



# Oregon

Theodore R. Kubongoski, 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

10/20/2009

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Cannon Beach Plan Amendment  
DLCD File Number 004-09

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, October 30, 2009

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  
Gloria Gardiner, DLCD Urban Planning Specialist  
Laren Woolley, DLCD Regional Representative

<paa> YA

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

<input type="checkbox"/> Hand delivered	<input type="checkbox"/> email	<input type="checkbox"/> mailed
<b>DEPT OF</b> <b>OCT 13 2009</b> <b>LAND CONSERVATION</b> <b>AND DEVELOPMENT</b> <small>For DLCD Use Only</small>		

Jurisdiction: City of Cannon Beach Local file number: ZO 09-04  
 Date of Adoption: 10/6/2009 Date Mailed: 10/9/2009  
 Date original Notice of Proposed Amendment was mailed to DLCD: 5/19/2009

- |   |   |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment        | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation                  | <input type="checkbox"/> Other: _____                     |

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

**Amendments to the Zoning Ordinance to prohibit the placement of wireless communication facilities in the Open Space (OS) Zone and other miscellaneous wireless communications amendments.**

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: None

Was and Exception Adopted?  YES  NO

DLCD File No.: 004-09 (17585) [15759]

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 )  
MUNICIPAL CODE, CHAPTER 17.75, )  
WIRELESS COMMUNICATION FACILITIES, )  
SECTION 17.75.040, DEVELOPMENT )  
STANDARDS )  
ORDINANCE NO. 09-05

The City of Cannon Beach does ordain as follows:

Section 1. Amend Section 17.75.040 Development standards, first paragraph to read as follows:

Wireless communication facilities are permitted in all zoning districts except the Open Space (OS) Zone. All wireless communication facilities shall be located, designed, constructed, treated and maintained in accordance with the following standards:

Section 2. Amend Section 17.75.040.B.6 General Standards to read as follows:

6. Equipment facilities shall be placed in underground vaults wherever feasible. Above ground equipment, facilities shall meet the setback requirements of the zone in which they are located and shall be reviewed through the design review process of Chapter 17.44 to ensure that they are designed, sited and landscaped to minimize the visual impact on the surrounding environment.

Section 3. Amend Section 17.75.040.B.7 General Standards to read as follows:


7. An existing utility pole may be replaced by a new utility pole made of wood with an additional height of ten feet, up to a maximum of fifty feet, at the same pole location and still be subject to design review rather than a conditional use. Replacement of an existing utility pole with a metal pole shall be reviewed as a #6 siting priority requiring a conditional use permit. A new utility pole placed pursuant to siting priority #6 shall be a replacement pole not resulting in an additional utility pole in the street right-of-way.

Section 4. Amend Section 17.75.040 Development standards to add a new subsection G to read as follows:

G. Nonconforming Wireless Communication Facilities. Wireless communication facilities that were located in conformance with applicable zoning requirements at the time of their construction but which no longer conform to location standards for wireless communication facilities shall be considered pre-existing uses pursuant to Section 17.82.060.

ADOPTED by the Common Council of the City of Cannon Beach this 6th day of October, 2009, by the following roll call vote:

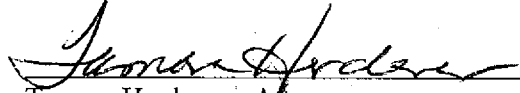
YEAS: Councilors: Steidel, Cadwallader, Higgins, Giasson and Mayor Morgan  
NAYS: Councilor Giasson  
EXCUSED: None

  
Mike Morgan, Mayor

Attest:

  
Richard A. Mays, City Manager

Approved as to Form:

  
Tamara Herdener, Attorney

FINDINGS OF FACT  
ZO 09-04, CITY OF CANNON BEACH, ZONING CODE TEXT AMENDMENTS, WIRELESS  
COMMUNICATION FACILITIES

**BACKGROUND**

The City of Cannon Beach is proposing amendments to the Zoning Code, Chapter 17.75, Wireless Communication Facilities. The proposed amendments: 1). Prohibit wireless communication facilities in the Open Space (OS) Zone; 2). Clarify that equipment facilities must meet setback requirements; 3). Specify that a new utility pole placed pursuant to siting priority #6 is a replacement pole not resulting in an additional utility pole in the street right-of-way; and 4). Establish a new section for nonconforming wireless communication facilities.

