Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
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NOTICE OF ADOPTED AMENDMENT

April 16, 2007

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 006-04 R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 2, 2007

This amendment was submitted to DLCD for review with less than the required 45-day notice because the jurisdiction determined that emergency circumstances required expedited review. 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 DATE SPECIFIED ABOVE.**

cc: Gloria Gardiner, DLCD Urban Planning Specialist
Meg Fernekees, DLCD Regional Representative
Tracy Brown, City of Sandy

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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 # 04-034

Date of Adoption April 2, 2007 Date Mailed April 11, 2007

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 _X_ Other

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

ORDINANCE 2007-06 REAFFIRMS ORDINANCE NO. 2005-03'S CHANGES TO THE SINGLE FAMILY RESIDENTIAL ZONE, ADOPTING FINDINGS RELATED TO SAME

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."

N/A

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: 1,2,10,14 Was an Exception adopted? __ Yes X No

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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 A. Brown, Director of Planning Phone: 503-668-4886

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

DLCD 006-04R (13824) [12579]

ORDINANCE NO. 2007-06

AN ORDINANCE REAFFIRMING ORDINANCE NO. 2005-03'S CHANGES TO THE SINGLE FAMILY RESIDENTIAL ZONE, ADOPTING FINDINGS RELATED TO SAME AND DECLARING AN EMERGENCY.

WHEREAS, the Land Use Board of Appeals (LUBA) remanded Ordinance No. 2005-03 to the City for further findings to justify the minimum lot sizes imposed by that ordinance;

WHEREAS, on remand the City has invited and received new evidence and testimony related to the minimum lot size standard in the Single Family Residential (SFR) zone and has to date limited its consideration on remand to the SFR's minimum lot size standard;

WHEREAS, the City has not yet decided how it will act on remand with regard to the minimum lot size standards imposed by Ordinance No. 2005-03 on the R-1 zone and this ordinance does not change nor seek to justify those standards;

WHEREAS, the City believes all that LUBA required of it on remand is to consider additional evidence and/or adopt more thorough findings to justify Ordinance No. 2005-03's minimum lot size standards;

WHEREAS, based on LUBA's direction the City does not believe that it must readopt the changes made to the SFR zone by Ordinance No. 2005-03;

WHEREAS, opponents to the minimum lot size standard in the SFR zone maintain that the City must readopt those standards in addition to the adoption of any findings justifying them; and

WHEREAS, in an abundance of caution the City reaffirms those standards in order to avoid any technicality preventing their future applicability.

NOW, THEREFORE, THE CITY OF SANDY DOES ORDAIN AS FOLLOWS:

Section 1: To the extent it is legally required to do so, the City readopts and incorporates by reference Ordinance No. 2005-03's changes to Sandy Municipal Code Chapter 17.34.30, titled "Development Standards."

Section 2: Findings responding to LUBA's remand of the SFR's minimum lot size standard and justifying its applicability are attached as Exhibit A and incorporated by reference.

Section 3. All remaining provisions of Title 17 of the Sandy Municipal Code are reaffirmed.

Section 4. In order to maintain the health, peace, and welfare of the City of Sandy, an emergency is declared and this ordinance shall take effect immediately upon its adoption and approval.

THIS ORDINANCE ADOPTED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR THIS 2nd DAY OF APRIL, 2007.

Linda K. Malone
MAYOR

ATTEST:

Larry Stohosky
City Recorder

SANDY CITY COUNCIL
FINDINGS IN RESPONSE TO REMAND IN *4-J v. CITY OF SANDY*

SINGLE FAMILY RESIDENTIAL (SFR) ZONE

The City limits its proceedings on remand to the issues that were the basis for LUBA's order. For the following reasons the City finds that the minimum lot size requirement in the SFR zone will not effect its ability to meet the zone's housing needs for the remainder of the planning period.

With regard to the SFR zone, LUBA concluded that the City's finding of historically dense development in that zone was supported by substantial evidence. *4-J v. City of Sandy*, 50 Or LUBA 525, 540 (2005). A subsequent analysis that included all SFR developments prior to the institution of a 7500 square foot minimum lot size in the SFR revealed that the built density was even higher than that assumed in the LUBA case.

