



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

05/11/2012

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 001-12

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: Thursday, May 24, 2012

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: Aaron Henson, City of Bend  
Gordon Howard, DLCD Urban Planning Specialist  
Karen Swirsky, 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

**DATE STAMP**

DEPT OF

MAY 04 2012

LAND CONSERVATION AND DEVELOPMENT  
For Office Use Only

Jurisdiction: **City of Bend**

Local file number: **PZ-12-0024**

Date of Adoption: **4/18/2012**

Date Mailed: **5/3/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 1/19/2012

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".

Text amendments to clarify and streamline the City's existing regulations pertaining to temporary uses, including: seasonal sales, farm produce sales, temporary real estate offices or model homes, temporary buildings, education modulars, medical hardship housing, carnivals/fairs, parking lot sales, and warehouse sales.

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

The duration of approval period for temporary buildings was increased from 6 months to 12 months, and the proposed regulations for mobile food units were deleted by City Council prior to adoption.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **NA**

to: **N/A**

Location: **citywide**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

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

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

35-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. 001-12 (19150) [17025]



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

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

Bend LaPine Schools, Deschutes County Environmental Health Department, Bend Fire Department

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Local Contact: **Aaron Henson, Senior Planner**

Phone: **(541) 383-4885** Extension:

Address: **710 NW Wall Street**

Fax Number: **541-388-5519**

City: **Bend, OR**

Zip: **97701-2713**

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

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### **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).
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](mailto:plan.amendments@state.or.us).

<http://www.oregon.gov/LCD/forms.shtml>

Updated December 30, 2011

**ORDINANCE NO. NS-2183**

**AN ORDINANCE AMENDING SECTION 3.6.400 OF THE BEND DEVELOPMENT CODE**

**Findings:**

- A. The City of Bend initiated the application on January 19, 2012. Timely and sufficient notice pursuant to Section 4.1.515 of the Bend Development Code was provided.
- B. On February 27, 2012, the Bend Planning Commission held a public hearing to accept testimony on the request. At the conclusion of the hearing, the Commission voted to recommend the proposed text amendments be approved by the City Council.
- C. Notice of the Council's public hearing on April 4, 2012 was mailed to all interested parties and recognized neighborhood associations on March 15, 2012. A notice of the hearing was also published in the Bend Bulletin on March 13, 2012.
- D. The Bend City Council held a public hearing on April 4, 2012, to accept evidence and consider the Planning Commission's affirmative recommendation. The City Council found that the text amendments satisfy the criteria for approval contained at Section 4.6.200 of the Bend Development Code.
- E. These general findings are further supported by specific findings of fact contained in Exhibit B of this ordinance related to the Bend Development Code, which are incorporated into these findings.

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

Section 1 The Bend Development Code is amended as depicted in Exhibit A.

Read for the first time the 4th day of April, 2012.

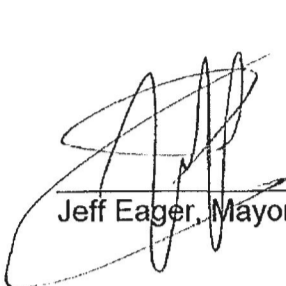
Read for the second time the 18th day of April, 2012.

Placed upon its passage the 18th day of April, 2012.

YES: Tom Greene  
Scott Ramsay  
Jodie Barram  
Jim Clinton  
Kathie Eckman  
Mayor Jeff Eager

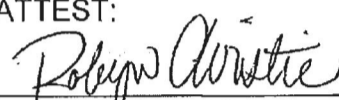
NO: Capell





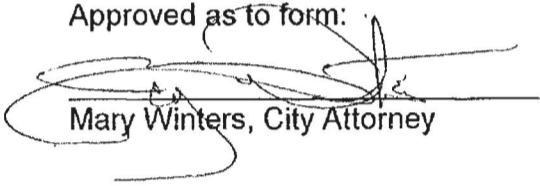
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Jeff Eager, Mayor

ATTEST:  


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Robyn Christie, City Recorder

Approved as to form:  


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Mary Winters, City Attorney

**EXHIBIT A**

**Amendments to Section 3.6.400 of the Bend Development Code  
City Council Public Hearing Draft**

**Public Hearing Date: April 4, 2012**

Prepared by:  
City of Bend Planning Division

**Note:**

Text in underlined typeface is proposed to be added.

