



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

04/26/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Sandy Plan Amendment
DLCD File Number 001-11

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: Tuesday, May 10, 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: Tracy Brown, City of Sandy
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA/ph



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

DATE STAMP

DEPT OF
APR 20 2011
LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Sandy**

Local file number: **10-032**

Date of Adoption: **4/18/11**

Date Mailed: **4/19/11**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 1/6/11

Comprehensive Plan Text Amendment

Comprehensive Plan Map

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".

Ordinance 2011-01 creates a process by which owners of property in which a planned unit development or subdivision tentative plat was previously approved and the approval has expired can apply to have the approval reinstated.

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

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres

Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

x x

Was an Exception Adopted? YES x NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

x 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: **Tracy Brown**

Phone: **(503) 668-4886**

Extension:

Address: **39250 Pioneer Blvd.**

Fax Number: **503-668-8714**

City: **Sandy**

Zip: **97055**

E-mail Address:

tbrown@cityofsandy.com

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working 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) by DLCD of the 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).

ORDINANCE 2011-01

AN ORDINANCE PERMITTING THE REINSTATEMENT OF CERTAIN TENTATIVE PLAT OR PLANNED UNIT DEVELOPMENT APPROVALS.

WHEREAS, due to the difficult economic conditions in the State of Oregon and the City of Sandy a number of planned development and tentative plat approvals have expired;

WHEREAS, the City Council desires to allow those approvals that were approved in compliance with current applicable code provisions to be reinstated; and

WHEREAS, the City Council believes permitting reinstatements in accordance with this ordinance may stimulate development activity in the city and reduce the burden placed on staff to review these projects again.

NOW, THEREFORE, THE CITY OF SANDY ORDAINS AS FOLLOWS:

Section 1. An owner as that term is defined in Sandy Municipal Code 17.10.30, whose detailed planned unit development ("PUD") and/or tentative plat approval expired between November 1, 2007 and April 15, 2010, may apply for and be granted a reinstatement of those approvals as provided herein. The Planning Director will reinstate such an approval pursuant to a Type I process under Sandy Municipal Code 17.12.10 if an applicant satisfies the following clear and objective criteria:

- A. Except as allowed under subsection (B) below, a reinstated approval will comply with any relevant provision of Chapter 17 of the Sandy Municipal Code adopted after the approval of the application to be reinstated, including but not limited to applicable minimum lot sizes and density requirements.
- B. No changes are proposed to the expired approval to be reinstated except that the Planning Director may approve a reduction of up to five lots in order to meet the Sandy Municipal Code's current maximum density standards.
- C. An expired approval that does not comply with these criteria requires submittal of a new land use application in order to be re-approved.

Section 2. An application for reinstatement of a tentative plat or detailed PUD approval shall submit the following:

- A. A completed Land Use Application Form and payment of a fee to be set by Council resolution;

- B. Two copies of the tentative plat or detailed PUD approval to be reinstated drawn to scale and fully dimensioned;
- C. A written narrative addressing the approval criteria contained in Section 1 above; and
- D. A calculation of net density (number of units per net acre after excluding areas dedicated for public use).

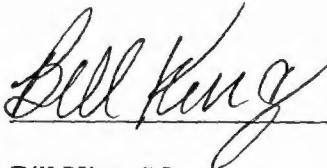
Section 3. Any reinstated approval will be effective for the period of time specified in 17.64.140(B) or 17.100.60(H), as applicable.

Section 4. This ordinance will be automatically repealed three years after its adoption by the City Council. An applicant seeking a reinstatement under this ordinance must submit an application within three years of the ordinance's adoption.

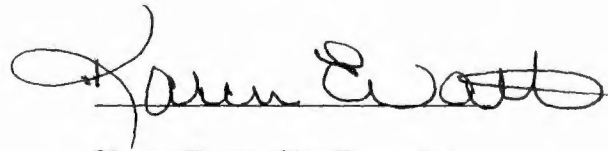
Section 5. This ordinance is supported by findings, attached as Exhibit A and incorporated by reference.

