

## ORDINANCE NO. NS 2264

### AN ORDINANCE AMENDING BDC CHAPTERS 1.2 DEFINITIONS, 2.1 RESIDENTIAL DISTRICTS, 2.2 COMMERCIAL ZONING DISTRICTS , 2.3 MIXED-USE ZONING DISTRICTS, 2.4 INDUSTRIAL ZONING DISTRICTS, 2.5 SURFACE MINING ZONING DISTRICT, 2.6 PUBLIC FACILITIES ZONING DISTRICT AND 3.6 SPECIAL STANDARDS FOR CERTAIN USES FOR SMALL HYDROELECTRIC FACILITIES

#### Findings:

- A. The application was submitted in accordance with BDC 4.1.500. Timely and sufficient notice pursuant to Section 4.1.515 of the Bend Development Code was provided.
- B. The proposed Bend Development Code text amendments provide a review process and standards and regulations for small hydroelectric facilities and they are necessary for the City of Bend to qualify for a Federal Energy Regulatory Commission (FERC) exemption.
- C. The Planning Commission reviewed the proposed amendments during a work session on April 11, 2016 and held a public hearing on April 25, 2016 to accept testimony on the request. At the conclusion of the hearing, the Planning Commission voted to recommend the proposed text amendments be approved by the City Council.
- D. Notice of the City Council public hearing was published in the Bend Bulletin on April 10, 2016 and sent to the neighborhood associations on April 6, 2016.
- E. The Bend City Council held a public hearing on May 4, 2016 to accept evidence, receive public testimony and consider the Planning Commission's recommendation. The City Council found that the text amendments satisfy the criteria for approval contained in Section 4.6.200 of the Bend Development Code and voted on the amendments to the Bend Development Code as amended by council motion.

#### **Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. Bend Development Code Chapters 1.2 Definitions, 2.1 Residential Districts, 2.2 Commercial Zoning Districts , 2.3 Mixed-Use Zoning Districts, 2.4 Industrial Zoning Districts, 2.5 Surface Mining Zoning District, 2.6 Public Facilities Zoning District and 3.6 Special Standards For Certain Uses for small hydroelectric facilities as shown below in Exhibit A.

Section 2. In addition to the findings set forth above, the City Council adopts the findings in Exhibit B.

First Reading: May 4, 2016

Second reading and adoption by roll call vote: May 18, 2016

YES: Jim Clinton, Mayor  
Doug Knight  
Victor Chudowsky  
Sally Russell  
Nathan Boddie  
Barb Campbell

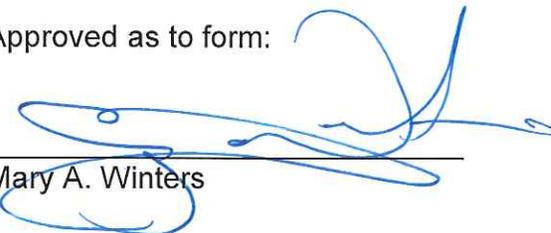
NO: None

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary A. Winters

**Exhibit A  
Development Code Update  
Draft**

Prepared by:  
City of Bend Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in strikethrough typeface is proposed to be deleted.

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

**Bend Development Code**

**Chapter 1.2**

**DEFINITIONS**

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Small hydroelectric facility means a hydroelectric facility that produces up to forty megawatts, and which qualifies for a FERC exemption for City of Bend municipal use.

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**Chapter 2.1**

**RESIDENTIAL DISTRICTS (UAR, UH-10, UH-2 1/2, SR 2 1/2, RL, RS, RM-10, RM, RH)**

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**Table 2.1.200 – Permitted Land Uses**

Land Use	SR 2 1/2	RL	RS	RM-10	RM	RH	UAR
<u>*Small hydroelectric facility</u>	<u>P</u>						

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**Chapter 2.2**  
**COMMERCIAL ZONING DISTRICTS (CB, CC, CL, CG)**

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**Table 2.2.300 – Permitted and Conditional Uses**

Land Use	CB	*CC	CL	CG
<u>*Small hydroelectric facility</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

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**Chapter 2.3**  
**MIXED-USE ZONING DISTRICTS (ME, MR AND PO)**

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**Table 2.3.200**  
**Permitted and Conditional Uses**

Land Use	ME	MR	PO
<u>* Small hydroelectric facility</u>	<u>P</u>	<u>P</u>	<u>P</u>

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**Chapter 2.4**  
**INDUSTRIAL ZONING DISTRICTS (IG, IL)**

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**Table 2.4.300 – Permitted and Conditional Uses**

Land Use	IG	IL
<u>*Small hydroelectric facility</u>	<u>P</u>	<u>P</u>

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**Chapter 2.5**  
**SURFACE MINING ZONING DISTRICT (SM)**

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**Table 2.5.200 – Permitted and Conditional Uses**

Land Use	SM
<u>*Small hydroelectric facility</u>	<u>P</u>

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Chapter 2.6

PUBLIC FACILITIES ZONING DISTRICT (PF)

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Table 2.6.200 – Permitted and Conditional Uses

Land Use	PF
*Small hydroelectric facility	P

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Chapter 3.6

SPECIAL STANDARDS AND REGULATIONS FOR CERTAIN USES

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3.6.300 Nonresidential Uses.