Westlake Consultants, on behalf of 4-J, submitted evidence that demonstrated the pre-amendment density in the SFR equaled 5.50 units per gross acre. The City's analysis indicates a slightly higher density at 5.6 units per acre. Under either number, this is above the City's 5 units per gross acre "target" density in the SFR for the 20-year planning period (1997–2017). With a density range of 2 to 6 units per gross acre, the Council finds that development in the SFR for the planning period's first 10 years has clearly and compellingly been at the upper end of the density range for that zone.

LUBA provided the City with good instructions regarding what must be demonstrated on remand to justify the minimum lot size. The Board stated that "the relevant inquiry under Goal 10 is whether the amendments will alter the types or densities of residential development that the HNA anticipates will actually occur in the city's residential zones during the planning period." *Id.* at 535.

With regard to density, the City's housing needs analysis generally speaks in terms of gross acres. The City's housing needs analysis anticipates 1556 new units in the SFR zone over the planning period. The analysis identifies that the City needs 334 gross acres to accommodate those new units over the planning period. The analysis further assumes that 20 percent of residential land will be dedicated for public and semi-public uses, resulting in a net acre need of 268 acres. As mentioned above, the housing needs analysis assumes an average gross density of 5 units per acre in the SFR during the planning period.

The following table taken from the comprehensive plan illustrates these numbers:

Gross Density (units/acre)	New Households (1997-2017)	Gross Acre Needs (1997-2017)	Net Acre Needs (1997-2017)
5	1556	334	268

Dividing the 1556 new dwelling units anticipated in the SFR during the planning period by the 334 needed gross acres results in 4.7 dwelling units per gross acre (1556 / 334 = 4.65). By achieving this density per acre the City would be able to accommodate 1556 new units in the SFR on 334 acres of land during the 20-year period.

For single family detached dwellings in the SFR zone, 5.8 units could be achieved per gross acre (43,560 / 7500 = 5.8). As a practical matter, this translates into 5 units per gross acre, entirely consistent with the target density identified in the City's housing needs analysis.

The needs analysis anticipates 5 units per gross acre over the planning period. The minimum lot size standard outright permits per gross acre precisely what is anticipated. As such, arguably the density anticipated in the housing needs analysis is not being "altered" by the amendment.

The evidence shows that pre-amendment 90.5 gross acres of SFR land were developed with 505 units, yielding a density of 5.6. Based on the above table this means that 243.5 gross acres and 1051 units remained to be developed in the SFR during the planning period. After the amendment, 23.8 acres of SFR land were developed with 87 dwelling units, yielding a density of 3.7.

Thus, the total number of acres developed in the SFR to date is 114.3 (90.5 + 23.8 = 114.3), leaving an unmet need of 219 7 gross acres for the remainder of the planning period (334 – 114.3 = 219.7). The total number of units developed in the SFR to date is 592, leaving an unmet need of 964 units (1556 – 592 = 964).

Dividing the number of remaining units (964) by the number of remaining acres (219.7) reveals what the average gross density in the SFR must be for the remainder of the planning period: 964 / 219.7 = 4.4 units per gross acre. This is 1.4 units less per gross acre than is what achievable with a 7500 square foot minimum lot size for single family detached dwellings in the SFR zone.

The housing needs analysis connects needs to gross densities however it also assumes that 20 percent of needed lands will be occupied by infrastructure and other related public purpose uses. Thus, it is arguably appropriate to consider what effect the minimum lot size of 7500 square feet will have on densities when 20 percent of an acre is set aside. Eighty percent of an acre equals 34,848 square feet.

If one were to assume that densities needed to account for such deductions then the SFR minimum lot size would permit no more than 4.6 units per acre (34,848 / 7500 = 4.64). Thus, even if a 20 percent deduction is taken for public purposes, the minimum lot sizes will not prevent the City from achieving the 4.4 units per acre needed for the remainder of the planning period.

