



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



NOTICE OF ADOPTED AMENDMENT

3/29/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 002-10

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: Monday, April 19, 2010

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Derrick Tokos, City of Newport
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> YA



FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

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DEPT OF

MAR 22 2010

**LAND CONSERVATION
AND DEVELOPMENT**
For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Newport**

Local file number:

Date of Adoption:

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 1/4/10

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".

Amendments were to the Temporary Structures Section of the Newport Zoning Ordinance (Section 2-2-29) to allow temporary vending carts in certain portions of the City. In addition, sign regulations in the Newport Municipal Code were amended to address temporary signage for this use and other uses, and language was added to exempt vending carts from Building Code requirements and System Development Charges.

Does the Adoption differ from proposal? Yes, Please explain below:

Language for temporary structures in conjunction with special events was removed from Section 2-2-29 and consolidated into Chapter 9.80 of the Newport Municipal Code, which contains all of the City's other provisions for special event permits.

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**

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 file No. 002-10 (18039) [16061]

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

None.

Local Contact: **Derrick I. Tokos, AICP**

Phone: **(541) 574-0626** Extension:

Address: **169 SW Coast Highway**

Fax Number: **541-574-0644**

City: **Newport**

Zip: **97365**

E-mail Address: **d.tokos@thecityofnewport.net**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

CITY OF NEWPORT
ORDINANCE NO. 2001

**AN ORDINANCE AMENDING THE NEWPORT ZONING ORDINANCE
(ORDINANCE NO. 1308, AS AMENDED) AND NEWPORT MUNICIPAL CODE
RELATING TO TEMPORARY VENDING CARTS NOT ASSOCIATED WITH
SPECIAL EVENTS AND TEMPORARY PORTABLE SIGNS
WITHIN PUBLIC RIGHTS-OF-WAY**

Findings:

1. Section 2-2-29 of the City of Newport Zoning Ordinance (No. 1308, as amended) contains criteria for allowing short-term uses that are temporary in nature, where no permanent improvements are made to a site. Such uses are subject to a temporary structures permit.
2. Bonnie Serkin, on behalf of Landwaves Inc., submitted an application proposing amendments to Section 2-2-29 to allow temporary vending carts in certain portions of the city. The request also includes amendments to Chapter 10.10 (Signs), Chapter 11.05 (Buildings), and Chapter 12.15 (System Development Charges) of the Newport Municipal Code. Changes to the sign code include an allowance for portable signs within rights-of-way in portions of South Beach for more than five consecutive days and more than 10 total calendar days and clarify that one portable sign is allowed per business rather than just one sign per property. Amendments to the building and system development charges section of the code add exemptions for vending carts, considering that they are not permanently affixed to a foundation and are temporary in nature.
3. In conjunction with this request, standards for the placement of temporary structures in conjunction with special events are being deleted from Section 2-2-29 of the Zoning Ordinance. This is being done because the standards have been incorporated into Chapter 9.80 of the Newport Municipal Code.
4. The Newport Planning Commission and Planning Commission Citizens Advisory Committee reviewed the proposed changes to the Newport Zoning Ordinance and Newport Municipal Code (Newport File No. 13-Z-09) at a work session on January 11, 2010. Following a public hearing on February 22, 2010, the Planning Commission voted unanimously to recommend the adoption of the proposed amendments.
5. The City Council held a public hearing on March 15, 2010 regarding the question of the proposed revisions (Newport File No. 13-Z-09), and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
6. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

Based on these findings,

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

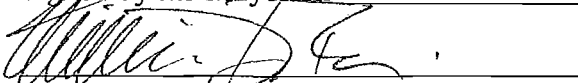
Section 1. Section 2-2-29 of Ordinance No. 1308 (as amended), Temporary Structures Permits, is repealed in its entirety and replaced with a new Section as shown in Exhibit "A".

Section 2. Section 10.10.040, Signs in Public Rights-of-Way, Section 10.10.070, Partially Exempt Signs, Chapter 11.05, Building Codes, and Section 12.15.060, Exemptions, of the Newport Municipal Code are amended as shown in Exhibit "B".

Section 3. This ordinance shall take effect 30 days after passage.


Date adopted on initial vote and read by title only: March 15, 2010

Signed by the Mayor on March 16, 2010.



