



Oregon

Theodore R. Kulbongski, 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

12/10/2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Cannon Beach Plan Amendment
DLCD File Number 002-08

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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, December 26, 2008

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

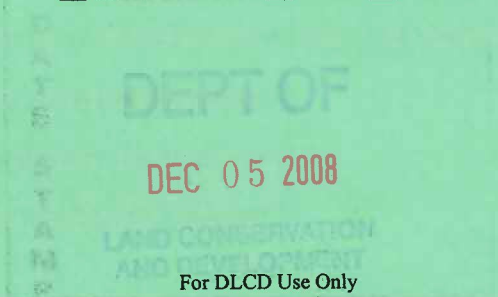
Cc: Rainmar Bartl, City of Cannon Beach
Doug White, DLCD Community Services Specialist

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FORM **2**

DLCD

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

Jurisdiction: City of Cannon Beach Local file number: ~~ZO 08-01~~ ZO 08-02
Date of Adoption: 12/2/2008 Date Mailed: 12/4/2008
Date original Notice of Proposed Amendment was mailed to DLCD: 08/01/2008

- 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".

Amendment to tree removal standards to require the applicant to obtain an certified arborist report.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

SAME

Plan Map Changed from: N/A to: N/A
Zone Map Changed from: N/A to: N/A
Location: N/A Acres Involved: N/A
Specify Density: Previous: N/A New: N/A

Applicable Statewide Planning Goals: 5

Was and Exception Adopted? YES NO

DLCD File No.: 002-08 (17056)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (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

Affected State or Federal Agencies, Local Governments or Special Districts:

None

Local Contact: Rainmar Bartl Phone: (503) 436-8040 Extension: _____
Address: PO Box 368 City: City of Cannon Beach
Zip Code + 4: 97110-368 Email Address: bartl@ci.cannon-beach.or.us

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 copy this form on to 8-1/2x11 green paper only; or 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.

BEFORE THE COMMON COUNCIL OF THE CITY OF CANNON BEACH

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 08-08
MUNICIPAL CODE, TITLE 17,)
ZONING, CHAPTER 17.70,)
TREE REMOVAL)

The City of Cannon Beach does ordain as follows:

Section 1. Amend the Municipal Code, Section 17.70.020.A, Permit issuance – Criteria, to read as follows:

A. The necessity to remove a tree which poses a safety hazard. The applicant must demonstrate that the condition or location of the tree presents a foreseeable danger to either public safety or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by pruning or treatment of the tree.

Section 2. Amend Municipal Code, Section 17.70.030, Additional requirements to read as follows:

A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020.A, 17.70.020.B, or Section 17.70.020.C, the application shall include a complete ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to Section 17.70.030.C, or where a tree removal permit proposes the removal of a tree pursuant to Section 17.70.030.F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020.F, an Oregon Certified Arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist. “Dead” means that the tree is lifeless or less than ten percent of the crown is alive.

D. The retention of trees shall be considered in the design of partitions, subdivisions or planned developments; placement of roads and utilities shall preserve trees wherever possible. The need to remove trees shall be considered in the review process for partitions, subdivisions or planned developments.

E. The preservation of trees shall provide a basis for consideration of a setback reduction or variance.

F. If the condition of a tree presents an immediate danger of collapse and if such potential collapse represents a clear and present hazard to persons or property, a tree removal permit is not required prior to tree removal. However, within seven days after the tree removal, the tree owner shall make application for an after-the-fact permit. For the purposes of this subsection, “immediate danger of collapse” means that the tree is already leaning, with the surrounding soil heaving and there is a significant likelihood that the tree will topple or otherwise fail and cause damage before a tree removal permit can be obtained. “Immediate danger of collapse” does not include hazardous conditions that can be alleviated by pruning or treatment. Where a tree presents an immediate danger of collapse, a complete ISA Tree Hazard Evaluation Form prepared by an Oregon Certified

Arborist is not required. Where a safety hazard exists, as defined by this subsection, the city may require the trees removal. If the tree has not been removed after forty-eight hours, the city may remove the tree and charge the costs to the owner.

G. The city may require the replanting of trees to replace those being removed. Tree replanting shall be in conformance with the city's tree replacement policy.

H. Decisions on the issuance of a tree removal permit may be appealed to the planning commission in accordance with Section 17.88.140(A).

I. For tree removal requests of trees located in a street right-of-way, property owners within one hundred feet of the tree(s) requested for removal shall be notified of the proposed action. In making its decision on such a tree removal request, the city shall consider property owner comments received within ten days of the date of the mailing of the property owner notification. To be considered, property owner comments must address the tree removal criteria of Section 17.70.020. Property owners who have commented on the tree removal request shall be notified of the city's decision and may appeal that decision in accordance with Section 17.70.030(G).

J. Tree pruning does not require a permit. However, the following trees shall be pruned in conformance with International Society of Arboriculture (ISA) standards (1995):

1. Trees more than thirty feet in height;
2. Trees more than thirty inches in diameter;
3. South of Ecola Creek, trees located west of Hemlock Street; and
4. North of Ecola Creek, trees located west of Laurel Street.

