



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 10, 2020

Department: Public Works Agenda Planning Date: June 4, 2020 Time required: 5 min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: Brian Mehlh

TITLE Consider adopting an administrative ordinance for Legislative Amendment (LA) 20-001/Amending Marion County Code, Title 17, related to temporary hardship dwellings.

Issue, Description & Background On March 3, 2020, the Marion County Board of Commissioners adopted Resolution #20R-3 initiating amendments to the Marion County Code (MCC), Title 17, related to temporary hardship dwellings. The board held a public hearing on April 8, 2020, which was continued to May 6, 2020, for which proper notice and advertisement were given. All interested persons were given the opportunity to speak or present written statements. The hearing was closed and the Board considered the Planning Division file, all arguments of the parties and is otherwise fully advised in the premises, and approved the amendments. The ordinance has been prepared and notice of adoption was given on June 3, 2020. The administrative ordinance is now set for formal adoption.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Approve the ordinance as prepared. 2. Direct staff to prepare a modified ordinance. 3. Take no action at this time.

Recommendation: Staff recommends the board of commissioners adopt the attached ordinance as written.

List of attachments: Ordinance

Presenter: Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore - gfennimore@co.marion.or.us; Scott Norris - snorris@co.marion.or.us; Joseph Miller - jcmiller@co.marion.or.us

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

In the Matter of an Ordinance	)	LA 20-001
Marion County Code Section	)	Clerk's File No: 5802
17.120.040 (Rural Zone Code)	)	Legislative Amendment

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. \_\_\_\_\_**

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 203, 197 and 215 to implement the County Comprehensive Plan by amending the Marion County Code provisions related to rural zoning.

SECTION II. Authorization

The Marion County Board of Commissioners initiated legislative amendments to the Marion County Rural Zone Code, by Resolution 20R-3, dated March 4, 2020. The Marion County Board of Commissioners held a public hearing on April 8, 2020, which was continued to May 6, 2020, for which proper notice and advertisement were given. All interested persons were given the opportunity to speak or present written statements. The hearing was closed and the Board considered the Planning Division file, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Evidence and Conclusion

The amendments of the Marion County Rural Zone Code made hereunder are based on consideration and analysis of the operation of present zoning regulations and provisions of ORS Chapters 197 and 215 and the State Land Use Goals and related Oregon Administrative Rules. Due consideration was given to testimony in the hearing. The Board finds that the revision to the Rural Zone Code is in compliance with State Land Use Goals, the applicable policies in the Marion County Comprehensive Plan, and with ORS 197 and ORS 215.

SECTION IV. Amendments

Marion County Rural Code Section 17.120.040 is hereby amended as set forth in Exhibit A, attached hereto and incorporated herein.

SECTION V. Severability and Savings Clause

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or any policy, provision, finding, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this ordinance or of the amendments adopted hereunder, be declared invalid for any reason, that declaration shall not affect the validity of any provision of this ordinance or of any other Marion County Code provisions amended herein.

SECTION VI. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is a legislative Administrative Ordinance and shall take effect upon adoption.

SIGNED and FINALIZED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

## EXHIBIT A

### 17.120.040 TEMPORARY USE OF MOBILE HOME OR RECREATIONAL VEHICLE DURING CERTAIN HARDSHIP CONDITIONS.

Use of a temporary mobile home, recreational vehicle, or existing building for the care of someone with a hardship may be approved as a conditional use subject to meeting the following criteria:

- A. For the purposes of this subsection:
1. "Absence" means that the person(s) for whom the hardship dwelling permit was granted has lived away from the hardship dwelling for less than 165 days per calendar year or less than 165 consecutive days;
  2. "Aged or infirm person" means the person(s) suffering from a medical hardship or hardship due to age or infirmity that requires care to be provided;
  3. "Application" means both an application to obtain approval to place a hardship permit dwelling on a property and the annual renewal of the hardship permit;
  4. "Domicile" means the intention of the aged or infirmed person(s) or caregiver(s) to live on the property or in the hardship permit dwelling as that person's primary residence;
  5. "Extended absence" means that the person(s) for whom the hardship dwelling permit was granted has not lived at the hardship dwelling for more than 165 days per calendar year or 165 consecutive days;
  6. "Hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;
  7. "Hardship permit" means a conditional use permit granted under ORS 215.283(2)(L) and MCC 17.120.040 to allow for the use of a hardship permit dwelling on the property for a period of one year;
  8. "Hardship permit dwelling" means a temporary mobile home, recreational vehicle, or existing building used for the care of an aged or infirmed person who is or will be domiciled on the property;
  9. "Medically necessary absence" means an extended absence that is necessary for the aged or infirm person to receive medical care or treatment;
  10. "Owner" has the same meaning as defined in MCC 17.110.425 ; and
  11. "Temporary absence" means a period of up to 165 days per calendar year or 165 consecutive days, in which the aged or infirm person(s) has not lived on the property.
- B. An application for a hardship permit must be submitted in writing.
1. An application must:
    - a. Include the name of the aged or infirm person(s) for whom the hardship permit is sought;
    - b. Include a signed statement from a licensed medical professional indicating whether the aged or infirm person has a hardship as defined in Section A. The statement shall also attest whether the licensed medical professional is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caregiver(s) must reside on the same premises;
    - c. Identify whether the aged or infirm person(s) and/or caregiver(s) will be residing in the hardship permit dwelling.
  2. Only the Owner(s) of a property may submit an application for a hardship permit.

