



## BOARD OF COMMISSIONERS

1300 NW Wall Street, Bend, Oregon  
(541) 388-6570

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# BOCC MEETING MINUTES

9:00 AM

**WEDNESDAY October 18, 2023**

Barnes Sawyer Rooms  
Live Streamed Video

Present were Commissioners Tony DeBone, Patti Adair and Phil Chang. Also present were County Administrator Nick Lelack; Assistant County Counsel Kim Riley; and BOCC Executive Assistant Brenda Fritsvold.

This meeting was audio and video recorded and can be accessed at the Deschutes County Meeting Portal website [www.deschutes.org/meetings](http://www.deschutes.org/meetings).

**CALL TO ORDER:** Chair DeBone called the meeting to order at 9:00 a.m.

### **PLEDGE OF ALLEGIANCE**

**CITIZEN INPUT:** None

### **CONSENT AGENDA: Before the Board was Consideration of the Consent Agenda.**

1. Approval of Document No. 2023-906 terminating the Improvement Agreement for Caldera Springs Destination Resort
2. Approval of Chair signature of Document No. 2023-919, a Notice of Intent to Award a contract for the Knott Landfill Cell 9 construction project
3. Approval of a lease with Dr. Anne Onishi and Maureen McCaffrey for the Medical Examiner's Office

4. Consideration of Board Signature on letter reappointing Donna Mills for service on the Deschutes County Public Safety Coordinating Council
5. Approval of minutes of the BOCC September 20 and 27, 2023 meetings

CHANG: Move approval of the Consent Agenda as presented  
 ADAIR: Second

VOTE: ADAIR: Yes  
 CHANG: Yes  
 DEBONE: Chair votes yes. Motion Carried

**ACTION ITEMS:**

**6. Proclamation: Domestic Violence Awareness Month**

The Board read the proclamation into the record for presentation to Shannon Ries, Development Director at Saving Grace. Saving Grace offers emergency shelter and other 24-hour help to victims of domestic violence.

ADAIR: Move adoption of a proclamation declaring October to be Domestic Violence Awareness Month  
 CHANG: Second

VOTE: ADAIR: Yes  
 CHANG: Yes  
 DEBONE: Chair votes yes. Motion Carried

The Commissioners expressed appreciation for the work Saving Grace does to address the problem of domestic violence.

**7. Public Hearing and first reading of Ordinance No. 2023-022, amending Deschutes County Code section 6.12**

Dave Doyle, County Attorney, explained that the Deschutes County Sheriff's Office sought an amendment to Deschutes County Code section 6.12 to clarify the required conditions for chickens to be treated as livestock. The proposed amendment would revise the definition of the term "livestock" to include domesticated fowl that is located wholly on private property, whether or not it is in a pen, cage or hutch. Doyle said the purpose of this change is to allow claims to be pursued against dog owners whose dogs attack fowl on another person's

property even if the fowl are unpenned. The proposed amendment was reviewed by the Dog Control Board with no objection or opposition.

Commissioner Adair expressed strong support for this change.

Responding to Commissioner Chang, Doyle said the County learns of dogs attacking unpenned fowl two to four times a year on average. The unamended Code did not allow the County to take any action in such cases.

*The public hearing was opened at 9:09 am. There being no one who wished to testify, the public hearing was closed at 9:10 am.*

ADAIR: Move approval of first reading of Ordinance No. 2023-022 amending Title 6.12, Livestock Kills, of the Deschutes County Code by title only

CHANG: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

Chair DeBone read the title of the ordinance into the record.

## **8. Road Dedication - Fryrear Butte Road**

Haleigh King, Associate Planner, presented a request for Board approval of a deed of dedication for new public right-of-way on Fryrear Butte Road. The purpose of the request is to provide for future road frontage for landlocked parcels.

CHANG: Move approval of Board signature of Document No. 2023-097 accepting the dedication of a portion of Fryrear Butte Road for roadway and utility purposes

ADAIR: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

## **9. Ordinance No. 2023-014, amending Deschutes County Code to allow Rural Accessory Dwelling Units**

Kyle Collins, Associate Planner, reminded that the Board held a public hearing on this matter in July and conducted deliberations in August, at which time it

directed several modifications to the draft text amendments as presented by staff.

Commissioner Chang spoke to the importance of protecting groundwater quality and said because the County has not recently monitored this in the south county, it is not known if it has degraded or not. He noted staff's recommendation had been to adopt a five-acre minimum threshold for parcels adding an ADU in the south county, but a majority of the Board supported changing that to two acres. He was concerned about the potential impacts of this change on groundwater quality and asked how onsite wastewater systems will be assessed to ensure that they can accommodate the primary residence and an ADU or, if staff determines that a site cannot provide for adequate groundwater protection, if an application for an ADU can be rejected and a permit not issued.

