



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

April 26, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Dundee Plan Amendment
DLCD File Number 004-06



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 15, 2007

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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
Jason Locke, DLCD Regional Representative
Melody Osborne, City Of Dundee

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FORM 2

DLCD 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 (See reverse side for submittal requirements)

DEPT OF

APR 25 2007

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: City of Dundee Local File No.: NLUR 06-24 (ORD 450) (If no number, use none)

Date of Adoption: April 17, 2007 (Must be filled in) Date Mailed: April 23, 2007 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: September 20, 2006

- Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment Land Use Regulation Amendment Zoning Map Amendment [X] New Land Use Regulation Other: (Please Specify Type of Action)

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

New regulations governing the placement of wireless communication facilities were added to the Dundee Development Code requiring a site design review and in some zones conditional use approval.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from: N/A to N/A

Zone Map Changed from: N/A to N/A

Location: N/A Acres Involved: 0

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

Applicable Statewide Planning Goals: 9, 11

Was an Exception Adopted? Yes: No: [X]

DLCD File No.: 004-06 (15568)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: City of Dundee

Local Contact: Melody Osborne Area Code + Phone Number: 503/538-3922

Address: PO Box 220

City: Dundee Zip Code+4: 97115-0220

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.



April 23, 2007

No persons requested notification of the attached decision.


Melody Osborne
Planning Secretary

**CITY OF DUNDEE
ORDINANCE No. 450-2007**

AN ORDINANCE APPROVING AN AMENDMENT TO THE CITY OF DUNDEE DEVELOPMENT ORDINANCE.

WHEREAS, an application for an amendment to the Dundee Development Ordinance was filed with the City for the purpose of establishing regulations for wireless communication facilities; identified as New Land Use Regulation Planning File No. 06-24;

WHEREAS, the City Recorder referred the applications for review, investigation, comment to all citizens, counties, special districts, state or federal agencies, and other persons deemed to have an interest in or affected by the applications and allowed not less than ten days for a reply from the date of mailing;

WHEREAS, the City Recorder caused notice of the hearing on the applications to be published on the 4th day of October in a newspaper of general circulation in the City prior to the City Planning Commission hearing;

WHEREAS, the City Recorder thereafter provided the coordination, review and filing of all responses and submitted them to the City Planning Commission prior to the hearing;

WHEREAS, the Planning Commission conducted public hearings on the 18th day of October and 15th day of November 2006, pursuant to the Rules of Procedure for the conduct of hearings related to land use matters and thereafter forwarded its recommendation for City Council to approve the proposed amendment (the recommendation is entitled ORDER OF RECOMMENDATION and dated November 21, 2006 and is signed by the Planning Commission Chair, Ted Crawford);

WHEREAS, the City Recorder provided notice of the hearing before the City Council;

WHEREAS, the City Council conducted a public hearing on the 6th day of March 2007, pursuant to the Rules of Procedure for the conduct of hearings related to land use matters;

WHEREAS, after conducting the hearing and considering the approval criteria pursuant to the City of Dundee Comprehensive Plan and other applicable law, the City Council approved the proposed amendments to the Development Ordinance and directed staff to prepare the final Ordinance adopting the amendment.

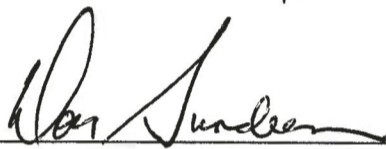
NOW, THEREFORE, BASED ON THE FOREGOING, THE CITY OF DUNDEE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Dundee does hereby APPROVE the amendments to the Dundee Development Ordinance attached hereto as EXHIBIT "A" and by this reference made a part hereof.

Section 2. The City Council of the City of Dundee does hereby adopt those certain findings of fact, and conclusionary findings attached hereto as EXHIBIT "B" and by this reference made a part hereof.

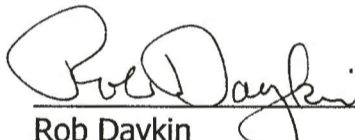
Section 3. This Ordinance shall take effect thirty days following its adoption as provided in the City charter.

PASSED by the Council and SIGNED by the Mayor the 17th day April, 2007.



Don Sundeen, Mayor

Attest:



Rob Daykin
City Administrator

Vote:
Ayes: C. Adlong, C. Miller, C. Nelson, C. Pugsley, C. Roggers
and Mayor Sundeen.