William D. Bain, Mayor

ATTEST:



~~Margaret M. Hawker, City Recorder~~
Cheryl Atkinson, Exec. Assistant
Office of City Manager/City Attorney

Exhibit A to Ordinance No. 2001, Amending the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) to provide criteria for temporary vending carts not associated with special events, and to delete standards for temporary structures in conjunction with special events.

2-1-1.101. Definitions. As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

* * *

Temporary Vending Carts. A trailer or other vehicle that does not exceed 16 feet in length, has functional wheels, an axle for towing, is not attached in a permanent manner to a permanent foundation and is self contained for sanitary sewer. A temporary vending cart may be mobile (i.e. does not remain stationary for longer than a few hours), or remain stationary, as permitted by Section 2-2-29.027.

* * *

Section 2-2-29. TEMPORARY STRUCTURES PERMITS *

2-2-29.005. Purpose. The purpose of this section is to provide some allowance for short-term uses that are truly temporary in nature, where no permanent improvements are made to the site, and the use can be terminated and removed immediately. Temporary activities include special events as defined in NMC 9.80.010, temporary living quarters, construction trailers, leasing offices, vending carts, kiosks, storage buildings, and similar structures.

2-2-29.010. Special Events Structures. Placement of special events structures is regulated under Chapter 9.80 of the Newport Municipal Code.

2-2-29.015. Temporary Living Quarters. Notwithstanding any other restrictions and prohibitions in this code, a recreational vehicle may be used as a temporary living quarters subject to the following conditions:

- A. The request for temporary living quarters must be in conjunction with a valid, active building permit.
- B. The time limit shall be no longer than one (1) year from issuance. After the expiration of the time limit, the recreational vehicle used for the temporary living quarters must no longer be used for on-site living purposes.
- C. The recreational vehicle used as the temporary living quarters must be self-contained for sanitary sewer.
- D. Temporary living situations for non-residential projects may use a job shack or other such structure instead of a recreational vehicle as the living quarters and may have a portable toilet instead of a self-contained unit.
- E. The location of the temporary living quarters on the site shall satisfy the vision clearance requirements as set forth in section 2-4-3 of the zoning code.
- F. Prior to the issuance of a temporary living quarters permit, the applicant shall sign an agreement that the applicant shall comply with the provisions of this subsection.

2-2-29.025. Temporary Structures for Other Than Special Events. Notwithstanding any other restrictions and prohibitions in this code, a temporary structure not associated with a special event may be erected subject to the following:

- A. The permit, if approved, shall be issued for a period not to exceed two (2) years. Upon like application and approval, the permit may be renewed for up to an additional one (1) year.
- B. Temporary structures are limited to commercially and industrially zoned properties.
- C. No permanent changes will be made to the site in order to accommodate the temporary structure.
- D. Permission is granted by the property owner.
- E. Sanitary facilities will be made available to the site.
- F. The structure does not interfere with the provision of parking for the permanent use on the site.
- G. The structure satisfies the vision clearance requirements of the zoning code.
- H. Approval is obtained from the City Building Official.
- I. A bond or cash deposit for the amount required to remove the temporary structure, if not removed in the required time frame, shall be placed in an interest bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

2-2-29.030. Temporary Vending Carts. Notwithstanding any other restrictions and prohibitions in this code, a temporary vending cart, not associated with a special event, may be located within the City of Newport subject to the following:

- A. Temporary vending carts may be located on commercially zoned property that is at least ½ mile from a permanent eating and drinking establishment.
- B. Temporary vending carts and any accessory improvements (such as seating) are limited to privately owned properties, and may encroach onto public property or public right-of-way only if the City consents to the encroachment as provided in Chapter 4.10 of the Newport Municipal Code.
- C. The items available for sale from temporary vending carts are limited to food and beverages for immediate consumption. Requests to have a different item or service considered shall be submitted, in writing, to the City Manager, who shall determine if the item or service:
 - (1) Can be vended from a regulation size temporary vending cart;
 - (2) Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;
 - (3) Involve a short transaction period to complete the sale or render the service;
 - (4) Not cause undue noise or offensive odors; and

