



# Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

7/22/2009

**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 001-09

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:** Thursday, July 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

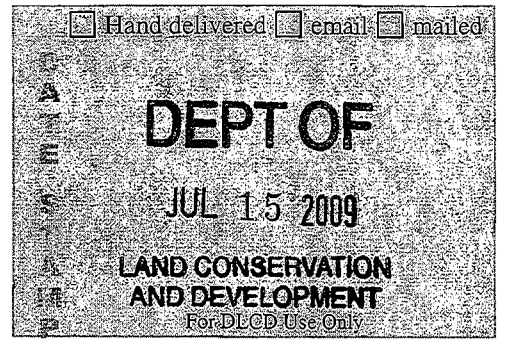
<paa> YA

2707 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 09-02  
 Date of Adoption: 7/7/2009 Date Mailed: 7/9/2009  
 Date original Notice of Proposed Amendment was mailed to DLCD: 1/5/2009

- |   |   |
|---|---|
| <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".

The amendment was to remove language that a duplex shall not be converted to condominium ownership with individual dwelling units owned separately.

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".

The original proposal was to establish standards on duplexes to require that at least one of the dwelling units shall be a long term rental since it was determined that the language to prohibit condo conversions needed to be removed.

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: N/A

Was and Exception Adopted?  YES  NO

DLCD File No.: 001-09 (17309) [15617]

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 **maru.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. 09-02  
MUNICIPAL CODE, TITLE 17, ZONING, )  
SECTION 17.90.170, DUPLEX )  
STANDARDS )

The City of Cannon Beach does ordain as follows:


Section 1. Amend the Municipal Code, Section 17.90.170, Duplex standards to read as follows:

The following standard is applicable to duplexes:

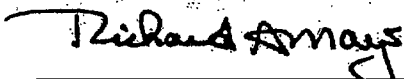
A. The individual dwelling units of a duplex may not be sold as separate personal property.

ADOPTED by the Common Council of the City of Cannon Beach this 7th day of July 2009, by the following roll call vote:


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

  
\_\_\_\_\_  
Mike Morgan, Mayor

Attest:

  
\_\_\_\_\_  
Richard A Mays, City Manager

Approved as to Form:

  
\_\_\_\_\_  
Tammy Hefener, Attorney

FINAL FINDINGS OF FACT  
ZO 09-02, CITY OF CANNON BEACH ZONING CODE AMENDMENT, DUPLEX SITING  
STANDARDS

**BACKGROUND**

On August 12, 2008, LeAnne Bremer with the law firm Miller Nash notified the City by letter that her client, Joel Stirling, who owns a duplex in Cannon Beach, was interested in converting his duplex into a condominium where each dwelling unit could be sold and owned separately. The letter noted that the City's Municipal Code, Section 17.90.170, Duplex standards, specifically prohibits the conversion of a duplex to condominium ownership. The letter argued that there is no provision in the Oregon Condominium Act which grants the City authority to prohibit the creation of condominiums for any type of property including duplexes and that therefore the City's duplex standard in Section 17.90.170.C is preempted by State statute. In light of the above legal argument, Ms. Bremer requested that the City not apply the standards of Municipal Code, Section 17.90.170.C to Mr. Stirling's property and permit him to proceed with converting his duplex into condominium ownership so that each dwelling unit could be sold and owned separately.

The City Attorney, Bill Canessa, reviewed the issues raised by the August 12, 2008 letter. Mr. Canessa opined that although the outcome of any litigation is uncertain, on balance there is a higher likelihood that the courts would find that the Oregon Condominium Act prevents the City from prohibiting condominium conversions. Council was apprised of Mr. Canessa's opinion. The Council determined to obtain a second legal opinion. The City hired Allen Johnson, of the firm Johnson & Sherton P.C., to prepare a second opinion. In his analysis of the standards contained in Section 17.90.170.C, Mr. Johnson made a distinction between those concerning ownership and those concerning tenancy. Mr. Johnson concurred with Mr. Canessa's opinion that the courts are likely to find that the Oregon Condominium Act preempts the City from prohibiting condominium conversions of duplexes. However, Mr. Johnson also concluded there is a substantial basis for concluding that the City can regulate the tenancy of duplexes. A third party, William Kabeisman, with Garvey Schubert Barer, confirmed this analysis.

On October 9, 2008, Joel Stirling filed a complaint for declaratory relief in Clatsop County Circuit Court. Mr. Stirling requested a judgment that Cannon Beach has no authority to prohibit condominium conversions for duplexes as long as the condominium is created in compliance with the Oregon Condominium Act. Based on the legal analysis that the City received, Council determined to enter into a stipulated agreement that the City has no authority to prohibit condominium conversions for duplexes as long as the condominium is created in compliance with the Oregon Condominium Act. The Stipulation & Judgment for Plaintiff Joel Stirling was entered on December 18, 2008.

