



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

January 27, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Springfield Plan Amendment  
DLCD File Number 001-06

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: February 9, 2006**

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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: Gary Karp, City of Springfield

<paa>



JAN 20 2006

DLCD NOTICE OF ADOPTION

LAND CONSERVATION AND DEVELOPMENT

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)

Jurisdiction: Springfield Local File No.: LRP2005-00036 (if no number, use none)

Date of Adoption: January 17, 2006 (Must be filled in) Date Mailed: January 19, 2006 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: No first notice was sent on this amendment. Notice was sent on LRO2005-00012.

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

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

Purpose - To make Springfield Development Code Section 5.090 consistent with the intent of Springfield Municipal Code Section 2.953 (2) regarding the status of transferability under a Ballot Measure 37 claim.

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."

N/A However the notice of decision document explains why no separate notice was sent for this minor text amendment.

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: N/A

Was an Exception Adopted? Yes: No: XX

DLCD File No.: 001-06 (NOA)

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: Lane County

Local Contact: Gary M. Karp Area Code + Phone Number: 541-726-3777

Address: 225 Fifth Street

City: Springfield Zip Code+4: 97477

## 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.

CITY OF SPRINGFIELD  
DEVELOPMENT SERVICES DEPARTMENT  
225 FIFTH STREET  
SPRINGFIELD, OREGON 97477

NOTICE OF DECISION  
SPRINGFIELD CITY COUNCIL

MAILING DATE OF NOTICE: January 19, 2006  
DATE OF DECISION: January 17, 2006  
EFFECTIVE DATE: January 17, 2006  
JOURNAL NUMBER: LRP2005-00036  
APPLICANT: City of Springfield

NATURE OF REQUEST

AN ORDINANCE AMENDING THE SPRINGFIELD DEVELOPMENT CODE, SECTION 5.090; AND DECLARING AN EMERGENCY.

PURPOSE OF THE AMDNEMENT

The purpose of this amendment is to make SDC Section 5.090 consistent with the intent of Springfield Municipal Code (SMC) Section 2.953(2) regarding the status of transferability of property under a Ballot Measure 37 Claim. In July, 2005, the City Council approved the SDC "housekeeping" amendments by adopting Ordinance 6133. These amendments applied both within Springfield's city limits and its urbanizable area. The intergovernmental agreement between the City and Lane County, giving Springfield planning and building permit jurisdiction within its urbanizable area, requires the Lane County Board of Commissioners (Board) to also adopt the SDC "housekeeping" amendments. The Lane County Planning Commission (LCPC) must make a recommendation to the Board prior to the adoption of their ordinance. In October 2005, staff presented the SDC "housekeeping" amendments to the LCPC. During the work session and public hearing, the LCPC raised a question regarding the status of transferability of BM 37 relief for the current property owner to a new property owner under the waiver of Code provisions. The LCPC believed there may be a conflict between Lane County's BM 37 ordinance in Lane Code, the City's BM 37 ordinance in the SMC and the City's "housekeeping" amendment to SDC Section 5.090. City staff told the LCPC that this issue would be researched and resolved prior to adoption of the SDC "housekeeping" amendments by the Board. After this discussion, the LCPC voted to recommend Board approval of the SDC "housekeeping" amendments. City staff reviewed Lane Code and the SMC and found a minor amendment of Section 5.090 was in order.

PROCEEDINGS AND DECISION

Staff presented the proposed amendment to the Planning Commission at a public hearing on December 6, 2005. There were no written comments or oral testimony. The Planning Commission voted unanimously to recommend City Council adoption of the SDC amending Ordinance. Staff presented the proposed amendment to the City Council at a public hearing on July 17, 2006. There were no written comments or oral testimony. The City Council voted unanimously to adopt the amending Ordinance, with emergency clause.

