



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

06/27/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Salem Plan Amendment
DLCD File Number 005-11

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, July 08, 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: Bryce Bishop, City of Salem
Gloria Gardiner, DLCD Urban Planning Specialist
Steve Oulman, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

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

In person electronic mailed

DEPT OF

JUN 20 2011

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Salem**

Local file number: **CA11-02**

Date of Adoption: **6/13/2011**

Date Mailed: **6/17/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: **3/31/2011**

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 to Salem Revised Code (SRC) Chapter 300 (Procedures for Land Use Applications and Legislative Land Use Proposals) clarifying the public notice requirements applicable to Type IV land use applications and legislative land use proceedings.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from: **NA**

to:

Zone Map Changed from: **NA**

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. 005-11 (18770) [16680]

DLCD file No. _____

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

Local Contact: **Bryce Bishop, Planner II**

Phone: (503) 588-6173 Extension: 7599

Address: **555 Liberty St SE, Room 305**

Fax Number: **503-588-6005**

City: **Salem**

Zip: **97301-**

E-mail Address: **bbishop@cityofsalem.net**

B.J.B.

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certain Type IV applications, pursuant to ORS 197.610. Notice to the Oregon Department of Land Conservation and Development shall be provided as follows:

(A) The City shall mail notice to the Oregon Department of Land Conservation and Development not less than forty-five days prior to the first evidentiary public hearing. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice to the Oregon Department of Land Conservation and Development shall be provided on forms provided by the Oregon Department of Land Conservation and Development. The notice shall be accompanied by information of sufficient detail to convey the nature and effect of the application and approval being sought, and the certificate of mailing of the notice.

(2) **Mailed Notice.** Mailed notice shall be provided as follows:

(A) **City Applicant Initiated Applications.**

(i) Initial Public Hearing. When a Type IV application is City applicant initiated, the City shall mail notice of the initial evidentiary hearing ~~not more than forty but not less than a minimum of~~ twenty days prior to the hearing. ~~The City shall mail notice of the final hearing a minimum of ten days prior to the hearing.~~ Affidavits of mailing shall be prepared and made part of the file.

Notice of ~~both~~ the initial public hearings shall be mailed to:

- (aa) The applicant(s) and/or authorized representative(s);
- (bb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;
- (cc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (dd) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (ee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;
- (ff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City; and

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(gg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park.

(ii) Subsequent Public Hearings. The City shall mail notice of a subsequent public hearing, including, but not limited to, a final hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

(aa) The applicant(s) and/or authorized representative(s);

(abb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;

(acc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(add) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(aee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(aff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;

(agg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park;

(aih) Any group or individual who submitted testimony for the record prior to the close of the initial public hearing; and

(aii) Any group or individual who requested notice of the initial decision of the Review Authority making recommendation to the City Council.

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(B) Applicant City Initiated Applications.

(i) Initial Public Hearing. When a Type IV application is applicantCity initiated, the City shall mail notice of the initial evidentiary hearing a minimum of twenty days prior to the hearing. The City shall mail notice of the final public hearing a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of ~~both~~ the initial public hearings shall be mailed to:

- (aa) The owner(s) or contract purchaser(s) of record of the subject property;
- (bb) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (cc) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (dd) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;
- (ee) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
- (ff) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park.

(ii) Subsequent Public Hearings. The City shall mail notice of any subsequent public hearing, including, but not limited to, a final public hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

- ~~(i) The applicant(s) and/or authorized representative(s);~~ (iiaa) The owner(s) or contract purchaser(s) of record of the subject property;
- (iiibb) Any City-recognized neighborhood association whose boundaries

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- (viii) A list of the approval criteria by name and code section;
- (viii) The date, time, and place of the public hearing;
- (ix) A statement that the application and/or all documents and evidence submitted are available for review, and that copies can be obtained at a reasonable cost;
- (ix) A brief summary of the decision making process for the application;
- (ix) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (ix) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, or in writing, shall be entitled to appeal;
- (ix) A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;
- (ix) A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;
- (ix) For the initial public hearing, a statement that subsequent to the close of the hearing a recommendation will be forwarded to the City Council; and for the final public hearing a statement that subsequent to the close of the hearing notice of the decision will be mailed to the applicant, if applicable, the property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested notice of the decision; and
- (ix) The name and contact information for the staff case manager.

