



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

June 19, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Durham Plan Amendment
DLCD File Number 002-07

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: July 2, 2008

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: Doug White, DLCD Community Services Specialist
Jennifer Donnelly, DLCD Regional Representative
Roland Signett, City of Durham

<paa> ya/

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

Jurisdiction: **City of Durham**

Local file number: **237-07REV0208**

Date of Adoption: **5/27/2008**

Date Mailed: **6/11/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 2-21-08

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Amends Land Use Code relevant to quasi-judicial decisions to reflect more recent enactment of state statute and case law. Design review is incorporated into the initial Planning Commission review.

Does the Adoption differ from proposal? **No**, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

| | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD # 002-07 (16156)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Roland Signett**

Phone: **(503) 639-6851** Extension:

Address: **17160 SW Upper Boones Ferry Rd**

Fax Number: **503-598-8595**

City: **Durham**

Zip: **97224-**

E-mail Address: **cityofdurham@comcast.netr**

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 Complete Copies** (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
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 this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not 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 now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE 237-07REV0208
AN ORDINANCE AMENDING THE LAND USE CODE
BY CREATING NEW PROVISIONS RELATING TO
QUASI-JUDICIAL LAND USE DECISIONS
AND REPEALING LAND USE CODE
CHAPTER II ARTICLE 4 SECTIONS 4, 5, 8, 9 & 10
AND
CHAPTER VI, ARTICLES 2 & 3 (SELECTED SECTIONS ONLY)

Whereas, the Council finds after public hearing that the Durham Land Use Code, last revised in 1995, provides for a process for quasi-judicial land use decisions that are no longer practical given interim developments in state statutes and case law, now, therefore,

THE CITY OF DURHAM, OREGON ORDAINS AS FOLLOWS:

The Durham Land Use Code is amended by adding new provisions to read as follows:

Section 1. Scope.

A. This Ordinance establishes the process for a city quasi-judicial land use decision including a limited land use decision as the terms "land use decision" and "limited land use decision" are defined in ORS 197.015. A limited land use decision shall include site review and design review for a use permitted in the applicable zoning district. A quasi-judicial land use decision is one where the process is bound to result in a decision and where the decision concerns a limited or unique set of facts or will apply to only to limited area or limited number of persons.

B. An applicant for an "expedited land use division" as that term is defined in ORS 197.360 may request that the city follow the alternative process for decision set out in ORS 197.365.

C. The City shall deem any and all applications for land use decisions to be either quasi-judicial or legislative at the time the application is deemed complete.

Section 2. Application Requirements. An applicant for a land use decision shall submit:

A. A description of the person's ownership- or other interest in the property that is the subject of the application (hereafter, "the property") and the applicant's signature, which shall signify that the person is authorized to make the application on behalf of the owner(s) if the applicant is not an owner;

B. A legal description of the property and a vicinity map showing the relation of the property and an area within 250' feet of any point on the property;

- C. The location and dimensions of all public and private rights of way and other easements adjacent to or within the boundaries of the property;
- D. The location and dimensions of all proposed streets and other access ways to be constructed or reconstructed if the application is approved;
- E. All trees existing on the property that are nominally subject to the city's tree preservation ordinance;
- F. If approval of the application may result in additional vehicle trips to and from the property such as to change the vehicle to capacity ratio on [describe streets and intersections that may be affected], a traffic impact analysis by a registered traffic engineer;
- G. A service provider letter from Clean Water Services if the application constitutes "development" under applicable CWS Resolution(s) and Order(s); and,
- H. All other detail required by Code Chapter 2 Article 4 Section 2 (Preliminary Development Plan and Program) if relevant to the application.

Section 3. Completeness.

- A. If the City deems an application subject to be incomplete it shall notify the applicant in writing as to what information is missing within 30 days of receipt of the application and shall allow the applicant to submit it. The application then shall be deemed complete upon the city's receipt of that information or receipt of notice from the applicant that some or all of the some or all of that missing information will not be provided. The City shall state in writing the date the application is deemed complete and shall publish a tentative schedule of hearings (if any) and decision(s) on the application in all required notices of the application and notices of the decision(s).
- B. If the application was complete when first submitted or if the applicant submits the requested missing information within 180 days after the application first was submitted, the city shall approve or deny the application based upon the standards and criteria applicable at the time the application first was submitted. An application is void if the applicant has not submitted either the missing information or the notice described in subsection B of this Section within 180 days of the date the application first was submitted.
- C. The City shall issue its final decision, including resolution of all appeals, on an application for a Type 3 land use decision (including an application for a permit (as defined in ORS 227.160(2)) or for a limited land use decision or zone change) within 120 days after the application is deemed complete, subject to the further provisions of this Section. The City shall decide a Type 1 application within 28 days-, and a Type 2 application within 60 days after the City deems each such an application to be complete. The applicant has the burden of proof in all applications for a land use decision, and the city's failure or refusal to approve an application within the time

allowed, including a lack of a majority of votes in favor of an application in cases where the application shall be finally decided by a vote, constitutes a denial of the application.

D. The applicant may in writing extend the time limit for decision that is provided for in this Section for a specified period of time, but the time limit for decision shall not exceed 60 days for a Type 1 decision, 120 days for a Type 2 decision or 245 days for a Type 3 decision after the date that the application is deemed complete. If at any time before decision the applicant substantially changes an application that had been deemed complete or fails to submit additional information, such as a professional study, that city deems to be necessary or desirable in the course of city's review of the application such as to allow for city's final decision within the time required by this Section, the City may deny the application for want of prosecution.