3. If additional information is required to clarify any portion of an application, the Owner(s) will be notified in writing of the deficiencies within the application.
- C. In the EFU, SA, FT and TC zones, occupancy of a hardship permit dwelling is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283(2)(L).
- D. When the aged or infirm person must be provided care so frequently or in such a manner that caregiver(s) must reside on the same premises, the aged or infirm person and/or those caregivers providing care for the aged or infirm person may temporarily reside in the hardship permit dwelling for the term necessary to provide care.
1. Those providing the care must show that they will be available and have the skills to provide the care required, as described by the licensed medical professional.
  2. Caregivers may reside within a hardship permit dwelling during periods of absence and medically necessary absence.
  3. Caregivers shall not have any financial or expense obligation increased for residing in the hardship dwelling during periods of absence and medically necessary absence.
- E. A temporary absence or medically necessary absence from the property by the aged or infirm person(s) will not result in the revocation or denial of a hardship permit.
1. When a medically necessary absence results in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days they must provide notice of the medically necessary absence to prevent the absence from being considered an extended absence.
  2. Notice of a medically necessary absence that will result in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days must be provided within 14 days of learning that the absence from the property will result in the aged or infirm person having to live away from the property for more than 165 days in one calendar year or 165 consecutive days.
  3. Notice of a medically necessary absence must:
    - a. Be submitted in writing;
    - b. Include a statement from a licensed medical provider outlining that the absence from the property is necessary for the care or medical treatment of the aged or infirm person;
    - c. Provide an estimate as to when the aged or infirm person(s) will return to the property;
    - d. Include an assessment from the licensed medical professional on whether or not the aged or infirm person(s) will be able to reside on the property again.
      - i. If a licensed medical professional cannot provide an assessment on whether the aged or infirm person will be able to return to the property at the time when notice of a medical necessary absence is due, a hardship permit maybe approved for the amount of time necessary, not to exceed one year, for the licensed medical professional to make the assessment as to whether the aged or infirm person(s) will be able to return to the property.
      - ii. If a licensed medical professional cannot provide an assessment after the period of time described in Section E.3.b.ii then a determination will be made as to whether the hardship permit is still necessary for the care of the aged or infirm person(s).

4. Notice of a medically necessary absence maybe submitted by the Owner(s), aged or infirm person(s), caregiver(s) of the aged or infirm person(s), or other agent of the aged or infirm person(s).
  5. Caregivers may not be charged any rent or otherwise required to provide financial compensation to live in the hardship dwelling during a temporary absence or medically necessary absence.
    - a. If as a part of any agreement to provide caretaking services, the caregiver was required to provide financial compensation or incur a financial obligation in order to reside within the hardship dwelling then that arrangement will not violate Section E.4, provided that the arrangement existed prior to the temporary absence or medically necessary absence.
- F. Extended absence from the property by the aged or infirm person(s), or caregiver(s) when the hardship permit dwelling is only being inhabited by caregiver(s), creates a rebuttable presumption that the hardship permit is no longer necessary to provide care to the aged or infirm person(s).
1. Extended absence from the property may result in revocation of the hardship permit; issuance of a citation pursuant to MCC 1.25.030; and/or initiation of civil action in circuit court pursuant to MCC 1.25.050.
  2. Notice will be provided to the owner of any substantiated violation of Section F. 30 days prior to the effective date of a revocation of the hardship permit made pursuant to Section F.1.
- G. A mobile home or recreational vehicle being used as a hardship dwelling shall to the extent permitted by the nature of the property and existing development:
1. Be located as near as possible to other residences on the property;
  2. On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;
  3. Not require new driveway access to the street;
  4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.
- H. For an existing building to be used as a hardship dwelling it must:
1. Be suitable for human habitation;
  2. Comply with all building and specialty codes (for example, but not limited to, electrical, plumbing, and sanitation) applicable to dwellings;
  3. Not require new driveway access to the street; and
  4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.
- I. One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property.
1. In the case of a recreational vehicle, it shall be rendered uninhabitable by disconnection from services.
    - a. An agreement to comply with this requirement shall be signed by the applicant, and the owner of the recreational vehicle if different than the applicant.
    - b. Oregon Department of Environmental Quality removal requirements also apply.

2. In the case of an existing building, the renovations or modifications made to an existing building to be used for inhabitation must be removed.
    - a. The existing building shall be returned to similar conditions as its previous use; or
    - b. If the existing building is not going to be returned to its previous use then the building must be used for either a permitted use or a new use application for the existing building must be obtained.
  3. In the case where an agricultural exemption is sought for an existing building, a new application must be approved regardless of any previously approved agricultural exemption.
- J. Applicants are responsible for ensuring that all caregivers and/or other persons residing in the hardship dwelling are removed from the hardship dwelling within 90 days of the date that the person with the hardship or the care provider no longer resides in the hardship dwelling or on the property.
1. Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.
- K. At the time of renewal of a hardship dwelling permit, if the aged or infirm person has been on a temporary absence or medically necessary absence from the property for at least 30 consecutive days prior to submission of the renewal application, the application must include:
1. In the event of a medically necessary absence, an assessment by a licensed medical professional stating that it is reasonably likely that the aged or infirm person will return to the property within the renewal period; or
  2. In the event of a temporary absence, a statement from the owner or aged or infirmed person setting forth the date on which the aged or infirm person will return to the property.
    - a. If the aged or infirmed person does not return to the property within the time period described in Section A.6., then the aged or infirm person's absence will be deemed an extended absence
- L. The use of a hardship permit dwelling is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.