(3) **Posted Notice.** Posted notice is required for Type IV applications. Posted notice shall be provided for each public hearing as follows:

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(A) The applicant, or City, if application is City-initiated, shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the public hearing. The notice shall remain in place through the day of the public hearing. An affidavit of posting shall be filed no later than five days after the date of the original posting.

(B) Notice shall be posted on each street frontage of the subject property in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.

(C) Posted notice shall be on signs prepared by the Planning Administrator.

(D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.

(E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days in an undamaged and reusable condition.

(dc) Application Review and Staff Report. Staff shall review the application and written comments and evidence submitted prior to each public hearing and prepare staff reports summarizing the application, comments received to-date, and the relevant issues associated with the application. Each staff report shall make a recommendation to the Review Authority. The staff reports shall be made available to the public for review a minimum of seven days prior to each public hearing.

(ed) Public Hearings. An initial evidentiary public hearing shall be held before the applicable Review Authority. The purpose of the initial evidentiary public hearing is for the Review Authority to receive evidence and testimony on the application and to forward a recommendation to the City Council. A final public hearing shall be held before the City Council. The purpose of the final public hearing before the City Council is to receive additional evidence and testimony and the recommendations of the Review

1 Authority and staff and to make a final decision on the application. Each hearing shall be
2 conducted as provided in SRC 300.900.

3 **(fe) Recommendation.** Subsequent to the close of the initial public hearing, the Review
4 Authority shall make a recommendation to approve, approve with conditions, or deny the
5 application, based upon the facts contained in the record and according to the applicable
6 standards and criteria. The recommendation of the Review Authority shall be a written
7 order that shall include:

- 8 (1) A list of the approval criteria by section number;
- 9 (2) A statement of the facts relied upon by the Review Authority in making its
10 recommendation. The Review Authority may direct the party whose position is
11 adopted to prepare the statement of facts, or adopt or incorporate a staff report or
12 written findings prepared by any party to the proceeding into the order;
- 13 (3) A statement of conclusions based on the statement of facts; and
- 14 (4) The recommendation of the Review Authority.

15 **(gf) Notice of Recommendation.** Notice of the recommendation shall be mailed within
16 seven days from the date the Review Authority adopts its order. An affidavit of mailing
17 shall be prepared and made part of the file.

- 18 (1) Notice of recommendation shall be mailed to:
 - 19 (A) The applicant(s) and/or authorized representative(s), if applicable;
 - 20 (B) The owner(s) or contract purchaser(s) of record of the subject property;
 - 21 (C) Any City-recognized neighborhood association whose boundaries include, or
22 are adjacent to the subject property;
 - 23 (D) Any group or individual who submitted testimony prior to the close of the
24 public hearing;
 - 25 (E) Any governmental agency which is entitled to notice by law or under an
26 intergovernmental agreement with the City, and any governmental agency which
27 submitted testimony prior to the close of the public hearing; and
 - 28 (F) Any community organizations, agencies, or individuals who submitted
29 written requests for notice of the recommendation.

- 30 (2) Notice of recommendation shall include:

- 1 (A) A brief description of the application;
- 2 (B) A description of the site sufficient to inform the reader of its location,
- 3 including site address, if available, map and tax lot number, and the
- 4 comprehensive plan designation, and zoning;
- 5 (C) A brief summary of the recommendation;
- 6 (D) A statement of the facts relied upon by the Review Authority in making its
- 7 recommendation;
- 8 (E) A brief statement explaining the next steps in the Type IV application
- 9 process; and
- 10 (F) A statement that the complete case file is available for review. The notice
- 11 shall state where the case file is available and the name and telephone number of
- 12 the staff case manager to contact about reviewing the case file.

13 **(hg) Decision.** Subsequent to the close of the final public hearing, the City Council shall
14 approve, approve with conditions, or deny the application, taking into consideration the
15 recommendations of the Review Authority and staff; and based upon the facts contained
16 within the record and according to the applicable standards and criteria; or refer the
17 matter back to the Review Authority for further consideration. The decision of the City
18 Council shall be a written order that shall include:

- 19 (1) A list of the applicable approval criteria by section number;
- 20 (2) A statement of the facts relied upon by the City Council in making its decision.
21 The City Council may direct the party whose position is adopted to prepare the
22 statement of facts, or adopt or incorporate a staff report or written findings prepared
23 by any party to the proceeding into the order;
- 24 (3) A statement of conclusions based on the statement of facts; and
- 25 (4) An order approving, approving with conditions, or denying the application.

