

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 958

An Ordinance Amending Multnomah County Code Chapters 11.15, 33, 34, and 35 to Provide Standards for the Appropriate Location, Regulation, and Development of Wireless Communications Facilities and Declaring an Emergency.

(Struckthrough language is deleted; double-underlined language is new.)

The Multnomah County Board of Commissioners Finds:

a. As time passes, conditions and trends change beyond those envisioned, such is the case with the current zoning code, adopted before the current and future level of wireless communications facilities were anticipated. Therefore, due to the rapid and unforeseen evolution of wireless communications systems necessary procedural and substantive safeguards were henceforth not adequately considered, and appropriate siting and development standards do not exist.

b. In consideration of the Sauvie Island Multnomah Channel Rural Area Plan adopted pursuant to the laws of the State of Oregon, realization of deficiencies within the existing regulations and development standards for wireless communications facilities prompted the Multnomah Board of County Commissioners to address concerns raised by citizens and reexamine the current ordinance regulating wireless communications facilities.

c. Section 704 of the Federal Telecommunications Act of 1996 preserved local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities, provided that regulation not discriminate among providers of functionally equivalent services nor prohibit, or have the effect of prohibiting, the provision of wireless communications facilities.

d. This ordinance is based upon the premise that the Federal Government has completely preempted the ability of the County to regulate location or placement of wireless communication facilities based upon health concerns related to radio frequency emissions.

e. County residents benefit from the convenience of wireless communications facilities for home and business use as well as from their use in emergency services communications, as they are currently employed in Multnomah County.

f. Wireless Communications Facilities:

- i. May detract from the rural character, natural beauty and scenic resources of Multnomah County;
- ii. Are capable of disrupting residential and scenic vistas and landscapes sought by those that travel through the County.

g. The Planning Commission held a duly advertised work session and two public hearings to consider the current state and future trend of wireless communications technology within the context of the Telecommunications Act of 1996, thereby providing direction as to the form and substance of subsequent regulations pertaining to wireless communications facilities.

h. The Planning Commission directed staff to conduct a workshop with representatives from the wireless communications industry to obtain technical input pertaining to the siting of wireless communications facilities.

i. Local land use and development regulations effecting a balance between the federal mandate and requirements of Oregon Planning Goals and values, Oregon Revised Statutes and Administrative Regulations and Multnomah County's policies for the development of wireless communication facilities are appropriate to address the rapid changes in technology and the service needs of county residents.

j. The Planning Commission has determined that the location of wireless communications facilities in the County can and should be accomplished to the fullest extent possible in a manner that minimizes visual impacts, and thereby maintains the rural and natural character of the landscape. This may be accomplished by making maximum use of existing topography, natural vegetative screening, colors, textures and other design elements that blend in with the site and setting; encouraging co-location and concealment technology; employing height limitation and setbacks.

k. The first preference for location of wireless communication facilities should be placement upon existing wireless communications towers or other existing structures, where their use should be encouraged by requiring an expedited review and permit process than required for the development of new less-concealed tower sites.

l. The first preference for design of wireless communications facilities where co-location is unavailable and a new tower is unavoidable is for the design to be of a concealed design so that it blends into the surrounding landscape and thereby minimizing visual impact. Use of such technology should be encouraged by requiring an expedited review and permit process. Absent concealment technology, the wireless facility should be screened either topographically, vegetatively, or structurally.

Multnomah County Ordains as follows:

Section 1. MCC subsections 11.15.2010(A) and (B), 33.2625(A) and (B), 34.2625(A) and (B), and 35.2625(A) and (B) are amended as follows:

11.15.2010 Review Uses

(A) Utility facilities necessary for public service, except but not including commercial facilities for the purpose of generating electrical power for public use by sale and or transmission towers over 200 feet in height provided as follows:

(1) Radio and television towers 200 feet and under when found to satisfy the requirements of ORS 215.275 "Utility facilities necessary for public service; criteria; mitigating impact of facility" and MCC 11.15.7035 through 11.15.7040.

(2) Wireless communications facilities 200 feet and under when found to satisfy the requirements of MCC 11.15.7075 through 11.15.7088.

(3) All other utility facilities and transmission towers 200 feet and under in height subject to the following.

(a)(1) The facility satisfies the requirements of ORS 215.275, "Utility facilities necessary for public service; criteria; mitigating impact of facility" A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided; and

(b)(2) The facility satisfies the requirements of MCC 11.15.6100 through 11.15.6148; 11.15.7025(A); 11.15.7805 through 11.15.7870; and 11.15.7942.

~~(B) Radio Towers 200 feet and under when found to satisfy the requirements of MCC 11.15.7035 through 11.15.7040 Deleted 2001, Ord. §~~

33.2625 Review Uses

(A) Utility facilities necessary for public service, except but not including commercial facilities for the purpose of generating electrical power for public use by sale and or transmission towers over 200 feet in height provided as follows:

(1) Radio and television towers 200 feet and under when found to satisfy the requirements of ORS 215.275 "Utility facilities necessary for public service; criteria; mitigating impact of facility" and MCC 33.6100 through 33.6130.

(2) Wireless communications facilities 200 feet and under when found to satisfy the requirements of MCC 33.6175 through 33.6188.

Section 7. MCC Sections 11.15.7015, 33.6010, 34.6010 and 35.6010 are amended as follows:

11.15.7015 Approval Criteria

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for radio and television transmission towers, which shall meet the approval criteria of MCC 11.15.7035, wireless communications facilities which shall meet the approval criteria of MCC .7075 through .7088; and except for regional sanitary landfills which shall comply with MCC 11.15.7045 through 11.15.7070.

- (A) Is consistent with the character of the area;
- (B) Will not adversely affect natural resources;
- (C) Will not conflict with farm or forest uses in the area;
- (D) Will not require public services other than those existing or programmed for the area;
- (E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- (F) Will not create hazardous conditions;
- (G) Will satisfy the applicable policies of the Comprehensive Plan; and
- (H) Will satisfy such other applicable approval criteria as are stated in this Section.

33.6010 Approval Criteria

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for radio and television transmission towers, which shall meet the approval criteria of MCC 33.6100 through 33.6125, wireless communications facilities which shall meet the approval criteria of MCC 33.6175 through 33.6188; and except for regional sanitary landfills which shall comply with MCC 33.6200 through 33.6230.

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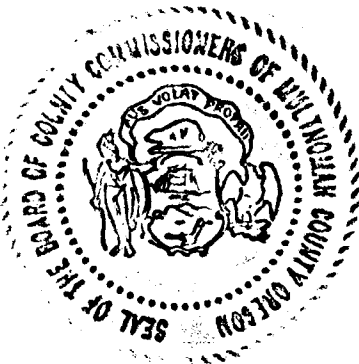
Section 22. MCC Chapters 11.15, 33, 34 and 35 are amended to add sections 11.15.7088, 33.6188, 34.6188 and 35.6188 to the respective code chapters that shall read as follows:

Statutory Severability.

If any subsection, sentence, clause, phrase, or word of this section is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section. The Multnomah County Board of Commissioners hereby declares that it would have passed and adopted this section and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 23. This ordinance, being necessary to implement new policies and process pending applications with respect to wireless communication facilities and for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance shall take effect on February 15, 2001, pursuant to section 5.50 of the Charter of Multnomah County.

FIRST READING AND ADOPTION: February 15, 2001

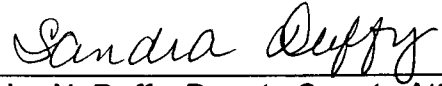


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
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