Text in ~~strikethrough~~ typeface is proposed to be deleted.

\*\*\* Indicates where text from the existing code has been omitted because it will remain unchanged.



### 3.6.400 Temporary Uses

Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to:

- Seasonal sales
- Farm produce sales
- Temporary real estate sales office or model home
- Temporary building
- Education modular
- Medical hardship housing
- Carnivals/fairs, parking lot sales and warehouse sales

~~construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, seasonal sales such as Christmas tree sales, and vegetable stands, mobile and medical emergency housing.~~

Unless otherwise permitted, temporary uses shall comply with this section. Temporary uses not specifically allowed under this section, including but not limited to temporary retail sales and services, in zones where retail sales and services are allowed, are prohibited. The use of a motor home, recreational vehicle, travel trailer, tent, or similar device as a dwelling unit is also prohibited.

Some temporary uses must be approved through a temporary use permit because they occur for longer periods than others. Other, shorter duration, temporary uses may occur without temporary use permit approval. In both cases, all temporary use standards of this section must be met at all times.

**A. Seasonal Sales and Special Events.** ~~These types of uses~~ Seasonal sales related to a holiday or seasonal event such as holiday tree sales and Fourth of July fireworks sales occur only once in a calendar year and for no longer a period than 30 days. Prior to operating, No temporary use permit is required. However, the use shall comply with the following criteria standards:

1. ~~The use is permitted in the underlying land use zoning district and does not violate any conditions of approval for the property (e.g., prior development permit Site Plan Review approval).~~
2. ~~The applicant, if not the property owner, has written proof of the property owner's permission from the property owner to temporarily place the use on his/her the property.~~
3. The minimum parking requirements of Chapter 3.3 will be maintained for all uses on the site. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirements under Chapter 3.3 – Vehicle and Bicycle Parking.

4. ~~The use provides adequate vision clearance standards, as required by Section 3.1.200, of Chapter 3.1 are maintained and shall not obstruct pedestrian access on public streets~~ rights of way are not obstructed.
5. ~~Ingress and egress are safe and adequate when combined with the other uses of the property and meet the access standards of Chapter 3.1, as required by Section 3.1.400 Vehicular Access Management;~~
6. ~~The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;~~
67. ~~The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)~~
78. ~~The temporary use shall terminate no later than 30 days after initial start-up.~~

**B. Farm Produce Sales.** ~~The sale of farm produce is allowed to occur continually on a site which allows retail sales, not to exceed 180 days. A temporary use permit is required to ensure that all of the seasonal sales standards contained in Subsection A(1-6) are met. The use of tents for farm produce sales shall meet any applicable fire code and/or building code standards.~~

**BC. Temporary Real Estate Sales Office or Model Home.** ~~The use of any real property within the City as a A temporary real estate sales office, offices for the purpose of facilitating the sale of real property, or model home in any a subdivision or tract of land within the City, but for no other purpose, based on the following criteria is subject to temporary use permit review to ensure that the following standards are met:~~

1. Temporary real estate sales office:
  - a. ~~The temporary real estate sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold; and~~
  - b. ~~The property to be used for a temporary real estate sales office shall not be permanently improved for that purpose; and~~
  - c. The temporary real estate sales office shall be removed once all lots or homes/buildings within the subdivision are sold.
2. Model house:
  - a. ~~The model house shall be located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and~~
  - b. ~~The model house shall be designed as a permanent structure that meets all relevant requirements of this Code; and~~



- c. The model house shall cease to be a temporary use and shall be used as a residential dwelling or other permitted use in the zoning district once all other lots or homes/buildings within the subdivision are sold.

