



# 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

September 19, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Sandy Plan Amendment  
DLCD File Number 002-08



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: October 7, 2008**

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Jennifer Donnelly, DLCD Regional Representative  
Tracy Brown, City of Sandy

<paa> yal

# NOTICE OF ADOPTION

This form must be mailed to DLCD not later than 5 working days after adoption  
ORS 197.615 and OAR Chapter 660, Division 18

See reverse side for submittal requirements

Jurisdiction City of Sandy Local File # 08-001 DCA

Date of Adoption September 15, 2008 Date Mailed Sept. 16, 2008

Date the Proposed Notice was Mailed to DLCD

Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment

Land Use Regulation Amendment  Zoning Map Amendment

New Land Use Regulation

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached." The proposal is a legislative text amendment to Sandy Development Code 17.46.20 to allow drive-thru facilities as a conditional use in the Village Commercial (C-3) Zone, subject to additional requirements.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice of the proposed amendment, write "N/A." The amendment was modified to limit to apply only to properties abutting a state highway and several additional requirements were included.

Plan Map Change From no change to no change

Zone Map Change From no change to no change

Location: N/A Acres Involved: N/A

Specify Density: Previous Density N/A New Density N/A

Applicable Goals: 1, 2, 9 Was an Exception adopted?  Yes  No

DLCD File # \_\_\_\_\_ DLCD Appeal Deadline \_\_\_\_\_

Did DLCD receive a Notice of Proposed Amendment 45 days prior to the final hearing?

Yes  No  The Statewide Planning Goals do not apply

Emergency Circumstances Required Expedited Review

Affected State or Federal Agencies, Local Governments or Special Districts: \_\_\_\_\_

Local Contact: Tracy Brown, Planning Director Phone: 503-668-4886

Address: City of Sandy, 39250 Pioneer Blvd., Sandy OR 97055

DLCD # 002-08 (16688)

## **ORDINANCE NO. 2008-04**

**AN ORDINANCE AMENDING TITLE 17 OF THE SANDY MUNICIPAL CODE, CHAPTER 17.46, VILLAGE COMMERCIAL (C-3), TO ALLOW DRIVE-THRU FACILITIES AS A CONDITIONAL USE IN CONJUNCTION WITH BANKS, SAVINGS AND LOAN, CREDIT UNIONS, OR EATING AND DRINKING ESTABLISHMENTS ON STATE HIGHWAYS, AND PROVIDING GENERAL CONDITIONS WITH RESPECT TO SAME.**

**Whereas**, the City of Sandy regulates development within the Village Commercial (C-3) district through Chapter 17.46, Village Commercial (C-3), of the Sandy Municipal Code;

**Whereas**, in Section 17.46.20 of the Sandy Municipal Code allows the establishment of certain uses in the C-3 zone subject to conditional use review;

**Whereas**, after being authorized by the City Council, a private property owner submitted an application for a legislative amendment to Section 17.46.20 of the Sandy Municipal Code to allow drive-thru facilities in conjunction with a bank, savings and loan, credit union, or eating and drinking establishment on specified roadways;

**Whereas**, on June 23, 2008, a hearing was held before the Planning Commission, who recommended approval of the application, subject to specified amendments;

**Whereas**, on August 4, 2008, the City Council accepted the recommendation of the Planning Commission, subject to an additional specified amendment, and directed preparation of an ordinance setting forth the amendments;


**Whereas**, the City Council of the City of Sandy, Oregon, has determined that it is reasonable, necessary, and in the public interest to adopt the proposed amendments to Section 17.46.20 of the Sandy Municipal Code, subject to the amendments recommended by the Planning Commission and the amendment approved by the City Council, pursuant to the findings set forth in the "Findings of Fact and Conclusions of Law for City of Sandy Ordinance No. 2008-04."

### **NOW THEREFORE THE CITY OF SANDY ORDAINS AS FOLLOWS:**

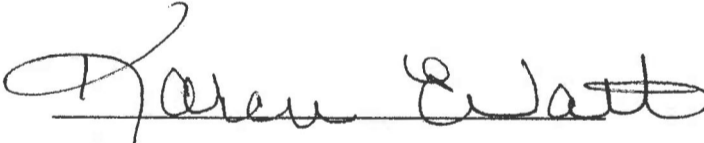
**Section 1.** Chapter 17.46 (Village Commercial (C-3)) of the Sandy Municipal Code is amended as detailed in Exhibit A, attached and incorporated by reference. The amendments identified in Exhibit A expand the list of conditional uses allowed in the Village Commercial zoning district, and provide special conditions applicable to same to be added to the existing chapter.

