

REVIEWED
[Signature]
LEGAL COUNSEL

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
COMMISSIONERS' JOURNAL
CJ 2011-106
04/11/2011 08:38:08 AM



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 8, Chapter 21 of the
Deschutes County Code regarding Defensible Space
on Unprotected Lands * * * * *
ORDINANCE NO. 2011-011

WHEREAS, Deschutes County was one of the first Counties in Oregon to participate and implement the Oregon Forestland-Urban Interface Fire Protection Act also known as SB-360. Deschutes County has participated in the re-classification process in 2004 (for Oregon Department of Forestry protected lands only) and in 2009 for hazard ratings based on SB-360 criteria resulting in all private lands throughout the County being classified including all fire districts, municipalities and the unprotected lands in the County utilizing the same defensible space standards (SB-360) for private lands throughout the County. Additionally, SB-360 defensible space standards are used for all private lands in each of the seven Community Wildfire Plans developed for the County regardless of jurisdiction. Additionally current County Code (Title 8, Chapter 20) regulates open burning on unprotected lands; and

WHEREAS, in developing the defensible space ordinance as per SB-360 standards consideration was given for the nature of unprotected lands (no structural or wildland agency will respond), the fact that structures and private lands have been destroyed in past years from wildland fires in the unprotected lands due to little or no defensible space, and within the unprotected lands in Deschutes County there are approximately 150 homes scattered throughout the County with approximately 400 people who could be adversely effected from a wildland fire; now, therefore,

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

Section 1. ADOPTION. DCC Title 8, Chapter 21, is hereby adopted to read as described in Exhibit "A," attached hereto and by this reference incorporated herein.

///

Dated this 6th day of April, 2011

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

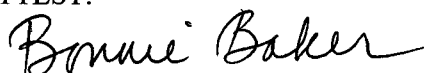


TAMMY BANEY, Chair



ANTHONY DEBONE, Vice Chair

ATTEST:



Recording Secretary



ALAN UNGER, Commissioner

Date of 1st Reading: ~~23rd~~ day of March, 2011.

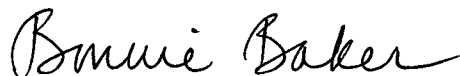
Date of 2nd Reading: 6th day of April, 2011.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Tammy Baney	<input checked="" type="checkbox"/>			
Anthony DeBone	<input checked="" type="checkbox"/>			
Alan Unger	<input checked="" type="checkbox"/>			

Effective date: 6th day of July, 2011.

ATTEST



Recording Secretary

Chapter 8.21
HAZARDOUS VEGETATIVE FUELS

- 8.21.010. Definitions.
- 8.21.020. Purpose and Intent
- 8.21.030. Lands Subject to the Standards
- 8.21.040. Standards
- 8.21.050. Standard Waivers and Reductions
- 8.21.060. Fuel Break Requirements
- 8.21.065. Inadequately protected wildland declared nuisance; Hazard abatement
- 8.21.070. Duty of owner and operator to abate fire; Abatement by County
- 8.21.075. Recovery of Fire Suppression Costs
- 8.21.080. Violation; Liability for Cost of Suppression
- 8.21.085. Violation; Penalty

8.21.010. Definitions.

A. The following words and phrases, when used in DCC 8.21, shall mean the following, unless the context otherwise requires:

1. "Developed land" means land which contains a structure.
2. "Driveway" means the primary, privately-owned vehicle access way that is not a dedicated public road, serves one or more dwellings, subject to control of the owner or occupants of the dwelling(s), and which is longer than 150 feet when measured along the centerline from the nearest intersecting public road to the dwelling.
3. "Dwelling" means a detached building containing one dwelling unit and designed for occupancy by one family only, not including temporary structures such as tents, teepees, travel trailers and other similar structures.
4. "Fire resistant roofing" means roofing material that has been installed and is maintained to the specifications of the manufacturer and which is currently rated by Underwriter's Laboratory as Class A, Class B, Class C, (UL 790, ASTM E108) or is equivalent thereto in terms of fire resistance.
5. "Forester" means the County Forester or the forester's designee.
6. "Forestland" means any woodland, chaparral, timberland, grazing land or clearing that, during any time of the year, contains enough vegetation to constitute, in the judgment of the Forester, a fire hazard, regardless of how the land is zoned or taxed. As used in this paragraph, "clearing" means any grassland, improved area, pond, meadow, mechanically or manually cleared

area, road, rocky area, stream or other similar terrain that is surrounded by or contiguous to woodland or timberland and that has been included in areas classified as forestland under ORS 526.305 to 526.370.

7. "Fuel break" means a natural or a human-made area immediately adjacent to a structure or a driveway, where material capable of allowing a wildfire to spread does not exist or has been cleared, modified, or treated to:

a. Significantly reduce the rate of spread and the intensity of an advancing wildfire; and

b. Create an area alongside the driveway or the structure in which fire suppression operations may more safely occur.