26 **(jh) Notice of Decision.** Notice of the decision shall be mailed within seven days from
27 the date the City Council adopts its written order. An affidavit of mailing shall be
28 prepared and made part of the file.

29 (1) Notice of decision shall be mailed to:

- 30 (A) The applicant(s) and/or authorized representative(s), if applicable;

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- (B) The owner(s) or contract purchaser(s) of record of the subject property;
- (C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to the subject property;
- (D) Any group or individual who submitted testimony for the record prior to the close of the public hearing;
- (E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;
- (F) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision to the City; and
- (G) The Oregon Department of Land Conservation and Development for decisions which required initial notice to the Oregon Department of Land Conservation and Development.

(2) Notice of decision shall include:

- (A) A brief description of the application;
- (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and the comprehensive plan designation and zoning;
- (C) A brief summary of the decision, and conditions of approval, if any;
- (D) A statement of the facts relied upon by the City Council in making its decision;
- (E) The date the City Council's decision becomes the City's final decision;
- (F) The date, time, and place by which an appeal must be filed and where further information may be obtained concerning the appeal process; and
- (G) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(j) Appeals. The decision of the City Council on a Type IV application shall become the City's final decision on the date when written notice of the decision is mailed to

1 persons entitled to notice of the decision. Appeals of Type IV applications are to the
2 Oregon Land Use Board of Appeals.

3 ~~(k)~~ **Expiration of Approval.** Approval of a Type IV application does not expire.

4 **Section 2.** SRC 300.1100 is amended to read as follows:

5 **300.1100. General Description.** ~~Legislative procedures apply to legislative land use~~
6 ~~decisions made by the City Council involving the creation, revision, or implementation of~~
7 ~~broad public policy and generally affecting more than one property owner or a large number~~
8 ~~of individual properties.~~ Legislative land use proceedings decisions include proposals to
9 amend amendments to the text of the Salem Area Comprehensive Plan, the City's land use
10 regulations, and large scale changes to the Salem Area Comprehensive Plan and zoning
11 maps, and involve the creation, revision, or implementation of broad public policy and
12 generally affecting more than one property owner or a large number of individual properties.
13 ~~Legislative procedures follow a legislative process where~~ The final action decision in a
14 legislative land use proceeding is the enactment of an ordinance enacted by the City Council.

15 **Section 3.** SRC 300.1110 is amended to read as follows:

16 **300.1110. Legislative Procedure.**

17 **(a) Initiation.** Legislative land use proceedings may be initiated by the City Council,
18 Planning Commission, Historic Landmarks Commission, or staff.

19 (1) The City Council may initiate a legislative land use proceeding by the adoption of
20 a resolution, which shall state whether the matter is to be referred to another Review
21 Authority for public hearing and recommendation.

22 (2) The Planning Commission or Historic Landmarks Commission may initiate a
23 legislative land use proceeding by the adoption of a resolution referring the matter to
24 public hearing for review and recommendation to the City Council.

25 (3) Staff may initiate a legislative land use proceeding by preparing an ordinance bill
26 and placing the ordinance on the City Council agenda for first reading. The City
27 Council may schedule a public hearing on the ordinance bill, may refer the ordinance
28 bill to public hearing before the Planning Commission or Historic Landmarks
29 Commission, as applicable, for its review and recommendation, may refer the
30 ordinance to a subcommittee for further review, prior to holding a public hearing, or

1 may decline to advance the ordinance to second reading.

2 **(b) Concurrency Requirement.** The Comprehensive Plan requires concurrent review
3 and action on certain legislative land use proceedings initiated by one jurisdiction sharing
4 the Salem/Keizer Urban Growth Boundary be coordinated with one or more of the other
5 regional jurisdictions. The regional jurisdictions within the Salem/Keizer Urban Growth
6 Boundary include the City of Salem, the City of Keizer, Marion County, and Polk
7 County. Land use decisions identified by the Salem Area Comprehensive Plan as
8 requiring concurrence are defined as “Regional Planning Actions” and “Non-Regional
9 Planning Actions.” The review of regional and non-regional planning actions shall be
10 conducted as provided in the Salem Area Comprehensive Plan.