- Section 2.** The "Findings of Fact and Conclusions of Law for City of Sandy Ordinance No. 2008-04" set forth in Exhibit B, attached and incorporated by reference, are hereby adopted in conjunction with this Ordinance.
- Section 3.** This Ordinance shall become effective from and after thirty (30) days after passage by the Council.
- Section 4.** All remaining provisions of Chapter 17.46 are hereby reaffirmed in their entirety.

**THIS ORDINANCE IS ADOPTED BY THE COMMON COUNCIL AND APPROVED  
BY THE MAYOR THIS 15<sup>th</sup> DAY OF SEPTEMBER, 2008.**

  
**Linda K. Malone, Mayor**

**ATTEST:**

  
**Karen Evatt, City Recorder**

**EXHIBIT A**

**PROPOSED AMENDMENTS TO CHAPTER 17.46  
OF SANDY MUNICIPAL CODE**

**17.46.20 CONDITIONAL USES**

- A. Automotive fueling stations and car washes;
- B. Community services;
- C. Congregate housing;
- D. Major public utility;
- E. Multi-family dwellings not located above a commercial business and occupying no more than 30% of the district area in a village;
- F. Outdoor product display or storage of merchandise sold on a year-round basis;
- G. Outdoor seasonal display of merchandise with a display area greater than 10% of the total retail sales area;
- H. Public park, plaza, playground or recreational area, and buildings used in connection therewith, located more than ¼ mile from a park symbol on the Comprehensive Land Use Plan Map;
- I. Professional or general business office with more than 5,000 square ft. of gross floor area per business;
- J. Retail businesses, with more than 7,500 square ft. of gross floor area per business;
- K. Drive-thru facilities in conjunction with a bank, savings and loan, credit union, or an eating and drinking establishment on a site abutting a state highway, subject to all other applicable provisions of the Sandy Development Code and the following special conditions:
  - 1. No drive-thru facility will be permitted unless the development site is at least 2 acres in size and only one drive-thru facility shall be allowed on each development site.
  - 2. Each drive-thru facility shall be oriented to the adjacent public street and shall be otherwise designed to prioritize pedestrian access and circulation over vehicular access and circulation. Pedestrians shall not have to cross drive-thru lanes to access entry doors.
  - 3. A drive-thru facility may be conditioned to operate during hours that do not negatively impact adjacent residential uses in terms of noise and lighting.
  - 4. Each drive-thru facility may have only one (1) drive-thru lane, which shall not be positioned between the primary building and a local residential street.
- L. Other uses similar in nature.

New language is underlined.

**EXHIBIT B  
ORDINANCE NO. 2008-04**

**In the Matter of a Request for a  
Legislative Text Amendment to Sandy  
Municipal Code 17.46.20 to Authorize  
Drive-Thru Facilities as a Conditional Use  
in the Village Commercial (C-3) Zone**

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW FOR CITY OF SANDY  
ORDINANCE NO. 2008-04**

**1. Procedural Status**

**A. Initiation of Application**

On January 15, 2008, Holt Homes, Inc. ("Applicant") submitted an application ("Application") to the City of Sandy ("City") requesting a legislative text amendment to Sandy Municipal Code ("SMC") 17.46.20 to allow drive-thru facilities in conjunction with banks and eating and drinking establishments as a conditional use in the Village Commercial ("C-3") zone. The Sandy City Council ("Council") had previously authorized Applicant to submit the Application for consideration based upon a recommendation of the Sandy Planning Commission ("Commission").

**B. Notices of Public Hearings**

On February 4, 2008, the City provided notice on the applicable form to the Oregon Department of Land Conservation and Development ("DLCD"), more than 45 days prior to the initial legislative public hearing before the Commission. This mailing satisfied the City's obligations for notice to DLCD.

Pursuant to Ballot Measure 56, on February 25, 2008, the City mailed a notice for the Application that included both public hearings to property owners within the C-3 zone. On March 12, 2008 and July 30, 2008, the City provided published notices in *The Sandy Post* for both the Commission and Council hearings relating to the Application. These notices listed the dates, times and places of the hearings.

SMC 17.26.30, entitled "Legislative Amendment Procedures," states that the change is a "legislative act" if it "applies uniformly to all properties in the City or to a sufficiently large number of properties as determined by contemporary legal principles." This application proposes an amendment to the SMC that applies to all lands in the City within the C-3 zone, which encompasses a sufficiently large number of properties that the request is not site-specific in nature. Thus, the City finds that the Application is properly classified as legislative in nature.

