



# Oregon

Theodore R. Kubongoski, 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

10/26/2009

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Eugene Plan Amendment  
DLCD File Number 004-08A

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:** Friday, November 06, 2009

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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** Alissa Hansen, City of Eugene  
Gloria Gardiner, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative  
Bill Holmstrom, DLCD Transportation Planner

<paa> YA/l

# DLCD

## Notice of Adoption

In person  electronic  mailed

DATE  
 DEPT OF  
 STATE  
 OCT 19 2009  
 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

Jurisdiction: **City of Eugene**

Local file number: **CA 07-5**

Date of Adoption: **October 12, 2009**

Date Mailed: **October 16, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: April 3, 2008

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".

An amendment to the land use code that lowers maximum building heights within a 16 block area zoned R-3 Limited High Density Residential and R-4 High Density Residential that is located between an R-1 Low Density Residential area and the University of Oregon.

Does the Adoption differ from proposal? Please select one

No. This is a re-adoption of a previous land use code amendment that was originally adopted August 11, 2008. It was subsequently appealed to LUBA, who remanded it back to the City.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

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**DLCD file No.** \_\_\_\_\_

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

None

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Local Contact: **Alissa Hansen**

Phone: (541) 682-5508 Extension:

Address: **99 W. 10<sup>th</sup> Avenue**

Fax Number: **541-682-5572**

City: **Eugene**

Zip: **97401**

E-mail Address: **alissa.h.hansen@ci.eugene.or.us**

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## **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, or by emailing **[larry.french@state.or.us](mailto:larry.french@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 **[larry.french@state.or.us](mailto:larry.french@state.or.us)** - **Attention: Plan Amendment Specialist**.

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**COUNCIL ORDINANCE NUMBER 20439**

**COUNCIL BILL NUMBER 5009**

**AN ORDINANCE CONCERNING BUILDING  
HEIGHT IN THE UNIVERSITY AREA;  
READOPTING PROVISIONS FROM ORDINANCE  
NO. 20418 IN RESPONSE TO REMAND;  
AMENDING SECTION 9.2751 OF THE EUGENE  
CODE, 1971; AND PROVIDING AN EFFECTIVE  
DATE AND A SUNSET DATE**

**ADOPTED: October 12, 2009**

**SIGNED: October 13, 2009**

**PASSED: 8/0**

**REJECTED:**

**OPPOSED:**

**ABSENT:**

**EFFECTIVE: November 13, 2009**

ORDINANCE NO. 20439

AN ORDINANCE CONCERNING BUILDING HEIGHT IN THE UNIVERSITY AREA; READOPTING PROVISIONS FROM ORDINANCE NO. 20418 IN RESPONSE TO REMAND; AMENDING SECTION 9.2751 OF THE EUGENE CODE, 1971; AND PROVIDING AN EFFECTIVE DATE AND A SUNSET DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

**Section 1.** Subsection (3) of Section 9.2751 of the Eugene Code, 1971, is amended to revise subsection (a) and to add a subsection (c) as follows:

**9.2751**     **Special Development Standards for Table 9.2750.**

**(3) Building Height.**

- (a) Except as provided below, in the R-3 and R-4 zone, the maximum building height shall be limited to 30 feet for that portion of the building located within 50 feet from the abutting boundary of, or directly across an alley from, land zoned R-1.
  
- (c) For that area bound by Hilyard Street to the west, Agate Street to the east, East 18<sup>th</sup> Avenue to the north and East 20<sup>th</sup> Avenue to the south:
  - 1. In the R-3 zone, the maximum building height shall be limited to 35 feet for that portion of the building located within 160 feet from the abutting boundary of, or directly across an alley from, land zoned R-1.
  - 2. In the R-4 zone, the maximum building height shall be limited to 35 feet for that portion of the building located within 50 feet from the abutting boundary of, or directly across an alley from, land zoned R-1. It shall be limited to 50 feet for that portion of the building located within 175 feet from land zoned R-3, and shall be limited to 75 feet for that portion of the building located within 176 feet and 225 feet of land zoned R-3.

**Section 2.** The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971 to the provisions added, amended, or repealed herein.

**Section 3.** The legislative findings to address the June 12, 2009 remand from the Land Use Board of Appeals, attached as Exhibit A hereto, are adopted in support of this Ordinance.

**Section 4.** This Ordinance and the amendments authorized herein shall automatically sunset and be repealed on June 30, 2010. The City Recorder is requested to note the sunset date on appropriate City logs.


**Passed by the City Council this**

**Approved by the Mayor this**

**12<sup>th</sup> day of October, 2009**

**13th day of October, 2009**

  
\_\_\_\_\_  
**Acting City Recorder**

  
\_\_\_\_\_  
**Mayor**

## Findings

### Building Height Transition

**Code Amendment Eugene Code Section 9.8065 requires that the following approval criteria (in bold and italics) be applied to a code amendment:**

- (1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

***Goal 12- Transportation. To provide and encourage a safe, convenient and economic transportation system.***

The Land Use Board of Appeals, in their Final Opinion and Order for the appeal of Ordinance No. 20418, found that “[w]hile it seems unlikely to us that the prior maximum building height limits in the R-3 and R-4 zone played much a role when the city’s comprehensive plan and land use code were acknowledged as complying with Goal 12 and the TPR, we cannot be sure that it played no role in facilitating “transit oriented developments (TODs) on lands along transit routes,” as OAR 660-012-0045(5)(a) requires.” LUBA remanded for findings that address OAR 660-012-0045(5)(a).