Consistent with LUBA's direction to the City on remand, it is reasonable to conclude that the SFR's minimum lot size "will not leave the city *unable* to accommodate *expected*

housing needs with the land that is planned and zoned for that purpose." *Id.* at 534 (emphasis added). To the contrary, the evidence shows that the City *will* be able to meet those anticipated housing needs with the minimum lot size requirement in the SFR.

As noted by the Board in its opinion, the actual mix of housing that will develop over the planning period is almost always uncertain. *Id.* Other housing types such as duplexes and zero lot-line detached dwellings are allowed in the SFR without any minimum lot size requirement. In addition, a planned development process exists that allows for a variety of housing types in the SFR – including attached units – all without a minimum lot size requirement.

The City realizes that it cannot *rely* on the existence of these options to demonstrate that its housing needs will be met in the SFR with the minimum lot size requirement in place. As demonstrated above, it doesn't have to. However, the existence of these options *can* be considered from a broader perspective and would only assist the City in achieving an average density greater than the 4.4 required in the SFR for the remainder of the planning period.

The City does not believe that it is required to factor into this analysis any deductions from gross acreage other than those assumed in the City's acknowledged comprehensive plan (i.e. the 20 percent for public and semi-public uses discussed above). The petitioner urges the City to consider a minimum block length standard and the potential effect that standard has on the City's ability to meet its remaining needs in the SFR zone with the minimum lot size standard in place.

That standard was adopted prior to the disputed amendment, was properly noticed and was not appealed by any party, including the petitioner. However, for the sake of argument, and without concluding that the evidence the petitioner submitted on this point is substantial, the City evaluates the minimum lot size standard against the 27.3 percent "set-aside" figure offered by the applicant.

A resulting buildable acre would be 31,668 square feet if 27.3 percent is removed. 31,668 square feet divided by the 7500 square foot minimum lot size results in 4.2 units per acre. This is exceedingly close to the 4.4 units per acre the City must achieve to meet its anticipated housing needs for the remainder of the planning period. In fact, it would constitute 96 percent of that density.

The City's duty to meet the housing needs identified in its comprehensive plan directly descends from its duty to comply with Goal 10. ORS 197.747 states that for the purposes of LUBA review goal compliance means a comprehensive plan and its implementing regulations (such as the minimum lot size requirement in the SFR) conform to the relevant goal's purpose and that any failure to meet a goal's requirement "is technical or minor in nature." Assuming it were appropriate to consider a set-aside figure not assumed or contemplated by the comprehensive plan, such as the one offered by the petitioner, the City asserts that achieving 96 percent of the density required for the remainder of the planning period constitutes a "failure" that is minor in nature.

Finally, as indicated above, five developments have been approved in the SFR after the enactment of the disputed amendment. The density range has varied amongst those developments, with one reaching the maximum 6 units per acre in the SFR and another achieving 4.2 units per acre. The average of these five is 3.7 units per acre.

The City notes that the range of densities and the small sample size makes it difficult to arrive at conclusions. It would not be appropriate to assume that many future developments in the SFR will achieve 6 units per acre. However, when it is clear that 4.6 units per acre (including the comprehensive plan's assumed set-asides) is achievable through outright permitted uses in the SFR, it is similarly not reasonable to assume that the future densities in the SFR will never eclipse 3.7 units per acre.

Moreover, the City understands that its duty under Goal 10 is to find that the amendment will not leave the City unable to accommodate its remaining housing needs. It does not believe that the goal requires it to guarantee that each development for the planning period's remainder reach or exceed 4.4 units per acre. A free market ensures that some will and that some will not. The City's burden is to show that the amendment will not prevent the City from accommodating its remaining housing needs. The City believes that the above findings clearly make this showing.

With regard to the other changes made to the development standards at 17.34.30, the City notes that LUBA did not base its remand on any of those changes. In fact, the petitioner did not assign error to those changes, and only mentioned them in passing in its summary of material facts. LUBA, in footnote 6 of its opinion, stated it was not apparent how those changes "would affect development densities and petitioner makes no attempt to explain why that might be the case. We therefore do not consider this part of petitioner's argument further." The petitioner could have but did not appeal this aspect of the remand and the City believes that the other changes to 17.34.30 – changes apart from the minimum lot size requirement – are immune from further challenge.