



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

August 29, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Scotts Mills Plan Amendment
DLCD File Number 001-08

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. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 11, 2008

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Doug White, DLCD Community Services Specialist
Steve Oulman, DLCD Regional Representative
Marjorie Mattson, City of Scotts Mills

<paa> ya/

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

For DLCD Use Only

Jurisdiction: *City of Scotts Mills*
Date of Adoption: *August 12, 2008*

Local file number: *Code Amendment Easements 2008-01*
Date Mailed: *August 21, 2008*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *April 10, 2008*

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation

- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The City amended the required width of public utility easements and specified location of PUE's.

Does the Adoption differ from proposal? Please select one

Code language was modified to clarify use of area within PUE.

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 |
| <input checked="" type="checkbox"/> | <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"/> |

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 # 001-08 (16833)

DLCD file No. _____

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

Marion County Public Works Department

Local Contact: *Marjorie Mattson* Phone: *503-588-6177* Extension: _____
Mid-Willamette Valley Council of Governments Phone: *(503) 540-1617*
Address: *105 High St SE* Fax Number: *503-588-6094*
City: *Salem, OR* Zip: *97301* E-mail Address: *mmattson@mwvco.org*

City of Scotts Mills PO BOX 220 Scotts Mills, OR 97375

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

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

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa: 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ATTACHMENT A

Please Note: Proposed amendments are indicated in **bold text**. Text proposed to be removed is indicated by ~~double strike-through~~. Revisions from the June version of the draft amendment are **highlighted**. Change made at July 8, 2008, regarding width of utility easement as indicated as highlighted and underlined.

3.4.5. Utilities

A. Underground Utilities. All utility lines including, but not limited to, those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above. The following additional standards apply to all new subdivisions, in order to facilitate underground placement of utilities:

1. The developer shall make all necessary arrangements with the serving utility to provide the underground services. Care shall be taken to ensure that all above ground equipment does not obstruct vision clearance areas for vehicular traffic (Chapter 3.1);
2. The City reserves the right to approve the location of all surface mounted facilities;
3. All underground utilities, including storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets; and
4. Easements. Easements shall be provided for all underground utility facilities. **See Development Code, subsection 3.4.6.**
5. Exception to Under-Grounding Requirement. The standard applies only to proposed subdivisions. An exception to the under-grounding requirement may be granted due to physical constraints, such as steep topography, sensitive lands (Chapter 3.7), or existing development conditions.

3.4.6 Easements

Easements for storm drainage and water quality facilities, water mains, electric lines or other public utilities shall be dedicated on a final plat, or provided for in the deed restrictions. See also, Chapter 4.2 - Site Design Review, and Chapter 4.3 - Land Divisions. The developer or applicant shall make arrangements with the City, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development. ~~The City's standard width for public main line utility easements shall be 6 feet unless otherwise specified by the utility company, applicable district, or the City.~~

CHANGED APPROVED AT JULY 8, 2008, CITY COUNCIL MEETING: ~~The City's standard width for public main line utility easements shall be a minimum of fifteen (15) feet unless otherwise specified by the utility company, applicable district, or the City.~~

Unless otherwise specified by the utility company, applicable district, or the City, the City's standard width for public main line utility easements adjacent public right-of-way shall be six (6) feet and a minimum of fifteen (15) feet in width when not adjacent public right-of-way. (July 8, 2008 amendment)

Wherever possible the easement shall be centered or border a lot/property line. For public utility easements, the public facility shall serve as the centerline of the easement. Easements for public utilities shall be restricted in scope to the activity permitted necessary to accomplish the purpose of the easement, unless otherwise allowed and approved by the City. Easements for public utility improvements shall prohibit the placement of any building on or over the easement. ~~but shall not preclude~~ A property owner may use the easement area but agrees not to plant, build, or construct any buildings or other structures on the easement that may interfere with the use of the easement. The City is not obligated to replant or replace any structures within of the site ~~(without causing excessive expense to the City)~~ easement following any excavation or other disturbance permitted by the easement.

Chapter 4.3 Land Divisions and Lot Line Adjustments

4.3.7 Final Plat Submission Requirements and Approval Criteria

B. Approval Criteria. By means of a Type I procedure, the City Recorder shall review the final plat and shall approve or deny the final plat based upon findings regarding compliance with the following criteria:

5. The plat contains a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, storm drainage, and water supply systems;
6. **Easements outside platted areas.** The dedication of an easement to the City outside a platted area requires the subdivider to submit on a City-approved form, the legal description of the easement with the submission of the final plat prior to City Council approval. The easement shall be accepted by the City Council prior to the easement document being filed at the Marion County Recorder's/Clerk's office.

Numbers ~~6~~ through ~~9~~ are renumbered as 7 through 10.

CITY OF SCOTTS MILLS

245 Grandview Avenue

P O Box 220

Scotts Mills, OR 97375

Phone/fax: 503-876-5435

*Approved
7/8/08*

STAFF REPORT – June 16, 2008 For City Council Public Hearing – July 8, 2008

FILE: Code Amendments 2008-01

Applicant: City of Scotts Mills

Request: A text amendment to address requirements for public utility easements: Chapter 3.0 – Design Standards (Sections 3.4.5 and 3.4.6) and Chapter 4.0 – Application and Review Procedures (Section 4.3.7)

Criteria: Scotts Mills Comprehensive Plan; Public Facilities; selected goals, objectives, and policies

Procedure: Type IV (Development Code, Section 4.1.6)

Attachment A: Draft Code Amendments

I. PROCESS

According to the Scotts Mills Development Code (subsection 4.1.6) Type IV procedures apply to legislative matters including the adoption of land use regulations that apply to entire zoning districts. The City Council serves as the Planning Commission and makes the final decision on a text amendment after conducting a minimum of two (2) public hearings (4.1.6.D.1.). The amendments were initiated by the City Council and staff was directed to proceed with a public work session that was scheduled for May 22, 2008, but was subsequently cancelled. A public hearing was conducted June 10 and continued to July 8, 2008. Public notices for the hearings are provided through newspaper publication.