**C. Commission Action**

On June 23, 2008, the Commission opened a public hearing on the Application. Tracy Brown, the City's Planning & Development Director, noted that the entire Planning & Development Department file was physically before the Commission. The Commission did not reject any part of the Planning & Development Department file. Following presentation of the City Planning & Development Department's staff report, Michael Robinson, Monty Hurley, Greg Fallgatter, and Shaun Quayle gave a presentation on behalf of Applicant. No members of the public appeared to testify with respect to the Application.

At the conclusion of public testimony, the Commission closed the public hearing and discussed the Application. Commissioner Bollinger made a motion, seconded by Commissioner Lesowski, to recommend that the Council approve the Application and adopt amendments to the SMC, subject to specified amendments designed to mitigate the impacts of drive-thru uses, based upon substantial evidence in the record as a whole. The Commission voted 3-1 to approve the motion.

**D. Council Action**

On August 4, 2008, the Council opened a public hearing on the Application at 7:03 p.m. Tracy Brown, the City's Director of Planning & Development, noted that the entire Planning & Development Department file was physically before the Council. The Council did not reject any part of the Planning & Development Department file. Following presentation of the City Planning & Development Department's staff report, the Council accepted public testimony. On behalf of Applicant, Michael Robinson gave a presentation on behalf of the Applicant.

Greg Becker testified with respect to installation of a traffic signal near Applicant's property to improve safety. Michael Robinson responded to this testimony by explaining that the identified location does not presently satisfy specified warrants established by the Oregon Department of Transportation that would authorize installation of a traffic signal. He also explained that this amendment will encourage development of the commercial area, which will help meet warrants.

At the conclusion of public testimony, the Council closed the public hearing at 8:04 p.m. and discussed the Application. Based upon the Commission recommendation, the evidence before the Council (which included the evidence before the Commission), and oral and written testimony presented to the Council, Councilor Coleman made a motion, seconded by Councilor Allen, to approve the Application, subject to the Commission's amendments and subject to an additional specified amendment, and to authorize staff to bring the SMC amendments forward as an ordinance. The Council voted, 3-2, to approve the motion.

**E. Record Before the Council**

The record before the Council consists of the Staff Report to the Council dated July 27, 2008, including all exhibits thereto; and, all materials entered into the record on the evening of August 4, 2008. The entire City Planning & Development Department file was physically before and not rejected by the Council prior to the close of the record. The record also includes the audio recordings of the public hearings before the Commission on June 23, 2008.

## **2. Findings of Fact and Conclusions of Law**

The applicable criteria for the Application include applicable Statewide Planning Goals (the "Goals") and associated State Administrative Rules, applicable Sandy Comprehensive Plan ("Plan") policies, and applicable SMC provisions. These Findings apply to the Amendments unless expressly stated otherwise.

The Application by Applicant dated January 15, 2008, Applicant's supplemental information dated January 30, 2008, and May 19, 2008, the City Planning & Development Department staff reports dated July 27, 2008, and oral and written evidence in support of the Application submitted prior to the close of the evidentiary record before the Council are hereby incorporated by reference in their entirety, including any attachments or exhibits referenced in the above-described documents. In the event of a conflict between these incorporated documents and the Findings, these Findings shall prevail.

### **A. Applicable Statewide Planning Goals**

The incorporated findings address the applicable Goals. The Council finds that the applicable Goals are satisfied.

### **B. Applicable State Administrative Rules**

The incorporated findings address the applicable State Administrative Rules. The Council finds that the applicable State Administrative Rules are satisfied.

### **C. Applicable Sandy Comprehensive Plan Policies**

The incorporated findings address the applicable Plan policies. The Council finds that these criteria are satisfied.

### **D. Applicable Sandy Municipal Code Provisions**

The incorporated findings address the applicable SMC provisions. The Council finds that these criteria are satisfied.

### **E. Other Issues**

#### **1. The Application is consistent with the purpose and intent of the C-3 Zone.**

The Oregon Departments of Transportation ("ODOT") and Land Conservation and Development ("DLCD") argue that the Application is inconsistent with the purpose and intent of the Village Commercial (C-3) zone. Substantial evidence in the record establishes that the Application furthers the goals of the C-3 zone. According to SMC 17.46.00, "Intent", the C-3 zone is intended to, among other things, increase "the intensity of activity in the area." Further, the district is "primarily [not exclusively] oriented to serve district residents," and the orientation of the uses is to "integrate pedestrian access", not to exclude well-designed commercial areas with a drive-thru lane. At the Council hearing on August 4, 2008, the Mayor noted the SMC' use

of the word "primarily." The C-3 zone also already permits auto-oriented uses such as a car wash and gas station.