Collins said the process will require an on-site evaluation before an application can be submitted seeking a permit to add an ADU. He confirmed that an evaluation could result in disallowing an application to be submitted.

Peter Gutowsky, Community Development Director, added that even if an on-site evaluation indicated that a septic system could be modified to accommodate a new ADU, impacts would still result. He noted the vulnerability of the aquifer in the south county and said any increase in density will add nitrates to the system and accelerate nitrate loading. Gutowsky said the DEQ groundwater monitoring report is now expected to be issued early next year.

County Administrator Nick Lelack said the County must implement State rules as issued by the Department of Environmental Quality (DEQ). Certain rules may make rural ADUs expensive or not affordable due to the need to adhere to State requirements such as installing a system that could adequately process the added wastewater of an additional residence.

In response to Commissioner Adair, Todd Cleveland, Onsite Wastewater Manager, said the DEQ report has been delayed due to staffing limitations, the current drought, and complications related to gaining access to wells. He described the aquifer in the south county as slow-moving and said its loading has not been sufficiently reduced to avoid a problem in the future. He remained concerned about contributing more contamination to this drinking water source.

Commissioner Chang said approving a two-acre minimum parcel size in the south county would establish an expectation that ADUs can be built on these parcels, but that may not be true if the property lacks sufficient wastewater capacity. Saying this could lead to disappointment and anger, he supported restricting ADUs in the south county to parcels five acres or larger in size.

Commissioner DeBone said most parcels in that area are one acre in size. While he understood that some applications would be denied or abandoned due to prohibitive costs, and agreed that groundwater protection is important, he supported a two-acre minimum.

Responding to Commissioner Adair, Collins said there are just over 1,100 two-acre or larger parcels in south Deschutes County, and 319 parcels with five or more acres.

Commissioner Adair referred to events in Boardman, Morrow County last year when high levels of nitrate contamination in the groundwater resulted in the distribution of bottled water to residents.

Cleveland said staff recommends restricting ADUs in southern Deschutes County to parcels at least five acres or larger based on basic loading calculations. He explained that larger parcels provide better diffusion of nitrates and can spread any pollution over a greater area.

Commissioner Chang said because all of the groundwater in the south county moves northward through the ground or is discharged as spring flow into the river, a too-high nitrate load in this area would eventually expand to affect other areas. He said groundwater problems in the south county are from onsite wastewater systems and was concerned that nitrates might pose a problem for wells.

Discussion ensued regarding amending the ordinance to restrict ADUs in south Deschutes County to parcels five acres or larger in size. Commissioner Adair noted if that amendment is made at this time, it could be changed later if the DEQ study is favorable.

CHANG: Move approval of first reading of Ordinance No. 2023-014, amending Deschutes County Code Title 18, Zoning Ordinance, Title 19, Bend Urban Area Zoning Ordinance, and Title 22, Procedures Ordinance, to adopt provisions for Rural Accessory Dwelling Units with the amendment that in southern Deschutes County, rural ADUs are restricted to properties five acres or larger

ADAIR: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried



Chair DeBone read the title of the ordinance into the record and said second reading will take place in two weeks.

**10. Consideration to hear an appeal of a modification of a previously approved land use permit to change the point of access**

Dan DiMarzo, Assistant Planner, said the Hearing's Officer denied a request for a modification of a previously approved land use permit to change the point of access for parcels sited in the 41000 block of NE O'Neil Way. DiMarzo explained that the applicant had sought and was issued permits to divide the property from one parcel into three, with the approved point of access for two of the parcels being NE Coyner Avenue.

The applicant requests the permit be modified to change the point of access for the two new parcels to NE O'Neil Way, which is State Highway 370 under the jurisdiction of the Oregon Department of Transportation (ODOT). The modification application also seeks to remove the permit's conditions of approval that require road improvements and the dedication of right-of-way to NE Coyner Avenue.

The Hearing's Officer denied the applicant's modification request on the grounds that NE O'Neil Way is a principal arterial, and Deschutes County Code Section 17.48.210 states that "The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel."

DiMarzo added that after ODOT initially approved the applicant's request to allow the two new parcels to access NE O'Neil Way, ODOT stated that approval had been given in error and subsequently rescinded it. ODOT then re-issued a conditional approval, contingent on receiving local land use approval from the County. DiMarzo concluded that staff recommends the Board decline to hear the appeal.

