



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

06/25/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Salem Plan Amendment
DLCD File Number 007-12

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: Tuesday, July 10, 2012

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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Bryce Bishop, City of Salem
Gordon Howard, DLCD Urban Planning Specialist
Angela Lazarean, DLCD Regional Representative

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FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000



Jurisdiction: **City of Salem**

Local file number: **CA12-02**

Date of Adoption: **6/11/2012**

Date Mailed: **6/18/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 03-30-2012

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Amendment to Salem Revised Code Chapter (SRC) 300 - Land use procedures. Purpose of the amendment is to conform SRC 300 to House Bill 2129 by reducing the period for DLCD notice to 35 days, and to allow an amendment to the City's land use regulations or Comprehensive Plan without a hearing, if the proposed change is to comply with new state land use requirements and DLCD has provided written confirmation that the proposed change is for that purpose.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from: **NA**

to:

Zone Map Changed from: **NA**

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

DLCD File No. 007-12 (19262) [17088]

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

Local Contact: **Bryce Bishop, Planner II**

Phone: (503) 588-6173 Extension: 7599

Address: 555 Liberty St SE, Room 305

Fax Number: 503-588-6005

City: Salem, OR

Zip: 97301-

E-mail Address: bbishop@cityofsalem.net

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated December 30, 2011



June 18, 2012

Audiencia Publica
Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173

NOTICE OF FINAL DECISION Ordinance No. 9-12
Code Amendment No. CA12-02 –
Chapter 300, Procedures for Land Use Applications
and Legislative Land Use Proposals

YOU ARE HEREBY NOTIFIED that the City Council of the City of Salem adopted Ordinance No. 9-12 at the June 11, 2012 session. Ordinance No. 9-12 amends Salem Revised Code Chapter 300 to change the required notification period to the Department of Land Conservation and Development (DLCD) from 45 days to 35 days for legislative land use proceedings and certain Type III and Type IV Land use Applications. The Ordinance also allows the city council to forego a Public Hearing on Amendments to the city's Comprehensive Plan and Land use regulations if the proposed amendment is to comply with new State Land Use Requirements and the DLCD has provided written confirmation that the proposed amendment is for that purpose. A copy of the ordinance is attached.

Any person with standing may appeal the City Council's decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals **not later than 21 days after June 18, 2012.** Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

If you have any further questions, you may contact the City of Salem Planning Division at 503-588-6173.

Glenn W. Gross
Urban Planning Administrator

Attachment: Ordinance No. 9-12

cc: See Attached

COMMUNITY DEVELOPMENT

Planning Division • 555 Liberty St. SE / Room 305 • Salem, OR 97301-3503 • (503) 588-6173 FAX (503) 588-6005



Proposed Amendments to SRC Chapter 300

Sections Proposed for Amendment:

- SRC 300.620; SRC 300.720; and 300.1110.

Proposed Amendments:

- Language identified by ~~strike-out~~ represents existing language proposed to be deleted.
- Language identified by underline represents new language proposed to be added.

Salem Revised Code Online:

The full text of SRC Chapter 300 is available on the City's website at the following location:

<http://www.cityofsalem.net/Departments/Legal/Pages/SalemRevisedCodes.aspx>

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information of sufficient detail to convey the nature and effect of the application, and a certificate of mailing.

(2) Mailed Notice. Mailed notice shall be provided as follows:

(A) The City shall mail notice of the public hearing not less than twenty days prior to the public hearing. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice of public hearing shall be mailed to:

- (i) The applicant(s) and/or authorized representative(s);
- (ii) The owner(s) or contract purchaser(s) of record of the subject property;
- (iii) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (iv) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (v) Any governmental agency entitled to notice by law or under an intergovernmental agreement with the City;
- (vi) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
- (vii) The tenants of a manufactured home or mobile home park, for applications involving a Comprehensive Plan map change and/or Zone change affecting all or part of the manufactured home or mobile home park; and
- (viii) All property owners within the historic district, for Major Historic Design Review applications within a historic district and historic resource demolition applications.

(C) Mailed notice shall include:

- (i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;

- 1 (ii) The type of application and a concise description of the nature of the
2 request;
- 3 (iii) The proposed site plan, if any;
- 4 (iv) The street address or other easily understood geographical reference
5 to the subject property;
- 6 (v) A vicinity map identifying the subject property with relation to nearby
7 major streets or other landmarks;
- 8 (vi) A list of the applicable criteria by name and code section;
- 9 (vii) The date, time, and place of the public hearing;
- 10 (viii) A statement that the application and all documents and evidence
11 submitted by the applicant are available for review and that copies can be
12 obtained at reasonable cost;
- 13 (ix) A brief summary of the decision making process for the application;
- 14 (x) A general explanation of the requirements for submission of testimony
15 and the procedure for conduct of hearings;
- 16 (xi) A statement that all interested persons may appear either in person or
17 with representation by an attorney and provide testimony; and that only
18 those participating at the hearing, in person or by submission of written
19 testimony, have the right to appeal the decision;
- 20 (xii) A statement that failure to raise an issue prior to the close of the
21 public hearing, in person or in writing, or failure to provide statements or
22 evidence with sufficient specificity to afford the applicant and Review
23 Authority to respond to the issue precludes an appeal to the Oregon Land
24 Use Board of Appeals on that issue;
- 25 (xiii) A statement that a copy of the staff report with recommendation to
26 the Review Authority will be available for inspection at no cost at least
27 seven days prior to the hearing, and that copies will be provided at
28 reasonable cost;
- 29 (xiv) A statement that after the close of the public hearing a decision shall
30 be made that will be mailed to the applicant, property owner, affected

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neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice of the decision; and

(xv) The name and contact information for the staff case manager.