THIS ORDINANCE IS ADOPTED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR THIS 18th DAY OF APRIL, 2011.

ATTEST:



Bill King, Mayor



Karen Evatt, City Recorder

ORDINANCE NO. 2011-01
FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Issue and Purpose.

Between 2007 and 2010, volatility in the credit markets caused an economic recession accompanied by rising unemployment, stagnating incomes, and falling property values. These circumstances forced many property owners and developers, through no fault of their own, to postpone approved land development projects. In recognition of this severe hardship, many local governments have granted, or established a process to grant, extensions or reinstatements of land use approvals that expired due to the economic recession.

In the City of Sandy (the "City"), between November 1, 2007 and April 15, 2010, at least 11 different approved tentative plats or detailed planned unit developments ("PUD's") expired before they could be finalized, implemented, or extended. The City Council (the "Council") finds that it is in the public interest to establish a clear and objective process to permit reinstatement of these expired approvals. The Council further finds that reinstating such approvals may stimulate economic development activity in the City and reduce the administrative burden on City staff and private landowners alike. For these reasons and as further explained below, the City has proposed and adopted the following ordinance.

2. Procedural Status.

The Sandy Municipal Code ("SMC") distinguishes between legislative and quasi-judicial decisions. SMC 17.26.30, entitled "Legislative Amendment Procedures," states that the change is a "legislative act" if it "applies uniformly to all properties in the City or to a sufficiently large number of properties as determined by contemporary legal principles." The Ordinance applies to all lands in the City subject to detailed PUD and/or tentative plat approvals that expired between November 1, 2007, and April 15, 2010. Thus, the Ordinance qualifies as legislative in nature.

A. Initiation of Legislative Change

A legislative change may be initiated by a majority vote of the Sandy Planning Commission ("Planning Commission") or the Council upon the finding of a sufficient cause to initiate a change. SMC 17.26.30.A. On December 13, 2010, a majority of the Planning Commission found such sufficient cause and voted to initiate the Ordinance.

B. Notices of Public Hearings

Exhibit A – Ordinance No. 2011-01

The City considered the Ordinance pursuant to its procedures for legislative text amendments. As such, the City followed certain procedures to provide sufficient notice to the public and to allow for public involvement.

On January 6, 2011, the City provided notice on the applicable form to the Oregon Department of Land Conservation and Development ("DLCD"), more than 45 days prior to the initial legislative public hearing for the Ordinance before the Planning Commission. This mailing satisfied the City's pre-hearing obligations for notice to DLCD.

On February 16, 2011, the City published a notice in the Sandy Post for the Planning Commission's public hearing on the ordinance and a notice for the City Council's hearing was published on March 23, 2011. The published notices listed the dates, times, and places of the Planning Commission and Council hearings.

C. Commission Action

On March 14, 2011, the Planning Commission conducted a public hearing to discuss the Ordinance. Tracy Brown, Planning Director presented the City Planning & Development Department staff report ("Staff Report"), which included a recommendation to approve the Ordinance. Following presentation of the Staff Report, Mike Robinson, representing Holt Homes gave a presentation in support of the Ordinance.

At the conclusion of the hearing, the Planning Commission closed the public hearing and discussed the Ordinance. Commissioner Carlton made a motion, seconded by Commissioner Jenkins, to recommend that the Council approve the legislative change and adopt the Ordinance based upon substantial evidence in the record as a whole. The Planning Commission unanimously voted to approve the motion.

D. Council Action

On April 4, 2011, the Council held a public hearing to take public testimony on the proposed Ordinance. Testimony was heard from Dale Hult, All County Surveyors and Seth King, representing Holt Homes. At the conclusion of the hearing the Council approved the first reading of the Ordinance by an unanimous vote. On April 18, 2011 the Council read and approved the second reading by an unanimous vote.