11 **(c) Public Notice.** Public notice is required for public hearings in legislative land use
12 proceedings. The purpose of this notice is to provide citizens, affected property owners
13 and other interested parties with the opportunity to submit written comments concerning
14 the proposal and to invite participation in the public hearing process. ~~Public notice is~~
15 ~~required for public hearings on a legislative land use proposal.~~

16 **(1) Oregon Department of Land Conservation and Development Notice.** Notice
17 to the Oregon Department of Land Conservation and Development is required for all
18 legislative land use proceedings. The City shall mail notice to the Oregon
19 Department of Land Conservation and Development a minimum of forty-five days
20 prior to the first evidentiary public hearing on the proposal. An affidavit of mailing
21 shall be prepared and made part of the file. Notice shall be on forms provided by the
22 Oregon Department of Land Conservation and Development and be accompanied by
23 information of sufficient detail to convey the nature and effect of the proposal; and
24 the certificate of mailing of the notice.

25 **(2) Mailed Notice.**

26 **(A) First Evidentiary Hearing.** The City shall mail notice of the first
27 evidentiary public hearing ~~on a legislative land use proceeding the proposal~~ not
28 more than forty days, but not less than twenty days, prior to the first evidentiary
29 hearing. ~~The City shall mail notice of final public hearing before the City~~
30 ~~Council, if applicable, a minimum of ten days prior to the hearing. Affidavits of~~

1 mailing shall be prepared and made part of the file.

2 ~~(B)~~ Notice of ~~each~~ the first evidentiary public hearing shall be mailed to:

3 (i) The Boards of Commissioners of Marion and Polk Counties;

4 (ii) All City-recognized neighborhood associations;

5 (iii) The owner(s) or contract purchaser(s) of record of each property that will
6 be rezoned, as defined by ORS 227.186(9), in order to comply with the
7 proposal, if adopted, the subject properties for comprehensive plan and zone
8 code text amendments which may affect the permissible uses of land;

9 (iv) The Oregon State Department of Parks and Recreation for all
10 comprehensive plan and zone code text amendments relating to the goals and
11 policies of the Willamette River Greenway and the Willamette Greenway
12 Zone; and for all proposed modifications to the boundaries of such zone;

13 (v) The Oregon State Department of Geology and Mineral Resources for all
14 zone code text amendments relating to mining, quarry operations, or mineral
15 aggregate extraction;

16 (vi) The Capitol Planning Commission for every zone code text amendment
17 relating to a Public zone;

18 ~~(vii)~~ The Federal Insurance Administration, U.S. Department of Housing
19 and Urban Development, for all zone code text amendments relating to the
20 Flood Plain Overlay Zones; and for all proposed modifications to the
21 boundaries of such zones;

22 ~~(viii)~~ The tenants of manufactured home or mobile home parks for
23 comprehensive plan map and/or zone changes affecting all or part of a
24 manufactured home or mobile home park;

25 ~~(ix)~~ Any governmental agency which is entitled to notice by law or under
26 an intergovernmental agreement with the City; and

27 ~~(x)~~ Any community organizations, public utilities, agencies, or individuals
28 who have submitted written requests for notification of legislative land use
29 proceedings.;

30 ~~(x)~~ Any group or individual who submitted testimony prior to the close of

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~~first evidentiary hearing; and~~

~~(xi) Any group or individual who requested notice of decision of the first evidentiary hearing.~~

(B) Subsequent Public Hearings. The City shall mail notice of each subsequent evidentiary public hearing in a legislative land use proceeding a minimum of ten days prior to the evidentiary hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of each subsequent evidentiary hearing shall be mailed to:

(i) Any group or individual who submitted testimony prior to the close of first evidentiary hearing.

(ii) All City-recognized neighborhood associations;

(iii) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and

(iv) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification of subsequent evidentiary hearings.