EXHIBIT "A"

- I. *The following new language will be added to Chapter 2.1, listing Wireless Communication Facilities as a specific use, in compliance with Section 2.311:*
 - A. Single Family Residential (R-1) Zone Conditional Uses: Section 2.103.03
 - H. Wireless communication facilities, subject to provisions in Section 2.311.
 - B. Single Family Residential (R-2) Zone Conditional Uses: Section 2.104.03
 - H. Wireless communication facilities, subject to provisions in Section 2.311.
 - C. Medium Density Residential (R-3) Zone Conditional Uses: Section 2.105.03
 - J. Wireless communication facilities, subject to provisions in Section 2.311.
 - D. Community Commercial (C) Zone Permitted Uses: Section 2.106.02
 - S. Wireless communication facilities, subject to provisions in Section 2.311.
 - E. Central Business District (CBD) Zone Conditional Uses: Section 2.107.03
 - E. Wireless communication facilities, subject to provisions in Section 2.311.
 - F. Commercial Destination Resort (CDR) Zone Conditional Uses: Section 2.108.03
 - E. Wireless communication facilities, subject to provisions in Section 2.311.
 - G. Industrial (I) Zone Permitted Uses: Section 2.109.02
 - G. Wireless communication facilities, subject to provisions in Section 2.311.
 - H. Public (P) Zone Permitted Uses: Section 2.110.02

- G. Wireless communication facilities, subject to provisions in Section 2.311.

II. *The following new Section will be added to Chapter 2.3:*

2.311 WIRELESS COMMUNICATION FACILITIES

2.311.01 Purpose

This Section shall establish application, location and other similar requirements for the placement of wireless communication facilities and shall apply to all such facilities regardless whether permitted outright or subject to a conditional use permit. In either case, a site development review shall be required.

2.311.02 Application Requirements

In addition to any other applicable application requirements, the following information shall be submitted:

- A. An evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:
 - 1. The location and ownership of existing telecommunication structures within the cell service area and not to exceed two miles.
 - 2. Written verification or other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.
 - 3. The tower type and height of potential collection facilities.
 - 4. Anticipated capacity of the wireless communication facility, including number and type of antennas which can be accommodated.
 - 5. The specific reasons as to why co-location is or is not feasible.

- B. Alternatives for locating or relocating support structures within 250-feet of the proposed location.
- C. Analysis of the visual impacts of the proposed facility on residential dwellings within 250-feet of the proposed site, and an assessment of potential mitigation measures, including relocation.

2.311.03 Approval Criteria

In addition to any other applicable requirements, the decision to approve or deny the placement of a wireless communication tower shall be based on the following:

- A. Co-location is not feasible on existing structures, including other wireless communication facilities.
- B. The wireless facility shall be located and designed to preserve the ability for collocation of at least one additional user on all structures exceeding 35-feet in height, if feasible.
- C. Based on the visual analysis and mitigating measures, the location and design of a freestanding wireless communication facility shall be conditioned to minimize visual impacts from residential areas through the use of setbacks, building heights, bulk, color, landscaping and similar visual considerations.
- D. The design minimizes identified adverse impacts of the proposed use to the extent feasible.
- E. Structures greater than 35-feet in height shall be at least 300-feet from any Residential zoned property.

2.311.04 Removal. Any obsolete freestanding or attached wireless communication facility shall be removed by the facility operator within 6-months of the date it ceases to be operational or if it falls into disrepair.

EXHIBIT "B"
CITY COUNCIL FINDINGS
DEVELOPMENT ORDINANCE TEXT AMENDMENT

In the Matter of the)	Planning File No. NLUR 06-24
)	
Application of)	1. New Land Use Regulation
)	Wireless Communication
City of Dundee)	Facilities
)	
)	

I. NATURE OF THE APPLICATION

This matter comes before the Dundee City Council on the application of the City of Dundee to amend the Dundee Development Ordinance by identifying wireless communication facilities as a specific use within the affected zones, and, establishing new regulations for their installation.

II. GENERAL INFORMATION

A. Location and Site Description

The proposal will affect all property zoned of Single Family Residential (R-1 and R-2), Medium Density Residential, Community Commercial, Central Business District, Commercial Destination Resort, Light Industrial and Public.

B. Background Information

The proposed action identifies wireless communication facilities as a specific use within the affected zones and amends Chapter 2.3 by establishing new regulations for their installation. The specific language is found in Exhibit "A" of this adoption Ordinance.