The Council directed the Planning Commission begin the process of amending the Zoning Code to establish a duplex standard that requires that at least one of the units is a duplex is a long term rental.

At its December 18, 2008, meeting, the Planning Commission discussed the concept of amending the Zoning Code's duplex standards to require that at least one of the units of a duplex is a long term rental. The Planning Commission directed staff to research any issues that might be associated with three potential amendments. First, an amendment to the duplex standards that requires that either both duplex units are long-term rentals or that one of the duplex units is a long-term rental and the other duplex unit is owner occupied. Second, modifying the standards for limited triplexes to require that all three units are

long-term rentals or that two of the units are long-term rentals and the third unit is owner occupied. Third, establishing a standard that requires that existing multifamily structures that provide long-term rentals be required to continue to do so.

At the January 22, 2009, Planning Commission meeting, staff presented its analysis of the three potential amendments that the Planning Commission discussed at the December 18, 2008, meeting. Staff's analysis was that the City could implement the standards with regard to duplexes and triplexes. Staff also recommended not proceeding with an amendment regarding the tenancy of multi-family dwellings. The Planning Commission directed staff to proceed with a public hearing on establishing tenancy standards for duplexes and triplexes that would:

1. Eliminate the duplex standard regarding common ownership of a duplex, including the prohibition on the conversion of a condominium to condominium ownership;
2. Require that either both duplex units are long-term rentals or that one of the duplex units is a long-term rental and the other duplex unit is owner occupied; and
3. Modifying the standards for limited triplexes to require that all three units are long-term rentals or that two of the units are long-term rentals and the third unit is owner occupied.
4. Create a nonconforming tenancy provision for those duplexes and triplexes that did not meet the requirements of 2 and 3 above.

At its February 26, 2009, meeting, the Planning Commission held a public hearing on proposed amendments to the standards that are applicable to duplexes and limited triplexes as outlined in the previous paragraph. The Planning Commission received significant testimony from duplex owners in opposition to the proposed Zoning Code amendments.

The Planning Commission closed the February 26, 2009, public hearing and scheduled a work session to discuss the testimony it had received. The work session was held on March 4, 2009. In light of the public testimony, staff prepared four alternatives recommendations that the Planning Commission could make to the City Council:

1. Option #1. Recommend approval of the proposal on which the February 26, 2009, public hearing was held;
2. Option #2. Recommend approval of the initial concept referred to the Planning Commission by the City Council, i.e., require that one duplex unit is a long-term rental;
3. Option #3. Delete the existing prohibition on the condominium conversion of duplexes, but make no other changes to standards applicable to duplexes or triplexes; and
4. Option #4. Delete the existing prohibition on the condominium conversion of duplexes and create an incentive for duplexes to provide long-term rental units. One concept is to reestablish a density standard for duplexes of 7,500 square feet of site area, with a reduction to 5,000 square feet if one of the duplex units is a long-term rental unit.

The general direction of the Planning Commission's discussion at the work session was not to pursue standards that would have a retroactive effect on duplex owners, i.e., Option #1 and Option #2 above. There was no general consensus on whether Option #4 should be recommended to the Council.

After the March 4, 2009 Planning Commission work session, planning staff had a conversation with the Department of Land Conservation and Development's (DLCD) Field Representative, Laren Woolley, regarding potential issues that DLCD might have regarding establishing a density standard for duplexes of 7,500 square feet of site area, with a reduction to 5,000 square feet of site area if one of the duplex units is a long-term rental unit. Mr. Woolley indicated that he foresaw a significant challenge to the City in justifying an increase in the minimum lot size for a duplex even if it was in conjunction with a permitted reduction in the minimum lot size to 5,000 square feet where at least one long term rental unit was

provided. He indicated that in order to justify such a change the City may be required to provide a new needed housing analysis that demonstrates that the implementation of this new standard would result in duplexes in a quantity that meets the outcome of the needs analysis. Mr. Woolley stated that it was his recommendation to not proceed with this change to the Zoning Code. In light of this information from DLCD, planning staff recommended that the Planning Commission not recommend Option #4 to the Council.

At its March 26, 2009, meeting, planning staff presented the information obtained from DLDC on Option #4. In light of this information from DLCD, planning staff recommended that the Planning Commission not recommend Option #4 to the Council. The Planning Commission recommended that the City Council adopt Option #3, delete the existing prohibition on the condominium conversion of duplexes, but make no other changes to standards applicable to duplexes or triplexes.

Background material on the proposed amendments to duplex and triplex standards was presented to the Council at its April 4, 2009, work session.