(C) Mailed notice of a public hearing shall include:

~~(i) The information required under ORS 227.186 for legislative land use proposals affecting the permissible uses of land; such information shall be provided with the initial notice of public hearing on the proposal sent to owners or contract purchasers of record of property which may be affected;~~

~~(ii) A concise description of the legislative land use proposal;~~

~~(iii) A map identifying the property affected by the legislative land use proposal, if applicable, in relation to major streets or other landmarks;~~

~~(iv) A list of the applicable standards or criteria;~~

~~(v) The date, time, and location of the public hearing;~~

~~(vi) A brief summary of the decision making process;~~

~~(vii) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;~~

~~(viii) A statement that all interested persons may appear either in person or~~

1 with representation by an attorney and provide testimony and that only those
2 participating at the hearing, in person or by submission of written testimony,
3 have the right to appeal the decision;

4 ~~(xviii)~~ A statement that a copy of the staff report with recommendation will
5 be available for inspection at no cost at least seven days prior to the hearing,
6 and that copies will be provided at reasonable cost;

7 (ix) The information required under ORS 227.186, if the hearing is the first
8 evidentiary hearing and the final decision by the City Council would require
9 the rezoning of land, as defined by ORS 227.186.

10 ~~(xix)~~ If For the hearing is the first evidentiary initial public hearing and held
11 before the Planning Commission or the Historic Landmarks Commission, a
12 statement that subsequent to the close of the hearing a recommendation will
13 be forwarded to the City Council;

14 ~~(xxi)~~ For the final public hearing before the City Council, if held, a
15 statement that subsequent to the close of the hearing notice of a decision
16 adopting a new land use regulation will be mailed to all neighborhood
17 associations, anyone who participated in the hearing, either in person or in
18 writing, and anyone who requested to receive notice; and

19 ~~(xxixii)~~ The name and contact information for the staff case manager.

20 **(3) Published Notice.** The City shall cause notice of ~~each any public hearing in~~ each ~~on a~~
21 legislative land use ~~proceeding~~ proposed to be published in a newspaper of general
22 circulation within the City at least once a week for two consecutive weeks prior to the
23 hearing, with the second notice to be published at least two days immediately
24 preceding the hearing. An affidavit of publication from the newspaper shall be
25 obtained and made part of the file.

26 **(d) Application Review and Staff Report.** Staff shall review the proposal and the
27 written comments and evidence submitted and, prior to each ~~public hearing, on the~~
28 ~~proposal~~ prepare a staff report summarizing the proposal, the comments received to-date,
29 and the relevant issues associated with the proposal; and making recommendation on the
30 proposal. Staff reports shall be made available to the public for review a minimum of

1 seven days prior to the ~~public~~hearing.

2 (e) **Public Hearings.** At least one ~~public~~hearing shall be held for the purpose of
3 receiving evidence and testimony in all ~~on any~~ legislative land use proceedings.
4 ~~proposal~~. The hearing may be held by the Planning Commission, the Historic Landmarks
5 Commission, or the City Council.

6 (f) **Recommendation.** If the proposal has been referred to the Planning Commission or
7 Historic Landmarks Commission for review and recommendation, subsequent to the
8 close of the ~~public~~hearing, the Planning Commission or Historic Landmarks
9 Commission, as the case may be, shall adopt a recommendation to adopt, to adopt with
10 modifications, or to not adopt the proposal based upon the facts in the record and
11 according to applicable standards or criteria. The recommendation shall be a written
12 order and include:

- 13 (1) A list of the applicable standards or criteria;
- 14 (2) A statement of facts relied upon in making the recommendation. The order may
15 adopt or incorporate a staff report or written findings prepared by any party to the
16 proceeding into the order; and
- 17 (3) The recommendation.

18 (g) **Notice of Recommendation.** Notice of the recommendation shall be mailed within
19 seven days from the date the Planning Commission or Historic Landmarks Commission
20 adopts its written order. An affidavit of mailing shall be prepared and made part of the
21 file.

- 22 (1) Notice of recommendation shall be mailed to:
 - 23 (A) Any group or individual who submitted testimony prior to the close of the
24 public hearing;
 - 25 (B) All City-recognized neighborhood associations;
 - 26 (C) Any governmental agency which is entitled to notice by law or under an
27 intergovernmental agreement with the City, and any governmental agency which
28 submitted testimony for the record prior to the close of the public hearing; and
 - 29 (D) Any community organizations, agencies, or individuals who submitted
30 written requests for notice of the recommendation to the City.

