



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

[www.lcd.state.or.us](http://www.lcd.state.or.us)



## NOTICE OF ADOPTED AMENDMENT

07/08/2013

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Salem Plan Amendment  
DLCD File Number 005-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, July 19, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Glenn Davis, City of Salem  
Gordon Howard, DLCD Urban Planning Specialist  
Angela Lazarean, DLCD Regional Representative

<paa> N



FORM 2

DLCD

# Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP	<input type="checkbox"/> In person <input type="checkbox"/> electronic <input type="checkbox"/> mailed
	DEPT OF
	JUL 01 2013
	LAND CONSERVATION AND DEVELOPMENT For Office Use Only

Jurisdiction: **City of Salem**

Local file number: **Ordinance 21-13**

Date of Adoption: **June 24, 2013**

Date Mailed: **June 28, 2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 5/3/2013

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Ordinance 21-13 modifies the subdivision code related to performance guarantees. The ordinance modifies the acceptable forms of security; gives discretion to the Public Works Director to specify the performance guarantees that are appropriate to ensure that the public improvements being secured will be completed; and specifies that the City may use all available remedies as appropriate when the developer's performance security is not adequate to complete the required improvements.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☐ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. 005-13 (19825) [17516]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

N/A

---

Local Contact: **Glenn Davis, P.E., Chief Dev Eng**

Phone: **(503) 588-6211**

Extension: **7377**

Address: **555 Liberty St SE, Room 325**

Fax Number: **- -**

City: **Salem**

Zip: **97301**

E-mail Address: **gdavis@cityofsalem.net**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

1  
2  
3  
4  
5  
6  
7  
8  
9  
0

3  
4  
5  
6  
7  
8  
9  
0

5  
6  
7  
8  
9  
0

6  
7  
8  
9  
0

1 (B) The owner of the property being subdivided or partitioned has executed  
2 and filed with the City an improvement agreement, requiring all  
3 improvements, both public and private, required as conditions of approval of  
4 the tentative plan, to be completed within 18 months of the final approval of a  
5 subdivision or partition, and, if applicable, the owner of the property being  
6 subdivided or partitioned has entered into an agreement pursuant to SRC  
7 66.590-610. The improvement agreement shall be ~~accompanied~~ secured by a  
8 performance guarantee as provided in SRC 63.053. Upon request, the  
9 improvement agreement shall be extended for an additional 18 month period  
10 if the performance guarantees are modified, if necessary, to reflect any change  
11 in cost of construction. The improvement agreement shall state that, should  
12 all improvements not be completed within the term of the improvement  
13 agreement or its extension, the City may pursue any and all remedies available  
14 to it, including, but not limited to, those set forth in SRC 63.053. ~~Shall~~  
15 ~~estimate the cost of completing the work, call upon the bond or deposit for~~  
16 ~~funds necessary to cover the cost, and complete the improvement from funds~~  
17 ~~collected under the performance guarantee. If the funds collected under the~~  
18 ~~performance guarantee are insufficient to install the required improvement,~~  
19 ~~the City may either hold the collected funds until additional funds are~~  
20 ~~authorized for the improvement or expend the collected funds on a revised~~  
21 ~~improvement or on a portion of the improvement as determined reasonable by~~  
22 ~~the Director of Public Works;~~

23 (c) If the Planning Administrator finds that the conditions specified in subsection (b)  
24 of this section have not been met the Planning Administrator shall advise the  
25 applicant of the changes that must be made and afford the applicant opportunity to  
26 comply. Rejection of a final plat shall not affect tentative plan approval.

27 (d) When the Planning Administrator finds that the final plat is in substantial  
28 conformity to the approved tentative plan and is otherwise in lawful form the  
29 Planning Administrator shall endorse the approval on the plat.

