



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

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## NOTICE OF ADOPTED AMENDMENT

December 19, 2006

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 004-05



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: January 2, 2007**

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  
Jason Locke, DLCD Regional Representative  
Melody Osborne, City of Dundee

<paa> ya/



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

DEC 12 2006

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: City of Dundee Local File No.: Ord. 444-2006 (NLUR 05-12)

Date of Adoption: 11-20-06 Date Mailed: 12-8-06

Date the Notice of Proposed Amendment was mailed to DLCD: 4-18-05

- 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." Amended the Dundee Development Code establishing regulations for Temporary Businesses.

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." The Site Design review procedures were removed from the application prior to public hearing.

Plan Map Changed from: N/A to N/A
Zone Map Changed from: N/A to N/A
Location: N/A Acres Involved: N/A
Specify Density: Previous: N/A New: N/A
Applicable Statewide Planning Goals: 9, 12
Was an Exception Adopted? Yes: No: X

DLCD File No.: 004-05 (14312)



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: none

Local Contact: Melody Osborne Area Code + Phone Number: (503) 538-3922  
Address: PO Box 220, 1020 SW 5th Street  
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](mailto:Larry.French@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

No parties requested notification of the attached decision.

W. Olson  
12-16-06



**CITY OF DUNDEE  
ORDINANCE No. 444-2006**

**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 Temporary Businesses, identified as Planning File Land Use Regulation Amendment No. 05-12;

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 5<sup>th</sup> day of July 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 16<sup>th</sup> day of July 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 July 27, 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 public hearings on the 5<sup>th</sup> day of September 2006 and the 6<sup>th</sup> day of November 2006, 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, conclusionary findings and conditions of approval attached hereto as EXHIBIT "B" and by this reference made a part hereof.

Section 3. This Ordinance shall take effect immediately upon adoption.

PASSED by the Council and SIGNED by the Mayor the 20th day November, 2006.

C. Diane Ragsdale  
Diane Ragsdale, Mayor

Attest:

Eve Dolan  
Eve Dolan  
City Administrator/City Recorder

Note: Maybury - aye, Adlong - aye, Roberson - aye, Miller - aye and Ragsdale - aye.



**EXHIBIT "A"**

- I. *The following new language shall be added to Chapter 2.1:*
  - A. Section 2.101.02
    - E. Temporary Uses subject to provisions in Section 2.310.
  - B. Section 2.102.02
    - D. Temporary Uses subject to provisions in Section 2.310.
  - C. Section 2.103.02
    - G. Temporary Uses subject to provisions in Section 2.310.
  - D. Section 2.104.02
    - G. Temporary Uses subject to provisions in Section 2.310.
  - E. Section 2.105.02
    - I. Temporary Uses subject to provisions in Section 2.310.
  - F. Section 2.106.02
    - S. Temporary Uses subject to provisions in Section 2.310.
  - G. Section 2.107.02
    - P. Temporary Uses subject to provisions in Section 2.310.
  - H. Section 2.108.02
    - M. Temporary Uses subject to provisions in Section 2.310.
  - I. Section 2.109.02
    - G. Temporary Uses subject to provisions in Section 2.310.
  - J. Section 2.110.02
    - G. Temporary Uses subject to provisions in Section 2.310.

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

2.310 PERMITTED TEMPORARY USES

2.310.01 Purpose

The purpose of these regulations is to provide standards for the establishment of temporary businesses and similar uses within the City of Dundee.

2.310.02 Permitted Uses

Where allowed, the following temporary uses shall be permitted subject to the following limitations and requirements:

A. Tree and Fireworks. Christmas tree or fireworks sales are permitted subject to the following:

1. The sales shall be limited to Commercial zones, except that sales may occur on those properties containing public or semi-public uses, such as schools or churches, regardless of the underlying zone.
2. Unless otherwise excepted by provisions in this Section, the sales activity shall be subject to provisions in Section 2.309.02.B.

B. Commercial Activities. Amusement and recreational services and retail sales and services are permitted in all Commercial zones, subject to the following:

1. The business may be operated from a vehicle, temporary structure or a vacant building.
2. The activity is located on the same lot for no more than 90 days in any calendar year.
3. The required parking for the primary uses on the same lot is not reduced below Ordinance requirements.
4. The use does not block driveways, driveway entrances or parking aisles.
6. The activity conforms to all signage requirements in Section 2.206.08.D.



7. The activity conforms to all setback requirements applicable to the lot and zone.
8. The operator of a temporary use shall provide the required information, pay the applicable fee, obtain and display the required temporary business permit.
9. The operator of a temporary use shall obtain all permits required by other agencies including those required for food handling and sales, and the sale of fireworks.
10. Temporary uses located within Residential zones shall not operate beyond 9:00 PM.

C. Temporary Construction Facilities. Mobile offices, temporary power equipment and temporary structures used by personnel and to store equipment during construction, provided the structures are located on the construction site and not used as dwellings. There is no restriction as to the zoning.