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- (2) Notice of recommendation shall include:
 - (A) A brief description of the proposal;
 - (B) A brief summary of the recommendation;
 - (C) A brief statement explaining the next steps in the review process; and
 - (D) A statement that the complete case file is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(h) Decision. City Council action on legislative land use proposals shall, in addition to the requirements of this Chapter, conform to the Salem City Charter and City Council Rules.

(1) Subsequent to receiving a recommendation, the City Council may in its sole discretion:

- (A) Proceed with enactment of an ordinance;
- (B) Refer the proposal ~~matter~~ back to the Planning Commission or Historic Landmarks Commission for additional deliberation;
- (C) Abandon the proposal; or
- (D) Hold a public hearing on the proposal, and, after the hearing, proceed as provided in subparagraphs (a)-(c) of this paragraph.

(2) Decisions ~~in~~ on legislative land use proceedings ~~proposals~~ may be accompanied by findings demonstrating the proposal's conformance with any applicable standards or criteria.

(i) Notice of Decision. Notice of final decision in action ~~on a~~ legislative land use proceeding ~~proposal~~ shall be mailed within seven days from the date the ordinance is enacted. An affidavit of mailing shall be prepared and made part of the file. Notice of the final decision ~~action~~ shall be provided as follows:

- (1) Notice of final decision shall be mailed to:
 - (A) Any group or individual who submitted testimony prior to the close of the public hearing;
 - (B) All City-recognized neighborhood associations;
 - (C) Any governmental agency which is entitled to notice by law or under an

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intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;

(D) Any community organizations, agencies, or individuals who submitted written requests for notice of the ~~recommendation~~decision; and

(E) The Oregon Department of Land Conservation and Development, on forms provided by the Oregon Department of Land Conservation and Development.

(2) Notice of final decision shall include:

(A) A brief description of the proposal;

(B) A brief summary of the final decision and any modifications to the proposal;

(C) The date, time, and place by which an appeal must be filed and where further information may be obtained concerning the appeal process;

(D) A statement that the complete case file, including findings, conclusions, modifications, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

~~(j) Appeals. The adoption of an ordinance in a legislative land use proposal is the final decision of the City.~~ Appeals of final decisions in legislative land use proceedings ~~proposals~~ are sent to the Oregon Land Use Board of Appeals and must be filed with the Oregon Land Use Board of Appeals within twenty-one days of the mailing date of the notice of enactment of the ordinance.

/////

1 **Section 4. Severability.** Each section of this ordinance, and any part thereof, is severable, and
2 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of
3 this ordinance shall remain in full force and effect.

4 PASSED by the City Council this 13th day of June, 2011.

5 ATTEST:
6 *Kathy Hall*
7 City Recorder
8 Approved by City Attorney: *[Signature]*

9
10 Checked by: B. Bishop

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FOR COUNCIL MEETING OF: May 23, 2011
AGENDA ITEM NO.: 8 (a)

TO: MAYOR AND CITY COUNCIL
THROUGH: *Linda Norris*
LINDA NORRIS, CITY MANAGER

FROM: VICKIE HARDIN WOODS, DIRECTOR *VHW*
COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: AMENDMENTS TO SALEM REVISED CODE CHAPTER 300
(PROCEDURES FOR LAND USE APPLICATIONS AND LEGISLATIVE
LAND USE PROPOSALS) CLARIFYING NOTICE REQUIREMENTS FOR
LEGISLATIVE LAND USE PROCEEDINGS AND TYPE IV LAND USE
APPLICATIONS (CA 11-02)

ISSUE:

Should the City Council enact Ordinance Bill No. 17-11, amending SRC Chapter 300 (Procedures for Land Use Applications and Legislative Land Use Proposals) to clarify notice requirements for legislative land use proceedings and Type IV land use applications?

RECOMMENDATION:

Staff recommends that the City Council advance Ordinance Bill No. 17-11, amending SRC Chapter 300 (Procedures for Land Use Applications and Legislative Land Use Proposals) to clarify notice requirements for legislative land use proceedings and Type IV land use applications, to second reading for enactment.