30 **Section 2.** SRC 63.053 is amended to read:

1       63.053. Performance Guarantees. ~~When required by the provisions of SRC 63.052 or~~  
2       ~~77.120, the applicant shall file as a performance guarantee, to insure the full and faithful~~  
3       ~~performance of all terms of an improvement agreement, if any, or to insure completion of all~~  
4       ~~work for which permits are required, one of the following:~~

5               (a) An applicant shall provide a performance guarantee, as required by this Chapter  
6               or by SRC 77.120, to ensure completion of a required improvement. The amount of  
7               the performance guarantee shall be equal to one hundred percent of the estimated  
8               construction costs of the required improvement, as determined by the Public Works  
9               Director. The performance guarantee shall remain in place until the required  
10              improvements have been completed by the applicant and accepted by the City.

11              (b) The Public Works Director has discretion to determine which performance  
12              guarantee, or combination of performance guarantees, is acceptable to insure the  
13              completion of the required improvement, as set forth in subsection (c).

14              (c) The performance guarantees that may be provided to ensure completion of a  
15              required improvement are:

16                      ~~(1) (a)~~—A surety bond executed by a surety company authorized to transact  
17                      business in the State of Oregon, in a form approved by the City Attorney, ~~in an~~  
18                      ~~amount equal to 100 percent of the construction cost of required improvements, as~~  
19                      ~~verified by the city.~~

20                      ~~(2) A deposit with the city, or at the option of the city, a verified deposit with a~~  
21                      ~~responsible escrow agent or trust company, of cash or negotiable securities bonds~~  
22                      ~~in an amount equal to 100 percent of the construction costs of the required~~  
23                      ~~improvements with the City, together with an agreement that the deposit may be~~  
24                      ~~disbursed only upon city approval of disbursement. The agreement shall include~~  
25                      ~~a provision that the city shall allow that provides:~~

26                              (A) The applicant shall forfeit the deposit to the City upon the Public Works  
27                              Director declaring that the required improvements have been not completed in  
28                              a satisfactory manner, or that there has been a default under the improvement  
29                              agreement; and

30                              (B) The Public Works Director may release portions of the deposit as



1           progress payments, in such amounts and at such times as a corresponding  
2           proportion of the required improvements are completed to the satisfaction of  
3           the Public Works Director. ~~city engineer following an inspection by the city~~  
4           ~~engineer or the engineer's authorized representative.~~

5           (3) A deposit of cash or negotiable securities with an escrow agent or trust  
6           company, selected by the Public Works Director together with an escrow  
7           agreement that provides:

8           (A) The deposit may be disbursed only upon written approval of the Public  
9           Works Director;

10          (B) The Public Works Director may release portions of the deposit as  
11          progress payments, in such amounts and at such times as a corresponding  
12          proportion of the required improvements are completed to the satisfaction of  
13          the Public Works Director; and

14          (C) The escrow agent or trust company shall release the deposit to the City  
15          upon receipt of a statement from the Public Works Director stating that the  
16          required improvements have been not completed in a satisfactory manner, or  
17          that there has been a default under the improvement agreement.

18          (4) A guaranty agreement between the City, the applicant, and one or more  
19          financial or lending institutions, in a form approved by the City Attorney. The  
20          guaranty agreement shall provide:

21          (A) An unconditional provision that funds in an amount equal to one hundred  
22          percent of the estimated construction cost of the required improvements are  
23          available and guaranteed as payment for the construction cost of the required  
24          improvements; and

25          (B) The lending institution shall release funds to the City upon receipt of a  
26          statement from the Public Works Director stating that the required  
27          improvements have been not completed in a satisfactory manner, or that there  
28          has been a default under the improvement agreement.

29          ~~(5) An agreement between the city, developer and one or more financial or~~  
30          ~~lending institutions pledging that funds equal to 100 percent of the construction~~

1 cost of all required improvements are available to the applicant and are  
2 guaranteed for payment for the improvements. ~~An irrevocable standby letter of~~  
3 ~~credit issued by a financial institution is acceptable to the Public Works Director,~~  
4 ~~in a form approved by the City Attorney. The irrevocable standby letter of credit~~  
5 ~~shall:~~

6 (A) Name the City as the beneficiary; and

7 (B) Provide for automatic extensions equal to the original term, unless the  
8 issuing financial institution gives not less than sixty days written notification  
9 to the Public Works Director prior to its expiration, and the issuing institution  
10 agrees that any unused portion of the credit shall be available upon  
11 presentation of the City's sight draft within sixty days of the issuing bank's  
12 receipt of notice of non renewal.

