



# 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

### NOTICE OF ADOPTED AMENDMENT

September 5, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 016-07



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: September 17, 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  
Mark Radabaugh, DLCD Regional Representative  
Colin Stephens, City of Bend

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# Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**



Jurisdiction: **City of Bend**

Local file number: **PZ07-590**

Date of Adoption: **8/6/2008**

Date Mailed: **8/27/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 11/7/2007

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **Hearing Process Amendment**

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
Development Code amendment to allow Planning Commission to hear certain appeals and code interpretations

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Location: \_\_\_\_\_ Acres Involved: \_\_\_\_\_

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable statewide planning goals:

- |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                            | <b>2</b>                 | <b>3</b>                 | <b>4</b>                 | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
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Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-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 # 016-07 (16517)**

DLCD file No. \_\_\_\_\_

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

none

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Local Contact: **Colin Stephens**

Phone: (541) 693-2119 Extension:

Address: **710 NW Wall St**

Fax Number: - -

City: **Bend**

Zip: **97701-**

E-mail Address: **cstephens@ci.bend.or.us**

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## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. NS-2103

AN ORDINANCE AMENDING THE BEND DEVELOPMENT CODE SECTION 4.1.815 TO ALLOW THE PLANNING COMMISSION TO HEAR INTERPRETATIONS AND APPEALS IN CERTAIN CIRCUMSTANCES

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1: The City of Bend initiated the application on November 2, 2007. Timely and sufficient notice pursuant to Section 4.1.315 of the Bend Development Code has been provided.

Section 2: On January 14, 2008, the Bend Planning Commission held a public hearing to accept testimony on the request. At the conclusion of the hearing they voted to recommend the proposed amendment be approved by the City Council.

Section 3: The Bend City Council opened a public hearing on July 16, 2008, to accept evidence and consider the Planning Commission's affirmative recommendation and has found that the Text Amendment satisfies the criteria for approval contained at Section 4.6.200 of the Bend Development Code.

Section 4. On the basis of the evidence contained in the record and the findings contained in Exhibit B, the Bend Development Code is hereby amended by changing the text of Section 4.1.815 to read as depicted in Exhibit A.

Read for the first time the 16<sup>th</sup> day of July, 2008.

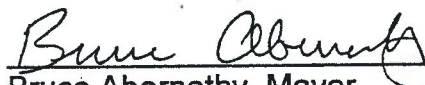
Read for the second time the 6<sup>th</sup> day of August, 2008.

Placed upon its passage the 6th day of August, 2008.

YES: 7

NO: 0

Authenticated by the Mayor the 6th day of August, 2008.

  
Bruce Abernethy, Mayor

ATTEST:

  
Patricia Stell, City of Bend Recorder

**Exhibit A**

4.1.815 Hearings Body

A. The following shall serve as the Hearings Body ~~in this order~~ as determined by the Planning Director:

1. Hearings Officer
2. Planning Commission, for matters of interpretation of this Code, Appeals of Type II decisions, ~~or~~ where the Hearings Officer cannot hear the matter due to a conflict of interest , or as otherwise specified by provisions of City Code.
3. City Council subject to Section 4.1.1100, Appeals.

## Exhibit B

### Findings of Fact Legislative Code Amendment PZ07-590

**Issue:** Bend Development Code section 4.1.815 lists the hearings bodies and states that, unless otherwise directed by the Code, that they shall serve in numeric order. The Hearings Officer is listed as number one and the Commission is listed as number two. Under this structure, an appeal of the Planning Director's administrative decision is to a hearing before the Hearings Officer.

**Background:** Many of the City's planning applications are classified by the City as Type II applications. These are traditionally processed by the City of Bend administratively as permits or limited land use decisions. This means owners of property within 100 feet of the proposed development are notified and invited to participate as parties. Oregon Revised Statute (ORS) section 227.175 provides for an opportunity for a local hearing on appeal of a permit processed as a Type II.

The proposed Code language gives the Planning Director the discretion to designate the Planning Commission as the hearings body for such appeals.

