



July 28, 2006

To: Citizen Participation Organizations and Interested Parties

From: Brent Curtis, Planning Manager  
Department of Land Use and Transportation

Subject: **PROPOSED ORDINANCE NO. 667**

Enclosed for your information is a copy of proposed Ordinance No. 667. Listed below is a description of the ordinance, hearing dates, and other relevant information. If you have any questions about the ordinance, or if you would like additional information, please contact the Planning Division.

### **Ordinance Purpose and Summary**

Ordinance No. 667 proposes to amend several sections of the Washington County Community Development Code relating to replacement dwellings within the Exclusive Farm Use (EFU) and Agriculture and Forestry - 20 Acre (AF-20) Districts. The ordinance was filed to implement the provisions of Senate Bill 863, adopted by the Oregon Legislature in 2005. Senate Bill 863 amended Oregon Revised Statute 215.213 to create a new provision relating to deferred replacement permits within exclusive farm use zones. In Washington County, those zones are the EFU and AF-20 Districts. The changes proposed by Ordinance No. 667 would allow applicants to replace dwellings within the EFU and AF-20 Districts at any time provided that they have obtained a deferred replacement permit and comply with all conditions of approval.

### **Who Is Affected**

Property owners interested in pursuing development approval for a replacement dwelling within the EFU and AF-20 land use districts.

### **What Land is Affected**

Land within the EFU and AF-20 exclusive farm use districts.

### **Key Provisions**

- Amends Section 201-4, Expiration, of the *Community Development Code* (CDC) to state that applicants with an approved deferred replacement permit are allowed to construct a replacement dwelling at any time.
- Modifies Sections 340 (Exclusive Farm Use) and 344 (Agriculture & Forestry – 20 Acres) to add a deferred replacement permit to the list of uses eligible for Type I development review actions. The Type II process sections of both Section 340 and 344 are amended to note the new CDC section relating to deferred replacement permits (Section 430-8.4).
- Amends the replacement dwelling standards in 430-8.4 to provide criteria for deferred replacement permits. Section 430-8.4 applies only to replacement dwelling applications in the EFU and AF-20 Districts.

### **Initial Public Hearings**

#### **Time and Place**

**Planning Commission**  
**1:30 pm**  
**September 6, 2006**

**Board of County Commissioners**  
**10:00 am**  
**September 19, 2006**

Hearings will be held in the Shirley Huffman Auditorium in the Public Services Building, 155 N. 1st Avenue, Hillsboro, Oregon.

On September 19th, the Board of County Commissioners (Board) may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If it is adopted, it would become effective on November 23, 2006.

**Community  
Development Code  
Standards Amended**

- Section 201-4, Expiration
- Section 340, Exclusive Farm Use District (EFU)
- Section 344, Agriculture & Forest District (AF-20)
- Section 430-8, Alteration, Restoration or Replacement of a Lawfully Established Dwelling, Including Manufactured Dwellings, In the EFU, EFC, AF-20, AF-10, AF-5 and RR-5 Districts Through a Type I or II Procedure

**How to Submit  
Comments**

Submit oral or written testimony to the Board and/or the Planning Commission at one of the public hearings. Written testimony may be mailed or faxed to the Board or Planning Commission in advance of the public hearings in care of the Planning Division. **At this time, we are unable to accept e-mail as public testimony.**

Washington County, Planning Division  
155 N. 1<sup>st</sup> Ave., Suite 350-14, Hillsboro, OR 97124-3072  
Fax: 503-846-4412

Failure to submit oral or written testimony before the Board or Planning Commission may preclude appeal of a decision by the Board to adopt an ordinance as filed or amended.