13 ~~(6) An agreement between developer and city that no building permits for any~~  
14 ~~structures within the subdivision will be issued until all improvements have been~~  
15 ~~completed by the applicant and accepted by the city. Such agreement shall be in~~  
16 ~~a form approved by the city attorney and recorded in the deed records of the~~  
17 ~~appropriate county. For subdivisions and partitions, a no-build agreement between~~  
18 ~~the applicant and City, in a form approved by the City Attorney. The no-build~~  
19 ~~agreement shall:~~

20 (A) Provide that no building permits for any buildings or structures within the  
21 subdivision or partition shall be issued until all required improvements have  
22 been substantially completed, as certified by the Public Works Director;

23 (B) Be binding on the applicant and the applicant's heirs, successors and  
24 assigns until such time as all improvements are complete;

25 (C) Be recorded in the deed records of the appropriate county; and

26 (D) Provide that upon completion and acceptance by the City of the required  
27 improvements, that the Public Works Director shall record a certificate of  
28 completion releasing the property from the no-build agreement in the deed  
29 records of the appropriate county.  
30



1 (d) City Remedies if Applicant Fails to Construct Required Improvement.

2 (1) If an applicant fails to complete all a required improvement, the City may seek  
3 any remedy available at law or in equity to remedy such failure, including but not  
4 limited to money damages and specific performance of an improvement  
5 agreement for which performance security has been provided, shall estimate the  
6 cost of completing any required improvement, call on the bond or deposit for the  
7 funds necessary to complete the improvement, and complete the improvement to  
8 the extent of the funds obtained upon call of the bond or deposit. If the amount  
9 obtained from the bond or deposit is insufficient to complete the improvement,  
10 the city may either hold the collected funds until additional funds are authorized  
11 for the improvement or expend the collected funds on a revised improvement or  
12 on a portion of the improvement as determined reasonable by the director of  
13 public works. Following final inspection as required by SRC 77.120(d) or (e), if  
14 the improvement is complete and the amount of the bond or deposit exceeds the  
15 actual cost to the city of completing the improvement, the remainder shall be  
16 released.

17 (2) In addition to the remedies set forth in paragraph (1) of this subsection, if an  
18 applicant fails to complete a required improvement, the Director may estimate the  
19 cost of completing the required improvement, obtain the necessary funds from  
20 one of the performance guarantees specified in SRC 63.053(c)(1)-(5), and  
21 complete the improvement. If the funds are insufficient to cover the costs of  
22 completion, the City may hold the funds obtained until additional funds have been  
23 provided by the applicant, or expend the funds on a modified improvement or on  
24 such portion of the required improvement as is deemed reasonable by the Public  
25 Works Director, provided, however, that such action by the Public Works Director  
26 shall not relieve the applicant of the obligation to construct the required  
27 improvement.

28 **Section 3.** SRC 63.360 is amended to read:

29 **63.360. Phased Subdivisions.**

30 (a) Real property which will be developed for commercial or industrial use may be

subdivided as a phased subdivision, as provided in this section.

(b) **Additional Submittal Requirements.** In addition to the information required under SRC 63.038(b), a tentative plan for a phased subdivision shall include a phasing plan that indicates the tentative boundaries and sequencing of each phase and the tentative configuration of lots in each phase. The phasing plan shall include the provisions for the construction of all public facilities, including streets, water, sewer, and storm drain, in each phase of the subdivision.

(c) **Additional Approval Criteria.** In addition to any other approval criteria set forth in this Chapter, a phased subdivision shall:

(1) Show tentative connectivity for streets and utilities between each phase to ensure the orderly and efficient construction of required public improvements among all phases;

(2) Demonstrate that each phase is substantially and functionally self-contained and self-sustaining with regard to required public improvements; and

(3) Each phase is designed in such a manner that all phases support the infrastructure requirements for the phased subdivision as a whole.

