or not a use constitutes a valid non-conforming use in accordance with the provisions of this section and applicable state law. Verification of the existence of a non-conforming use shall be required prior to or concurrently with any application to alter or restore the use. The burden shall be upon the applicant for alteration or restoration of a nonconforming use to demonstrate its lawful existence. The applicant shall demonstrate all of the following:

A. The nonconforming use was lawful on the effective date of the provisions of this Ordinance prohibiting the use.

B. The nonconforming use was actually in existence on the effective date of the provisions of this Ordinance prohibiting its use, or had proceeded so far toward completion that a right to complete and maintain the use would be deemed to have vested.

C. The nonconforming use has existed continuously or it has not existed continuously, has not been abandoned or has not been interrupted for a period in excess of one (1) year.

The decision verifying the nonconforming use shall be made [by the Planning Director and shall be appealable] pursuant

to the provisions of the County land use procedures ordinance."

Section 8. Section 19.100.040, "Application," of the Deschutes County Code is amended to read as follows:

"19.100.040 Application

A request for a conditional use may be initiated by a property owner or his [authorized] agent, **authorized in writing**, by filing an application with the Planning Director. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. The Planning Director or Hearings Body may request other drawings or material essential to an understanding of the proposed use and its relationship to the surrounding properties."

Section 8A. Section 19.104.100, "Violation of Conditions," of the Deschutes County Code is amended to read as follows:

"19.104.100 Violation of Conditions

The [Planning Director or] Hearings Body on its own motion may revoke any planned unit development approval for non-compliance with the conditions set forth in the order granting the said approval, after first holding a public hearing and giving notice of such hearing as provided in the land use procedures ordinance. The foregoing shall not be the exclusive remedy, and it shall be unlawful and an offense punishable hereunder for any person to construct any improvement in violation of any condition imposed by the order granting the planned unit development approval."

Section 9. Section 19.108.050, "Application for a Variance," of the Deschutes County Code is amended to read as follows:

"19.108.050 Application for a Variance

A property owner or his agent, **authorized in writing**, may initiate a request for a variance by filing an application with the Planning Director. The application shall be accompanied by a plan, drawn to a suitable scale, showing the condition to be varied and the dimensions and arrangements of the proposed development. The application shall be reviewed in the manner provided for in the County's land use procedures ordinance."

Section 10. Section 19.112.020, "Public Hearing," of the Deschutes County Code is repealed and replaced as follows:

"19.112.020 Public Hearing

The procedures for considering a revocation under this Chapter shall be as set forth in Title 22 of the Deschutes County Code."

Section 11. Sections 19.116.010, "Application," 19.116.020, Public Hearing on an Amendment," 19.116.040, "Action by County Commissioners," 19.116.070, "Appeals," and 19.116.080, "Procedures," of the Deschutes County Code are repealed.

Section 12. The introductory paragraph to Chapter 19.116, "Amendments, Appeals and Procedures," of the Deschutes County Code is repealed and replaced with a new provision 19.116.010, "Amendments," as follows:

"19.116.010 Amendments

This Ordinance may be amended by changing the boundaries of zones or by changing any other provisions thereof subject to the provisions of this Chapter.

A. Text changes and legislative map changes may be proposed by the Board of County Commissioners on its own motion, by the motion of the Planning Commission, by petition as set forth in ORS 254.310, or, upon payment of a fee, by the application of a member of the public. Such changes shall be made pursuant to Chapter 22.12 of the Deschutes County Code and ORS 215.110 and 215.060.

B. Any proposed quasi-judicial map amendment or change shall be handled in accordance with the applicable provisions of Title 22 of the Deschutes County Code."

Section 13. Section 19.116.030, "Standards for Zone Change," is renumbered to Section 19.116.020 and is amended to read as follows:

"19.116.030 Standards for Zone Change

The burden of proof is upon the [one seeking change] applicant. [The degree of that burden increases proportionately with the degree of impact of the change which is being sought.] The applicant shall in all cases establish:

- A. That the change conforms with the comprehensive plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.
- B. That the change will not interfere with existing development, development potential or value of other land in the vicinity

of the proposed action.

- C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.
- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the county's policy for provision of public facilities.
- E. That there is proof of a change of circumstance or a mistake in the original zoning."

Section 14. Section 19.116.050, "Record of Amendments," is renumbered to Section 19.116.030.