E. No application for a land use decision shall be deemed complete, whether or not the application is subject to the time limits of this Section, unless and until the applicant undertakes in a signed writing to pay all of City's costs and fees incurred to review the application accompanied by a deposit of \$500 against those costs and fees. No land use permit or approval shall be effective and no building permit shall issue as to the property subject to the application unless and until the full amount of those costs and fees so incurred are paid in full.

F. No application for a Type 3 land use decision shall be deemed complete unless and until the applicant has first complied with the neighborhood meeting requirement as set out in Land Use Code Article 2, Sec. 3.

Section 4. Decision Types and Review Process.

A. The City shall decide all applications for quasi-judicial land use decision by a Type 1, Type 2 or Type 3 process. The City Administrator shall decide an application for a lot line adjustment as defined in ORS Chapter 92, an application for emergency tree removal and an application for signage that does not require consideration of a signage program for a site, by a Type 1 process. The Planning Commission shall decide an application for a residential minor partition or subdivision, for signage that includes a signage program, for tree removal except in case of an emergency and for placement of a manufactured home by a Type 2 process. The Planning Commission shall decide all other land use applications not listed in this subsection by a Type 3 process.

B. The City shall mail notice of decision and the right to appeal:

1. For a Type 1 decision, to the applicant and to any and all persons who make a written appearance on the record prior to the decision;
2. For a Type 2 decision, to the applicant, to any and all persons who make an appearance on the record (in person or in writing) and to the owners of record of property lying within 100 feet of any point on the property that is the subject of the application; and,
3. For a Type 3 decision, as required by ORS 197.763.

C. The Planning Commission and the City Council each may approve, modify, approve

with conditions or deny any application for a decision before it on original review of the application or on appeal of a decision on the application. An applicant who seeks approval with conditions shall submit the proposed conditions in writing prior to the close of the decision process below or prior to the close of the public hearing (if there is a hearing), whichever is first, and allow city staff sufficient time to respond for the condition(s) to be considered. A tie vote on an appeal affirms the decision made below.

D. An applicant for a permit (as defined in ORS 227.160) or a zone change may apply at one time for all permits or zone changes needed for a development project. The Planning Commission shall hear and decide all such combined applications under the process described in this Ordinance for a Type 3 application.

Section 5. Appeals.

A. An appeal of a Type 1, 2 or 3 decision shall be heard by the Council after notice and hearing that complies with the requirements of ORS 227.175.

B. An appeal of a decision by the City Administrator or Planning Commission:

1. Shall be in writing and signed by the appellant(s);
2. Shall state how the person is entitled to appeal;
3. Shall state the issue(s) that are the subject of the appeal;
4. Shall be received at City Hall by the close of the business day that is no later than 12 calendar days from date of the decision being appealed from; and,
5. Shall be accompanied by payment in full of an appeal fee that the Council may set from time to time in an amount intended to reimburse the city's costs for preparing for and conducting the appeal, provided that the fee for an appeal of a Type 1 decision shall be the (estimated) amount of such costs or \$250, whichever is less. All requirements for an appeal as are set out in this subsection are jurisdictional and the Council in its discretion may refuse to hear an appeal that does not comply with any of these requirements, in which case the Planning Commission's decision shall constitute the city's final decision on the application.

C. An appeal of a Type 1 or Type 2 decision shall be heard by the Council de novo. An appeal of a Type 3 decision shall be heard by the Council on the record created below. The Council may further limit testimony, argument and other evidence presented at the appeal hearing to that which the Council deems relevant to the issues raised in the notice of appeal.

D. A person who desires to submit new matter into the record of the appeal to be heard by the Council de novo shall submit any and all such matter not later than the close of business on the 7th calendar day before the day scheduled for the appeal hearing; if not, the Council may refuse to accept any and all such matter into the record. Any supplemental city staff report responsive to the new matter should be available to the public no later than 3 calendar days prior to the appeal hearing.

E. At the appeal hearing the Mayor or other presiding officer shall determine and announce the order in which persons appearing will be heard and the time allowed for

any person to present testimony, argument and other evidence and for rebuttal.

Section 6. Planning Commission To Conduct Design Review.

A. Durham Land Use Code Chapter 1, Article 2, Section 1B (Planning Commission) is amended by adding the following provisions to existing text:

“For those applications for which this Code requires site- or design review, the Design Review Board shall meet together with the Planning Commission for such time as the positions now occupied on the Design Review Board remain occupied. Vacancies that occur from time to time on the Design Review Board shall not be refilled from and after the date of this Ordinance.”

B. The jurisdiction and proceedings of the Design Review Board as provided for in Land Use Code Chapter IV shall be merged with the proceedings of the Planning Commission as provided for in this Ordinance.

Section 7. Existing Sections Repealed. Durham Land Use Code Chapter II Article 4 Sections 4, 5, 8, 9 and 10; and, Chapter VI Article 2 Section 1, Sections 2C5, 6 and 7, Section 2D, Sections 3A, 3C, and Sections 4-8; and, Chapter VI Article 3 Section 1 hereby are repealed as to any and all applications for a quasi-judicial land use decision received on and after the effective date of this Ordinance.

PASSED AND ADOPTED by the City of Durham, Oregon this 27 day of May, 2008.

First Reading: April 22, 2008
Second Reading: May 27, 2008

CITY OF DURHAM

By: _____

Gery Schirado, Mayor

ATTEST:



Roland Signett, City Administrator/Recorder

City of Durham
17160 SW Upper Boones Ferry
Durham, OR 97224



ATT: Plan Amendment Specialist
DLCD
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540