E. Record Before the Council

The record before the Council consists of the Staff Report to the Council dated March 24, 2011 including all exhibits thereto; and, all materials entered into the record on the evenings of March 14, 2011 and April 4, 2011. The entire City Planning &

Development Department file was physically before and not rejected by the Council prior to the close of the record.

3. Findings of Fact and Conclusions of Law.

Legislative changes are reviewed to determine their effect on City facilities and services and to ensure consistency with the purposes of the SMC, the policies of the Sandy Comprehensive Plan (the "Plan"), the Statewide Planning Goals (the "Goals"), and any other applicable policies and standards adopted by the Council. SMC 17.26.30.B. For the reasons set forth below, the City finds the applicable approval criteria met and adopts the Ordinance.

A. Effects on City Facilities and Services.

The Council finds that this standard is satisfied for three reasons. First, the Ordinance merely provides a process for reinstatement and does not authorize any specific development at this time. Because the Ordinance does not authorize any specific development, there is no direct or immediate impact to City facilities or services. Second, the City would have ensured that any approved tentative plat or detailed PUD provided adequate public facilities and services. The Ordinance requires that applicants not have changed their expired approvals (except to reduce density by up to five lots to meet the SMC's current maximum density standards). Thus, the Council finds that the reinstatement of such approvals will necessarily provide adequate public facilities and services as well. Finally, all such reinstatements must necessarily comply with all relevant provisions of the SMC adopted between the original approval of the now-expired tentative plat or detailed PUD and the date of application for reinstatement. Therefore, the City finds that the Ordinance satisfies this criterion.

B. Consistency with Purposes of the SMC.

The provisions in the SMC are intended to ensure that development "is of the proper type, design, and location and serviced by a proper range of public facilities and services" and is otherwise consistent with the goals and policies of the Plan. SMC 17.00.10.A. The Ordinance allows the Planning Director to reinstate certain expired tentative plat approvals or detailed PUDs. Further, the City would only have approved a tentative plat or detailed PUD if it ensured that development of affected land was of the proper type, design, and location and serviced by a proper range of public facilities and services. Therefore, the reinstatement of such approval will necessarily do the same. As described below, the Ordinance is consistent with the goals and policies of the Plan. Accordingly, the City finds that the proposed Ordinance satisfies this criterion.

C. Consistency with Plan Goals and Policies.

This section addresses consistency with applicable goals and policies of the Plan. For the reasons set forth below, the City finds that the proposed Ordinance satisfies these approval criteria.

a. Goal 1 – Citizen Involvement

Goal 1 of the Plan seeks to establish standards and policies that ensure citizens the opportunity to participate in every phase of the planning process. The City has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed text amendments. The process by which this particular Ordinance was adopted is consistent with the procedures provided in the Plan and in the SMC. The City held duly noticed public hearings before the Planning Commission, on February 28, 2011, and the Council, on March 21, 2011, in compliance with all applicable City procedures under Title 17 of the SMC.

Therefore, the City finds its review and implementation of the Ordinance consistent with Goal 1 of the Plan.

b. Goal 2 – Land Use Planning

Goal 2 of the Plan requires consistency between land development proposals and applicable local requirements. The language of the Ordinance states that only expired approvals that remain unchanged, with certain minor changes to be consistent with new SMC requirements, may achieve reinstatement, thus ensuring that those approvals comply with all local regulations and provisions in effect when the applications were first submitted. Further, the expired approvals must meet all subsequent applicable regulations and provisions. Lastly, the Ordinance allows the Planning Director to reduce the number of approved lots by five to ensure that any reinstated approval meets the City's current maximum density standards.