- (5) Be easily carried by pedestrians.
- D. A permit for a temporary vending cart, if approved, shall be issued for a period not to exceed two (2) years. Upon expiration of a permit, a temporary vending cart must immediately cease operation, and must be permanently removed within seven (7) days.
- E. At least one trash and one recycling receptacle will be made available to the public.
- F. The City of Newport receives a signed statement that the permittee shall hold harmless the City of Newport, its officers and employees and shall indemnify the City of Newport, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activities of the permittee. Permittee shall furnish and maintain public liability, products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations of the permittee. Such insurance shall provide coverage of not less than \$1,000,000 per occurrence. Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the City of Newport, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City Recorder of the City of Newport.
- G. A bond or cash deposit for the amount required to remove the temporary vending cart, if not removed in the required time frame, shall be placed in an interest bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

2-2-29.035. Permits Not Transferable Unless Approved. Permits authorized by this section are not transferable to another person or location unless approved by the Community Development Director.

2-2-29.040. Approval Authority. Unless otherwise provided, placement of temporary structures is subject to review and approval by the Community Development Director using a Type I decision making process.

2-2-29.045. Application Submittal Requirements. In addition to a land use application form with the information required in Section 2-6-1.020, applications for temporary structures shall include the following:

- A. A site plan, drawn to scale, showing:
- (1) The proposed location of the temporary structure, seating areas, and amenities, as applicable.
 - (2) Existing buildings.
 - (3) Existing parking.
 - (4) Access(es) to the parking areas.
 - (5) Any additional structures, seating areas, and amenities associated with the temporary structure.
 - (6) The location and size of trash receptacles.
 - (7) Utilities.

- (8) Existing signs and signs associated with the temporary structure.
 - (9) Temporary structure building elevations or photos.
 - (10) The location of drive-up windows (if applicable).
- B. A signed agreement stating that the applicant is aware of the limitations and conditions attached to the granting of the permit and agrees to abide by such limitations and conditions.
 - C. A description of the types of items sold or services rendered, if applicable.
 - D. A valid copy of all necessary permits required by State or local health authorities, and other required licenses or permits, such as business license or sign permit obtained by the applicant and maintained on site.

2-2-29.050. Fire Marshal Inspection. Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any temporary structure to assure conformance with the provisions of the Fire Code.

2-2-29.055. Construction Trailer Exemption. Construction trailers located on the site upon which construction is to occur that are used during the course of the construction project are exempt from the process outlined in this section and may be permitted at the time of building permit approval provided said structures comply with the building code and the vision clearance requirements of the zoning code.

Exhibit B to Ordinance No. 2001, Amending the Newport Municipal Code to clarify criteria for portable signs within the public right-of-way and establishing exemptions to building code and system development charges for temporary vending carts not associated with special events.

CHAPTER 10.10 SIGNS

10.10.040 Signs in Public Rights-of-Way

* * *

B. Permits are required for temporary or portable signs within rights of way and may be issued only if authorized in this section.

* * *

2. Permits for portable signs within rights of way for more than five consecutive days and more than 10 total calendar days in a year may be granted if the portable sign is placed adjacent to a business location operated by the permittee, the sign is removed at all times when the business is not open, and the sign is within the following areas:

* * *

f. In that portion of the South Beach area of Newport, east of Highway 101, west of Kings Slough, south of the intersection of Highway 101 and 40th Street and north of the intersection of Highway 101 and 50th Street.

10.10.070 Partially Exempt Signs

* * *

E. One temporary portable sign per business placed on private property is permitted. Temporary portable signs shall be made of permanent, durable materials and shall be maintained in a good condition. Temporary signs (portable and attached) in the aggregate may not exceed 24 square feet for all display area surfaces on a single property. Temporary signs shall not be included in the calculation of total maximum display area. All portable signs shall be weighted, anchored or constructed so that they will not move or collapse in the event of wind, or otherwise create a hazard.

CHAPTER 11.05 BUILDING CODES

* * *

11.05.180 Exemptions

Temporary Vending Carts that are permitted in accordance with Newport Zoning Code and Ordinance section 2-2-29.027 are not permanently attached to a foundation, they are considered vehicles (not a building or structure), and the Oregon Structural Specialty Code does not apply.

CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

* * *

12.15.060 Exemptions

A. The following actions are exempt from payment of SDCs:

* * *

4. Temporary Vending Carts that are permitted in accordance with Newport Zoning Code and Ordinance section 2-2-29.027