K. Tree topping is prohibited except for where: (1) trees have been severely damaged in a storm; and (2) required for utility line maintenance when other pruning practices are impractical. "Tree topping" is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

L. A monthly report on tree removal permit actions shall be made to the planning commission.

M. If a tree is removed without a tree removal permit, a violation may be determined by measuring the stump at the surface of the cut. A stump that is twenty-two inches or more in circumference or seven inches or more in diameter shall be considered prima facie evidence of a violation of this chapter. Proof of violation of this chapter shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation is committed.

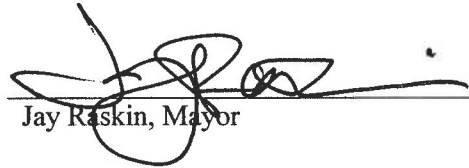
N. Penalties.

1. Notwithstanding any other provisions of the code, any party found to be in violation of this chapter shall be subject to a civil penalty of five hundred dollars and the payment of an additional civil penalty representing the value of any unlawfully removed or damaged tree, as determined by an appraisal using the International Society of Arboriculture (ISA) Guide for Plant Appraisal, Eighth Edition, 1992. The unlawful removal of each individual tree shall be a separate offense.

2. A builder, developer, tree service, or any other person holding a city business license who is convicted of violating any provision of this chapter is also subject to a proceeding to consider revocation of their business license, pursuant to Section 5.04.170.

ADOPTED by the Common Council of the City of Cannon Beach this 2nd day of December 2008, by the following roll call vote:

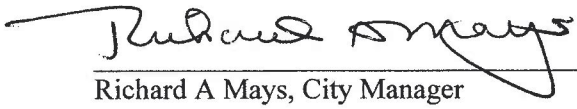
YEAS: Councilors: Giasson, Steidel, Arnold, Cadwallader; Mayor Raskin
NAYS: None
EXCUSED: None



Jay Raskin, Mayor

Attest:

Approved as to Form:



Richard A Mays, City Manager



Tamara Herdener , Attorney

FINDINGS OF FACT
ZO 08-02, CITY OF CANNON BEACH, AMENDMENTS TO ZONING CODE, CHAPTER
17.70, TREE REMOVAL

BACKGROUND

The City of Cannon Beach is proposing amendments to the tree removal standards of Municipal Code, Chapter 17.70. Specifically, the City is proposing to amend Section 17.70.020.A Permit issuance - Criteria and Section 17.70.030 Additional requirements to require that a complete ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist is provided with a tree removal application where the basis for the proposed tree removal is a safety hazard posed by the tree, or the tree has been damaged, or is diseased and dying. An Oregon Certified Arborist will also be required to provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

The Planning Commission held a public hearing at its September 25, 2008, meeting. The Planning Commission continued its deliberation on the proposed amendments to consider potential changes. The Planning Commission held a work session on the proposed amendments on October 13, 2008. The Planning Commission, at its October 23, 2008, meeting recommended approval of amendments to the tree removal standards of the Zoning Code. The Commission's recommendations are as follows:

1. Section 17.70.020.A, Permit issuance – Criteria, utilize the foreseeable danger standard for both potential public safety hazards and property damage.
2. Section 17.70.030.A, Additional requirements (revised text), an ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist is required where the basis for a tree removal permit is a safety hazard, the necessity to remove a damaged tree, or the necessity to remove a “dead” tree. An Oregon Certified Arborist will also be required to provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.
3. Section 17.70.030.A, Additional requirements (revised text), clarify that an ISA Tree Hazard Evaluation Form prepared by an Oregon Certified Arborist is not required where a dead tree is being removed, pursuant to 17.70.030.B, or where a tree is being removed that present an immediate danger pursuant to 17.70.030.E.
4. Section 17.70.030.B, Additional requirements, to require a permit for the removal of a dead tree.

ANALYSIS/INFORMATION

CRITERIA - ZONING CODE

A. Section 17.86.070 Criteria provides that “before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied”:

1. “The amendment is consistent with the comprehensive plan.”

The following policies are applicable to the proposed amendments:

General Development Policy 14 states that it is the City's objective “to ensure that development is designed to preserve significant site features such as trees, streams and wetlands.”

General Development Policy 15 states that “the City shall regulate the removal of trees in order to preserve the City's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards.”

Recreation, Open Space, Natural, Visual and Historic Resource Policy 10 states that “trees shall be protected through Zoning Ordinance provisions pertaining to either forest management or tree removal.”

Finding: The proposed amendments will ensure that trees to be removed based on the standard of Zoning Code, Section 17.70.020.A, 17.70.020.B and Section 17.70.020.C are permitted only where a certified arborist has found that there is a technical basis for that removal, as defined in the ISA Tree Hazard Evaluation Form.

The proposed amendment is consistent with General Development Policy 14 and 15, and Recreation, Open Space, Natural, Visual and Historic Resources Policy 10.

Conclusion: This standard is met.

2. “The amendment will not adversely affect the ability of the city to satisfy land and water use needs.”

Finding: The proposed amendments will have no impact on the ability of the City to satisfy land and water use needs.

Conclusion: This standard is met

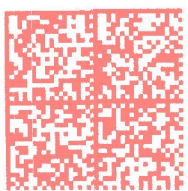
CONCLUSION

The proposed amendments to the text of the Zoning Code meet the relevant criteria.

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CITY OF CANNON BEACH
P. O. Box 368
Cannon Beach, OR 97110

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



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