**Staff Contact**

Aisha Willits, Senior Planner  
155 N. 1<sup>st</sup> Ave., Suite 350-14, Hillsboro, OR 97124-3072  
Telephone: 503-846-3961 Fax: 503-846-4412  
e-mail: aisha\_willits@co.washington.or.us

**Proposed Ordinance is  
available at the  
following locations:**

- The Washington County Department of Land Use and Transportation, Planning Division, 155 N. 1<sup>st</sup> Ave., Hillsboro, OR 97124-3072  
Telephone: 503-846-3519
- [www.co.washington.or.us/deptmts/lut/planning/ordhome.htm](http://www.co.washington.or.us/deptmts/lut/planning/ordhome.htm)
- Cedar Mill Community Library and Tigard Public Library
- Citizen Participation Organizations (CPOs); Call 503-725-2124 for a directory of CPOs.

**FILED**  
JUL 18 2006  
Washington County  
County Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR WASHINGTON COUNTY, OREGON

ORDINANCE No. 667

An Ordinance Amending the  
Community Development Code  
Element of the Comprehensive Plan  
Relating to Deferred Replacement  
Permits in the EFU and AF-20 Districts

The Board of County Commissioners of Washington County, Oregon, ordains:

SECTION 1

A. The Board of County Commissioners of Washington County, Oregon, recognizes that the Community Development Code ("CDC") element of the Comprehensive Plan (Volume IV) was readopted with amendments on September 9, 1986, by way of Ordinance No. 308, with portions subsequently amended by Ordinance Nos. 321, 326, 336-341, 356-363, 372-378, 380, 381, 384-386, 392, 393, 397, 399-403, 407, 412, 413, 415, 417, 421-423, 428-434, 436, 437, 439, 441-443, 449, 451-454, 456, 457, 462-464, 467-469, 471, 478-481, 486-489, 504, 506-512, 517-523, 525, 526, 528, 529, 538, 540, 545, 551-555, 558-561, 573, 575-577, 581, 583, 588, 589, 591-595, 603-605, 607-610, 612, 615, 617, 618, 623, 624, 628, 631, 634, 635, 638, 642, 644, 645, 648, 649, 654, 660, and 661.

B. Subsequent ongoing planning efforts of the County indicate a need for changes to the CDC element of the Comprehensive Plan to provide deferred replacement permits in the EFU and AF-20 Districts. The Board takes note that such changes are

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1 necessary to assure consistency with state law and are for the benefit of the residents of  
2 Washington County, Oregon.

3 C. Under the provisions of Washington County Charter Chapter X, the Land  
4 Use Ordinance Advisory Commission has carried out its responsibilities, including  
5 preparation of notices, and the County Planning Commission has conducted one or more  
6 public hearings on the proposed amendments and has submitted its recommendations to  
7 the Board. The Board finds that this Ordinance is based on those recommendations and  
8 any modifications made by the Board, as a result of the public hearings process.

9 D. The Board finds and takes public notice that it is in receipt of all matters and  
10 information necessary to consider this Ordinance in an adequate manner, and that this  
11 Ordinance complies with the Statewide Planning Goals, and the standards for legislative  
12 plan adoption, as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the  
13 Washington County Charter, and the Washington County Community Development Code.

14 SECTION 2

15 The following exhibits, attached hereto and incorporated herein by reference, are  
16 adopted as amendments to the designated documents as follows:

- 17 A. Exhibit 1 (1 page) amends CDC Section 201-4, EXPIRATION;  
18 B. Exhibit 2 (1 page) amends CDC Section 340, EXCLUSIVE FARM USE  
19 DISTRICT (EFU);  
20 C. Exhibit 3 (1 page) amends CDC Section 344, AGRICULTURE AND  
21 FOREST DISTRICT (AF-20); and  
22

1 D. Exhibit 4 (5 pages) amends CDC Section 430-8, ALTERATION,  
2 RESTORATION OR REPLACEMENT OF A LAWFULLY  
3 ESTABLISHED DWELLING, INCLUDING MANUFACTURED  
4 DWELLINGS, IN THE EFU, EFC, AF-20, AF-10, AF-5 AND RR-5  
5 DISTRICTS THROUGH A TYPE I OR II PROCEDURE.