At its December 2, 2008, meeting, after acting on the proposed Verizon lease agreement with the City for the siting of a wireless communication facility on City property east of the intersection of E. Washington and Spruce Street, the Council directed staff to schedule a work session at which the Council could discuss the City's existing siting criteria for wireless communication facilities and potential revisions thereto.

The Council held a work session on January 13, 2009, to discuss the City's existing siting criteria for wireless communication facilities. The Council directed staff to evaluate a change to the Code that would remove wireless communication facilities as a use permitted in the Open Space Zone. The Council also requested a review of the existing standards as they applied to the siting of wireless communication facilities in conjunction with utility poles in street rights-of-way. This area of concern arose as the result of a number news stories in the Portland press concerning wireless communication facilities installed on utility poles.

The Planning Commission held work sessions on April 23, 2009 and May 11, 2009, to discuss potential revisions to the wireless communication facilities section of the Zoning Code.

The Planning Commission held a public hearing on July 23, 2009.

The City Council held a public hearing on the proposed amendments on September 1, 2009.

**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."

Finding: The Vision Statement of the comprehensive plan includes the following statement:

"Cannon Beach will continue to be a small town where the characteristics of a

village are fostered and promoted. Both the physical and social dimensions associated with a village will be integral to Cannon Beach's evolution during the next two decades. The elements of the town's physical form which the plan will foster are: Development that honors the city's physical setting. . .” One tool utilized by the City in achieving its goal of having future development honor the City's physical setting is to establish Zoning Code protections for certain parcels with unique environmental characteristics. One such Zoning Code protection is the Open Space (OS) Zone, whose purpose is “to preserve areas in their natural condition.” In order to achieve the purpose of preserving areas in their natural condition, the OS Zone permits only two uses on a conditional use basis, trails and wetland enhancement, including compensatory mitigation. Given that the stated purpose of the OS Zone is to preserve areas in their natural condition and that purpose is achieved by limiting physical improvements to those with de minimus impacts on the natural condition of a site, it is inconsistent with the purpose of the OS Zone to permit wireless communication facilities, which can include substantial physical improvements such as monopoles and equipment facilities, which in turn can impact the “natural condition” of the area in which they are located.

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 existing Zoning Code provisions for wireless communication facilities permit wireless communication facilities to be located in any of the City's zoning districts as well as street rights-of-way. The City's urban growth boundary contains approximately 950 acres, of which five parcels of land are designated OS, Open Space. These five parcels of land have an area of approximately 60 acres, or six percent of total area within the urban growth boundary. Therefore, there are approximately 890 acres inside the City's urban growth boundary available for the siting of wireless communication facilities. Reducing the area of the City where wireless communication facilities can be located by 6% will not adversely affect the City's ability to accommodate the siting of wireless communication facilities.

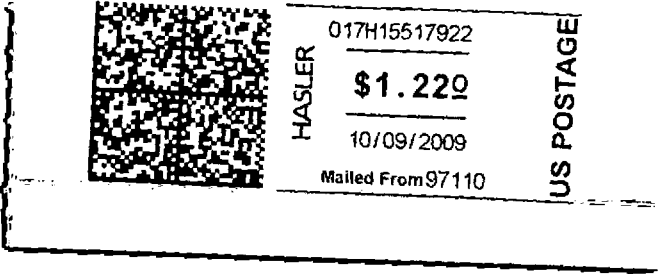
The other proposed amendments concerning the siting of equipment facilities, the placement of wireless communication facilities on utility poles, and a nonconforming use standard will have no impact on the ability of wireless communication providers to site such facilities in the City.

Conclusion: This standard is met

## CONCLUSION

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

Cc\cbzo09-04fin



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