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Q. Small Hydroelectric Facilities.

1. Small hydroelectric facilities are subject to BDC Chapter 4.2, Minimum Development Standards Review, Site Plan Review and Design Review.  
Exception: Small Hydroelectric facilities located underground or inside an existing structure are exempt from BDC Chapter 4.2.
2. For small hydroelectric facilities that are subject to BDC Chapter 4.2, the following design elements are required in addition to the Criteria of BDC Chapter 4.2:
  - a. Structures and roofing must be constructed of non-reflective materials and finished in a color that blends with the surrounding vegetation and landscape.
  - b. New powerlines associated with the small hydroelectric facility must be buried even if they are not located in the right-of-way. Existing overhead lines may remain.
3. Prior to issuance of a building permit, the applicant must provide the City with any required documentation of all Federal Energy Regulatory Commission (FERC) and state water right permits for the small hydroelectric facility.

**EXHIBIT B  
FINDINGS OF FACT  
DEVELOPMENT CODE UPDATE  
AMENDMENT PZ 16-0229**

**Procedural Findings**

The application was initiated by the city in accordance with BDC 4.1.500. Timely and sufficient notice of the public hearings was provided pursuant to BDC 4.1.515. Notice of the proposed amendments was provided to the Department of Land Conservation and Development (DLCD) on March 21, 2016. A notice of the Planning Commission public hearing was published in the Bend Bulletin on March 27, 2016 and sent to the neighborhood associations on March 23, 2016. Staff also emailed the changes to the Development Code Update Committee on April 7, 2016 for their review. The Planning Commission held a work session on April 11, 2016 and a public hearing on April 25, 2016 and recommended approval of the proposed text amendments to the City Council. A notice of the City Council public hearing was published in the Bend Bulletin on April 10, 2016 and sent to the neighborhood associations on April 6, 2016. The City Council held a public hearing on May 4, 2016 and conducted the first reading. On May 18, 2016 the City Council held a second reading and voted to approve the amendments for small hydroelectric facilities.

**Criteria of Approval**

- (1) The Bend Area General Plan
- (2) Bend Development Code
  - (a) Chapter 4.6, Land Use District Map and Text Amendments;  
Section 4.6.200(B), Criteria for Legislative Amendments

**Applicable Procedures**

- (1) Bend Development Code
  - (a) Chapter 4.1, Land Use Review and Procedures

**Findings Regarding Compliance with Applicable Criteria:**

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6,  
LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

#### 4.6.200 Legislative Amendments.

**A. Applicability, Procedure and Authority.** Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

**FINDING:** The recommended amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

**B. Criteria for Legislative Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

**1. The request is consistent with the applicable State land use law;**

**FINDING:** The proposed amendments are consistent with the applicable State land use law. In particular, they satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, and Goal 13: Energy Conservation.

**Goal 1, Citizen Involvement,** is satisfied through following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

**Goal 2, Land Use Planning,** requires a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The Goal is met because the City followed the land use planning process and policy framework established in the City's acknowledged Comprehensive Plan (General Plan) and Development Code as a basis for the decisions and actions related to the new regulations regarding the use of land and to assure an adequate factual base for these decisions and actions. This application provides the required information and responses to the applicable approval standards for a Development Code text amendment and therefore is consistent with Statewide Planning Goal 2. The proposed amendments will be adopted by the City Council after a public hearing. Several opportunities were provided for review and comment by citizens during the preparation of this ordinance.

**Goal 3, Agricultural Lands and Goal 4, Forest Lands, Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces** Goals 3 and 4 are not applicable because there are no Agricultural or Forest Lands in the City. Goal 5 is not applicable because these amendments do not affect any regulation that implements Goal 5 and the City's acknowledged regulations implementing Goal 5 remain in effect with no change in applicability.

**Goal 6, Air, Water and Land Resources Quality** requires that all waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. Small hydroelectric facilities are usually installed where water is already dammed or diverted. Adding small hydropower where water is already in use for another purpose typically does not cause additional environmental impacts. Also, small hydroelectric facilities that qualify for a FERC exemption involve little change to water flow and use and are unlikely to affect threatened or endangered species. Therefore, compliance with Goal 6 is maintained.

**Goal 7, Areas Subject to Natural Hazards** is not applicable because the City's acknowledged regulations implementing Goal 7 remain in effect with no change in applicability.

**Goal 8, Recreational Needs** is not applicable to the proposed Development Code amendments because the amendments do not limit any recreational uses in any zone.