Section 15. Section 19.116.060, "Resolution of Intent to Rezone," is renumbered to Section 19.116.040.

Amendments to Title 20
Redmond Urban Area Zoning Ordinance

Section 16. Section 20.116.060, "Public Hearing on a Conditional Use," is repealed and replaced as follows:

"20.116.060 Procedures

An application for a conditional use shall be processed in accordance with the procedures set forth in Title 22 of the Deschutes County Code."

Section 17. Section 20.116.070, "Notification of Action," is repealed and subsequent sections of Chapter 19.116 are renumbered accordingly.

Section 17A. A new Section 20.120.015, "Verification of Nonconforming Use," is adopted to read as follows:

"20.120.015 Verification of Nonconforming Use

The existence and scope of a nonconforming use may be verified in accordance with the requirements of state law under the procedures set forth in Chapter 22.40 of this title."

Section 17B. Section 20.120.050, "Alterations and Repairs," is amended to read as follows:

"20.120.050 Alterations and Repairs

- A. Alterations of a nonconforming use may be permitted to

reasonably continue the use. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

B. Any proposal for the alteration of a use under Section A., except as an alteration necessary to comply with a lawful requirement shall be considered [subject to] as a land use action under Title 22. As used in this Section, "Alteration" of a nonconforming use includes:

1. A change in the use of no greater adverse impact to the neighborhood.

2. A change in the structure of physical improvements of no greater adverse impact to the neighborhood."

Section 18. Section 20.124.010, "Authorization to Grant or Deny Variances," is amended to read as follows:

"20.124.010 Authorization to Grant or Deny Variances

The Planning Director or Hearings Body, except as provided for in Section 20.124.030, may authorize variances from the standards of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of this title would cause an undue or unnecessary hardship; except that no variance shall be granted to allow the use of the property for purposes not authorized within the pertinent district, or to alter any procedural requirements of this title. In granting a variance, the Hearings Body may attach conditions found necessary to protect the best interest of the surrounding property or neighborhood and to otherwise achieve the purposes of this title."

Section 19. Section 20.124.030, "Authorization to Grant or Deny Variances to On-Site Requirements," is amended to read as follows:

"20.124.030 Authorization to Grant or Deny Variances to On-Site Requirements

The Planning Director or Hearings Body may authorize a variance from the standards of this title relating to on-site requirements (e.g. yards, parking signs, etc.). Provided, however, that no variance under this section shall be greater than 25% of the requirement from which the variance is sought."

Section 20. Section 20.124.050, "Application for a Variance," is amended to read as follows:

"20.124.050 Application for a Variance

A property owner or an agent of the owner authorized in writing to act on the owner's behalf may initiate a variance by filing an application with the Planning Director using forms prescribed in Title 22. The application shall be accompanied by a plan, drawn to a suitable scale, showing the condition to be varied and the dimensions and arrangements of the proposed development. The application shall be reviewed in the manner provided for in Title 22."

Section 21. Section 20.124.070, "Notification of Action," of the Deschutes County Code is repealed.

Section 22. Section 20.128.010, "Authorization to Initiate Amendments," is amended to read as follows:

"Section 20.128.010 Authorization to Initiate Amendments

An amendment to the text of this title or a legislative amendment to a zoning or plan map may be initiated by either the Board, Planning Commission or a property owner. Quasi-judicial plan map amendments shall be initiated by a property owner. A property owner shall [may] initiate a request for an amendment by filing an application with the Planning Director."

Section 23. Section 20.128.020, "Zone-Plan Map Amendments," is amended to read as follows:

"20.128.020 Zone-Plan Map Amendments.

The Hearings [Officer] Body shall[, within 45 days after filing of a petition by a property owner for a zone change/plan amendment with the Planning Director,] hold a public hearing on a quasi-judicial zone change or plan amendment in accordance with the provisions of Title 22. [Prior to said hearing, the Planning Director shall refer the proposed amendments to the Planning Commission for their review and a recommendation. The recommendation of the Commission shall be made a part of the record at the hearing.] For the purposes of this section only, the initial Hearings Body shall, at the discretion of the Planning Director, be either the Planning Commission or the Hearings Officer. "

Section 24. Section 20.128.050, "Map Amendment Procedure," is repealed and replaced to read as follows:

"20.128.050 Legislative Amendment Procedure

Except as set forth herein, legislative changes shall be

heard pursuant to the procedures set forth in Chapter 22.12 of this Code."