Applicant offered testimony that currently, banks and restaurants are reluctant or unwilling to locate in the Village Commercial zone, which would be inconsistent with the intent of the C-3 zone and render it ineffective as the village core. Applicant's real estate expert has testified that without anchors, such as restaurants and banks, other retail users will be unlikely to lease in this small center. The center will be small because of the small size of the C-3 zoned area and the small number of homes to be served by the C-3 zone. Drive-thru uses support the establishment of this area, not detract from it. They also facilitate the development of commercial areas to serve Village residents, which meets the intent of the C-3 zone.

SMC 17.46.00 also provides that the C-3 zone is "*primarily* oriented to serve residents of the village and the immediately surrounding residential area." (emphasis added). Adopting the requested amendments to the SMC is not inconsistent with this intent because it will further development of banks and restaurants to serve village residents. The installation of a drive-thru facility itself will serve village residents who live in close proximity and may not walk for all commercial trips, especially when driving elsewhere given the fact that the relevant existing C-3 sites are located on the periphery of the City; however, the drive-thru facility will be necessary in order to justify development of the use in the first place. Stated another way, the prohibition on drive-thru facilities will preclude development of the banks and restaurants altogether which will frustrate another goal of the C-3 zone.

ODOT and DLCD further argue that drive-thru facilities are not pedestrian-friendly. This depends on their design because drive-thrus will be conditional uses, thus giving the City the ability to carefully review the design. However, many existing permitted uses in the C-3 zone, including lodges for fraternal and civic assembly, parking garages and parking lots, and museums are themselves traffic-intensive. Moreover, through both the conditional use and design review processes, the City can require that an applicant incorporate pedestrian-friendly elements into the design of drive-thru facilities. Thus, the Council finds that the Application is consistent with the purpose and intent of the C-3 zone.

**2. Adoption of the Application will not have significant effects on the City's transportation system or on pedestrians.**

Initially, ODOT and DLCD contended that the Application violates the Transportation Planning Rule ("TPR") by generating unmitigated significant effects on the local transportation system. A text amendment that would not permit development that would add more traffic to the transportation system than could be added under the existing zoning before the text amendment does not "significantly affect" the transportation facility under OAR 660-012-0060. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000). Moreover, any applicant for conditional use approval of a drive-thru in the C-3 zone must satisfy the same traffic operational standards as currently exist. SMC 17.68.20.C. Thus, any proposed development will necessarily not add any more unmitigated traffic to the transportation system than could be added under the existing C-3 zone, and, the TPR is therefore satisfied.

Furthermore, Council finds that the April 14, 2008 memorandum by Kittelson & Associates demonstrates that this text amendment will not create the potential for more traffic. Moreover, in a letter dated June 10, 2008, ODOT concurred that the Application would not have a significant effect on the City's transportation system. The Council finds that on the basis of substantial evidence in the record as a whole, the Application, as conditioned, is consistent with the TPR as submitted, and no additional traffic analysis is necessary at this time.

**3. Drive-thru lanes are consistent with the City's desire to have healthy and integrated commercial and residential areas in the Village Commercial districts.**

ODOT lists a number of policy arguments against drive-thru lanes. For example, ODOT argues that drive-thru lanes are unnecessary to serve Village residents because the residents should be encouraged to walk to nearby businesses. The Council believes that drive-thru lanes will not discourage people from walking to the businesses when they have the time or in good weather. However, if a family is on its way to or from another destination, they may make a pass-by trip to the drive-thru facility. In that case, then a drive-thru lane creates no detriment to either the Village district or the highway. Moreover, with appropriate design (as described in Section 2.E.6), pedestrians and cars can be appropriately integrated with one another in the commercial center.

ODOT also asserts that "drive-thru facilities accommodate motor vehicle traffic at the expense of pedestrians." This is simply an opinion of the author of the letter and is not a matter of fact or law. However, evidence in the record reflects that this area will not develop either as intensely or as quickly without anchors, such as banks and restaurants, which require drive-thru facilities especially for small areas.

ODOT also criticizes the external impacts of drive-thru facilities such as idling vehicles, amplified speakers and multiple driveways. ODOT asserts that these external impacts are not conducive to a pleasant living environment. The City finds that, through the conditional use process, it can regulate amplified speakers and other external impacts but, as noted above, those speakers will be separate from the residences by the mass of the commercial buildings. "Multiple driveways" are not allowed as amended by the Council.