8. "Ladder fuel" means tree branches, leaves, needles, and other combustible vegetation that may allow a wildfire to spread from lower growing vegetation to higher growing vegetation.

9. "Land" means real property encompassing one or more tax lots.

10. "Non-fire resistant roofing" means roofing material that is not fire resistant roofing, including, but not limited to, cedar shakes.

11. "Road" means a public road.

12. "Standards" and "Defensible Space Standards" mean the distance from the structure and alongside a driveway where wildland fuel is removed and/or treated to meet the requirements of this chapter, based on the hazard ratings of the area i.e. High, Extreme, or High Density Extreme.

13. "Structure" means a permanently sited building, a manufactured home, or a mobile home that is either a dwelling or an accessory building to a dwelling, which occupies at least 500 square feet of ground space.

14. "Unprotected land" means those privately owned wildland in Deschutes County located outside the boundaries of any forestland protection district, fire protection district, city or the Oregon Department of Forestry.

15. "Vacant land" means land which does not contain a structure.

16. "Wildfire" means an uncontrolled fire within or adjacent to a forestland-urban interface and which is damaging, or is threatening to damage, natural vegetation or structures.

17. "Wildland" means a geographic area within the County that is classified as unprotected land and contains mainly native vegetation and does not include agricultural, urban, or industrial areas.

18. "Wildland Urban Interface" means an area of transition between unoccupied land and developed land. Communities may be included in a wildland urban interface. These lands and communities adjacent to and surrounded by a wildland urban interface are at risk of wildfires.

B. Except as otherwise defined in this section, terms used in this chapter shall have the meaning given under the provisions of ORS 477.015 to 477.061, as constituted on the date of adoption of this chapter, or as may be amended by the Oregon Legislature from time to time.

8.21.020 Purpose and Intent.

A. Defensible Space Standards set forth in this chapter are designed to minimize or mitigate wildland fire hazards and risks which arise due, singly or in combination, to the presence of structures, or to the arrangement or accumulation of vegetative fuels.

B. Property owners in forestland and wildland urban interface have a variety of objectives to achieve while applying defensible space standards, including aesthetics, dust mitigation, protection of fish and wildlife habitat, gardening, soil stabilization, sound barriers, and visual barriers. It is the intent of the standards to allow owners to meet such objectives, provided they satisfy the standards and thereby mitigate wildfire hazards and risks.

C. The standards are considered to be minimum measures which are intended to improve the survivability of structures during a wildfire, but which will not guarantee survivability.

D. The defensible space standards supplement the requirements of ORS 477.015 to 477.061.

8.21.030 Lands Subject to the Standards.

A. Except as otherwise provided in subsection B of this section, Owners of unprotected lands shall comply with the standards set forth in this chapter.

B. Owners of the following lands may comply with the standards set forth in this chapter:

1. Developed lands classified as High, Extreme or High Density Extreme under ORS 477.015 to 477.061, which are subject to fire protection by the Oregon Department of Forestry.

2. Vacant lands classified as High Density Extreme under ORS 477.015 to 477.061, which are subject to fire protection by the Oregon Department of Forestry.

3. Lands within the city limits of Bend, Redmond, La Pine and Sisters.

4. Lands subject to fire protection from a rural fire protection district or from a county service district.

8.21.040 Standards.

A. For unprotected areas classified as "High" pursuant to ORS 477.015 to 477.061 provide and maintain primary fuel breaks which comply with the requirements of DCC 8.21.060 immediately adjacent to structures, for a distance of at least 30 feet, or to the property line, whichever is the shorter distance. The distance shall be measured along the slope and from the furthest extension of the structure, including attached carports, decks, or eaves.

B. For unprotected areas classified as "Extreme" pursuant to ORS 477.015 to 477.061 provide and maintain primary and immediately adjacent secondary fuel breaks which comply with the requirements of DCC 8.21.060 immediately adjacent to structures, for a distance of at least 50 feet, or to the property line, whichever is the shorter distance. The distance shall be measured along the slope and from the furthest extension of the structure, including attached carports, decks, or eaves.

C. For unprotected areas classified as "High Density Extreme" pursuant to ORS 477.015 to 477.061, provide and maintain primary and adjacent secondary fuel breaks which comply with the requirements of DCC 8.21.060 immediately adjacent to structures, for a distance of at least 100 feet, or to the property line, whichever is the shorter distance. The distance shall be measured along the slope and from the furthest extension of the structure, including attached carports, decks, or eaves.