Section 25. Section 20.128.060, "Limitations on Reapplications," is amended to read as follows:

"20.128.060 Limitations on reapplications.

No application of a property owner for an amendment to the text of this title or to the zoning map shall be considered by the Hearings [Officer] Body within the six-month period immediately following a previous denial application[,]. However, if[,] in the opinion of the Hearings [Officer] Body, new evidence or a change of circumstances warrant it[.], [However,] the Hearings [Officer] Body may permit a new application."

Amendments to Title 21
Sisters Urban Area Zoning Ordinance

Section 26. Section 19, "Non-Conforming Uses," is amended to read as follows:

"Section 19. NONCONFORMING USES. A use lawfully occupying a structure or site on the effective date of this title or of amendments thereto, which does not conform to the use regulations for the zone in which it is located, shall be deemed to be a nonconforming use and may be continued, subject to the following regulations.

1. Routine maintenance and repairs may be performed on structures or sites, the use of which is nonconforming.

2. No structure, the use of which is nonconforming, shall be moved, altered or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use.

3. No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use.

4. The Planning [Commission] Director or Hearings Body may grant an application for a change of use, filed in accordance with the provisions of this title and processed under Title 22 as an application for a land use action, if, on the basis of the application and the evidence submitted, the following findings are made:

A. That the proposed use is classified in a more

restrictive category than existing or pre-existing use by the zoning district regulations of this title. The classifications of a nonconforming use shall be determined on the basis of the district in which it is first permitted, provided that a Conditional Use shall be deemed to be in a less restrictive category than a permitted use in the same district.

- B. That the proposed use will no more adversely affect the character of the district in which it is proposed to be located than the existing or pre-existing use.
 - C. That the change of use will not result in the enlargement of the space occupied by a nonconforming use, except that a nonconforming use of a building became nonconforming provided that no structural alteration, except those required by law are made.
5. If a nonconforming use has been changed to a conforming use, or if the nonconforming use of a building, structure or premises ceases for the period of one year or more, said use shall be considered abandoned.
6. If a structure containing a nonconforming use is destroyed by any cause to an extent exceeding 60 percent of the appraised value of the structure as determined by the records of the County Assessor for the year preceding destruction, a future structure or use on the property shall conform to the regulations for the district in which it is located.
7. Nothing contained in this title shall require any change in the plans, construction, alteration, or designated use of a structure for which a valid permit exists prior to the adoption of this title and subsequent amendments thereto, except that if the designated use will be nonconforming, it shall be an abandoned use if not in operation within one year of the date of issuance of the building permit.
8. If a building or structure, in existence on the effective date of this title and subject to any yard, location or coverage restriction imposed by this title, fails to comply with such restrictions, such building or structure may be enlarged or altered to the extent that such alteration or enlargement does not itself encroach upon a required yard or violate a location restriction or so increase the area of the building or structure that it violates that coverage restriction; but this right shall be subject to all other restrictions contained in this title.
9. If an existing nonconforming use, or portion thereof, not housed or enclosed within a structure, occupies a portion

of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded. The use, or any part thereof, shall not be moved to any other portion of the property. This shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area. This shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this Ordinance.

10. A use which was lawful by reason of a variance may be conducted only on the terms of the original permit or variance granted and subject to all limitations under which the permit or variance was awarded.

11. The existence and scope of a nonconforming use may be verified in accordance with the requirements of state law under the procedures set forth in Chapter 22.40 of this title."

Section 27. Section 20, "Conditional Use Permits," is amended to read as follows:

"Section 20. CONDITIONAL USE PERMITS

1. Purpose. In certain districts, conditional uses may be permitted subject to the granting of a Conditional Use Permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, Conditional Uses require special consideration so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.
2. [Planning Commission] Authority. The [Planning Commission] Planning Director or Hearings Body shall have the authority to approve, with conditions, disapprove, or revoke Conditional Use Permits subject to the provisions of this section.
3. General Conditional Use Permit Criteria. A Conditional Use Permit may be granted only upon findings by the [Planning Commission] Planning Director or Hearings Body that the proposal meets all of the criteria in this section, as well as all other applicable criteria contained in this Ordinance. The general criteria are:
 - A. That the location, size, design and operating characteristics of the proposed use are such that it will have minimal adverse impact on the liveability, value, or permissible development of abutting properties and the surrounding area.

