



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

02/14/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 007-10

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, February 28, 2011

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: Colin Stephens, City of Bend
Gloria Gardiner, DLCD Urban Planning Specialist

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FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

FEB 08 2011

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 Bend**

Local file number: **10-292**

Date of Adoption: January 19, 2011

Date Mailed: *February 7*
January 25, 2011

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: Sept 21, 2010

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".

Development Code amendment to eliminate point of service government uses intended to serve the entire city as a permitted use in the Convenience Commercial zoning district.

Does the Adoption differ from proposal? Please select one

No

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. _____

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

Local Contact: **Colin Stephens**

Phone: **(541) 693-2119** Extension:

Address: **710 NW Wall St**

Fax Number: - -

City: **Bend**

Zip: **97701**

E-mail Address: **cstephens@ci.bend.or.us**

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 the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

ORDINANCE NO. NS-2155

AN ORDINANCE AMENDING THE BEND DEVELOPMENT CODE TABLE 2.2.300 TO ELIMINATE GOVERNMENT POINT OF SERVICE USES IN THE CONVENIENCE COMMERCIAL ZONE

Findings:

- A. The City of Bend initiated the application on September 21, 2010. Timely and sufficient notice pursuant to Section 4.1.515 of the Bend Development Code was provided.
- B. On November 8, 2010, the Bend Planning Commission held a public hearing to accept testimony on the request. At the conclusion of the hearing they voted to recommend the proposed amendment be approved by the City Council.
- C. The Bend City Council held a public hearing on December 15, 2010, to accept evidence and consider the Planning Commission's affirmative recommendation. The City Council found that the Text Amendment satisfies the criteria for approval contained at Section 4.6.200 of the Bend Development Code. This general finding is further supported by specific findings of fact contained in Exhibit B of this ordinance.

Based on these findings, the City of Bend ordains as follows:

Section 1 the Bend Development Code is amended by changing Table 2.2.300 to eliminate government point of services uses from the Convenience Commercial zoning district. Table 2.2.300 shall be amended as depicted in Exhibit A.

Read for the first time the 15th day of December 2010.

Read for the second time the 19th day of January 2011.

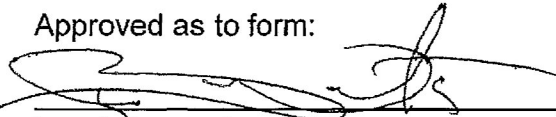
Placed upon its passage the 19th day of January 2011.

YES: 6


NO: 1

Authenticated by the Mayor the 19th day of January, 2011.

Approved as to form:



Legal Counsel



Jeff Eager, Mayor

ATTEST:



Patricia Stell, City of Bend Recorder

Exhibit A

**Proposed Amendment to Bend Development Code
Table 2.2.300**

Public and Institutional	CBD	CC	CL	CG
Government - point of service <u>intended to serve the entire city</u> (e.g., city hall, <u>main library main post office, main Department of Motor Vehicles service center</u>)	P	P N	P	P
Government – branch service <u>intended to serve a portion of the city</u> (e.g., <u>branch library or branch post office</u>)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

New text is underlined; text to be removed is in strike-through

Commercial Use Table in its Entirety, With Proposed Amendments

Table 2.2.300 - Permitted Land Uses

Land Use	CBD	*CC	CL	CG
Residential				
Existing Residential uses	P	P	P	P
*New Residential uses	P	P	P	P
*Temporary Housing	C	N	C	C
Commercial				
Retail Sales and Service				
- building footprint less than 50,000 square feet	P	P	P	P
- building footprint greater than 50,000 square feet	P	N	P	P
Retail Sales and Service (*auto dependent)	N	C	P	P
Retail Sales and Service (*auto oriented)	C	C	P	P
Restaurants/Food Services				
- with *drive-through 300 sq ft or less	C	C	P	P
- without drive-through	P	P	P	P
Offices and Clinics	P	P	P	P
Production Businesses (e.g. IT support, Radio/Television Broadcast)	N	N	C	P
Convention Centers/Meeting Rooms	C	N	P	P
Lodging (hotels, motels, *bed and breakfast inns, *vacation rentals, boarding houses)	P	P	P	P
Hospitals	N	N	P	P
Commercial and Public Parking	P	P	P	P
Commercial Storage				
- enclosed in building and on an upper story	C	P	P	P
- not enclosed in building	N	N	P	P
- enclosed in building on ground floor (i.e., mini-storage)	N	N	C	P
Entertainment and Recreation				
- enclosed in building (e.g., theater, fitness facility)	P	P	P	P
- not enclosed (e.g., amusement)	N	N	C	P
Time Share Units	C	C	C	C
Trailer Park / Campground	N	N	C	C
Mortuary	N	N	P	P