6 SECTION 3

7 All other Comprehensive Plan provisions that have been adopted by prior  
8 ordinance, which are not expressly amended or repealed herein, shall remain in full force  
9 and effect.

10 SECTION 4

11 All applications received prior to the effective date shall be processed in accordance  
12 with ORS 215.427 (2005 Edition).

13 SECTION 5

14 If any portion of this Ordinance, including the exhibit, shall for any reason be held  
15 invalid or unconstitutional by a body of competent jurisdiction, the remainder shall not be  
16 affected thereby and shall remain in full force and effect, and any provision of a prior land  
17 use ordinance amended or repealed by the stricken portion of this Ordinance shall be  
18 revived and again be considered in full force and effect.

19 SECTION 6

20 The Office of County Counsel and Department of Land Use and Transportation are  
21 authorized to prepare planning documents to reflect the changes adopted under Section 2  
22 of this Ordinance, including deleting and adding textual material and maps, renumbering

1 pages or sections, and making any technical changes not affecting the substance of these  
2 amendments as necessary to conform to the Washington County Comprehensive Plan  
3 format.

4 SECTION 7

5 This Ordinance shall take effect on November 23, 2006.

6 ENACTED this 19<sup>th</sup> day of Sept., 2006, being the 1<sup>st</sup> reading  
7 and 1<sup>st</sup> public hearing before the Board of County Commissioners of Washington  
8 County, Oregon.

9 BOARD OF COUNTY COMMISSIONERS  
10 FOR WASHINGTON COUNTY, OREGON

11 **ADOPTED**

12 John Lopez for  
CHAIRMAN

13 Barbara Hejtmanek  
RECORDING SECRETARY

14 READING

14 PUBLIC HEARING

15 First September 19, 2006  
16 Second \_\_\_\_\_  
17 Third \_\_\_\_\_  
18 Fourth \_\_\_\_\_  
19 Fifth \_\_\_\_\_  
20 Sixth \_\_\_\_\_

15 September 19, 2006  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

19 VOTE: Aye: Brian, Leeper, Dryck,  
Rogers, Schouten Nay: \_\_\_\_\_  
20 Recording Secretary: Barbara Hejtmanek Date: September 19, 2006

CDC Section 201-4, EXPIRATION, is amended to reflect the following:

**201-4 Expiration**

201-4.NEW In the EFU and AF-20 Districts, an approved deferred replacement permit pursuant to Section 430-8 allows the construction of a replacement dwelling at any time.

CDC Section 340, EXCLUSIVE FARM USE DISTRICT (EFU), is amended to reflect the following:

**340-3 Uses Permitted Through a Type I Procedure**

The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code.

340-3.1 Accessory Uses and Structures - Section 430-1.

340-3.2 Alteration, restoration or replacement of a lawfully established dwelling. In the case of replacement, the existing dwelling shall be removed or demolished. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use. For required standards see Sections 430-8.1, ~~and 8.3, and~~ 8.4.

340-3.3 Deferred replacement permit – Section 430-8.4.

340-3.34 Property Line Adjustment - Section 610-1.1.

340-3.45 Co-located antennas, excluding those antennas regulated by Section 430-109.11 or otherwise exempt pursuant to Sections 430-109.1 and 201-2 – Section 430-109.3.

**340-4 Uses Permitted Through a Type II Procedure**

The uses listed in Sections 340-4.1 and 340-4.2 are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5. Unless the use is specifically exempted, the Review Authority shall make specific findings with respect to the standards in Section 340-4.3.

340-4.1 Permitted Uses which are exempt from Section 340-4.3:

A. Accessory dwellings customarily provided in conjunction with farm use – Section 430-37.2 D. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.

B. Alteration, restoration or replacement of a lawfully established dwelling not permitted through a Type I procedure. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use. For required standards see Sections 430-8.2, ~~and 8.3, and~~ 8.4.

