



# 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](http://www.lcd.state.or.us)

### AMENDED NOTICE OF ADOPTED AMENDMENT

September 18, 2007



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment  
DLCD File Number 005-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

#### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 28, 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  
Laren Woolley, DLCD Regional Representative  
Doug White, DLCD Community Services Specialist  
James Bassingthwaite, City of Newport

<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

SEP 11 2007

LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: City of Newport Local File No.: 1-CP-07  
(If no number, use none)

Date of Adoption: September 4, 2007 Date Mailed: September 10, 2007  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: June 27, 2007

☒ Comprehensive Plan Text Amendment ☐ Comprehensive Plan Map Amendment  
☐ Land Use Regulation Amendment ☐ Zoning Map Amendment  
☐ 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 three policies in Public Facilities Section and Implementation Measure 4a of  
Urbanization Section of Newport Comprehensive Plan to allow the City to provide  
water and sanitary sewer service to the extent permitted under Planning Goal 11 and  
state law.

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."

Adopted amendment included suggested language modifications informally recommended  
by DLCD.

Plan Map Changed from : --- to ---

Zone Map Changed from: --- to ---

Location: --- Acres Involved: ---

Specify Density: Previous: --- New: ---

Applicable Statewide Planning Goals: 2, 11, 14

Was an Exception Adopted? Yes: --- No: X

DLCD File No.: 005-07(16268)



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: X\* No:       

\*Mailed in time for DLCD to receive 45 days prior to first ev. hearing.

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 Newport,

Lincoln County, Seal Rock Water District

Local Contact: James Bassingthwaite Area Code + Phone Number: 541-574-0626

Address: 169 SW Coast Highway

City: Newport Zip Code+4: 97365-4713

## 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.



8-23-07

**CITY OF NEWPORT**  
**ORDINANCE NO. 1933**

**AN ORDINANCE AMENDING ORDINANCE NO. 1621 (AS AMENDED) OF  
THE CITY OF NEWPORT, OREGON, TO AMEND POLICIES OF THE PUBLIC  
FACILITIES AND URBANIZATION SECTIONS OF THE CITY OF NEWPORT  
COMPREHENSIVE PLAN**

**WHEREAS**, the City of Newport Comprehensive Plan Public Facilities Section and the Urbanization Section contain policies related to the provision of water and wastewater that the City wishes to modify to allow the City more flexibility in the provision of water and wastewater (sewer) service throughout the area within the urban growth boundary and as allowed by state law, including Statewide Planning Goal 11 (Public Facilities) and implementing regulations,

**WHEREAS**, the City of Newport has recently adopted the South Beach Neighborhood Plan by Ordinance No. 1899 and the proposed modifications in the policies of water and wastewater will allow the City to better plan, coordinate, and/or provide for the services of water and wastewater within the South Beach area of Newport as well as in other areas of Newport,

**WHEREAS**, the Planning Commission of the City of Newport, after providing the required public notification including the notification to the Department of Land Conservation & Development, held a public hearing on August 13, 2007, on the proposed amendment (Newport File No. 1-CP-07) for the purpose of reviewing the proposed ordinance and providing a recommendation to the City Council,

**WHEREAS**, after due deliberation and consideration of the proposed change, the Planning Commission recommended that the proposed comprehensive plan text amendment be adopted by the City Council of the City of Newport; and

**WHEREAS**, the City Council of the City of Newport, after providing the required public notification, held a public hearing on September 4, 2007, regarding the question of the proposed comprehensive plan text amendment (Newport File No. 1-CP-07), and voted in favor of adoption of the proposed text amendment after considering the recommendation of the Planning Commission, the Planning Staff Memorandum and attachments, and the evidence and argument presented at the public hearing,



**NOW, THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** Ordinance No. 1621 (as amended) is amended to include following amendments to the Goals and Policies of the Public Facilities Element of the City of Newport Comprehensive Plan:

- A. Policy 5 of the Goal under the General section of the Goals and Policies of the Public Facilities Element of the City of Newport Comprehensive Plan is amended to read as follows:

Policy 5: Upon annexation of territory to the City of Newport, the city will be the provider of water and sewer service except as specified to the contrary in an urban service agreement or other intergovernmental agreement.