D. For unprotected areas classified as "High," "Extreme," and "High Density Extreme" pursuant to ORS 477.015 to 477.061, provide primary and adjacent secondary fuel breaks which comply with the requirements of DCC 8.21.060 for the following areas:

1. For driveways that are longer than 150 feet immediately adjacent to driveways, for a distance of at least 10 (ten) feet on each side of the centerline of the driveway, or to the property line, whichever is the shorter distance. The distance shall be measured along the slope. Including the driving surface, a fuel break shall result in an open area which is not less than 13½ feet in height and 12 feet in width or to the property line, whichever is the shorter distance.

2. Adjacent to structures:

- a. Remove any portion of a tree which extends to within 10 feet of the outlet of a structure chimney or a stove pipe.
- b. Maintain the portion of any tree which overhangs a structure by removing substantially dead plant material.
- c. Maintain the area under decks substantially free of firewood, stored flammable building material, leaves, needles, and other flammable material.
- d. During times of the year when wildfire may be a threat, locate firewood, flammable building material, and other similar flammable material at least 20 feet away from a structure or in a fully enclosed space.

3. On vacant lands less than five acres in size, the landowner shall provide fuel breaks which comply with the requirements of DCC 8.21.060 and which are immediately adjacent to all:

- a. Property lines, for a distance of at least twenty (20) feet or to the nearest adjacent property line, whichever is the shorter distance. The distance shall be measured along the slope; and
- b. Roads, for a distance of at least thirty (30) feet from the center of a road, or to the nearest adjacent property line, whichever is the shorter distance. The distance shall be measured along the slope.

8.21.050 Standard Waivers and Reductions.

The County Forester may, in writing, reduce or waive any standard or requirement of this chapter if the Forester finds that conditions so warrant. Reductions or waivers made under this provision:

- A. May be made only after a written request from the owner;
- B. Shall be justified by one or more site specific conditions and a conflict between this chapter and the requirements of another code, law, ordinance, or regulation.

8.21.060 Fuel Break Requirements

A. The purpose of a fuel break is to:

1. Slow the rate of spread and the intensity of an advancing wildfire; and
2. Create an area in which fire suppression operations may more safely occur.

B. A fuel break shall be a natural or a human-made area where material capable of allowing a wildfire to spread:

1. Does not exist; or
2. Has been cleared, modified, or treated in such a way that the rate of spread and the intensity of an advancing wildfire will be significantly reduced.

C. A primary fuel break shall be comprised of one or more of the following:

1. An area of substantially non-flammable ground cover. Examples include asphalt, bare soil, clover, concrete, green grass, ivy, mulch, rock, succulent plants, or wildflowers.
2. An area of dry grass which is maintained to an average height of less than four inches.
3. An area of cut grass, leaves, needles, twigs, and other similar flammable materials, provided such materials do not create a continuous fuel bed and otherwise complies with the intent of subsections A. and B. of this section.
4. An area of single specimens or isolated groupings of ornamental shrubbery, native trees, or other plants, provided they are:
 - a. Maintained in a green condition;
 - b. Maintained substantially free of dead plant material;
 - c. Maintained free of ladder fuel;
 - d. Arranged and maintained in such a way that minimizes the possibility a wildfire can spread to adjacent vegetation; and
 - e. Otherwise complies with the intent of subsections A and B of this section.

D. A secondary fuel break shall be comprised of single specimens or isolated groupings of ornamental shrubbery, native trees, or other plants, provided they are:

1. Maintained in a green condition;
2. Maintained substantially free of dead plant material;
3. Maintained free of ladder fuel;
4. Arranged and maintained in such a way that minimizes the possibility a wildfire can spread to adjacent vegetation; and
5. Otherwise complies with the intent of subsections A and B of this section.

8.21.065 Inadequately protected wildland declared nuisance; Hazard abatement

A. All unprotected wildland that by reason of inadequate fire protection and the property owner's or occupant's failure to comply with the requirements of this chapter endangers life, forest resources or property and is hereby declared to be a hazard and a public nuisance.

B. Whenever the Forester learns of a condition described in subsection A of this section, the Forester shall advise the owner or occupant to take proper steps to correct the nuisance condition. If the owner or occupant after having been so directed in writing by the Forester fails or refuses to correct the nuisance condition within the specified time, then the Forester may undertake such work as the Forester considers necessary to abate and correct the nuisance condition.

C. The owner or occupant of property shall be liable for the cost of work under subsection B of this section and the expense of any patrol rendered necessary by the failure of the owner or occupant to remedy the nuisance condition. The Forester may institute appropriate proceedings to recover the cost of work described in subsection B of this section.

D. The remedies provided in this section are in addition to and not in lieu of penalties and remedies provided elsewhere in DCC 8.21.

8.21.070 Duty of owner and operator to abate fire; Abatement by County

A. Each owner and occupant of unprotected wildland on which a fire exists or from or across which a fire has spread, notwithstanding the origin or subsequent spread thereof, shall immediately proceed to control and extinguish such fire when its existence comes to the knowledge of the owner or operator, without

awaiting instructions from the Forester, and shall continue to control and extinguish same until the fire is extinguished or until relieved of such obligation by the Forester.