ADDITIONAL INFORMATION

If you have questions concerning the amendments or the decision of the City Council in this matter, please contact Gary M. Karp, Senior Planner at 541.726.3777. E-mail address: [gkarp@ci.springfield.or.us](mailto:gkarp@ci.springfield.or.us). The adopting ordinance, along with supporting staff report and documents, are available for review between 8:00AM and 4:00PM, at the Development Services Department counter, Springfield City Hall, at 225 Fifth Street. These documents can be e-mailed to interested parties if an e-mail address is provided.

APPEAL

All parties are advised that a *Notice of Intent to Appeal* conforming to the requirements of the Oregon Revised Statutes 197.830(9) shall be filed on or before the 21st day after the mailing date of this notice. All parties are further advised to consult an attorney or land use consultant regarding their appeal.

**ORDINANCE**

**ORDINANCE NO. 6152 (General)**

**AN ORDINANCE AMENDING THE SPRINGFIELD DEVELOPMENT CODE,  
SECTION 5.090 AND DECLARING AN EMERGENCY**

**THE CITY COUNCIL OF THE CITY OF SPRINGFIELD FINDS THAT:**

**WHEREAS**, the Springfield Development Code (SDC) was adopted by the Springfield City Council on May 5, 1986, and amendments thereto were subsequently adopted by Ordinance; and

**WHEREAS**, Article 7 of the SDC sets forth procedures for the amendment of this document; and

**WHEREAS**, on July 18, 2005, the Springfield City Council held a public hearing and adopted the SDC "housekeeping" amendments Ordinance 6133 (Case Number LRP 2005-00012); and

**WHEREAS**, the Intergovernmental Agreement between the City of Springfield and Lane County requires the Lane County Board of Commissioners to adopt amendments to the SDC that are effective within the City's urbanizable area; and

**WHEREAS**, on October 18, 2005, the Lane County Planning Commission held a work session on this SDC "housekeeping" amendment application and raised a question concerning SDC Section 5.090; and

**WHEREAS**, City staff determined that a minor amendment of Section 5.090 was necessary in order to resolve any uncertainties concerning consistency among Lane Code, the Springfield Municipal Code and the SDC; and

**WHEREAS**, on December 6, 2005, the Springfield Planning Commission held a public hearing on this SDC amendment application (Case Number LRP 2005-00036) and unanimously recommended City Council adoption of the attached Ordinance; and

**WHEREAS**, on January 17, 2006, the Springfield City Council held a public hearing and is now ready to take action on this matter based upon the above recommendation and the evidence and testimony already in the record as well as the evidence and testimony presented at this public hearing held in the matter of adopting this ordinance amending the SDC.

NOW THEREFORE, THE CITY OF SPRINGFIELD ORDAINS AS FOLLOWS:

**Section 1: Section 5.090 is hereby amended to read as follows:** "Notwithstanding the foregoing provisions and regulations of this Article, any waivers to the standards of this Code granted by the City Council in response to a Demand for compensation, as may be permitted in accordance with the Springfield Municipal Code 1997, shall supersede the provisions and regulations of this Article and shall be transferable to a future purchaser of the property only to the extent required by Ballot Measure 37."

**Section 2: Declaration of Emergency.** It is hereby found and declared that matters pertaining to the amendment of, and additions to the Springfield Development Code affect the public health, safety and welfare of the City of Springfield and that this Ordinance shall, therefore, take effect immediately upon its passage by the Council and approval by the Mayor.

**ADOPTED** by the Common Council of the City of Springfield by a vote of 6 for and 0 against, this 17th day of January, 2006.

