



Oregon

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 08/25/2014
Jurisdiction: City of Cannon Beach
Local file no.: ZO 14-02
DLCD file no.: 006-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 08/18/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 50 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

| |
|---------------------|
| FOR DLCD USE |
| 006-13 |
| File No.: {19762} |
| Received: 8/18/2014 |

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: **City of Cannon Beach**

Local file no.: **ZO 14-02**

Date of adoption: **7/1/14** Date sent: **8/19/14**

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): **12/4/13**

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): **Mark Barnes, City Planner**

Phone: **(503) 436-8040** E-mail: **barnes@ci.cannon-beach.or.us**

Street address: **PO Box 368** City: **Cannon Beach** Zip: **97110**

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any: **N/A**

For a change to a comprehensive plan map: N/A

Identify the former and new map designations and the area affected:

Change from to . acres. A goal exception was required for this change.

Change from to . acres. A goal exception was required for this change.

Change from to . acres. A goal exception was required for this change.

Change from to . acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary. N/A

Exclusive Farm Use – Acres:

Non-resource – Acres:

Forest – Acres:

Marginal Lands – Acres:

Rural Residential – Acres:

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres:

Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary. N/A

Exclusive Farm Use – Acres:

Non-resource – Acres:

Forest – Acres:

Marginal Lands – Acres:

Rural Residential – Acres:

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres:

Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number: **Chapter 17.70 Tree Removal**

For a change to a zoning map: N/A

Identify the former and new base zone designations and the area affected:

Change from to . Acres:

Change from to . Acres:

Change from to . Acres:

Change from to . Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: N/A . Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: N/A

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

FINDINGS OF FACT

ZO14-02, A REQUEST FROM THE CITY OF CANNON BEACH TO AMEND MUNICIPAL CODE CHAPTER 17.70, TREE REMOVAL, TO ADDRESS THE USE OF OUTSIDE TECHNICAL EXPERTISE, AND FOR ORDINANCE MAINTENANCE

BACKGROUND

This request to amend chapter 17 of the municipal code came before the Planning Commission on January 23, 2014. The Planning Commission conducted a public hearing, and recommended that the City Council adopt the proposed amendments. The City Council conducted a public hearing on the proposed amendments on May 6, 2014. At the conclusion of the public hearing, the City Council tentatively agreed to adopt the amendments, pending review of an ordinance and approval findings.

The amendments affect chapter 17.70, Tree Removal. The proposed amendments accomplish four things:

- The City Council's direction regarding outside technical expertise is addressed (see proposed section 17.70.030.O);
- Definitions spread throughout chapter 17.70 are consolidated into one section (see proposed section 17.70.012);
- References to out-of-date external documents are updated (see proposed sections 17.70.030.J and N); and
- The existing ordinance refers to "Oregon Certified Arborists". The State of Oregon does not certify or license arborists. Sections 17.70.030.A and F are changed to reflect current certification practices in this industry.
- Some ambiguity about who may apply for a tree removal permit is addressed in proposed new section 17.70.017.

ANALYSIS/INFORMATION

Section 17.86.070.A of the Municipal Code establishes two criteria for approval of zoning ordinance text amendments. The proposed amendments must also be consistent with applicable statewide planning goals. These requirements are reproduced and addressed below.

17.86.070.A.1. Criteria: This section of the municipal code establishes criteria for the approval of municipal code amendments. The first criterion is:

A. 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;

Five comprehensive plan policies are applicable to the proposed zoning ordinance text amendment.

General Development Policy 14: To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.

General Development Policy 15: 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 Resources Policy 9: *A tree corridor along U.S. Highway 101 shall be maintained. The corridor shall incorporate both the U.S. Highway 101 right-of-way and adjacent private property.*

Recreation, Open Space, Natural, Visual and Historic Resources Policy 10: *Trees shall be protected through Zoning Ordinance provisions pertaining to either forest management or tree removal.*

Recreation, Open Space, Natural, Visual and Historic Resources Policy 11: *Vegetation and tree cover along the ocean front shall be managed in a manner which retains its erosion control capabilities and maintains its contribution to the scenic character of the beach.*

The City Council finds that the proposed amendments are consistent with these policies. The changes do not diminish the City's ability to ensure that site features, including trees, are preserved. The City will continue to regulate tree removal under the proposed amendments; the scope of the City's tree removal regulations is un-changed. The Highway 101 tree corridor is not threatened or diminished as a result of the proposed amendments. Trees that contribute to the City's recreation, open space, natural or visual resources will continue to be protected under the proposed revisions. These amendments do not change substantive decision-making criteria or the regulatory scope of the tree removal ordinance. Oceanfront tree cover that contributes to erosion control and to the beach's scenic character remains protected under the proposed amendments. The amendments codify the City's ability to consider outside technical expertise when reviewing tree removal permit applications.