- B. That the site planning of the proposed uses will, as far as reasonably possible, provide an aesthetically pleasing and functional environment to the highest degree consistent with the nature of the use and the given setting.
 - C. If the use is permitted outright in another zone, that there is substantial reason for locating the use in an area where it is only conditionally allowed, as opposed to an area where it is permitted outright.
 - D. That the proposed use will be consistent with the purposes of this title, the Comprehensive Plan, Statewide Goals, and any other statutes, titles, or policies that may be applicable.
 - E. The establishment, maintenance or operation of the use applied for will not, under circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood or to the general welfare of the Urban Area.
4. A request for Conditional Use may be initiated by a property owner or his authorized agent by filing an application with the Planning Director. The application shall be accompanied by a site plan drawn to scale, showing the dimensions and arrangement of the proposed development. The [Planning Commission] Planning Director or Hearings Body may request other drawings or material essential to an understanding of the proposed use and its relationship to the surrounding properties.
- [5. Public Hearing. Before a conditional use is permitted the proposed conditional use shall be considered by the Hearings Body at a public hearing. Notice of said hearing shall be in accordance with Title 22.]
5. Procedures. Conditional use applications shall be processed in accordance with applicable provisions of Title 22 of the Deschutes County Code.
6. Action by the Planning [Commission] Director or Hearings Body. The Planning Commission may approve, approve with conditions, or disapprove the application for a conditional use permit, subject to the standard procedures of [section 23] Title 22. In permitting a conditional use, the Planning [Commission] Director or

Hearings Body may impose, in addition to regulations and standards expressly specified in this ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood or the urban area as a whole. Any future enlargement or alteration of the use shall be reviewed by the [City] County and new conditions may be imposed.

- A. In order to grant any conditional use, the Planning [Commission] Director or Hearings Body must find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the urban area.
 - B. Duration of permits issued under this chapter shall be as set forth in Chapter 22.36 of the Deschutes County Code.
7. Effect. No building or other permit shall be issued in any case where a conditional use permit is required by the terms of this Ordinance until five days after the approval of the conditional use by the Planning [Commission] Director or Hearings Body. An appeal from an action of the Planning [Commission] Director or Hearings Body shall automatically stay the issuance of a building or other permit until such appeal has been completed.
8. Violation of Condition. The Planning [Commission] Director or Hearings Body, on its own action, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing [as provided in section ____] in accordance with applicable provisions of Title 22. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit."

Section 28. Section 21, "Variances," is amended to read as follows:

"Section 21. VARIANCES. Where practical difficulties, unnecessary hardships and results inconsistent with the

general purposes of this Ordinance may result from the strict application of certain provisions thereof, variances may be granted as provided in this Section. This section shall not be used to allow a use that is not permitted by this Ordinance for the district in which the land is located.

1. Authorization to Grant or Deny Variances. The Planning [Commission] Director or Hearings Body may authorize variances from the requirements of this Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of this ordinance would cause an undue or particular hardship, except that no variance shall be granted to allow the use of property for purposes not authorized within the district in which the proposed use would be located. In granting a variance, the Planning [Commission] Director or Hearings Body may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and to otherwise achieve the purposes of this Ordinance.
2. Conditions for Granting a Variance. A variance may be granted if, on the basis of the application, investigation and evidence submitted, the Planning [Commission] Director or Hearings Body makes the following findings:
 - A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the zoning ordinance.
 - B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.
 - C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.
 - D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.
 - E. That the granting of the variance will not be

detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

F. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

3. Conditions from Granting a Variance to Off-Street Parking or Loading Facilities. The Planning [Commission] Director or Hearings Body may grant a variance to a regulation prescribed by this Ordinance with respect to off-street parking facilities or off-street loading facilities as the variance was applied for or in modified form if, on the basis of the application, investigation and the evidence submitted, the Planning [Commission] Director or Hearings Body makes the findings prescribed in subsection (2) above and the following additional findings:

A. That neither present nor anticipated future traffic volumes generated by the use of the site or use of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.

B. That the granting of the variance will not result in the parking or loading of vehicles on public street in such a manner as to interfere with the free flow of traffic on the streets.