Stephanie Marshall, Assistant Legal Counsel, added that the permit was issued with the approved point of access for the two new parcels being NE Coyner Avenue. That permit was not appealed by the applicant.

CHANG: Move approval of Order No. 2023-044 declining to hear an appeal of the Hearings Officer's decision on a modification of a previously approved land use permit to change the point of access

ADAIR: Second

VOTE: ADAIR: Yes  
CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

**11. Amendment to a contract with Iris Telehealth and Resolution 2023-058 which increases appropriations and reduces reserves within the Health Services Fund**

Holly Harris, Behavioral Health Director, and Chandra Mola, Program Supervisor, said the County contracts with Iris Telehealth to provide tele-psychiatric treatment for individuals served by Deschutes County Health Services. The proposed amendment to this contract would increase funding by \$280,000 to include services of a Psychiatric Mental Health Nurse Practitioner at the North County (Kingwood) clinic. If approved, the associated resolution would formalize the needed adjustments to the County's FY 23-24 Budget.

CHANG: Move approval of Board Signature of Document No. 2023-871, amending a contract with Iris Telehealth for tele-psychiatric services

ADAIR: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

CHANG: Move approval of Resolution No. 2023-058 reducing reserves and increasing appropriations within the Health Services Fund and the 2023-24 Deschutes County Budget

ADAIR: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

**12.. Oregon Health Authority grant agreement #180009-2 and Resolution No. 2023-060 converting 1.0 limited duration FTE to regular and increasing appropriations in the Health Services Fund**

Heather Kaisner, Public Health Director, said the proposed amendment to a grant agreement with the Oregon Health Authority (OHA) would modify program element descriptions and result in an additional \$922,746 in funding, most of which (\$652,283) would be used for leadership, governance and program implementation to further public health modernization efforts. In conjunction with the additional funding, Health Services seeks authorization to convert one Public Health Program Manager from limited duration to regular effective

January 1, 2024. Kaisner said this position would focus on emergency preparedness, community partnership development and risk communications.

Cheryl Smallman, Health Services Business Officer, said because the proposed resolution would free up \$150,000 in ARPA funds, Health Services asks that the Board approve extending the end date to use ARPA funding earmarked for Health Services through December 2026.

ADAIR: Move approval of Chair signature of Document No. 2023-902, Oregon Health Authority agreement #180009-2

CHANG: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

CHANG: Move approval of Resolution No.2023-060 to convert 1.0 limited duration FTE to a regular FTE position and increase appropriations within the Health Services Fund and the 2023-24 Deschutes County Budget

ADAIR: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

Commissioners DeBone and Adair were in agreement that the request for authorization to extend the end date to use ARPA funding earmarked for Health Services through December 2026 can be addressed at a later date.

### **13. Public Health Advisory Board By-Laws Update**

Public Health Manager Tom Kuhn, PHAB Chair Rob Ross and PHAB Vice-Chair Colleen Sinsky presented recommended updates to the by-laws of the Public Health Advisory Board, last updated in 2017.

Ross explained that some of the changes reflect a desire to become more responsive to the needs of the public. Also, the PHAB believes it can be more impactful by focusing its efforts.

Commissioner Chang noted that as an advisory board, it is not PHAB's role to implement solutions to public health problems. He appreciated that collaborative partnerships have emerged from the Board's work.



Commissioner Adair advised the by-laws be changed to state that the PHAB meets monthly instead of at least quarterly.

CHANG: Move approval of the recommended updates to the Public Health Advisory Board By-Laws with the added revision that PHAB meetings are held monthly

ADAIR: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

#### **14. Deschutes County Employee Benefits Renewal for the 2024 Plan Year**

Kathleen Hinman, Human Resources Director, said each fall, the County evaluates the employee health benefits plan and the vendor contracts which support it in advance of January 1<sup>st</sup>, when these are scheduled to be renewed. Hinman described the process undertaken to offer a benefits plan which offers proven effectiveness, is competitive with benchmarking against other health plans, aligns with current laws, and is fiscally responsible.

Noting that the Health Benefits Fund balance was recently \$4.2 million and is now \$3.8 million, Commissioner Adair was concerned about the potential devastating effect that health emergencies could have on this fund and questioned why the County is not raising the employee cost share for coverage more.

Commissioner Chang said rather than increase the employee premium co-pay amounts, the best way to protect the Health Benefits Fund is to reduce costs by promoting employee health and wellness.