III. PUBLIC HEARING

A. Planning Commission Action

A public hearing was held on this application before the Dundee Planning Commission on October 18, 2006. At the hearing, City Planning File NLUR 06-24 was made a part of the record. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. At the conclusion of the hearing, the Planning Commission voted to continue the matter to the November 15, 2006 hearing.

The hearing was reopened on November 15, 2006. The Commission deliberated on the issue and voted to recommend City Council approval of the proposed amendments to the Dundee Development Ordinance, directing staff to prepare an Order of Recommendation for the Chair's signature.

B. City Council Action

A public hearing was held on this application before the Dundee City Council on March 6, 2007. At the hearing, City Planning File NLUR 06-24 was made a part of the record. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. At the conclusion of the hearing, the City Council voted to accept the Commission's recommendation regarding the proposed amendments to the Development Ordinance and directed staff to prepare an adoption Ordinance.

IV. FINDINGS OF FACT-GENERAL

The Dundee City Council, after careful consideration of the testimony and evidence in the record, adopts the following Findings of Fact:

- A. The applicant is the City of Dundee.
- B. The proposal will affect all property zoned of Single Family Residential (R-1 and R-2), Medium Density Residential, Community Commercial, Central Business District, Commercial Destination Resort, Light Industrial and Public.
- C. The proposed action identifies wireless communication facilities as a specific use within the affected zones and amends Chapter 2.3 by establishing new regulations for their installation. The specific language is found in Exhibit "A" of this adoption Ordinance.
- D. Approval or denial of this request shall be based on the Oregon Statewide Land Use Goals and the Dundee Comprehensive Plan.

V. APPLICATION SUMMARY

- A. Wireless communication facilities (or cell towers) are "utility facilities" and as such, are allowed in those zones wherever utility facilities are identified. Based on language in the Development Ordinance, a cell tower is permitted outright in the Community Commercial, Public and Light Industrial zones and is subject to conditional use approval in all three Residential zones as well as the Central Business District and Commercial Destination Resort zones. They are not permitted in the Agriculture and Exclusive Farm Use zones.

- B. Each zone does place limitations on structure height, ranging from 30-feet in the Residential zones to 45-feet in the Light Industrial zone. Many (but not all) cell towers are taller than these limits. However, a major variance is not required to install these taller towers. Development Ordinance Section 2.402.02 addresses this situation with the following language:

2.402.02 General Exception to Building Height Limitations

Projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and other similar objects not used for human occupancy are not subject to the building height limitations of the underlying zone.

A reasonable interpretation would consider the term "tower" and phrase "other similar objects" applicable to cell towers. As these are not "habitable" structures, the height limitations of the underlying zone do not apply.

- C. Based on these factors, the current Development Ordinance rules give great latitude in the siting of cell towers. The City is concerned a lack of regulation may allow cell towers to become intrusive, thereby visually impacting the City and reducing its livability. This concern however must be balanced by Federal regulations. The City recognizes it may not discriminate between various providers or create regulations that effectively prohibit such facilities. Further, the City cannot regulate or prohibit facilities based on perceived health and environmental impacts from radio frequencies (RF).
- D. In a previous analysis to the City Council (of which is part of the official record of this case) the City Attorney provided a number of suggestions. The first was to require specific application requirements and site standards. These requirements would reveal whether it was possible to co-locate a new facility with an existing tower, in effect sharing the same pole. Other information would provide data on service area, alternative locations, engineering plans as well as the usual requirements for a site plan. While this does not grant the City specific authority to accept or reject a request, it does put pressure on the applicant to ensure the communications tower is necessary, and, there are no feasible alternative to the proposed site.

The second option was to restrict the location as to zone, allowing them in some zones and conditionally permitting them in others. As noted, a zone's height limitation *does not apply* to non-habitable spaces such as towers, chimneys and similar features. It must be also noted that the zones that currently permit cell towers (Community Commercial and Light Industrial), are primarily located along Highway 99W, which is likely the preferred location for this type of a facility.