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CDC Section 344, AGRICULTURE AND FOREST DISTRICT (AF-20), is amended to reflect the following:

**344-3 Uses Permitted Through a Type I Procedure**

The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code.

344-3.1 Accessory Uses and Structures - Section 430-1.

344-3.2 Alteration, restoration or replacement of a lawfully established dwelling. In the case of replacement, the existing dwelling shall be removed, demolished, or converted to an accessory structure, pursuant to Section 430-8.1. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use. For required standards see Sections 430-8.1, and 8.3, and 8.4.

344-3.3 Deferred replacement permit – Section 430-8.4.

344-3.34 Property Line Adjustment - Section 610-1.1.

344-3.45 Co-located antennas, excluding those antennas regulated by Section 430-109.11 or otherwise exempt pursuant to Sections 430-109.1 and 201-2 – Section 430-109.3.

**344-4 Uses Permitted Through a Type II Procedure:**

The uses listed in Section 344-4.1 and 344-4.2 are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5. Unless the use is specifically exempted, the Review Authority shall make specific findings with respect to the standards in Section 344-4.3.

344-4.1 Permitted Uses which are exempt from Section 344-4.3:

A. Accessory dwellings customarily provided in conjunction with farm use – Section 430-37.2 D. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.

B. Alteration, restoration or replacement of a lawfully established dwelling not permitted through a Type I procedure. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use. For required standards see Section 430-8.2, and 8.3, and 8.4.

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CDC Section 430-8, ALTERATION, RESTORATION OR REPLACEMENT OF A LAWFULLY ESTABLISHED DWELLING, INCLUDING MANUFACTURED DWELLINGS, IN THE EFU, EFC, AF-20, AF-10, AF-5 AND RR-5 DISTRICTS THROUGH A TYPE I OR II PROCEDURE, is amended to reflect the following:

- 430-8.1 Alteration, restoration or replacement of a dwelling, through a Type I procedure, when the following standards are met:
- A. The applicant shall demonstrate the dwelling was lawfully established on or after April 6, 1959 by submitting the following information:
    - (1) A development application approval for the dwelling issued on or after April 6, 1959;
    - (2) A building permit for the dwelling issued on or after April 6, 1959; or
    - (3) A certificate of zoning compliance for the dwelling issued on or after April 6, 1959; or
  - B. The applicant demonstrates the dwelling was lawfully established by providing documentation from the Department of Assessment and Taxation that the dwelling was established prior to April 6, 1959;
  - C. The existing dwelling shall have:
    - (1) Intact exterior walls and roof structure;
    - (2) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
    - (3) Interior wiring for interior lights; and
    - (4) A heating system.

Acceptable documentation for items (1) through (4), above, may include photographic evidence that the given feature or features are present and in working order. In addition, for compliance purposes, the applicant shall submit a photograph that depicts the overall dwelling structure as it appears from the public right-of-way or access drive.
  - D. In the case of replacement, the existing dwelling structure is removed, demolished, or converted to an accessory structure as specified in FG. below, within ninety (90) days of completion of the replacement dwelling.
  - E. In the EFC District, the replacement dwelling also meets the standards in Section 428-3 (forest structure siting and fire safety standards for dwellings reviewed through a Type I procedure).

F. In the EFU and AF-20 Districts, the applicant may request a deferred replacement permit. For required standards, see Section 430-8.4.

G. To convert to an accessory structure, and render a dwelling uninhabitable, the applicant must complete all of the following, as verified by a site inspection:

- (1) In the kitchen:
  - a) Remove all appliances including the stove, oven, refrigerator, dishwasher, and trash compactor;
  - b) Remove the sinks, countertops and cabinets;
  - c) Remove or terminate all 220-volt electrical circuits to kitchen appliances in a manner conforming to the One & Two Family Dwelling Electrical Code;
  - d) Remove fuel supply lines (if any) to kitchen appliances and cap service lines at the supply source in the wall in conformance with the One & Two Family Dwelling Mechanical Code.
- (2) In all bathrooms:

Remove the toilets, sinks, and tub/shower facilities;
- (3) Terminate the water supply into the converted structure and cap off all plumbing fixtures (including those in the kitchen) in a manner conforming to the Oregon Specialty Code;
- (4) The property owner shall record a restrictive covenant in the Department of Records stating the converted dwelling structure is not eligible to be, nor will be used as a dwelling.