C. That the granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of the zoning ordinance.

4. Application for Variance. A request for a variance may be initiated by a property owner or his authorized agent by filing an application with the [City] Planning Director. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. The Planning [Commission] Director or Hearings Body may request other drawings or material essential to an understanding of the proposed use and its relationship to the surrounding properties.

5. Public Hearings. Before a variance is permitted, the proposed variance shall be considered by the Planning [Commission] Director or Hearings Body at a public hearing. Notice of said hearing shall be given as provided in [Section _____] Title 22.

6. Action of the Planning [Commission] Director or Hearings Body. The Planning [Commission] Director or Hearings Body may approve, disapprove or approve with conditions the application, subject to the standard procedures of [Section _____] Title 22. The Planning [Commission] Director or Hearings Body shall notify the applicant, in writing, of the Planning [Commission's] Director or Hearings Body's action [within ten (10) days after the decision has been rendered] in accordance with Title 22. The Planning [Commission] Director or Hearings Body may attach conditions to an authorized variance which it feels are necessary to protect the public interest and carry out the purpose of this Ordinance.
7. Time Limit on Approval of a Variance. Duration of variances issued under this chapter shall be as set forth in Chapter 22.36 of the Deschutes County Code."

Section 29. Section 22, "Revocation of Permits," is amended to read as follows:

"Section 22. REVOCATION OF PERMITS OR VARIANCES.

1. Revocation for Non-compliance with Conditions. Any conditional use permit or variance granted in accordance with the terms of this Ordinance may be revoked if any of the conditions or terms of such permit or variance are violated, or if any law or ordinance is violated in connection therewith. If, after notice and hearing, any permit is revoked for a substantial violation of any of its conditions, the [City Council] Hearings Body may reconsider any zone change granted in connection with the permit and restore the zoning existing prior to the permit, notwithstanding improvements constructed prior to such revocations, but any such proposed change of zone shall follow the procedures otherwise specified for zone changes herein.
- [2. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee and to other owners of property as set forth in Section _____. The Planning Commission shall render its decision within 45 days after the conclusion of the hearing. In case the permittee is not satisfied with the action of the Planning Commission, he may appeal the decision to the City Council in the manner provided in this Section and Section _____.]
2. Procedures for revocations shall be as set forth in Title 22 of this code."

Section 30. Section 23, "Amendments," is amended to read as follows:

"Section 23. AMENDMENTS. This Ordinance may be amended by changing the boundaries of districts, or by changing any other provisions thereof[, whenever the public necessity and convenience and the general welfare requires such an amendment.] as set forth in this chapter. The procedures for text or legislative map changes shall be as set forth in Chapter 22.12 of this code. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of Title 22 of the Deschutes County Code. [Such a change may be proposed by the City Council on its own motion or by motion of the Planning Commission or by petition as hereinafter set forth. Any such proposed amendment or change shall first be submitted to the Planning Commission and the Planning Commission shall, within 40 days after a hearing, recommend to the City Council approval, disapproval or modification of the proposed amendment.]

- [1. Application. An application for amendment by a property owner or his authorized agent shall be filed with the Planning Director. The application shall be made on the forms provided by the City.
2. Public Hearing on an Amendment. Before taking final action on a proposed amendment, the Planning Commission shall hold a public hearing thereon. The Planning Commission shall follow the procedures set forth in Section 23 for map changes. For amendments to the text, notice of the time and place of the proposed amendment shall be given by three publications in a newspaper of general circulation in the urban area not less than five days nor more than ten days prior to the date of the hearing.]
- 1[3]. Standards for Zone Change. The burden of proof is upon the applicant [one seeking change]. [The degree of that burden increases proportionately with the degree of impact of the change which is sought.] The applicant shall in all cases establish:
 - A. Conformance with the Comprehensive Plan.
 - B. Conformance with all applicable statutes.
 - C. Conformance with statewide planning goals wherever they are determined to be applicable.
 - D. That there is a public need for a change of the

kind in question.

E. That the need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

F. That there is proof of a change of circumstance or a mistake in the original zoning.

G. That annexation to the City of Sisters will accompany the zone change.

[4. Action by the City Council and County Commission. The City Council and County Commission may enact an ordinance granting the zone change or amendment or may, by motion, deny the granting of the zone change or amendment.]

2[5]. Record of Amendments. The signed copy of each amendment to the text and the map of this ordinance shall be maintained on file in the office of the County Clerk and City Recorder[s]. A record of such amendments shall be maintained in a form convenient for the use of the public.