The City does not know the exact number of duplex units in the City, in part because the 2000 US Census no longer has a sole housing type category that defines two units, rather it aggregates 2-4 units. However, with some extrapolation from the 1990 Census, when duplexes were enumerated separately, it is estimated that there are approximately 62 duplexes in the City, comprising 124 dwelling units. It is estimated that in 2000, duplexes at that time constituted approximately 40% of the total potential supply of rental units in the City.

The Council held a public hearing at its June 2, 2009, meeting. At the conclusion of the public hearing the Council tentatively approved the Planning Commission recommendation of eliminating the prohibition on the conversion of a duplex to condominium ownership; as well as not creating new regulations on the tenancy of a duplex.

## **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.”

Housing Policy 1 states that “in order to maintain the city’s village character and its diverse population, the city will encourage the development of housing which meets the needs of a variety of age and income groups, as well as groups with special needs.”

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

Finding: On October 9, 2008, Joel Stirling filed a complaint for declaratory relief in Clatsop County Circuit Court. Mr. Stirling requested a judgment that Cannon Beach has no authority to prohibit condominium conversions for duplexes as long as the condominium is created in compliance with the Oregon Condominium Act. Based on the legal analysis that the City received, Council determined to enter into a stipulated agreement that the City has no authority to prohibit condominium conversions for duplexes as long as the condominium is created in compliance with the Oregon

Condominium Act. The Stipulation & Judgment for Plaintiff Joel Stirling was entered on December 18, 2008. By virtue of the above action by the City, the City has taken the position that it cannot regulate the conversion of a duplex to a condominium form of ownership. The proposed amendment to Section 17.90.170, Duplex standards simply amends the Zoning Code so that is in conformance with the decision the City has already made on this matter.

When the Council initiated the zoning text amendment regarding duplex standards it requested that the Planning Commission evaluate the concept of regulating the tenancy of duplexes. The Planning Commission did so and held a public hearing on proposed zoning text amendments that would have regulated the tenancy of duplexes. At that hearing the Planning Commission heard extensive testimony on the potential adverse impacts of regulating the tenancy of duplexes. The following summarizes these arguments.

The key argument in opposition was that the proposed regulation of the tenancy of duplexes would take away rights, as to the use of the duplex, which duplex owners presently enjoy under provisions of the Zoning Code. Under present rules owners of duplexes have a variety of options for the use of the duplex, one or both units can be long term rentals, one of the units is a weekend/second home, the owner lives in one of the units and makes the other unit available to a family members, one of the units is a vacation rental or a transient rental. Some or all of these options would be eliminated by the adoption of the proposed tenancy standards. When assessing this impact, consideration should be given to the fact that property owners to be regulated provide a significant amount of the dispersed affordable long-term rental housing in the community.

Another argument was that adoption of the proposed tenancy standards will prohibit duplex owners from using their property in a manner that single-family dwelling owners are permitted to do, namely as a residence, or a second home, or as a short-term rental. Making a distinction between the permitted occupancy of a single-family dwelling and the occupancy of a duplex in this manner is discriminatory.

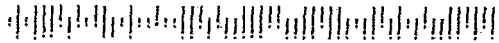
A third argument was that requiring the submittal of annual statements on the use of duplexes is an unwarranted and burdensome.

A fourth argument was that mandating that both duplex units are long-term rentals means the duplex property would have to be treated as strictly a business investment, with the income generated by the property supporting costs associated with its ownership. This will undoubtedly lead to an increase in rents, resulting in the likely loss of existing tenants who can not pay the higher rents. Because of the service nature of the local economy, there is an upper limit on what the average tenant can pay and because service workers have a restricted income this would have the effect of depressing the value of the duplex, since its value is now strictly based on the income it can generate. This is an unfair burden, which is not born by other types of home owners.

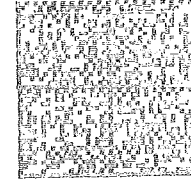
A fifth argument was that because the proposed tenancy restrictions require a specific combination of long-term tenancy and owner-occupancy, there is likely, at any given time, an extremely small pool of potential owners that in combination would accede to the required restrictions. In effect, the tenancy standards are a de facto means of retaining the prohibition on condominium conversion.



We concur with these arguments and have based the decision to not regulate the tenancy of duplexes on these arguments. We have concluded that implementing tenancy standards for duplexes may result in the loss of more duplexes from the supply of available long-term rentals than would any loss in supply that may result from the conversion of a duplex to condominium ownership. Therefore, the proposed amendment will not adversely affect the ability of the city to satisfy a land use need; in this case the need for long-term rental housing.



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



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**\$1.220**  
Mailed From 97110

US POSTAGE

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