Final building inspection approval of the replacement dwelling shall not be granted until the conversion of the existing dwelling structure is complete.

430-8.2 Alteration, restoration or replacement of a lawfully established dwelling that is not permitted by Section 430-8.1, through a Type II procedure, when the following standards are met:

- A. The applicant shall submit evidence which demonstrates the dwelling was lawfully established;
- B. The existing dwelling shall have:
  - (1) Intact exterior walls and roof structure;

- (2) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (3) Interior wiring for interior lights; and
- (4) A heating system.

Acceptable documentation for items (1) through (4), above, may include photographic evidence that the given feature or features are present and in working order. In addition, for compliance purposes, the applicant shall submit a photograph that depicts the overall dwelling structure as it appears from the public right-of-way or access drive.

C. In the case of replacement, the existing dwelling structure shall be:

- (1) Removed or destroyed within ninety (90) days of completion of the replacement dwelling; or
- (2) Converted to an accessory structure that is permitted by the primary district when the following standards are met:
  - (a) The accessory structure shall be reviewed in conjunction with the application for replacement of the dwelling and shall be by a Type II procedure if the accessory structure is permitted by a Type III procedure. Replacement of the dwelling shall not be allowed if the accessory structure is not approved. If the existing dwelling structure is not converted to the accessory structure within ninety (90) days of completion of the replacement dwelling the original dwelling structure shall be demolished or removed;
  - (b) The existing dwelling structure shall be altered to retain only interior walls, plumbing, wiring and fixtures determined necessary by the Review Authority for the accessory structure;
  - (c) The property owner shall record a restrictive covenant in the Department of Records stating the converted dwelling structure is not eligible to be used as a dwelling; and
  - (d) Final building inspection approval of the replacement dwelling shall not be granted until the conversion of the existing dwelling structure is complete.

D. In the EFC District, the replacement dwelling also meets the standards in Section 428-3 or 428-4 (Forest Structure Siting and Fire Safety Standards for Dwellings in the EFC District).

E. In the EFU and AF-20 Districts, the applicant may request a deferred replacement permit. For required standards, see Section 430-8.4.

430-8.3 Standards for Replacement Dwellings in EFU, EFC, and AF-20

- A. A replacement dwelling may be sited on any part of the same lot or parcel.
- B. A dwelling established under this section shall comply with all applicable siting standards. However, the siting standards shall not be applied in a manner that prohibits the siting of the dwelling.
- C. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for Washington County a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the Review Authority and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The Review Authority shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section.
- D. A temporary residence approved under the standards of Section 430-135.2 A. is not eligible for replacement under these provisions.

430-8.4 Deferred Replacement Permits in the EFU and AF-20 Districts

- A. In the EFU and AF-20 Districts, the applicant may request a deferred replacement permit in conjunction with a development application for a replacement dwelling, or
- B. A deferred replacement permit may be granted through a Type I procedure by applicants that have prior development approval for a replacement dwelling. Applicants must provide evidence that:
  - (1) The dwelling exists on the site, and
  - (2) The development approval has not expired as prescribed in Section 201-4.
- C. Once approved, through either method described above, the deferred replacement permit allows construction of the replacement dwelling at any time provided the applicant complies with the following requirements:
  - (1) The existing dwelling is removed or demolished within ninety (90) days from the date of development approval or the date the deferred replacement permit is issued.
  - (2) The deferred placement permit will become void if the existing dwelling is not removed or demolished within ninety (90) days.

- (3) The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.
  
- (3) The deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or child of the applicant.