The City finds the Ordinance consistent with Goal 2 of the Plan.

c. Goal 10 – Housing

Goal 10 of the Plan seeks to "establish policies to provide for the housing needs of the state." **Policies 1 and 2**, respectively, seek to "[a]ssure an adequate supply of developable land for low, medium, and high density housing" and to "[e]ncourage the private sector to provide adequate housing choices." The Ordinance encourages private businesses and individuals adversely impacted by the recent economic recession to apply for the reinstatement of their expired approvals. The reinstatement process provides an expeditious way to ensure compliance with applicable law as well as to reduce the administrative burdens on local planning authorities and applicants. The language in the

Ordinance also ensures that reinstatements do not allow any development that exceeds current maximum density standards and that the expired approvals include fewer lots when necessary to comply with those standards. This will, for example, help further the Plan's policies requiring that residential densities "generally decrease with distance from village centers" (**Policy 8**) and that they "are appropriately related to site conditions, including slopes, potential hazards, and natural features" (**Policy 9**).

Therefore, the City finds the Ordinance consistent with Goal 10 of the Plan.

D. Consistency with Statewide Planning Goals.

This section addresses consistency with the applicable Goals. As described below, the City finds the Ordinance consistent with the Goals.

a. Goal 1 – Citizen Involvement

Goal 1 requires every city and county to develop and implement a citizen involvement program. As the State Land Use Board of Appeals ("LUBA") has recognized, Goal 1 does not provide due process protections, nor does it dictate the conduct of local government hearings. Rather, the Oregon Revised Statutes govern the manner in which local authorities conduct hearings and the procedural requirements for such hearings. *See* ORS Chapter 227. When notice of a hearing is provided and public testimony considered, LUBA will find no Goal 1 violation.

The City has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed plan amendments. These local processes thus comply with state mandates, and the Ordinance was processed in a manner consistent with the Plan and the SMC. The Planning Commission and Council held duly noticed public hearings in compliance with local law and with the statutory procedures required under ORS Chapter 197. Therefore, the City finds its review of the Ordinance consistent with Goal 1.

b. Goal 2 – Land Use Planning

Goal 2 requires consistency between local comprehensive plans and the Goals, that local comprehensive plans maintain internal consistency, and that the implementation of ordinances remain consistent with acknowledged comprehensive plans. Goal 2 also requires that planning authorities make land use decisions with adequate factual bases and coordinate with affected jurisdictions.

The Plan and the SMC, as well as the Goals and applicable statutes, provide policies and criteria for the evaluation of the Ordinance. Compliance with these

measures ensures an adequate factual basis for approval of the Ordinance. As discussed elsewhere in these findings, the Ordinance is consistent with applicable policies and standards. By demonstrating such compliance, the Ordinance satisfies the consistency element of Goal 2.

The City is required under ORS 197.610 to forward a notice of the Ordinance to DLCDC at least 45 days before the first evidentiary hearing on adoption. The City provided the requisite notice to DLCDC on January 13, 2011. Under Goal 2, the City is not required to accommodate all of the concerns of interested governmental agencies, but the City's findings did respond to the legitimate concerns of affected agencies.

The City finds its review of the Ordinance consistent with Goal 2.

c. Goal 3 – Agricultural Lands

The Ordinance does not affect any farm lands, and thus the City finds Goal 3 inapplicable.

d. Goal 4 – Forest Lands

The Ordinance does not affect any forest lands, and thus the City finds Goal 4 inapplicable.

e. Goal 5 – Open Space, Scenic and Historic Areas, Natural Resources

The Ordinance does not affect any open space, scenic and historic areas, or natural resources. Thus, the City finds Goal 5 inapplicable.

f. Goal 6 – Air, Water, and Land Resources Quality

Goal 6 seeks to maintain and improve the quality of the air, water, and land resources in the state. Because the proposal does not authorize any specific development at this time, there can be no direct impact to air, water, or land resources. Moreover, the City previously determined that all approved applications satisfied the applicable approval criteria of the SMC, which implements the Plan, which, in turn, has been acknowledged as consistent with the Goals. Therefore, the City finds the Ordinance consistent with Goal 6.

g. Goal 7 – Areas Subject to Natural Hazards

Goal 7 requires that planning authorities not locate development that could result in damage or loss of life in known areas of natural hazards and disasters without

appropriate safeguards. Because the Ordinance does not authorize any specific development at this time, it allows no development planned or located in known areas of natural hazards and disasters. Moreover, the City previously determined that all approved applications satisfied the applicable approval criteria of the SMC, which implements the Plan, which, in turn, has been acknowledged as consistent with the Goals. The City finds the Ordinance consistent with Goal 7 in this instance.