II. BACKGROUND

The City of Scotts Mills is currently working on a water system improvement project. In the process of researching properties and issues related to the project, the City Council determined a need to more specifically address requirements for public utility easements. Potential categories of amendments were presented to the City Council in a memo dated May 8, 2008, City Council, and presented in report with an oral presentation for the June 10, 2008, public hearing.

III. SUMMARY OF AMENDMENTS

Potential changes include increasing the size of public main line utility easements from its currently specified width of six (6) feet to 15 feet. One of the Councilors questioned at the hearing in June the ability to be flexible in the width requirement. Staff indicated that the code currently allows agencies and the City to consider width at the time easements are needed.

Locating PUEs by either centering or bordering property lines will be required. Easement language will clearly document its intended use—access, water, sanitary sewer, storm water, or a combination thereof. At the Council's recommendation, construction of a structure within the area is limited and not replaced by the City if repair/maintenance activities require its removal.

Easements will allow access, maintenance, repair, and/or the ability to upgrade the public utility. The City or its designee(s) shall review document language prior to the recording with Marion County Surveyor and/or Clerk. After recording, the applicant/property owner submits to the City of Scotts Mills a copy of the PUE document including the reel and page number.

While not part of the text amendment, an ordinance to adopt the amendment include details on who may enter private property for purposes related to activity of the public utilities within the easement area. Such things as providing proper identification, conducting work during reasonable hours, and minimizing impacts on owner activities are also included in the ordinance.

The proposed and specific text changes are as presented in Attachment A.

IV. LAND USE PLAN GOALS (Selected and Applicable: State and City)

Statewide Planning Goals

1. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.
2. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.
3. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Findings: A public notice published in a newspaper was provided for the public hearing and meeting agendas are posted. Interested parties are invited to participate either in writing or by attending the City Council meetings. The hearings are conducted under a City adopted Type IV procedure applicable to legislative hearings. A staff report is available upon request a week prior to each hearing. The report becomes part of the public record and indicates the facts and findings for the proposed text amendment. City Council proposes to clarify the requirements for public utility easements and provide for areas sufficient size to allow maintenance of public facilities while trying to minimize the impact on the property owners.

Comprehensive Plan Goals and Policies

A. Public Facilities Goals and Policies:

Goals:

1. To provide for an orderly, efficient and economical system of delivery of city services.
3. To seek and maintain cooperation and coordination of public services with other governmental agencies.

Objectives:

1. Maintain and enhance the quality of public facilities and services, and provide them in a timely cost-effective manner.

Policies:

4. The installation, repair or resizing of municipal services lines should be done prior to, or concurrent with, street improvements.

Findings: In preparing to upgrade a portion of its public water system, the City Council determined that the Development Code needed amending to allow for adequately sized public utility easements (PUEs) and to clarify to both City staff and property owners the use of and access to the easement specific to public utilities.

Other agencies are notified of development and utility projects and that helps to provide coordination among the private and public providers including other appropriate governmental agencies. Revising the easements should reduce costs by formally documenting public utility easements versus individually negotiating with property owners and other interested parties at the time access and maintenance is required.

Utilities are frequently placed within public rights-of-way and maintenance, improvements, and replacements can be accomplished at the time of street improvement. However, there are times that extensions or “looping” of facilities require work on intervening properties. The PUEs helps to clarify the process of connecting public facilities or making improvements resulting from needed system improvements or to meet either State or federal regulatory requirements.

V. CITY COUNCIL ACTION

- A. Approve the code amendment as presented in Attachment A; or
- B. Approve the amendment with revisions, removal, or additions to the text by stating the change and the reason for the changes; or
- C. Direct staff to discontinue work on the proposed text amendments to the City’s requirements for public utility easement.

Please Note: Formal adoption of the code amendments requires the City Council to pass an Ordinance that may be considered at the close of the public hearing.

ATTACHMENT A

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purpose of the easement, unless otherwise allowed and approved by the City. Easements for public utility improvements shall prohibit the placement of any building on or over the easement. ~~but shall not preclude~~ A property owner may use the easement area but agrees not to plant, build, or construct any buildings or other structures on the easement that may interfere with the use of the easement. The City is not obligated to replant or replace any structures within of the site ~~(without causing excessive expense to the City)~~ easement following any excavation or other disturbance permitted by the easement.

Chapter 4.3 Land Divisions and Lot Line Adjustments

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Numbers ~~6~~ through ~~9~~ are renumbered as 7 through 10.

Language for ordinance

Access to Premises. Employees of the City of Scotts Mills or companies under contract with the City shall have access, under proper identification or authorization documents, to all premises at which City operated utilities are located and including any public utility easements. The purpose of the access shall be for inspection, maintenance, and utility improvement/upgrade purposes. Such access shall be at reasonable hours (unless an utility emergency or a natural disaster occurs) and utility work shall limit as much as possible interference with the customer's normal use of his/her premises.

MID - WILLAMETTE VALLEY
COUNCIL OF GOVERNMENTS

105 High Street S.E.
Salem, OR 97301-3667



FIRST CLASS

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