Wholesale Sales (more than 75% of sales are wholesale)	N	N	P	P
Veterinary Clinic (small animal)	C	P	P	P
*Mixed Use (residential with commercial/civic/industrial) Mixed-use developments shall be subject to the use limitations prescribed for the respective individual uses	P	P	P	P
Public and Institutional				
Government - point of service <u>intended to serve the entire city</u> (e.g., city hall, <u>main library main post office, main Department of Motor Vehicles service center</u>)	P	P N	P	P
Government – branch service <u>intended to serve a portion of the city</u> (e.g., branch library or branch post office)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Government – limited point of service; (e.g., public works yards, vehicle storage etc.)	C	C	C	C
Parks and Open Space	P	P	P	P
Schools -- *pre-school, daycare, and primary, secondary -- colleges, and vocational schools	P P	P N	P P	P P
*Clubs and Places of Worship	C	C	C	C
Industrial				
*Manufacturing and Production - greater than 5,000 sq. ft. - less than 5,000 sq. ft. with retail outlet	N P	N P	C P	N P
Warehouse	N	N	P	P
Transportation, Freight and Distribution	N	N	C	P
Industrial Service (e.g., cleaning, repair)	N	N	P	P
Manufactured Home Sales	N	N	C	P
Lumber / Building Supplies	N	N	C	P
*Hydroelectric facilities	C	N	C	C

Exhibit B

Findings of Fact Legislative Code Amendment PZ10-292

Procedural Findings:

The application was initiated September 21, 2010. Notice of proposed amendment was provided to the Department of Land Conservation and Development (DLCD) on September 21, 2010. Notification of the public hearing before the Bend Planning Commission was printed in the October 19, 2010 edition of the Bend Bulletin. The Planning Commission held a public hearing on November 8, 2010 and voted in favor of recommending approval to the City Council. Notification of the public hearing before the City Council was printed in the November 27, 2010 edition of the Bend Bulletin. The City Council held a first reading on December 15, 2010 and a second reading on January 19, 2010.

Criteria of Approval:

The criteria applied to legislative plan amendments are found within the Bend Development Code (BDS) Chapter 5, Section 4.6.200. The criteria are:

1. *The request is consistent with the applicable State land use law;*
2. *The request is consistent with the applicable Bend Area General Plan goals and policies;*
3. *The applicant can demonstrate a public need or benefit for the proposed amendment.*

Application of the Criteria:

1. **The request is consistent with the applicable State land use law;**

FINDING: Because the proposal applies to a commercial district, there may be a perception that Statewide Planning Goal 9, *Economic Development*, applies. An analysis of Goal 9 is provided below. All other Goals either do not apply to this application or are satisfied through the City's comprehensive plan or associated functional plans (note: Oregon Administrative Rule (OAR) 660-012, which implements Goal 12, is addressed below).

Statewide Planning Goal 9 states that its objective is "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." OAR 660-009 implements Goal 9. The Rule requires the City to maintain its comprehensive plan and land use regulations to provide adequate opportunities for a variety of economic activities. In Bend, the purposes of Goal 9 and OAR 660-009 are achieved, in part, through the recently Ordinance NS-2155

approved General Plan amendments associated with the UGB expansion. This text amendment does not materially change the uses allowed in the CC zone or the findings related to economic development adopted in support of the General Plan. By continuing to allow government point of services that serve part of the city, the proposal is limited to the scale of the use, not the use in its entirety. It brings the use into consistency with the description of the CC zone contained in the General Plan. Further, government uses were not considered in the projected needs for the city's inventory of employment lands. For these reasons this criterion has been met.

There are no other State of Oregon goals, rules or statutes applicable to this ordinance.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDING: The Bend Area General Plan is a broad policy document which provides little direction on the scope of government uses that should be allowed in the commercial zones. There are no commercial policies within Chapter 6 that are applicable to this proposal. However, *Public Facilities and Services Policy 31* addresses public buildings. It reads:

Public buildings and facilities should be located so as to provide convenient public use and to provide maximum service for the greatest economy. Governmental offices should locate downtown when practicable. Other governmental facilities, reservoirs, landfills and correctional facilities should be located in areas with good public access to principal streets.

The CC district is dispersed throughout the city, much more so than the other commercial districts which tend to be located in the central part of the city and along major transportation corridors. The proposal removes the CC district, which can be located far from downtown, from consideration for some government offices. Therefore, the amendment is consistent with this policy and meets criterion number two.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: The proposed amendment will bring the CC district into alignment with the General Plan's intent of providing a zoning district that allows uses that meet the frequent needs of nearby residential area for small-scale service uses. Because it is a public benefit to have zoning districts that are consistent with locally adopted comprehensive plans, the proposal meets this criterion.

4.6.600 Transportation Planning Rule Compliance.

Ordinance NS-2155

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

While this proposal is not a development application, Bend Development Code section 4.6.200 states that section 4.6.600 applies to legislative amendments. OAR 660-012-0060 requires amendments to a land use regulation to mitigate any impacts to the transportation infrastructure if it is determined that there is a "significant effect" as defined by the Rule.

A significant effect occurs when the proposal will:

(a) Change the functional classification of an existing or planned transportation facility;

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

FINDING: Because the proposed text amendment does not cause any of the events described in OAR 660-012-0060(1)(a)(b) or (c) to occur, there is no significant effect. Therefore, this criterion is satisfied.



CITY OF BEND
COMMUNITY DEVELOPMENT DEPARTMENT
710 NW WALL STREET
BEND, OR 97701

TO:

DLCD
Attn: Plan Amendment Specialist
635 Capitol St NE, Ste 150
Salem OR 97301-2540

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