The complete text of OAR 660-012-0045(5)(a) is provided below (in *italic bold* text):

***OAR 660-012-0045 Implementation of the Transportation System Plan***

- (5) In MPO areas, local governments shall adopt land use and subdivision regulations to reduce reliance on the automobile which:***
- (a) Allow transit-oriented developments (TODs) on lands along transit routes;***

As explained below, the regulations that set maximum building heights in the City’s R-3 and R-4 zones have played no part in the City’s representations or DLCD’s actions regarding acknowledgement for consistency with this OAR.

Prior to 2001, the Eugene Code set the maximum building height in R-3 at 40 feet, but did not set a zone-wide maximum building height in the R-4 zone. For both the R-3 and R-4 zones, however, the maximum height was limited to 25 feet for that portion of the building within 50 feet from the abutting boundary of, or directly across an alley from, any of land zoned AG, RA or R-1 (the maximum height in the AG, RA and R-1 zones was 25 feet).

A comprehensive update to the City of Eugene’s land use code was adopted in 2001. The 2001 update set new building height maximums in the R-3 and R-4 zones of 50 feet and 120 feet, respectively. For both the R-3 and R-4 zones, however, the maximum height was limited to 30 feet for that portion of the building located within 50 feet from the abutting boundary of, or directly across the alley from, land zoned R-1 Low Density Residential (the maximum height in R-1 was 30 feet).

The current (MiCAP) proposal further limits maximum building heights in the R-3 and R-4 zones within a 16 block area located south of the University of Oregon to provide a more graduated height transition between this R-3/R-4 area and the adjacent R-1 neighborhood.

There is no evidence that suggests the height provisions discussed above were adopted or relied upon to demonstrate compliance with OAR 660-12-0045(5)(a). Written findings addressing compliance with Statewide Planning Goals and the Metro Plan were prepared for the 2001 land use code update (Ordinance No. 20224). Those findings discussed numerous code provisions that demonstrated consistency with Goal 12 - Transportation. The building height maximums were not included in those findings as a basis for consistency with Goal 12. Based on those findings, the 2001 code was acknowledged as complying with Goal 12 and the TPR, with no mention of the building height maximums. The City's consistency with OAR 660-12-0045(5) was not dependent on the building height maximums.

It was actually the City's establishment of a /TD Transit Oriented Development overlay zone in 1993 under Ordinance No. 19946 that specifically addressed compliance with OAR 660-012-0045(5)(a). The 16-block area where the current (MiCAP) proposal would apply is not within the /TD Transit Oriented Development overlay zone and leaves DLCD's acknowledgement of that zone's consistency with OAR 660-012-0045(5)(a) undisturbed.

The current (MiCAP) proposal to require more graduated maximum heights in this 16-block area is consistent with, and does not have any effect on the City's current acknowledgement for consistency with Goal 12 and specifically OAR 660-012-0045(5)(a).





Planning & Development  
Planning

## NOTICE OF DECISION

City of Eugene  
99 West 10<sup>th</sup> Avenue  
Eugene, Oregon 97401  
(541) 682-5377  
(541) 682-5572 FAX  
[www.eugene-or.gov](http://www.eugene-or.gov)

October 16, 2009

On October 12, 2009, the Eugene City Council adopted an ordinance amending the land use code to change allowable building heights in the R-3 Limited High Density Residential and R-4 High Density Residential zones located between Hilyard and Agate Streets and 18<sup>th</sup> and 20<sup>th</sup> Avenues, south of the University of Oregon. Specifically, the ordinance amends section 9.2751 of the Eugene Code. The ordinance will become effective on November 13, 2009.

All decisions of the elected officials are final. Appeal of the decision to the Land Use Board of Appeals (LUBA) may be filed in accordance with ORS 197.825 ET SEQ and rules of LUBA concerning actions taken after remand.

To view the ordinance (Ordinance No. 20439) visit the following web page or contact Alissa Hansen, as provided below.

[www.eugene-or.gov/codeamendments](http://www.eugene-or.gov/codeamendments)

For additional information, please contact:

**Alissa Hansen, Senior Planner**  
City of Eugene Planning Division  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

E-mail: [alissa.h.hansen@ci.eugene.or.us](mailto:alissa.h.hansen@ci.eugene.or.us)

Phone: (541) 682-5508

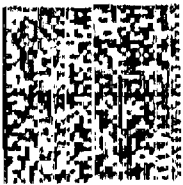


**Planning & Development  
Planning**

City of Eugene  
99 West 10th Avenue  
Eugene, Oregon 97401

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10/16/2009

97401

US POSTAGE

Attention: Plan Amendment Specialist

DLCD

635 Capital Street NE, Ste 150  
Salem, OR 97301-2540

HAJFF11 97301