- B. Policy 3 of the Goal under the Water section of the Goals and Policies of the Public Facilities Element of the City of Newport Comprehensive Plan is amended to read as follows:

Policy 3: The city may extend water service to any property within the city's urban growth boundary, and may extend water service beyond the urban growth boundary if the extension of service is not inconsistent with an urban service agreement or other intergovernmental agreement. The city may require a consent to annexation as a condition of providing water service outside the city limits.

- C. Policy 2 of the Goal under the Wastewater subsection of the Goals and Policies of the Public Facilities Element of the City of Newport Comprehensive Plan is amended to read as follows:

Policy 2: City wastewater services may be extended to any property within the urban growth boundary. Except for the very limited circumstances allowed by state law and regulations, the city will not generally provide wastewater services outside the urban growth boundary. The city may require a consent to annexation as a condition of providing wastewater service outside the city limits. Nothing in this policy obligates the City to provide wastewater services outside of the city limits. For property outside of the city limits but within the urban growth boundary, wastewater services may be provided at the City's discretion only for:

- a) residentially zoned lands as allowed by county zoning without full services, and
- b) commercial and industrial zoned lands to existing lawful uses as of the date ( 9/4/07 ) of this amendment .

**Section 2.** Ordinance No. 1621 (as amended) is amended to amend Implementation Measure 4a of Policy 4 of the Goals/Policies/Implementation Measures of the Urbanization Section of the City of Newport Comprehensive Plan to read as follows:

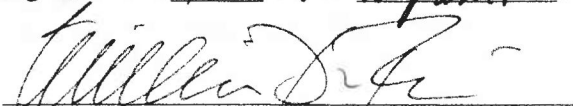
Implementation Measure 4a: The City of Newport may provide water and wastewater services outside the city limits consistent with the policies for the provision of such services as identified in the applicable Goals and Policies of the Public Facilities Element of the Comprehensive Plan.

Section 3. The attached findings of fact and conclusions in Exhibit "A" are adopted in support of the amendments identified in Section 1 and Section 2.

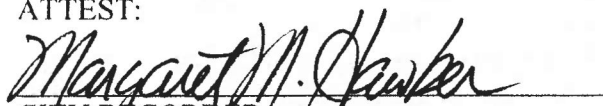
Introduced and passed on first reading in a regular meeting of the City Council of the City of Newport, Oregon, held on the 4<sup>th</sup> day of September, 2007.

Passed on second reading, placed for final passage, and adopted by the City Council of the City of Newport, Oregon, on the 4<sup>th</sup> day of September, 2007.

Approved by the Mayor of the City of Newport, Oregon, on the 4<sup>th</sup> day of September 2007.

  
MAYOR

ATTEST:

  
CITY RECORDER



**EXHIBIT "A"**  
File No. 1-CP-07

Findings of Fact and Conclusions

**FINDINGS OF FACT:**

1. The City Council of the City of Newport on August 15, 2005, authorized staff to initiate the necessary amendments to the Newport Comprehensive Plan for the Employment Lands Project (which includes the South Beach Neighborhood Plan) when the amendments were ready. The South Beach Neighborhood Plan and related urban growth boundary amendments as adopted by Newport Ordinance No. 1899 received acknowledgement of the Oregon Department of Land Conservation and Development on June 12, 2007, pursuant to Order 001728. The South Beach Neighborhood Plan discusses the need for an intergovernmental agreement with Seal Rock Water District related to the provision of the urban service of water for the South Beach area of Newport.
2. In regard to the South Beach area of Newport, there are currently two urban service level providers of water: the City of Newport and the Seal Rock Water District. The City of Newport currently has the ability under the Newport Comprehensive Plan and state law to sell water to Seal Rock Water District or to sell water to any customer within the Seal Rock Water District in conformance with any intergovernmental agreement with Seal Rock Water District. The Newport Comprehensive Plan contains policies that limit the ability of the City to physically extend the Newport water service infrastructure outside of the City limits. State law, including Statewide Planning Goal 11 (Public Facilities) and the implementing administrative rules, allow for the City to provide water service outside of the city limits. Oregon Revised Statutes (ORS) 195.060 to 195.085 contain provisions on Urban Service Agreements. ORS 195.085 (1) establishes that local governments and special districts need to demonstrate compliance with the applicable provisions no later than the first periodic review following November 3, 1993. The City of Newport has not been required nor has the City chosen to initiate periodic review since the November 3, 1993. Pursuant to any intergovernmental agreement with Seal Rock Water District, the City may need the ability to extend the City's water infrastructure to provide water service to property outside of the current city limits. In conjunction with providing water service infrastructure to property within the UGB but not within the city limits, the City may want the flexibility to provide sanitary sewer infrastructure to property within the UGB at the same time as water service infrastructure.
3. If the City is extending water infrastructure outside of the city limits in accordance with any intergovernmental agreement and as allowed by state law, the City may at the same time desire to extend sanitary sewer service to provide a coordinated and cost-

efficient provision of urban level services. Additionally, the City may at times choose to extend sanitary sewer service to areas within the Urban Growth Boundary that are not yet annexed within the City for public or environmental health and safety reasons or to provide service to property that is not contiguous to the city limits and is unable to annex at the time service is requested.

4. The Newport Planning Commission held a duly noticed public hearing on August 13, 2007, and allowed for public testimony and made a recommendation to the Newport City Council on the proposed legislative amendments that included changes in the proposed language of Policy 2 involving wastewater so that there would not be a potential issue with the Transportation Planning Rule.

5. The Newport City Council held a duly noticed public hearing on September 4, 2007, and allowed for public testimony and made a decision on the proposed legislative amendments.

6. According to the Newport Comprehensive Plan on page 285, text amendments are legislative acts. Text amendments involving Goals and Policies are required by the Newport Comprehensive Plan on page 287-288 to be accompanied by findings that address the following:

1. A significant change in one or more conclusion; or
2. A public need for the change; or
3. A significant change in community attitudes or priorities; or
4. A demonstrated conflict with another plan goal or policy that has a higher priority; or
5. A change in a statute or statewide agency plan; and
6. All the Statewide Planning Goals.

7. According to the Newport Comprehensive Plan on page 288, text amendments involving implementation measures are required to be accompanied by findings that address the following:

1. A change in one or more goal or policy; or
2. A new or better strategy that will result in better accomplishment of the goal or policy; or
3. A demonstrated ineffectiveness of the existing implementation strategy; or
4. A change in the statute or state agency plan; or
5. A fiscal reason that prohibits implementation of the strategy.

#### **CONCLUSIONS:**

1. Of the above findings (#1-5) for the amendment of a policy, only one of the # 1-5 findings needs to be addressed. For the purposes of this amendment, the public need for the change finding (# 2) is addressed:



A. There is a public need for the change as the City of Newport needs to be able to have the ability to provide water service and wastewater service outside of the Newport city limits as necessary to address public and environmental health and safety issues, as necessary to implement the provisions of any intergovernmental agreement, and to better coordinate, plan, and implement the provision of water and wastewater services throughout the Newport Urban Growth Boundary.

B. State law defines the limits of a city's ability to provide water and wastewater service outside of a city limit boundary. Statewide Planning Goal 11 (Public Facilities) and the implementing regulations allow a city more discretion as to when water and wastewater services may be provided than the City of Newport's Comprehensive Plan policies currently allow. The amendments to allow the City of Newport the ability to provide water and wastewater services consistent with state law also provide a public need for the change.