(d) **Conditions of Approval.** Conditions of approval shall be imposed upon the tentative plan that will ensure all public facilities will be completed in a timely manner, that safe and healthful development of the subject property and neighboring properties will be ensured, and that the public health, safety, and welfare will be preserved.

(e) **Construction of Public Facilities; Performance Security.** ~~The developer shall be required to construct or provide performance guarantee for only those public improvements required as conditions of tentative plan approval for that phase, unless~~ Unless the tentative plan approval specifically requires otherwise, as a condition of development approval—A the developer shall only be required to provide performance security allowed under SRC 63.053(a), (b) and (c) for construct those public improvements that are required to be constructed as a condition-conditions of final plat tentative plan approval for the specific phase that is to be recorded, or provide a performance guarantee as provided in SRC 63.053.

(f) **Final Plat Approval.** Approval of a final plat for a phase of a phased subdivision

1 shall be as set forth in SRC 63.052. Final plat for each phase shall be in substantial  
2 conformance with the tentative plan, and shall have satisfied any conditions of approval  
3 with respect to the phase involved set forth in the tentative plan approval. The final plat  
4 for each phase may diverge from the tentative plan as provided in this subsection, and  
5 unless the divergence from the tentative plan would require a modification of any  
6 condition of approval, and still be considered in substantial conformance with the  
7 approved tentative plan if there is:

- 8 (1) A decrease or increase in the number of lots within the particular phase;
- 9 (2) A change in the location or size of public rights-of-way within the specific  
10 phase; provided, however, the change does not materially affect connectivity, does  
11 not increase or decrease the number of connections to streets set forth in the  
12 tentative plan, does not change the point of connection with existing or planned  
13 streets, does not change the street designation from one classification to another;
- 14 (3) A change in the location or width of a public utility easement, so long as the  
15 change does not adversely affect connectivity with constructed or planned utilities;
- 16 (4) A decrease in the number of phases or area of a specific phase; or
- 17 (5) An increase in the area of a specific phase.

18 (g) Time Limit for Tentative Plan Approval. Tentative plan approval for a phased  
19 subdivision shall be valid for ten years following the date tentative plan approval  
20 becomes a final.

21 **Section 4. Severability.** Each section of this ordinance, and any part thereof, is severable, and  
22 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of  
23 this ordinance shall remain in full force and effect.

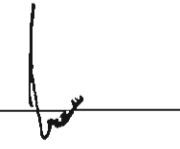
24 **Section 5. Codification.** In codifying this ordinance the City Recorder may change the word  
25 "ordinance," "code," "article," "section," or "chapter" to reflect the proper terminology; may  
26 renumber sections, subsections, paragraphs and clauses to reflect proper sequencing; may correct  
27 any cross-references; and may correct any typographical errors in the text which do not affect the  
28 meaning of text.

1 PASSED by the City Council this 24<sup>th</sup> day of June, 2013.

2 ATTEST:

3  
4 *Kathryn Hall*

5 City Recorder

6 Approved by City Attorney: 

7  
8 Checked by: G. Davis

9 g:\group\legal\council\2013\032513 performance guarantees ord 21-13 rt final.doc

FUTURE REPORT: April 22, 2013  
FOR COUNCIL MEETING OF: May 13, 2013  
AGENDA ITEM NO.: 8.1 (a)  
PUBLIC WORKS FILE NO.: June 10, 2013  
4 (a)

TO: MAYOR AND CITY COUNCIL  
THROUGH: LINDA NORRIS, CITY MANAGER  
FROM: PETER FERNANDEZ, P.E., PUBLIC WORKS DIRECTOR  
SUBJECT: ORDINANCE BILL NO. 21-13 RELATING TO SUBDIVISION AND  
PARTITION PLAT APPROVALS, AMENDING SALEM REVISED  
CODE 63.052, 63.053, AND 63.360

**ISSUE:**

Should Council hold a public hearing regarding Ordinance Bill No. 21-13 amending *Salem Revised Code* (SRC) 63.052, 63.053, and 63.360, modifying provisions related to plat approvals, and after such hearing, advance Ordinance No. 21-13 to second reading?