h. Goal 8 – Recreational Needs

The Ordinance merely provides a reinstatement process and does not involve any designated recreational or open-space lands. Thus it does not affect access to any significant recreational uses in the area. The City finds Goal 8 inapplicable in this instance.

i. Goal 9 – Economic Development

Goal 9 requires that local authorities base their comprehensive plans and policies on an inventory of areas suitable for increased economic growth and activity, including for specified land uses. Although the Ordinance does not authorize any specific development activity, it provides an expeditious process to allow those with expired approvals to apply for reinstatement. Therefore, the Ordinance facilitates economic development consistent with Goal 9. The City finds Goal 9 is satisfied in this instance.

j. Goal 10 – Housing

Goal 10 requires local governments to help provide for an adequate number of needed housing units and to encourage the efficient use of developable land within urban growth boundaries. The reinstatement process contemplated by the Ordinance provides a more efficient way in which applicants with certain expired approvals may resume their development activities, thus encouraging more cost-effective development of land to meet the City's housing needs as well as reducing administrative strain on local planning authorities and private landowners. The Ordinance also ensures that only those expired approvals that remain unchanged (or have up to five fewer lots) can gain approval from the Planning Director. Thus, the City finds the Ordinance consistent with Goal 10.

k. Goal 11 – Public Facilities and Services

Goal 11 creates guidelines for the timely, orderly, and efficient provision of public facilities and services, such as sewer, water, solid waste, and storm drainage. The Ordinance does not specifically propose any new development that would utilize public facilities or services. Moreover, the City previously determined that all approved applications satisfied the applicable approval criteria of the SMC, which implements the

Plan, which, in turn, has been acknowledged as consistent with the Goals. Therefore, the City finds Goal 11 inapplicable in this instance.

l. Goal 12 – Transportation

Goal 12 requires that local governments provide and encourage a safe, convenient, and economic transportation system. Because the proposal does not authorize any specific development at this time, there can be no direct impact to transportation. Moreover, the City previously determined that all approved applications satisfied the applicable approval criteria of the SMC, which implements the Plan, which, in turn, has been acknowledged as consistent with the Goals. Therefore, the City finds the Ordinance consistent with Goal 12. The City further finds that OAR 660-012-0060, the Transportation Planning Rule ("TPR") implements Goal 12. The City addresses the TPR below.

m. Goal 13 – Energy Conservation

The Ordinance does not impact any known or inventoried energy sites or resources. The City finds Goal 13 inapplicable in this instance.

n. Goal 14 – Urbanization

The Ordinance does not involve a change in the location of the Urban Growth Boundary or a conversion of rural land to urban land. The City finds Goal 14 inapplicable in this instance.

o. Goals 15 – 19

Goals 15 through 19 apply to the Willamette River Greenway and the Oregon Coast and are therefore inapplicable.

E. Oregon Administrative Rules

1. OAR 660-012-0060 (Transportation Planning Rule)

The TPR mandates that local governments impose mitigation measures when a land use regulation would "significantly affect an existing or planned transportation facility." OAR 660-012-0060(1). The Ordinance is a land use regulation. A land use regulation that does not permit development that adds more traffic to the transportation system than could be permitted under zoning existing before the ordinance cannot "significantly affect" the transportation facility under the TPR. In the instant case, no specific development is proposed. Therefore, the Ordinance will not add more traffic to

the transportation system, and the Ordinance will not have a significant effect on any transportation facilities.

F. Consistency with Other Applicable Policies and Standards Adopted by the Council

No other policies or standards adopted by the Council relate to this Ordinance. Therefore, this requirement does not apply in this instance.

r Blvd.
7055



DEPT OF

APR 20 2011

LAND CONSERVATION
AND DEVELOPMENT

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