**CD. Temporary Building.** ~~A temporary trailer or prefabricated building for use on any residential, commercial or industrial property within the City may be used as a temporary commercial or industrial office or space associated with the primary use on the a property. but for no other purpose, is~~ Temporary buildings are subject to site development temporary use permit review and conformance with the following criteria must meet all of the following standards:

- ~~1. The temporary trailer or building shall be located within the boundaries of the parcel of land on which it is located;~~
- ~~2. The site is already developed with a primary use; The primary use on the property to be used for a temporary trailer is already developed;~~
1. The site is developed with a primary use or the primary use is under construction.
2. The temporary trailer or building shall be located within the boundaries of the property on which the primary use is located (temporary buildings used during construction of the primary use may be located off-site, but must be a reasonable distance from the primary use).
- ~~3. Ingress and egress are safe and adequate meet the applicable requirements of Chapter 3.1, when combined with the other uses of the property; as required by Section 3.1.200 – Vehicular Access and Circulation;~~
- ~~4. There is adequate parking for the customers or users of the temporary and primary uses as required by Chapter 3.3. – Vehicle Parking, Loading and Bicycle Parking;~~
- ~~5. The use will not result in decreased level of service for transportation facilities within one quarter mile.~~
- ~~6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;~~
- ~~57. The building complies with applicable building codes.~~
- ~~68. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits);~~
7. All locational standards for structures in the applicable zoning district are met (e.g. setbacks, height and lot coverage). ; and
- ~~89. The length of time that the temporary building will be used does shall not exceed six 12 months. When a temporary building exceeds this time frame, When a temporary permit expires, the applicant or owner shall be required to remove the building from the site. or renew the temporary use permit. The permit shall be reviewed through a Type II review.~~
9. Trailers used for construction purposes are allowed on a site when a building is under construction and do not need a temporary use permit.

**DE. Temporary Placement of Educational Modulars.** ~~A temporary permit for the~~  
~~The placement of educational modular classrooms may be granted for up to two~~  
~~years without Site Plan Approval after first obtaining Type-I through a temporary use~~  
~~permit application approval. In addition to meeting the criteria 1-8 listed above in~~  
~~subsection D 3.6.400(D), an application for a temporary use permit for educational~~  
~~modulars and The temporary use permit application shall contain the following a~~  
~~schematic site plan that shows the following:~~

1. ~~A schematic site plan that shows:~~
  - a. ~~the type of modular proposed; and~~
  - b. ~~the proposed placement location of the modular;~~

In addition to meeting the standards of subsection D(1-7), the application for a temporary use permit for an education modular shall also meet the following standards:

21. The parking requirements of Chapter 3.3 shall be met for the permanent and temporary structures. Show the calculation of the parking requirements in conformance with Chapter 3.3 of this Ordinance and provide proof that the applicant meets these requirements;

32. Proof of compliance with the The landscaping requirements in Chapter 3.2 shall be met. of this ordinance;

4. Prior to occupancy of the educational modulars, the applicant shall obtain the necessary building and electrical permits and fire inspections.

**EF. Medical Emergency Hardship Housing.** ~~In addition to the standards and~~  
~~procedures provided in Section 4.9.100.C, the A temporary use permit is required~~  
~~for medical hardship housing. The following additional standards are applicable to~~  
~~development the siting of temporary housing for medical emergencies medical~~  
~~hardship housing.~~

1. Temporary use permits may be granted in residential zones for relatives of the family residing on the property if the temporary home dwelling unit will be used because of a medical problem requiring the use of such a unit. The existence of a medical problem that requires the patient to reside on the same site as his or her relatives shall be supported by the certificate of a medical doctor. The permit shall not exceed one year and may only be renewed with another certificate from a medical doctor.
2. ~~Temporary use permits may be granted in connection with construction projects.~~  
~~The duration of such permits shall not continue beyond the construction period~~  
~~and the permit shall terminate upon occupancy of the building being constructed.~~  
~~The Building Official may issue such permits.~~



23. The temporary house dwelling unit may be a manufactured dwelling, manufactured home, manufactured structure, or mobile home as defined in Chapter 1.2 of this Code. No permanent structure or foundation shall be established for the medical hardship emergency housing. Recreational vehicles and trailers are prohibited.