D. Yard Sales and Auctions. Yard sales or auctions in any zone, provided there are not more than four sales in a calendar year, with each sale not to exceed three consecutive days. Merchandise and signs shall remain on private property. This Section does not limit the number of times, or duration, that public agencies may conduct sales or auctions regard agency land, equipment, supplies or other materials.

E. Additional Permitted Temporary Uses. The City Council may, by resolution, authorize additional permitted temporary uses during a specific event or festival and set forth reasonable types of uses, appropriate zones for such uses, and any time restrictions the Council finds necessary to protect the health, safety and welfare of the public.

III. *Section 3.101.01.A shall be amended with the following new language:*

5. Temporary Use

IV. *Chapter 3.1 shall be amended with the addition of the following new Section:*

3.112 Temporary Use Permit

3.112.01 Permit Required. With the exception of temporary construction facilities, yard sales and auctions, each temporary use allowed under Section 2.310 shall be required to obtain a permit from City Hall to operate within the City of Dundee.

3.112.02 Application Requirements. A request for a temporary use permit shall submit the following information:

- A. A signed statement from the property owner or lessee of the primary use on said property: (1) granting permission for the property to be used by the permit applicant, (2) copy of a property deed, ground lease or similar evidence of ownership for subject property, (3) specifying the day(s) for which permission is granted, (4) containing the name, mailing address and telephone number of the owner or lessee, and (5) acknowledging responsibility to ensure all litter, trash and materials on the property associated with the temporary use are removed within two days after the temporary use ceases.
- B. A signed statement from the permit applicant: (1) specifying the permit applicant's name, permanent home or business address (not P.O. Box), home or business telephone number, (2) specifying the type of use proposed by the applicant, (3) attaching proof that any applicable state or federal licenses or other requirements to engage in the temporary use proposed by the applicant have been granted by the appropriate governmental agencies, (4) acknowledging responsibility to ensure that all litter, trash and materials on the property associated with the temporary use are removed within two days after the temporary use ceases.
- C. Each application shall be accompanied by a site plan to demonstrate compliance with these provisions. The site plan shall be to an approximate scale, preferably on an 8½" x 11" sheet of paper. The site plan shall include the following: (1) locations of all existing structures, (2) proposed location of temporary use, (3) parking spaces and aisles within the parking lot, (4) driveways, and (5) streets.



- 3.112.03 Decision Criteria. The permit shall be issued by the City, upon payment of the applicable fee, and evidence the intended use conforms to the applicable requirements set forth in Section 2.310.B.
- 3.112.04 Length of Operation. In determining the length of operation of a temporary use, the use will be deemed continuous from the first day that the permit was issued. The use will be deemed discontinued upon cessation of the temporary use, restoration of the premises as set forth herein, and surrender of the permit to the City, whichever occurs last. The applicant may apply and be granted approval up to six months in advance of the effective issuance of the permit.
- 3.112.05 Revocation. The temporary business permit may be revoked in the event that the operating business does not conform to the requirements specified in Section 2.310, or if any of the information in the written statements referred to in Section 3.112.02 is false.

**EXHIBIT "B"**

**CITY COUNCIL FINDINGS  
DEVELOPMENT ORDINANCE TEXT AMENDMENT**

|                      |   |                                |
|----------------------|---|--------------------------------|
| In the Matter of the | ) | Planning File No. LURA 05-12   |
|                      | ) |                                |
| Application of       | ) | 1. Land Use Regulation         |
|                      | ) | Amendment (Temporary Business) |
| City of Dundee       | ) |                                |

**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 and establish regulations for temporary businesses.

**II. GENERAL INFORMATION**

**A. Location and Site Description**

The proposal will affect all land within the city of Dundee.

**B. Background Information**

The proposed action establishes regulations for the siting of a temporary business and establishing permitting requirements. Proposed language is found in Exhibit "A" of this Ordinance.

**III. PUBLIC HEARING**

**A. Planning Commission Action**

A public hearing was held on this application before the Dundee Planning Commission on July 16, 2006. At the hearing, City Planning File LURA 05-12 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 deliberated on the issue and voted to approve the proposed amendments to the Dundee Development Ordinance. The Commission found the proposed Ordinance amendments complied with the applicable decision criteria and recommends City Council approval of these amendments. Staff was directed 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 September 5, 2006. At the hearing, City Planning File LURA 05-12 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 continue the matter to resolve concerns regarding potential impacts on public agencies.