The new language will also allow the Commission to hear matters of interpretation of the Code, such as a Declaratory Ruling. The ability to do so was expressed by the Commission at their November 19, 2007 work session.

#### **Procedural Findings:**

The application was initiated November 2, 2007. Notice of proposed amendment was provided to the Department of Land Conservation and Development (DLCD) on November 2, 2007. Notification of the public hearing before the Bend Planning Commission was printed in the December 30, 2007 edition of the Bend Bulletin. The Planning Commission held a public hearing on January 14, 2008 and voted in favor of recommending approval to the City Council. The City Council held a first reading on July 16, 2008 and a second reading on August 6, 2008.

#### **Criteria of Approval:**

The criteria applied to legislative plan amendments are found within the Bend Development Code (BDS) Chapter 5, Section 4.6.200. The criteria are:

1. *The request is consistent with the applicable State land use law;*
2. *The request is consistent with the applicable Bend Area General Plan goals and policies;*

## Attachment 2

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

### **Application of the Criteria:**

#### **Criterion 1: *The request is consistent with the applicable State land use law;***

**Findings:** State land use law flows from the 19 Statewide Planning Goals which are implemented through the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR). The Goals are broad policy statements which do not provide direction on specific procedural options such as the one before the Commission. Goals 1 and 2, Citizen Involvement and Land Use Planning are the only Goals germane to this request.

Rules for planning processes and public involvement are implemented at the State level for permits and zone changes in ORS section 227. ORS 227.175 (1) allows a property owner to apply to the Hearings Officer or other person as the City Council designates for a permit or zone change. In Bend, the City Council has, through Chapter 4.1 of the BDC, designated the Planning Director as the "other" such person. 227.175(10)(a)(A) allows the Planning Director to issue a permit without a hearing if the Director gives notice of the hearing and provides an affected person the ability to file an appeal. 227.175(10)(D) states that the appeal of a decision made without a hearing by the Planning Director shall be to the Hearings Officer, Planning Commission or governing body. Since the proposed language allows the Planning Commission to be a hearings body, it is consistent with these portions of the ORS.

The remaining 17 Statewide Planning Goals do not apply to this request. Staff are unaware of any other ORS or OAR provisions that apply to this request.

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

##### **Findings:**

Like the Goals, the Bend Area General Plan is a broad policy document that contains policies intended to guide the growth and prosperity of the City. Chapter 1 of the Plan is the General Plan's component of the City's Acknowledged compliance with Goal 1. Chapter 1, Policy 16 is the only policy that is relevant to this proposal. It states:

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

Because the proposed Code amendment expands the opportunity for the Planning

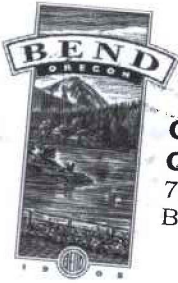
## Attachment 2

Commission to hold public hearings and to interpret the Development Code, it is consistent with this General Plan policy. There are no other General Plan policies that apply to the proposal; therefore, Criterion 2 is fulfilled.

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

**Findings:** Because the appeal fee for permits is statutorily capped at \$250, the actual cost of a hearing before the Hearings Officer presents a fiscal challenge for the Planning Fund. By allowing the Commission to hear appeals where no deposit for the Hearings Officer is collected, the expenditure of significant public funds can be eliminated. Because saving public funds is a public benefit, Criterion 3 is met.

It is a public benefit to allow the Planning Commission to interpret the Development Code. The Commission participated in the legislative crafting of the Code language. The Commissioners are, therefore, aware of the public intent of the text, where a Hearings Officer does not have this legislative history to rely upon. The public will benefit because the Code can be interpreted the way the drafters of the document intended. Therefore, Criterion 3 is again satisfied.



**COMMUNITY DEVELOPMENT DEPARTMENT**  
**CITY OF BEND**  
710 NW Wall Street  
Bend, OR 97701



ATTN: PLAN AMENDMENT SPECIAL  
DEPT OF LAND CONSERV AND DEV  
635 CAPITOL ST NE, SUITE 150  
SALEM, OR 97301

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