The Comprehensive Plan background report titled "Open Space, Scenic and Historic Areas, and Natural Resources" addresses tree protection. The City's tree removal ordinance is mentioned in this background report under "Resource #1: Open Space":

The City has adopted a tree removal ordinance to regulate the removal of trees in conjunction with urban development. The purpose of the ordinance is to permit the removal of trees necessary for the development and use of property while retaining as much of the existing tree cover as possible.

The background report lists trees as a protected resource, with the "Tree Ordinance" as the protection measure. This text accompanies the tabular listing:

***Trees** The city's zoning ordinance contains a chapter regulating the removal of trees. These regulations maintain the scenic character of Cannon Beach which is associated with its tree cover.*

The City Council finds that the amendments do not conflict with the background report. The tree removal ordinance, chapter 17.70 of the municipal code, would continue to function as described in the background report. Chapter 17.70 would continue to "regulate the removal of trees in conjunction with urban development"; and help "maintain the scenic character of Cannon Beach which is associated with its tree cover." The intent of chapter 17.70 reads, in part, as follows:

The purpose of this chapter is to establish protective regulations for trees within the city in order to better control problems of soil erosion, landslide, air pollution, noise, wind and destruction of scenic values and wildlife habitat, as well as the protection of trees as a natural resource which establishes the wooded character of the city. (17.70.010.A)

Proposed amendments to this chapter do not change the tree removal ordinance's scope or substantive decision-making criteria. These ordinance amendments are procedural (allowing the City to use outside technical expertise in the decision-making process; clarifying who can apply for a tree removal permit), and minor (updating references in the ordinance, and reorganizing definitions). The amendments do not

diminish the City's ability to regulate tree removal in fulfillment of comprehensive plan requirements cited above. Proposed ordinance amendments are consistent with applicable parts of the "Open Space, Scenic and Historic Areas, and Natural Resources" Comprehensive Plan background report. No amendments to either the background report or to applicable policies are required as a result of the proposed code changes.

17.86.070.A.2. Criteria: This section of the municipal code establishes the second of two criteria for approval of amendments to the municipal code:

A. 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:

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

The City's land and water use needs can be satisfied if a sufficient inventory of land and water areas are available within the Urban Growth Boundary to meet needs for residential, commercial, recreational, institutional, open space, and other essential uses. Proposed amendments have no impact on land or water needs in Cannon Beach, or on the inventory of available land or water areas, because:

- The amendments do not increase or decrease the inventory of vacant developable land;
- The amendments do not reduce the allowable density of development or redevelopment;
- The amendments do not alter the existing balance between commercial and residential land;
- The amendments do not add a significant barrier to commercial or residential development or redevelopment;
- The amendments do no change any areas designated for open space or natural resource protection.

Based on this, the City Council finds that the proposed amendments will not adversely affect the City's ability to satisfy land and water use needs.

Statewide Planing Goals

Statewide planning goal 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.

The City's land use planning framework is well-established, and includes a comprehensive plan and implementing ordinances setting procedural and substantive requirements for all land use decisions. Proposed amendments do not compromise the City's basic land use planning process or the underlying policy framework. The amendments elaborate and expand on an existing permit process, but do not conflict with statewide planning goal 2 because the policy framework and basic planning process remain unchanged. Based on this, the City Council finds that the proposed amendments will not conflict with statewide planning goal 2, or with the City's goal 2 implementation measures.

Statewide planning goal 5: To protect natural resources and conserve scenic and historic areas and open spaces.

Goal 5 is implemented via the Comprehensive Plan background report cited above; and, with respect to trees, through Municipal Code Chapter 17.70, dealing with tree removal. Proposed code amendments do not take the City out of compliance with goal 5, nor do they weaken or undermine the City's goal 5 implementation strategy with respect to trees. A comprehensive plan amendment is not required as a result

of the proposal. The amendments do not change or undermine the City's decision under goal 5 to protect trees. A re-evaluation of trees as a goal 5 resource is not required. Based on this, the City Council finds that the proposed amendments will not conflicts with statewide planning goal 5, or with the City's goal 5 implementation measures.