C. ORS Oregon Revised Statutes (ORS) 195.060 to 195.085 contain provisions on Urban Service Agreements. ORS 195.085 (1) establishes that local governments and special districts need to demonstrate compliance with the applicable provisions no later than the first periodic review following November 3, 1993. The City of Newport has not been required nor has the City chosen to initiate periodic review since the November 3, 1993. Pursuant to any intergovernmental agreement with Seal Rock Water District, the City may need the ability to extend the City's water infrastructure to provide water service to property outside of the current city limits. The amendments will give the City necessary flexibility in meeting the ORS 195.060 to 195.085 requirements.

2. For finding # 6, all of the Statewide Planning Goals need to be addressed with respect to the proposed policy amendment.

A. The proposed amendments are consistent with the Statewide Land Use Planning Goals.

B. Goal 1 Citizen Involvement and Goal 2 Land Use Planning  
These goals will be met through the land use proceedings for which this application must be processed.

C. Goal 3 Agricultural Lands, Goal 4 Forest Lands, Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources, Goal 6 Air, Water and Land Resources, Goal 7 Areas Subject to Natural Disasters and Hazards, Goal 8 Recreation Needs, Goal 9 Economic Development, Goal 10 Housing, Goal 12 Transportation, Goal 13 Energy Conservation, Goal 15 Willamette River Greenway, Goal 16 Estuarine Resources, Goal 17 Coastal Shorelands, Goal 18 Beaches and Dunes and Goal 19 Ocean Resources

For the change in language to the policies, these goals are not applicable as the relevant Statewide Land Use Planning Goals are Goal 11 and Goal 14. The proposed ordinance included modified language in Policy 2 involving wastewater such that no issue with the Transportation Planning Rule would be triggered.

D. Goal 11 Public Facilities

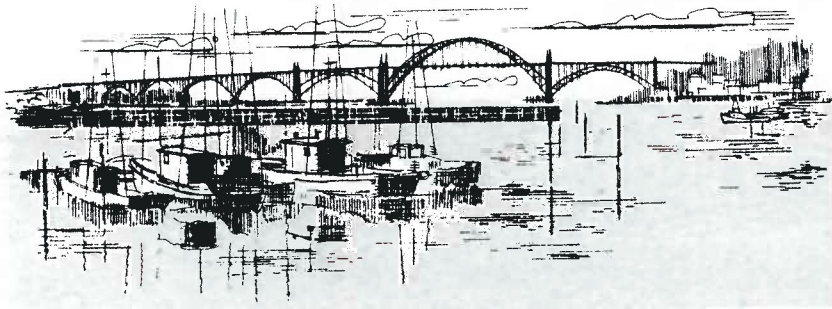
The proposed amendments are consistent with Statewide Land Use Planning Goal 11 and the implementing administrative rules which specify the extent a City can provide water and sewer infrastructure. The proposed amendments allow for the provision of water and sewer infrastructure in conformance with state law and also allow for the implementation of such urban service level provider agreements required by ORS 195.060 to 195.085.

E. Goal 14 Urbanization

The proposed amendments are consistent with Statewide Land Use Planning Goal 14 and the implementing administrative rules, including Implementation Measure 1 (the type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion). The proposed amendments would allow the City more flexibility in the provision of urban level services of water and sanitary sewer within the urban growth boundary and give the City the flexibility to provide services consistent with the provisions of Statewide Land Use Planning Goal 11.

3. For the findings required related to the proposed amendment to the Implementation Measure 4a of the Urbanization Section of the Comprehensive Plan, only findings addressing one of the five items is required. As the proposed change in Implementation Measure 4a is due to a change in several policies in the Public Facilities Section, the first finding regarding "A change in one or more goal or policy" is met by the change in policies.





OFFICE OF Community Development

## CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

TDD/VOICE 1-800-735-2900

**CERTIFICATE OF MAILING OF NOTICE OF ADOPTION AND THE  
ADOPTED TEXT AND FINDINGS AS APPLICABLE**

Local File # 1-CP-07

Date of Deposit in the U.S. Mail: Sept. 10, 2007

Name of Person Mailing JAMES BASSEN COUNSELLOR

Signature of Person Mailing [Handwritten Signature]