**APPROVED** by the Mayor of the City of Springfield, this 17th day of January, 2006.

ATTEST:

Amy Sowa  
City Recorder

[Signature]  
Mayor

REVIEWED & APPROVED  
Jordan J. Larkin  
1/17/06  
OFFICE OF CITY ATTORNEY

City of Springfield, Oregon

CERTIFIED TRUE COPY

Amy Sowa  
City Recorder

**ATTACHMENT 1  
CITY OF SPRINGFIELD  
DEVELOPMENT SERVICES DEPARTMENT  
STAFF REPORT AND  
ORDER AND RECOMMENDATION**

<b>Applicant:</b> City of Springfield	<b>Case Numbers:</b> LRP 2005-00036
<b>Request:</b> Amend SDC Section 5.090 to be consistent with the intent of Springfield Municipal Code (SMC) Section 2.953(2) regarding the status of transferability of property under a Ballot Measure 37 claim.	<b>Procedure:</b> Type IV Legislative SDC text amendment

**I. BACKGROUND**

**A. SPRINGFIELD MUNICIPAL CODE AMENDMENTS.**

In November 2004, the Springfield Municipal Code (SMC) was amended to adopt procedures for processing Ballot Measure (BM) 37 claims. Ordinance 6102 contained the following language in SMC Section 2.953(2) pertaining to situations when the City Council granted a waiver of Code provisions instead of paying compensation: *“... any action taken under this Article to remove, modify or not apply application of an identified land use regulation runs with the property and is transferred with ownership of the property.”* This language stated that a waiver of Code provisions applied to both the property owner making the claim and any future property owners. This language was prepared consistent with the City Council’s direction to staff on this issue.

In February 2005, the Oregon Attorney General’s office issued an interpretation on the transferability of BM 37 relief under a waiver of Code provisions. That interpretation stated: *“... it only provides authority for a public entity to waive a law to the extent necessary to allow an otherwise prohibited use by the ‘present’ owner, i.e., the owner at the time the exemption is granted. In other words, this language authorizes a public entity to make exemption personal to the owner making the claim.”* The interpretation found no evidence to allow a waiver of Code provisions to be applied to any future property owners.

In March 2005, Ordinance 6126 was adopted containing several amendments to the SMC BM 37 procedural regulations including SMC Section 2.953(2) which now reads: *“... any action taken to remove, modify or not apply application of an identified land use application shall be transferable to a future purchaser of the property to the extent required by Ballot Measure 37.”* The intent of the amendment of SMC Section 2.953(2) was consistency with the Attorney General’s interpretation the City of Eugene and Lane Code (see the discussion under topic C).

## **B. SPRINGFIELD DEVELOPMENT CODE "HOUSEKEEPING" AMENDMENTS.**

In July, 2005, the City Council approved the SDC "housekeeping" amendments by adopting Ordinance 6133. Since these amendments applied both within Springfield's city limits and its urbanizable area, the intergovernmental agreement between the City and Lane County giving Springfield planning and building permit jurisdiction within that area required the Lane County Board of Commissioners (Board) to also adopt the SDC "housekeeping" amendments. Lane County's approval process is similar to Springfield's. The Lane County Planning Commission (LCPC) must make a recommendation to the Board prior to the adoption of their ordinance.

In October 2005, staff presented the SDC "housekeeping" amendments to the LCPC. During the work session and public hearing, the LCPC raised a question regarding the status of transferability of BM 37 relief under the waiver of Code provisions. The LCPC believed there may be a conflict between Lane County's BM 37 ordinance in Lane Code and the City's ordinance in the SMC. This issue arose due to an incorrect commentary by City of Springfield staff explaining the intent of the text in SDC Section 5.090. After this discussion, the LCPC voted to recommend Board approval of the SDC "housekeeping" amendments.

## **C. ATTORNEY DISCUSSIONS – CONSISTENCY BETWEEN LANE COUNTY AND CITY REGULATIONS.**

In November 2005, Springfield's City Attorney, Joe Leahy, discussed the consistency issue with Assistant Lane County Counsel, Steve Vorhes. Mr. Vorhes stated that Lane Code grants certain rights to the owner of property only as long as that owner owns the property. Mr. Leahy stated that the SMC also grants certain rights to the property owner and is transferable only as permitted by Ballot Measure 37, which may or may not allow transfer. Mr. Vorhes indicated that for all intents and purposes, there is no difference in the interpretation of how Lane Code and the SMC operate on the transferability issue. The language in SDC 5.090 is based upon the revision to the SMC in March. Therefore, the language in SDC 5.090 is also consistent with the intent of Lane Code on this topic.