BACKGROUND:

Over the past several months the Planning Division has been working on a proposed new wireless communication facilities ordinance to update and revise the City's current standards for wireless communication facilities, and to incorporate into the zoning code standards for regulation of the siting of such facilities within the public right-of-way.

In the process of preparing to begin public outreach on the proposed amendments, it came to the attention of staff that the public notice requirements for legislative land use proceedings included in the City's procedures ordinance could be read to require two citywide mailings for the proposed amendment, one for the public hearing by the Planning Commission and a second for the public hearing by the City Council.

ORS 227.186¹ establishes the requirements for mailed notice for legislative land use proposals that would "rezone" property. For purposes of ORS 227.186 a property is "rezoned" when a city:

- *Changes the base zoning classification of a property; or*
- *Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.*

ORS 227.186 only requires that notice of the first evidentiary hearing be mailed to each person whose property would be rezoned if the legislative land use proposal is adopted. SRC 300.1110(c)(2)(B)(iii) was intended to implement ORS 227.186 in the City's land use code.

However, SRC 300.1110(c)(2)(B) includes a requirement that notice be provided for each public hearing. This requirement, combined with the language of SRC 300.1110(c)(2)(B)(iii), requires two citywide mailings for a legislative land use proceeding that "rezones" property. Because the purpose of SRC 300.1110(c)(2)(B) was simply to implement ORS 227.186 in the City's land use code, this provision reflects a drafting error that was not caught when the ordinance bill was being prepared. Two notices for legislative land use proposals were not required by the City's land use regulations prior to the adoption of SRC 300 and the requirement, if maintained, will result in significant additional cost for legislative land use proposals that fall within its scope, in the amount of approximately \$14,000 for the second mailing.

Ordinance Bill No. 17-11 is intended to address this issue.

FACTS AND FINDINGS:

Procedural Findings

1. Under SRC 300.1110(a)(3), legislative land use proceedings may be initiated by staff through preparation and placement of an ordinance bill on the City Council agenda for first reading. The City Council may schedule a public hearing on the ordinance bill, refer it to another Review Authority for review and recommendation, or may decline to advance the ordinance bill to second reading.
2. On April 25, 2011, Ordinance Bill No. 17-11 was presented to the City Council for first reading. The Council voted to hold a public hearing on the proposed ordinance bill and a public hearing date was subsequently set for May 23, 2011.
3. ORS 197.610 and OAR 660-018-0020 require that notice be provided to the Department of Land Conservation and Development (DLCD) on any proposed amendment to a local land use regulation at least 45 days prior to the first public hearing. Notice to DLCD was delivered on March 31, 2011.

¹ ORS 227.186 is sometimes referred to as "Ballot Measure 56." Ballot Measure 56 was approved by the voters in 1998. Prior to the adoption of Ballot Measure 56, there was no requirement of individual property owner notification of legislative land use proposals.

4. Notice of the public hearing on the proposal was mailed on May 3, 2011, and published in the newspaper on May 13, 2011 and May 19, 2011.

Proposed Code Amendments

Ordinance Bill No.17-11 makes SRC 300.1110(c)(2)(B) consistent with ORS 227.186 by eliminating the requirement that notice be mailed for the second evidentiary hearing. If adopted, Ordinance Bill No. 17-11 will require notice of any subsequent evidentiary hearing to be mailed to any individuals who submitted evidence or written or oral testimony prior to the close of the first evidentiary hearing, and to any individuals who have submitted requests for notification of subsequent evidentiary hearings.

Ordinance Bill No. 17-11 also clarifies notice requirements for Type IV land use applications and makes minor housekeeping/code cleanup revisions within SRC Chapter 300.

Ordinance Bill No. 17-11, if adopted, will require public notice consistent with state law.



Glenn W. Gross
Urban Planning Administrator

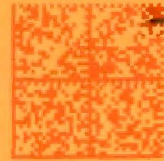
Prepared by Bryce Bishop, Planner II

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DEPT OF SALEM
PLANNING DIVISION
55 LIBERTY ST. SE ROOM 305
SALEM, OR 97301-3503

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LAND CONSERVATION
AND DEVELOPMENT

Land Conservation & Development
Department
635 Capitol St NE, Suite 150
Salem OR 97301