Continuing, Hinman said the County solicited bids for a Stop Loss contract and was able to bring the 2024 cost down from a 15% increase to a 7.7% increase. Although this amounts to an approximate \$87,000 increase for next year, the County anticipates a rate refund of approximately \$100,000.

ADAIR: Move approval of renewing with Sunlife, the current Stop Loss provider, and deductible limits for the 2024 plan year

CHANG: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

Responding to Commissioner DeBone regarding the recommendation to renew with PacificSource for Third Party Administrator services, Hinman said PacificSource has proposed a 3.9% rate increase for 2024.

ADAIR: Move approval of renewing with PacificSource, the current Third Party Administrator, for the 2024 plan year

CHANG: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

Hinman next presented the ten recommended changes to the employee benefit plan as supported by the Employee Benefit Advisory Committee (EBAC). Commissioner DeBone shared that he attended the EBAC meeting where these changes were discussed. With respect to the provision of abortion services, he supported following State law as required under HB 2002.

Commissioner Chang supported approving all ten changes recommended by the EBAC.

CHANG: Move approval of the staff-recommended Employee Benefit Plan changes #1-10

ADAIR: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

ADAIR: Move approval of County Administrator signature of the final Deschutes County Employee Benefits Health Plan documents and service agreements for the 2024 plan year

CHANG: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

Commissioner Change thanked the EBAC for its work on the renewals.

## **15. FY 2024 Q2 Discretionary grant application review**

Stephanie Robinson, Administrative Analyst, presented applications submitted to the Deschutes County Discretionary Grant Program for the Board's consideration and determination of award amounts.

*At 11:25, a break was announced. The meeting reconvened at 11:40.*

**OTHER ITEMS:**

- Dave Doyle, County Attorney, asked that the Board approve a Memorandum of Understanding (MOU) between the County and the Deschutes County Sheriff's Office (DCSO) regarding legal services. Doyle explained that the purpose of the MOU is to clarify the role of legal counsel in DCSO. Sheriff Nelson has signed the MOU.

ADAIR: Move approval of Chair signature of Document No. 2023-947, a Memorandum of Understanding between the County and the Sheriff's Office for legal services

CHANG: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

- Commissioner Adair acknowledged the assistance of Sheriff Shane Nelson in siting billboards which inform the public of the risk and dangers of fentanyl use.
- Deputy County Administrator Whitney Hale presented a letter drafted for the purpose of submitting comments from the Board on the State's rule-making analysis and process for groundwater allocation. Commissioner DeBone explained that the City of Redmond has asked that the County submit a letter on its behalf.

Commissioner Chang agreed that the incorporated cities in Deschutes County should have access to the water they need. At the same time, the County must acknowledge declining groundwater levels and formulate a specific approach for the Deschutes basin.

Following discussion, the Board was in consensus to revise the letter as directed and address it to the Governor with copies to legislators and the Water Resource Department.

- The Board discussed drafting a letter to comment on Measure 110, which some have called to be reformed.

Commissioner Adair said this legislation should be repealed, and time is of the essence as overdoses are increasing and babies are being born addicted. She added that sending Measure 110 back to the voters would take too long.

Commissioner DeBone said District Attorney Gunnels and Sheriff Nelson will be invited to co-sign the letter.

Commissioner Chang agreed that the increase in public drug use and the fentanyl epidemic are concerns. He supported expanding the capacity of treatment and recovery services and developing appropriate incentives to motivate people to seek treatment.

The Board provided direction to staff to use in drafting a letter for its consideration.

- Commissioner Adair attended the groundbreaking for the Housing Works Spencer Court affordable housing project, noting the County had contributed \$2 million for this endeavor.
- Commissioner DeBone said the County will sponsor a table at the upcoming Bend Chamber of Commerce Impact conference on October 31<sup>st</sup>.

**EXECUTIVE SESSION:**

At 12:00 noon, the Board moved into Executive Session under ORS 192.660 (2) (h) Litigation.

*The Board moved out of executive session at 12:06 p.m. with no action taken.*

**ADJOURN:**

Being no further items to come before the Board, the meeting was adjourned at 12:06 pm.

DATED this 1<sup>st</sup> day of Nov. 2023 for the Deschutes County Board of Commissioners.

**ATTEST:**

Brenda Fitzgibbon  
**RECORDING SECRETARY**

Anthony DeBone  
**ANTHONY DEBONE, CHAIR**

Patti Adair  
**PATTI ADAIR, VICE CHAIR**

Phil Chang  
**PHIL CHANG, COMMISSIONER**