## **D. RESOLUTION OF UNCERTAINTIES**

Although SDC Section 5.090 is based upon the language in SMC 2.953(2), which is consistent with Lane Code, in order to resolve any uncertainties, staff is proposing to amend SDC 5.090 as proposed in Attachment 2.

## **II. PROCEDURAL REQUIREMENTS**

Procedural requirements for SDC text amendments are described in SDC Article 8.

SDC Article 8 indicates that the Development Services Director, Planning Commission, City Council or a citizen can initiate SDC text amendments. These amendments are reviewed under a "Type IV" procedure and require public hearings before the Planning Commission and the City Council. Type IV procedures are detailed in SDC Section 3.100. The proposed SDC text amendment has been initiated by staff.



SDC Section 14.030 (2) requires that legislative land use decisions be advertised in a newspaper of general circulation, providing information about the legislative action and the time, place and location of the hearing.

Procedural Requirement Findings:

The Development Services Director has initiated the SDC text amendment which is a Type IV review procedure. Notice of the public hearings concerning this matter was published on November 25, 2005 in the Springfield News, advertising both the hearing before the Springfield Planning Commission on December 6, 2005 and the City Council on January 17, 2006. The content of the notice followed the direction given in Section 14.030(2) of the SDC for legislative actions.

Procedural Requirement Conclusion:

Procedural requirements described in SDC Articles 8 and 14 have been/will be followed.

### **III. DECISION CRITERIA AND FINDINGS**

#### **SPRINGFIELD DEVELOPMENT CODE CRITERIA FOR SDC AMENDMENTS**

**SDC 8.030** of the Springfield Development Code establishes criteria that must be met in order to approve this request. *"In reaching a decision on these actions, the Planning Commission and the City Council shall adopt findings which demonstrate conformance to the following: (1) The Metro Plan; (2) Applicable State statutes; and (3) Applicable State-wide Planning Goals and Administrative Rules."*

The SDC "Housekeeping" Amendments **Case Number LRP 2005-0012** included a 22 page staff report that addressed all applicable criteria of approval specified above were adopted by the City Council on July 18, 2005 and acknowledged by DLCDD on July 27, 2005. Those amendments included language in SDC Section 5.090.

The proposed text revisions to SDC Section 5.090 are for clarification purposes and do not rise to the occasion to merit addressing each of these criteria again. There is a detailed discussion concerning the proposed amendments in the Background Section, above.

### **IV. CONCLUSION/RECOMMENDATION/REQUESTED ACTION**

Staff has demonstrated that the proposed amendments complied with the criteria of approval listed in SDC 8.030.

Staff recommends the Planning Commission: approve the attached Order and forward the proposed amendments, as may be amended, to the City Council with a recommendation for adoption.

**ATTACHMENT 2**  
**PROPOSED REVISED TEXT SDC SECTION 5.090**

**Proposed Text Amendments to SDC Section 5.090:**

Underline denotes new text; ~~striketrough~~ denotes deleted text.

**Commentary:** *The word "only" is added for emphasis. The reference to B 37 is added for consistency with SMC 2.953(2). The reference to ORS 197 was originally used because Ballot Measure 37 amended ORS 197.*

Notwithstanding the foregoing provisions and regulations of this Article, any waivers to the standards of this Code granted by the City Council in response to a Demand for compensation, as may be permitted in accordance with the Springfield Municipal Code 1997, shall supersede the provisions and regulations of this Article and shall be transferable to a future purchaser of the property only to the extent required by [~~ORS 197~~] Ballot Measure 37.