**RECOMMENDATION:**

Staff recommends Council hold a public hearing regarding Ordinance Bill No. 21-13 amending SRC 63.052, 63.053, and 63.360, modifying provisions related to plat approvals, and after such hearing, advance Ordinance Bill No. 21-13 to second reading.

**BACKGROUND:**

When developers construct required public improvements under permits issued per SRC Chapter 77, they are required to file a performance guarantee prior to permit issuance. The performance guarantee ensures that the City has adequate resources available if the developer's contractor fails to complete the improvements in accordance with City standards and specifications. If the developer's contractor fails to perform, City staff can use the funds from the performance guarantee in order to complete the required improvements. Performance guarantees can include a variety of financial mechanisms or, in many cases, a no-build agreement, which restricts future building permits without any other financial consideration.

No-build agreements do not provide the City any readily available funds to address a failure to construct infrastructure. This poses the most significant issues when work is required in existing right-of-way. If a safety problem arises within existing right-of-way, City staff may need to act immediately by calling on a performance security posted by the developer. When a no-build agreement is the security being used, no developer funds would be available to address the safety concern.

Current code provisions give the developer full discretion regarding the selection of an adequate performance security. Ordinance 21-13 provides discretion to the Public Works Director to ensure the performance security being provided by the developer is most appropriate for the situation at hand.

Current code provisions do not specifically address a situation where City expenditures needed to remedy a developer improvement exceed the funds available in the

performance guarantee. Ordinance 21-13 clarifies that the City may use all available remedies as appropriate when the performance security is inadequate.  
A public hearing is planned for June 10, 2013, in order to meet the public notice provisions in SRC 300.1100(e).

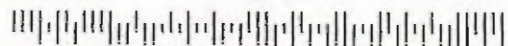
**FACTS AND FINDINGS:**

1. The ordinance adoption process is described in SRC 300.1100. Notice to the Department of Land Conservation and Development will be provided not less than thirty days prior to the date of the public hearing.
2. Section 1 will make minor changes to SRC 63.052 to conform this section to the new provision regarding performance securities by deleting redundant language. Additional changes are housekeeping in nature.
3. Section 2 will amend SRC 63.053 to do the following:
  - (a) Gives the Public Works Director the authority to determine the nature and adequacy of the performance security;
  - (b) Separates the types of performance guarantees, and clearly states rules that are specific to that type of performance guarantee;
  - (c) Adds the deposit of cash or negotiable securities with an escrow agent as a form of performance security;
  - (d) Allows the payment of "progress payments" from a cash or negotiable security deposit where the public improvements are completed in stages;
  - (e) Clearly identifies the two types of security that can be provided through a financial institution -- guaranty agreement with irrevocable standby letter of credit and establishes the requirements for both types of performance security;
  - (f) Clarifies the process used for a "no-build" agreement;
  - (g) Authorizes the use of remedy of "specific performance," which is needed in the case of "no-build" agreements.
4. Section 3 will amend SRC 63.360 to conform this section to the new provision regarding performance securities. Additional changes are housekeeping in nature.



Robert D. Chandler, Ph.D., P.E.  
Assistant Public Works Director





ty of Salem  
ublic Works Department  
55 LIBERTY STREET SE ROOM 325  
ALEM, OR 97301-3513



U.S. POSTAGE >> PITNEY BOWES



ZIP 97301 \$ 001.32<sup>0</sup>  
02 18  
0001366670 JUN 28 2013

PLAN AMENDMENT SPECIALIST  
DEPT LAND CONSERVATION AND DEV  
635 CAPITOL ST, SUITE 150  
SALEM OR 97301-2540

DEPT OF

JUL 01 2013

LAND CONSERVATION  
AND DEVELOPMENT