- E. In reviewing this matter the Commission and Council agreed it was appropriate to include both suggestions as a method to balance local interests with Federal requirements. The regulations are included as Exhibit "A" of this adoption Ordinance and summarized below:
1. Section 2.1 - Cell towers will be identified as a separate use in each zone and subject to provisions in Section 2.311.
 2. Section 2.311.01 - This is the introductory section which requires all wireless communication facilities to comply with these requirements, whether or not the use is allowed outright or subject to a conditional use permit.
 3. Section 2.311.02 - This Section identifies specific application requirements. An applicant must submit a feasibility study to determine whether co-location is possible. Alternatives to the proposed site must also be addressed along with visual impacts on residential dwellings within 250-feet of the site. Again, the applicant must establish a *need* for the facility and that there is no suitable alternative site to the proposed location.
 4. Section 2.311.03 - The approval criteria are contained in this Section. In addition to other requirements (*including a site development review and/or conditional use*) the facility must demonstrate co-location on existing wireless communication facilities is not feasible. If a structure greater than 35-feet is proposed, then the design must preserve the ability for at least one additional user (in effect supporting future co-location). Visual impacts on adjacent residences must be mitigated to the extent feasible through the use of setbacks, building heights, bulk, color, landscaping and similar considerations. This Section also requires freestanding support structures greater than 35-feet in height must be at least 300-feet from any Residential zoned property. This supersedes previously noted regulations in Section 2.402.02 and therefore would require a variance to exceed this height.
 5. Section 2.113.04 - Obsolete facilities must be removed from the tower.
- F. On balance, the provisions are designed to encourage the sharing of facilities through co-location. And by permitting them to locate on commercial and industrial zoned property, the provisions encourage their placement along Highway 99W as opposed to adjoining residential areas. The regulations also allow the City some discretion on how best to mitigate impacts: fencing, landscaping, setbacks and even colors are some of the available tools. While mitigating impacts is always difficult, this must be balanced with FCC regulations that prohibit local jurisdictions from creating regulations that effectively prohibit the placement of cell towers.

VI. FINDINGS

- A Section 3.101.04 of the Development Ordinance states that an amendment to laws or policies is subject to the procedural process for a Type IV action. This action must be initiated by City staff, the Planning Commission or the City Council. In this case, the action was initiated by the City Council. Section 3.207 requires hearings to be held before both the Commission and Council, with the Commission having an advisory role and the final decision rendered by the Council. Ordinance amendments generally need to comply with the Statewide Land Use Goals as well as conform to existing Comprehensive Plan polices.
- B. The Statewide Land Use Goals establish the basis for all planning within the State. All local plans and implementing ordinances are required to be consistent with the policies and objectives of the Statewide Goals.

FINDING: Compliance with the Statewide Goals is noted as follows:

Goal 1, Citizen Involvement: Public hearings on the new Development Ordinance were held before both the Commission and City Council. This is consistent with City procedures regarding citizen involvement.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged Comprehensive Plan and Development Ordinance.

Goal 3, Agricultural Lands: The proposal does not involve or affect farm land.

Goal 4, Forest Lands: The proposal does not involve or affect forest land.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed revisions do not alter existing requirements regarding open space, scenic, historical or natural resources.

Goal 6, Air, Water and Land Resource Quality: Identified air, water and land quality concerns are not directly affected.

Goal 7, Natural Hazards: Development requirements for natural hazard areas are not altered or otherwise affected.

Goal 8, Recreational Needs: Land required or planned for recreational purposes will not be altered.

Goal 9, Economic Development: The amendments will neither enhance nor detract

from economic development.

Goal 10, Housing: This action does not affect residential zoning or the ability to provide needed housing.

Goal 11, Public Facilities: The City is obligated to make some provision for these facilities. The rules allow their placement, but subject to siting regulations.

Goal 12, Transportation: The amendments do not affect traffic patterns or transportation plans.

Goal 13, Energy Conservation: This action is neutral with regard to energy conservation.

Goal 14, Urbanization: The amendments do not affect the City's ability to create a compact urban form envisioned by this Goal.

Goals 15 to 19, Willamette River Greenway, Estuarine Resources, Coastal Shores, Beaches and Dunes, Ocean Resources: The proposal does not involve land within the Willamette Greenway or coastal areas.

In general, the proposed amendments are entirely consistent with the intent of the Statewide Goals or the individual goals do not apply to the amendments.

- C. In addition to compliance with the Statewide Goals, the proposed amendments must be consistent with the City's applicable Comprehensive Plan policies. In reviewing this matter, it was determined the Plan requires the City to make provision for public and private facilities and services. The regulations allow cell towers while providing reasonable regulations regarding their location, including methods to mitigate their impacts.

VII. CONCLUSION

For the reasons stated above, the City Council concludes the proposed Ordinance revisions comply with the decision criteria.