3[6] Resolution of Intent to Rezone. If, from the facts presented and findings and the report and recommendations of the Planning Commission as required by this section, the City Council and County Commission determine that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the City Council and County Commission may indicate its general approval in principal of the proposed rezoning by the adoption of a "resolution of intent to rezone." This resolution shall include any conditions, stipulations or limitations which the City Council and County Commission may feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the City Council and County Commission may feel necessary to prevent speculative holding of the property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution on the part of the applicant shall make such a resolution a binding commitment on the City Council and County Commission. Such a resolution shall not be used to justify spot zoning to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. Upon completion of compliance action by the applicant, the City Council and County Commission shall, by ordinance, effect such rezoning. The failure of the applicant to meet any or all conditions, stipulations or limitations contained in the resolution shall render the resolution of intent to rezone

null and void, unless an extension is granted by the City Council and County Commission upon recommendation of the Planning Commission.

- A. Content of Site Plan. Where a site plan is required pursuant to Section 29, it shall include; location of existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping; existing and proposed topography; mechanical roof facilities, if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggeration except where noted, including locations, area and design of signs, all landscaping and adjacent streets and facilities.
- B. Resolution on Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolution of intent on the part of the applicant shall make the resolution binding on the City Council and County Commission. Upon compliance with the resolution by the applicant, the City Council and County Commission shall, by ordinance, effect such reclassification.
- C. Resolution of Intent Void Upon Failure to Comply. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void, unless an extension is granted by the City Council and County Commission upon recommendation of the Planning Commission."

Section 31. Section 24, "Appeals," is amended to read as follows:

"Section 24. APPEALS. Appeals shall follow the procedures established by [Ordinance No. 82-011] Title 22, except that within the city limits, the hearing shall be held by the City Council."

Section 31A. Section 25, "Procedures," is repealed and replaced to read as follows:

"Section 25. PROCEDURES. Procedures for processing approvals under this ordinance shall be as set forth in Title 22."

Section 32. Section 29(1), "Site Plan Approval - Purpose," is amended to read as follows:

"Section 29. SITE PLAN APPROVAL.

1. Purpose. The purpose of site plan approval is to insure compliance with the objectives and provisions of this Ordinance and the Comprehensive Plan where development may cause a conflict between uses in the same or adjoining districts by creating unsightly, unhealthful or unsafe conditions thereby adversely affecting the public health, safety and general welfare. The purpose of this section is to influence location and design of the proposed use rather than to deny a use allowed within the zone. In considering a site plan, the [commission] Planning Director or Hearings Body shall take into account the impact of the proposed development on nearby properties, on the capacity and circulation of the street system, on the capacity of the utility and service systems, on land value and development potential of the area and on the appearance of the street and the community. The [Commission] Planning Director or Hearings Body may require the following, in addition to the minimum requirements and standards of this Ordinance, as a condition to the site plan approval:
 - A. An increase in building separation to afford greater fire resistance based on building structural and fire flow requirements.
 - B. An increase in building separation to afford improvement in light reception or air circulation.
 - C. Additional off-street parking according to specific requirements for the type of development.
 - D. Screening of the proposed use by a fence or landscaping or a combination thereof.
 - E. Limitations on the size, location and number of exterior lights.
 - F. Limitations on the number and location of curb cuts for ingress/egress, for traffic safety and improved circulation.
 - G. Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.

- H. Improvement, including, but not limited to, paving, curbing, installing traffic control facilities and constructing sidewalks, drainage facilities or the street system which serves the proposed use where the existing street system will be burdened by the proposed use.
- I. Improvement or enlargement of utilities serving the proposed use where existing facilities serving the proposed use will be burdened by the proposed use.
- J. Landscaping or increases in landscaping requirements for the site.
- K. Limitations on the number and size of signs.
- L. Review of and adjustments in design for conformance with the historic architectural design theme.
- M. Any other limitations or conditions it considers necessary to achieve the purposes of this Ordinance and the Comprehensive Plan."

Section 33. Section 29(2), "Site Plan Approval - Site Plan Approval Required," is amended to read as follows:

"2. Site Plan Approval Required. No building, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such uses be commenced, enlarged, altered or changed until a final site plan is approved by the Planning [Commission] Director or Hearings Body.