The Council finds that ODOT's arguments are overstating the negative impacts of drive-thru facilities and not properly balancing these impacts against the positive economic development associated with such facilities. Accordingly, the Council dismisses these arguments. Instead, the Council finds that the City's conditional use permit process is an adequate process to provide notice, an opportunity to be heard, and an opportunity to consider the impacts of these requests. Through this process, the City intends to carefully review, and as appropriate, condition each request for a drive-thru facility to ensure that it is developed in a manner that satisfies applicable approval criteria. If a request does not satisfy applicable approval criteria or cannot be conditioned to do so, the City has the authority to deny the application.

**4. Other cities have drive-thru facilities in neo-traditional zones.**

The record reflects that other local communities offer drive-thru facilities in neo-traditional zones. As Applicant advised both the Commission and the City Council in Summer 2007 when Applicant made this request, the City of Happy Valley amended its Office Commercial ("OC") zoning district in the neo-traditional zoning area south of Sunnyside. The City of Happy Valley elected to modify the OC zoning district to allow drive-thru banks, provided other approval criteria were in place to prevent the issues ODOT and DLCD asset occur with drive-thru facilities. The neo-traditional zoning district, originally established by Clackamas County, has many of the same purpose standards as does the Village Commercial zoning district. However, the City of Happy Valley was confident that the conditional use process would allow mitigation of any external impacts contrary to the purpose of that zoning district.

Moreover, a number of transit-oriented districts in the area allow drive-thru uses, albeit under stricter scrutiny. The Council believes this is appropriate because development of the Village Commercial area is a partnership between the public and the private entities and Applicant or other applicants should exchange the potential ability to have drive-thru facilities in return for higher scrutiny by the Planning staff, the public and the Commission.

The City of Hillsboro Station Community Planning Areas ("SCPA") authorizes drive-thru lanes in certain commercial zoning districts. Drive-thru facilities are authorized in the Station Community Commercial-Highway Oriented District ("SCC-HOD"), Station Community Commercial-Station Commercial ("SCC-SC") and Station Community Commercial-Multi-Modal ("SCC-MM") New drive-thru lanes are allowed more than 400 hundred feet away from a light rail station and, in the SCC-HOD district, are allowed pursuant to standards very similar to those proposed in this text amendment. Additionally, all three (3) zoning districts are intended to encourage transit and walking as a means of transportation. Yet, the City of Hillsboro expressly allows drive-thru lanes under specified circumstances and after appropriate review. Thus, the Council finds that ODOT's and DLCD's policy objections are neither based on law nor commonly implemented throughout the Portland metropolitan area. In fact, the cities selectively allow drive-thru lanes based on good design and appropriate approval criteria, just as the applicant has proposed here.

**5. The Council finds that the proposed amendment should be narrowed to apply only to drive-thru facilities in the C-3 zone located along state highways.**

The Application initially proposed allowing drive-thru facilities as conditional uses in Village Commercial sites located on arterial roads. The Council believes this request is too broad and may lead to the propagation of drive-thru facilities in a manner that is not consistent with pedestrian safety. The Council finds that potentially allowing a limited number of drive-thru facilities in the Village Commercial zone satisfies applicable approval criteria, but that such facilities should be limited to the most heavily-traveled roadways. Accordingly, the Council finds that an amendment to the Application limiting potential drive-thru sites in the Village Commercial zone to those located along state highways will protect pedestrian safety and satisfy applicable approval criteria.

**6. The Council finds that the Commission's proposed mitigating conditions further the purpose and intent of the C-3 zone and do not undermine development of drive-thru facilities.**

The Commission recommended that the Council approve the Application and adopt the proposed amendments to the SMC, subject to seven (7) conditions designed to mitigate the impacts associated with developing drive-thru facilities. The Commission modeled these conditions after suggestions offered in a letter from DLCD dated June 5, 2008. The Council finds that the Commission's mitigating conditions further the purpose and intent of the C-3 zone by protecting pedestrian safety and ensuring quality design without rendering drive-thru facilities cost-prohibitive or otherwise undermining their development objectives. Accordingly, the Council adopts these mitigating conditions as set forth in the proposed ordinance.

**3. Conclusions**

For the reasons contained herein, the Council approves the Application and the adoption of an ordinance implementing the requested amendments to the SMC.

By adoption of the amendments to the SMC, the City allows drive-thrus in conjunction with banks, savings and loan, and credit unions and eating and drinking establishments on state highways as a conditional use in the C-3 zone, subject to specified conditions.

CITY OF SANDY  
250 PIONEER BLVD.  
SANDY, OREGON 97055



Department of Land Conservation  
and Development  
1175 Court Street, N.E.  
Salem, OR 97310-0590