ACTION

The City Council adopts the proposed amendments to Chapter 17.70.

cc/cbzo14-02fin

BEFORE THE COMMON COUNCIL OF THE CITY OF CANNON BEACH

FOR THE PURPOSE OF AMENDING MUNICIPAL) ORDINANCE NO. 14-04
CODE CHAPTER 17.70, TREE REMOVAL)

The City of Cannon Beach does ordain as follows:

Section 1. Add section 17.70.012 Definitions as follows:

17.70.012 Definitions

A. "Tree" is defined as any woody plant having at least one well-defined stem at least six inches in diameter measured at a height of four and one-half feet above the natural grade. All tree measures specified in this chapter shall be measured at a height of four and one-half feet above the natural grade.

B. "Dying tree" means that the tree is diseased, infested with insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation of disease to other trees.

C. "Solar energy system" means either: (i) a device employed in the collection of solar radiation for the purpose of heating or cooling a building, the heating of water, or the generation of electricity; or (ii) the south facing windows of a dwelling where such windows constitute fifty percent or more of the building's total window area; or (iii) the roof of a dwelling which has been designed for the collection of solar energy for space heating purposes.

D. "Dead tree" means that the tree is lifeless or less than ten percent of the crown is alive.

E. "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.

F. "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.

Section 2. Delete subsection 17.70.015.B.

Section 3. Add section 17.70.017 Permit Administration as follows:

17.70.017 Permit administration.

A. A property owner or their designated representative may initiate a request for approval for removal of a tree on the owner's property by filing an application with the city using forms prescribed by the city. The property owner's signature is required.

B. Anyone may initiate a request for approval of tree removal in a city right-of-way or on city-owned property by filing an application with the city using forms prescribed by the city.

Section 4. Amend subsection 17.70.020.C to read as follows:

C. The necessity to remove a dying tree.

Section 5. Amend subsection 17.70.020.E to read as follows:

E. The necessity to remove a tree where required to provide solar access to a solar energy system where pruning will not provide adequate solar access to permit effective operations of the solar energy system.

1. The city may require documentation that a device qualifies for an Oregon Department of Energy solar tax credit, or other incentive for the installation of solar devices offered by a utility.
2. No tree measuring more than twenty-four inches in diameter shall be removed for the purpose of obtaining solar access.

Section 6. Amend subsection 17.70.030.A 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 a Certified Arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a 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, a Certified Arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

Section 7. Amend subsection 17.70.030.A to read as follows:

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a Certified Arborist.

Section 8. Amend subsection 17.70.030.F. to read as follows:

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. Where a tree presents an immediate danger of collapse, a complete ISA Tree Hazard Evaluation Form prepared by a 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.

Section 9. Amend subsection 17.70.030.J to read as follows:

J. Tree pruning does not require a permit. However, the following trees shall be pruned in conformance with International Society of Arboriculture (ISA) ANSI A300 Pruning Standards (2008):

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

Section 10. Amend subsection 17.70.030.K to read as follows:

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.

Section 11. Amend subsection 17.70.030.N.1 to read as follows:

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, Ninth Edition, 2000. The unlawful removal of each individual tree shall be a separate offense.

Section 12. Add subsection 17.70.030.O to read as follows:

O. The City may seek independent expert opinion when reviewing an ISA Tree Hazard Evaluation; or when reviewing any request to remove a diseased, damaged, dying, or hazardous tree.

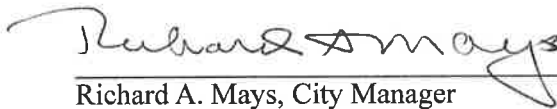
ADOPTED by the Common Council of the City of Cannon Beach this 1st day of July, 2014, by the following roll call vote:

YEAS: Councilors Cadwallader, Higgins, Benefield, Vetter and Mayor Morgan
NAYS: None
EXCUSED: None



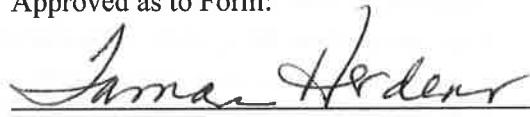
Mike Morgan, Mayor

Attest:



Richard A. Mays, City Manager

Approved as to Form:



Tamara Herdener, City Attorney