- A. The provisions of this section apply to developments and uses contained in the zoning ordinance as follows:
 - a. Multi-family dwellings.
 - b. Planned unit developments.
 - c. Mobile home parks.
 - d. Commercial zones.
 - e. Commercial-industrial zones.
 - f. Industrial zones.

- g. Conditional uses where specified in each zone.
- B. A site plan must be filed under the following conditions:
- a. New buildings or structures.
 - b. Building alterations affecting the exterior design and/or dimensions of an existing structure.
 - c. Porches, decks and canopy additions.
 - d. Any new permitted land use on undeveloped property, such as parking lots, concession stands, storage yards, etc.
 - e. Site grading of property affecting or altering the on-site or off-site drainage.
 - f. Signs within the commercial zones.
 - g. A change of use within a zone unless the site already complies with all of the standards of this Ordinance.
- C. All conditions of site plan approval required by the Planning Commission shall be complied with prior to obtaining any required permits or licenses.
- D. Non-compliance with an approved site plan and any conditions of approval shall be a zoning violation."

Section 34. Section 30(6), "Planned Unit Development - Public Hearing," is amended to read as follows:

- "6. Public Hearing. A public hearing shall be held by the Hearings Body on a Planned Unit Development. Notice for this hearing shall be given as set forth in [Section 23] Title 22."

Section 35. Section 30(9), "Planned Unit Development - Hearings Body Action," is amended to read as follows:

- "9. Hearings Body Action. The hearings body shall act upon the applications within [90] 120 days of acceptance of the application, excluding such time as may be required to complete any necessary zoning amendment. In taking action, the hearings body may

approve, approve with conditions or deny an application as submitted. Any planned unit development as authorized shall be subject to all conditions imposed and shall be excepted from other provisions of this Ordinance only to the extent specified in said authorization. Any approval of a planned unit development granted hereunder shall lapse and become void unless, within 12 months after the final granting of approval or within such other period of time as may be stipulated by the hearings body as a condition of such approval, construction of the building or structures involved in the development has begun and been diligently pursued. The hearings body may further impose other conditions limiting the time within which the development or portions thereof must be completed. The decision of the hearings body shall be final unless appealed to a higher hearings body according to the procedures set forth in [Section 35] Title 22."

Section 36. Section 30(10), "Planned Unit Development - Violation of Conditions," is amended to read as follows:

"10. Violation of Conditions. The hearings body on its own action may revoke any planned unit development approval for noncompliance with the conditions set forth in the order granting the said approval after first holding a public hearing and giving notice of such hearing as provided in [Section ____] Title 22. The foregoing shall not be the exclusive remedy, and it shall be unlawful and an offense punishable hereunder for any person to construct any improvement in violation of any condition imposed by the order granting the planned unit development."

Section 37. Section 33(1), "Landscaping Requirements - Purpose," is amended to read as follows:

"1. Purpose. The purpose of this section is to provide for minimum standards for landscaping as a means to implement the provision, purposes and objectives of this Ordinance and Comprehensive Plan. Landscaping requirements for new, redeveloping or change of use applications will be considered by the Planning [Commission] Director or Hearings Body."

Section 38. Additions and Deletions. Additions to Title 22 are set out in bold-faced type and deletions are bracketed.

Section 39. Codification. The Code Book Review Committee shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with

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the Code Book Review Committee's form and style for ordinance codification. Such codification shall include the authority to make format changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated code sections. In addition, as part of codification of these ordinances, the Code Book Review Committee may insert appropriate legislative history references. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

Section 40. Severability. The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance or any exhibit thereto is adjudged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this ordinance or any exhibit thereto.

Section 41. Applicability. This ordinance shall apply to existing and new land use applications and land use action proceedings in a manner consistent with the applicability of Ordinance 95-045 adopted on this date.

Section 42. Repeal of Ordinances as Affecting Existing Liabilities. The repeal, express or implied, of any ordinance, ordinance provision, or code section by this ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability incurred under such ordinance, unless a provision of this ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who violated the repealed ordinance.

Section 43. Emergency. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on its passage.

DATED this 28 day of June, 1995.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Barry H. Slaughter

BARRY H. SLAUGHTER, Chairman

Nancy Pope Schlagen

NANCY POPE SCHLANGEN, Commissioner

Robert L. Nipper

ROBERT L. NIPPER, Commissioner

ATTEST:

Aruta M. Mitchie

Recording Secretary