34. The applicant shall obtain required temporary permits for electrical, water and other services as appropriate before the home temporary dwelling unit is occupied.

45. All locational standards for structures in the applicable zoning district shall be met (e.g. setbacks, height and lot coverage).

5. The medical hardship housing and all utility connections shall be removed no later than 90 days after the expiration of the permit.

**G. Temporary carnivals, fairs, parking lot sales and warehouse sales.** Temporary carnivals, fairs, parking lot sales and retail sales from a warehouse are permitted on developed commercial, industrial and public facility sites for a maximum of 14 days each calendar year. No permit is necessary; however, the following standards must be met:

1. Adequate parking is available to meet their minimum parking requirements of Chapter 3.3;

2. The vision clearance standards of Chapter 3.1 are maintained and public rights of way are not obstructed; and

3. Vehicle ingress and egress locations meet the access standards of Chapter 3.1.

## EXHIBIT B

### Findings of Fact Legislative Code Amendment PZ 12-24

#### Procedural Findings:

The application was initiated on January 19, 2012. Notice of the proposed amendments was provided to the Department of Land Conservation and Development (DLCD) on January 19, 2012. Notification of the public hearing before the Bend Planning Commission was printed in the February 7, 2012 edition of the Bulletin. The Planning Commission held a public hearing on February 27, 2012 and voted in favor of recommending approval to the City Council. Notification of the public hearing before the City Council was printed in the March 13, 2012 edition of the Bulletin. The City Council held a first reading on April 4, 2012 and a second reading on April 18, 2012.

#### Criteria of Approval:

The criteria applied to legislative plan amendments are found within the Bend Development Code (BDC) Chapter 4, 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:** The proposed amendments are consistent with the applicable State land use law. In particular, they will satisfy Goal 1: Citizen Involvement.

Goal 1, Citizen Involvement, is satisfied through following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

Because the proposed code amendments are limited in scope, there are no other Statewide Planning Goals applicable to this ordinance. Likewise, there are no applicable Oregon Revised Statutes or Oregon Administrative Rules that apply to these code amendments.

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

**FINDING:** The “goals” established in the general plan express the desires of the residents of Bend as the City progresses into the future. The “goals” are generally carried out through “policies”, which are statements of public policy. The City reviewed the Comprehensive Plan and found only Chapter 1 to be directly applicable to the proposed text amendments.

Chapter 1 of the Bend Area General Plan includes the following goal:

- *Public/Civic Involvement* – Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an “evolving vision”.
- *Implementing Consistent Ordinances* – Implement the plan through effective, clear and consistent ordinances and language that reflect the intent of the vision.

Chapter 1 also includes the following public policies:

15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.
16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

Chapters 4.1 and 4.6 of the Development Code together require the Planning Commission and the City Council to hold public hearings prior to acting on amendments to the text of the Development Code. Prior to the required public hearings, the proposed text amendments were mailed to all recognized Neighborhood Associations and others who use the Temporary Uses section of the Development Code, and the public was invited to submit written comments on the draft amendments. In response to testimony received by the Planning Commission, the wording of certain subsections was revised for clarity and internal consistency.

Based on the findings stated above, the City Council concludes that the proposed text amendments are consistent with the applicable General Plan goals and policies.

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

**FINDING:** There is a public need for clear and consistent regulations and review procedures for temporary uses, in conformance with state law and the City’s customer service objectives. Regulations which allow for temporary uses provide a public benefit to the community.



**4.6.600 Transportation Planning Rule Compliance.**

**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.**

**FINDING:** The City is proposing to adopt text amendments to the Bend Development Code, a functional component of the comprehensive plan. The City has analyzed the proposed text amendments and has found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

**Conclusion:**

Based on the above findings, the City Council concludes that the proposed Development Code text amendments meet all applicable criteria for adoption.



**COMMUNITY DEVELOPMENT DEPARTMENT**  
**CITY OF BEND**  
710 NW Wall Street  
Bend, OR 97701

BEND OR 977

03 MAY 2012 PM 7



DEPT OF

MAY 04 2012

Attention: Plan Amendment Specialist  
Dept. of Land Conservation & Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

9730132564