The hearing was reopened on November 6, 2006. Staff provided additional information for the Council and additional testimony was presented. At the conclusion of the hearing, the City Council deliberated on the issue and voted to approve the proposed amendments to the Dundee Development Ordinance. The Council found the amendments contained in Exhibit "A" complied with the applicable decision criteria. Staff was directed to prepare the appropriate 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 within the City.
- C. The proposed action establishes regulations for the siting of a temporary business and establishing permitting requirements. Proposed language is found in Exhibit "A" of this 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. The City of Dundee permits temporary businesses. However, the current regulations do not place time limits on these types of business thereby allowing them to operate in perpetuity. It is also held that current regulations could be revised to reflect the City's interest to improve the quality of the downtown.
- B. The amending language is contained in Exhibit "A" of this Ordinance. Generally, the material seeks to provide guidelines for all types of temporary uses but limits the permitting process to those involving commercial activities. A brief summary of Exhibit "A" follows:



1. Chapter 2.1 - The "permitted use" section of each zone will be amended to allow temporary uses. It is important to note that temporary uses include commercial activities as well as yard sales or the use temporary construction facilities. Therefore, the activity should be listed in each zone. These amendments make it clear these are permitted subject to provisions in Section 2.309 (Temporary Uses).
2. Chapter 2.3 - A new Section will be added to this Chapter. This material is inclusive and not only involves temporary commercial uses but other temporary activities such as yard sales. A summary of the material follows:
  - a. Section 2.309.01 – This is the purpose statement, indicating regulations for temporary uses are located in this Section.
  - b. Section 2.309.02 - This Section outlines the specific permitted uses:
    - i. Subsection "A." allows the sales of Christmas trees and fireworks. These may be sold in any Commercial zone, and, any residential zone that contains a public or semi-public use, such as a church or school. Unless specifically excepted by this Section, the sales activities are subject to the same provisions as sales within the commercial zones.
    - ii. Subsection "B." focuses on other commercial-type uses. With the exception of "i." above, these activities are limited to the commercial zones. The business may be operated from a vehicle, temporary stand or vacant building. However, the activity cannot be located on the same property for more than 90-days in a calendar year.

Parking for an existing primary use cannot be reduced, and aisles and walkways cannot be blocked. A paved lot is not required. Signs are limited to those found in Development Ordinance Section 2.206.08.D. A permit is required and the operator is responsible for obtaining other applicable permits. Finally, no temporary use identified in this Subsection may operate after 9:00 PM.
    - iii. Subsection "C" allows the use of temporary construction facilities during development provided they are not used as a dwelling. These facilities are not restricted as to zone but must be located on the construction site.

- iv. Subsection "D" allows yard sales and auctions in any zone. These are limited to four sales in a calendar year with each sale not to exceed three consecutive days. Public agency sales or auctions are exempt from these requirements.
  - v. Subsection "E" grants the City Council, by resolution, the authority to authorize additional permitted temporary uses. Usually these occur during a community-wide festival or special event. The Council may establish reasonable restrictions to limit types of uses or locations.
3. Chapter 3.1 will contain the following amendments:
- a. Section 3.101.01 - The various land use procedures are identified in this Section. This section will be amended to include a temporary use permit as a Type 1-A action. In this situation only the applicant is notified of the decision with an appeal is to the Planning Commission.
  - b. Section 3.112 - This is a new Section to identify the application requirements and decision criteria for a temporary use permit.
    - i. Section 3.112.01 - A permit is required to establish a temporary use. This requirement does not apply to temporary construction facilities, yard sales and auctions.
    - ii. Section 3.112.02 - The application requirements are outlined in this Section. Property owner authorization is required as is personal information on the business operator and a site plan. The key here is to ensure the City has a list of individuals to contact regarding problems or complaints. These are detailed but necessary to ensure compliance with Section 2.310.
    - iii. Section 3.11.03 - The City shall provide a temporary use permit if the applicant complies with the requirements. There can be no conditions beyond what is required by the Ordinance.
    - iv. Section 3.112.04 - Temporary uses are limited to 90-days within a calendar year. This section identifies how that time period is calculated as well as other time-related issues.
    - v. Section 3.112.05 - This Section allows the City to revoke a permit if the operator does not comply with provisions in section 2.310 or if false information was provided on the application.



- C. The main thrust of the language is to ensure all temporary activities are truly temporary. This does not prohibit a temporary business from relocating every 90-days. However, even this provision ensures that the “temporary” business does not remain permanently fixed to a single property.

## 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 will be 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 but merely provide reasonable regulations for the temporary commercial activities.

Goal 10, Housing: This action does not affect residential zoning nor the ability to provide needed housing.

Goal 11, Public Facilities: The amendment does not significantly increase the demand or use of existing public facility systems.

Goal 12, Transportation: As temporary businesses will use existing commercial property with access, 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 address aesthetic issues regarding commercial development and 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 applicable Comprehensive Plan policies. In reviewing this matter, it was determined the Plan does not specifically address temporary businesses. However, the amendments will provide some reasonable regulations to allow temporary businesses without burdening permanent businesses.

## VII. CONCLUSION

For the reasons stated above, the City Council concludes the proposed amendments to the Dundee Development Ordinance contained in Exhibit "A" comply with the decision criteria.