B. If the Forester determines the fire is either burning uncontrolled or the owner or occupant does not then have readily and immediately available personnel and equipment to control or extinguish the fire, the Forester, or any forest protective association or agency under contract or agreement with the County for the protection of unprotected wildland against fire, and within whose protection area the fire exists, shall summarily abate the nuisance thus constituted by controlling and extinguishing the fire.

C. An owner may request in writing that the Forester employ alternate fire prevention and suppression strategies or techniques on the owner's property. The Forester may employ some or all of the requested strategies or techniques when, in the judgment of the Forester, conditions warrant the use of the alternate strategies or techniques.

D. The cost of work under subsection B of this section and the expense of any patrol rendered necessary by the want of adequate protection of such wildland shall be recoverable from the owner by an action prosecuted in the name of the County.

8.21.075 Recovery of Fire Suppression Costs

A. Any person

1 who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property,

2 other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which the Forester properly has issued a notice of violation respecting the hazard, or

3 including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which the Forester has issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for both of the following:

a. The cost of investigating and making any reports with respect to the fire.

b. The costs relating to accounting for that fire and the collection of any funds pursuant to this section, including, but not limited to, the administrative costs of operating fire suppression cost recovery program.

The liability imposed pursuant to this paragraph is limited to the actual amount expended which is attributable to the fire.

B. In any civil action brought for the recovery of costs provided in this section, the court in its discretion may impose the amount of liability for costs described in subsection A.

C. The burden of proof as to liability shall be on the Plaintiff and shall be by a preponderance of the evidence in an action alleging that the defendant is liable for costs pursuant to this section. The burden of proof as to the amount of costs recoverable shall be on the Plaintiff and shall be by a preponderance of the evidence in any action brought pursuant to this section.

D. The liability constitutes a debt of that person and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

8.21.080 Violation; Liability for cost of Suppression

A. It is a violation of this chapter to be the owner of land designated to be within an unprotected wildland who fails to meet the applicable standards established under this chapter.

B. The owner or operator of land designated to be within an unprotected wildland is liable to the County for the costs of suppressing a fire that occurs on the owner's land if:

1. The owner has failed to meet the applicable minimum standards established under this chapter;
2. The fire originates on the owner's land;
3. The ignition or spread of the fire is directly related to the owner's failure to meet the applicable standards established under this chapter; and
4. The fire requires action by the County pursuant to Section 8.21.70

C. The actual cost incurred by the Forester or the County in controlling or extinguishing the fire shall be paid by the owner or occupant within 90 days after the date on which the first written demand for payment of the actual cost is mailed by the Forester to the owner or occupant. If the actual cost is not paid within such 90-day period, such amount shall bear interest at 10 percent per year from the date on which the first written demand for the payment of the actual costs was mailed by the Forester and the actual cost together with such interest may be recovered from such owner or operator by an action prosecuted in the name of Deschutes County.

D. An itemized statement of the actual cost incurred by the Forester the County, certified to by the Forester, and shall be accepted as prima facie evidence of the actual cost in any proceeding authorized by this section.

E. The actual cost in cases covered by this section shall constitute a general lien upon the real and personal property of such owner or occupant. A written notice of the lien, containing a description of the property and a statement of the actual cost, shall be certified under oath by the Forester and filed in the office of the County Clerk within 12 months after the calendar year within which the fire originated, and may be foreclosed in the manner provided by law for foreclosure of liens for labor and material. In any proceeding to foreclose a lien created under this subsection, recovery shall include, in addition to the amount of the actual cost, interest on such amount at the rate of 10 percent per year from the date of the filing of the written notice of the lien.

F. Upon request of the Forester, County Legal Counsel shall prosecute such action or foreclose the lien in the name of Deschutes County. Liens provided for in this section shall cease to exist unless suit for foreclosure is instituted within 12 months from the date of filing under subsection E of this section.

G. In any action under subsection C of this section to recover actual cost and in any proceeding to foreclose any lien created by subsection E of this section, the court shall award, in addition to costs and disbursements, reasonable attorney fees at trial and on appeal to the prevailing party.

H. The liability of an owner of land under subsection B of this section may not exceed \$100,000.

8.21.085. Violation; Penalty.

A. Violation of any provision of this chapter is a Class A violation. The County Forester is authorized to issue citations that charge a person with a violation of DCC 8.21.

B. A person liable for prosecution under DCC 1.16.015(C) for a violation of this chapter is subject to a civil penalty not to exceed \$720.00 per day the violation exists. Proceedings to assess a civil penalty for a violation of the fire code may be instituted by the County Forester.