**Goal 9, Economic Development** is implemented through Oregon Administrative Rule (OAR) Division 9 which is intended to ensure that each jurisdiction maintain an adequate land supply for economic development and employment growth. Small hydroelectric projects can offset energy costs and, depending on generating capacity, can also create a revenue stream. Therefore, compliance with Goal 9 is maintained.

**Goal 10, Housing** is not applicable to the proposed Development Code amendments because the amendments will not reduce residential inventories.

**Goal 11, Public Facilities and Services** requires the City to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The proposed amendments will not result in the need to adjust or amend existing policies or projects in the City's adopted facility plans. Therefore, compliance with Goal 11 is maintained.

**Goal 12, Transportation** requires the City to provide and encourage a safe and convenient and economic transportation system. The proposed amendments are not site specific and therefore do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore the proposed text amendments do not cause a "significant effect" under ORS 660-012-0060. Therefore, compliance with Goal 12 is maintained.

**Goal 13: Energy Conservation**, requires land and uses developed on the land to be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles. The proposed amendments would allow small hydroelectric facilities that qualify for a FERC exemption and produce up to 40 megawatts to be constructed and operated in the City of Bend. Many small hydroelectric facilities convert energy from in-conduit flow to electrical energy, which allows other electrical generation to be avoided. Small hydroelectric projects can offset energy costs and, depending on generating capacity, can also create a revenue stream.

**Goal 14, Urbanization**, requires the City to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The proposed amendments do not encourage sprawl or lower than targeted densities, or uncoordinated development. The management of the City's land use inventories is unaffected by these proposed amendments and therefore compliance with Goal 14 is maintained.

Because the proposed code amendments are limited in scope, there are no other Administrative Rules applicable to this amendment. Likewise, there are no applicable Oregon Revised Statutes that are criteria applicable to these amendments (Note, consistency with the Transportation Planning Rule (TPR) is discussed further in this document).

Based on the above discussion, the proposed text amendments to the Development Code are consistent with the statewide planning goals and therefore comply with the requirement that the amendment be consistent with state land use planning law.

**2. The request is consistent with the applicable Bend Area General Plan The request is consistent with the applicable Bend Area General Plan goals and policies;**

**FINDING:** The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies," which are statements of public policy. The following Goals and Policies are applicable:

***Chapter 1: Plan Management and Citizen Involvement***

***Policies***

***Citizen Involvement***

*15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.*

16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

A notice of the Planning Commission public hearing was published in the Bend Bulletin on March 27, 2016 and sent to the neighborhood associations on March 23, 2016. Staff also emailed the changes to the Development Code Update Committee on April 7, 2016 for their review. The Planning Commission held a work session on April 11, 2016 and a public hearing on April 25, 2016 and recommended approval to the City Council. A notice of the City Council public hearing was published in the Bend Bulletin on April 10, 2016 and sent to the neighborhood associations on April 6, 2016. The City Council held a public hearing on May 4, 2016 and conducted the first reading. On May 18, 2016 the City Council held a second reading and voted to approve the amendments for small hydroelectric facilities.

### **Chapter 10: Natural Forces**

Goals: To encourage energy conservation and the development of energy producing facilities that use renewable resources.

### **Policies**

#### **Energy conservation**

1. The use of alternative energy sources should be encouraged.
2. Any energy producing projects shall be consistent with the community's wildlife, recreation, open space, and scenic resource values.

**FINDINGS:** Small hydroelectric facilities convert waste to energy which provides an alternative energy source. Small hydroelectric facilities are usually installed where water is already dammed or diverted. Adding small hydropower where water is already in use for another purpose typically does not cause additional environmental impacts. Also, small hydroelectric facilities that qualify for a FERC exemption involve little change to water flow and use and are unlikely to affect threatened or endangered species. Therefore, small hydroelectric facilities are consistent with the community's wildlife, recreation, open space, and scenic resource values.

Based on the findings stated above, staff concludes that the proposed text amendments are consistent with the applicable General Plan Goals and Policies.

3. **The applicant can demonstrate a public need or benefit for the proposed amendment.**

### **FINDING:**

The benefits of small hydroelectric facilities include converting waste to energy which can offset energy costs and depending on generating capacity, they can create a revenue stream.

#### **4.6.500 Record of Amendments.**

**The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.**

**FINDING:** In the event the Development Code text amendment is adopted by ordinance, the City Recorder will maintain a record of the amendments and the revised provisions will be included as part of the Bend Development Code available to the public on the City's website.

#### **4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** The new text amends the Bend Development Code, a functional component of the General Plan, and is an amendment to a land use regulation as noted in OAR 660-012-0060. The proposed amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore the proposed text amendments do not cause a "significant effect" under ORS 660-012-0060.

### **V. CONCLUSIONS:**

Based on the above Findings, the proposed Development Code text amendment meets all applicable criteria for adoption.