(3) Posted Notice. Posted notice shall be provided as follows:

(A) The applicant shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the public hearing. The notice shall remain in place through the day of the public hearing. The applicant shall file an affidavit of posting with the City no later than five days after the date of the original posting. The affidavit shall be made a part of the file.

(B) Notice shall be posted on each street frontage of the subject property in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.

(C) Posted notice shall be on signs prepared by the Planning Administrator.

(D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.

(E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days in an undamaged and reusable condition.

(c) Application Review and Staff Report. Staff shall review the application, and written comments, and evidence submitted prior to the public hearing and prepare a staff report summarizing the application, comments received to-date, and relevant issues associated with the application; and making a recommendation to the Review Authority. The staff report shall be made available to the public for review a minimum of seven days prior to the hearing.

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(d) Public Hearing. A public hearing shall be held before the Review Authority for the purpose of receiving evidence and testimony regarding the application. The hearing shall be conducted in accordance with the public hearing procedures established under SRC 300.900. The Review Authority shall consider in its review the application, all evidence and testimony submitted for the record, and the recommendation of staff.

(e) Decision. The Review Authority shall approve, conditionally approve, or deny the application based upon the facts contained within the record and according to the applicable standards and criteria. The decision shall be a written order and include:

- (1) A list of the approval criteria by section number;
- (2) A statement of facts upon which the Review Authority relied to find the application does or does not comply with each approval criterion and to justify any conditions of approval. The Review Authority may direct the party whose position is adopted to prepare the statement of facts, and may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order;
- (3) A statement of conclusions based on the statement of facts; and
- (4) An order approving, approving with conditions, or denying the application.

(f) Notice of Decision. Notice of the decision shall be mailed within seven days from the date the Review Authority adopts the written order. An affidavit of mailing shall be prepared and made part of the file.

- (1) Notice of decision shall be mailed to:
 - (A) The applicant(s) and/or authorized representative(s);
 - (B) The owner(s) or contract purchaser(s) of record of the subject property;
 - (C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
 - (D) Any group or individual who submitted testimony for the record prior to the close of the public hearing;
 - (E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency that submitted testimony prior to the close of the public hearing;

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(F) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision to the City; and

(G) The Oregon Department of Land Conservation and Development, for decisions which required notice to the Oregon Department of Land Conservation and Development.

(2) Notice of decision shall include:

- (A) A brief description of the application;
- (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and its comprehensive plan designation and zoning;
- (C) A brief summary of the decision, and conditions of approval, if any;
- (D) A statement of the facts relied upon;
- (E) The date the Review Authority's decision becomes effective, unless appealed;
- (F) The date, time, and place by which an appeal must be filed, a brief statement explaining how to file an appeal, and where further information may be obtained concerning the appeal process;
- (G) A statement that all persons who presented evidence or testimony as part of the hearing may appeal the decision; and
- (H) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(g) Appeal and Review.

- (1) Unless appealed pursuant to SRC 300.1010, or review is initiated by the City Council pursuant to SRC 300.1050, the decision on a Type III application shall become effective on the date when written notice of the decision is mailed to persons entitled to notice.
- (2) Only the applicant and persons who provided evidence or testimony prior to the close of the public hearing have standing to appeal a Type III application.

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(3) The Review Authorities for appeals are identified under Table 300.100-2. Except as otherwise provided in paragraph (4) of this subsection, the decision of the Review Authority on appeal, or, if review is initiated by the City Council, the City Council on review, shall be the final decision of the City.

(4) The decision on a Major Historic Design Review application is not subject to Council review.

(5) Appeal of the City's final decision is to the Oregon Land Use Board of Appeals.

(h) **Expiration of Approval.** Approval of a Type III application expires automatically as provided under SRC 300.860(a).

Section 2. SRC 300.720 is amended to read as follows:

300.720 Type IV Procedure.

(a) Application Requirements.

(1) **Applicant Initiated.** If the Type IV application is applicant initiated, the following shall apply.

(A) **Application Form.** Type IV applications shall be made on forms provided by the Planning Administrator.

(B) **Submittal Requirements.** Type IV applications shall include the information required under SRC 300.210.

(2) **City Initiated.** If the Type IV application is City initiated, application shall be initiated by resolution of the City Council, Planning Commission, or Historic Landmarks Commission.

(b) **Public Notice.** Public notice is required for Type IV applications. The purpose of this notice is to provide property owners in the area and other interested parties with the opportunity to participate in the public hearing process through the submission of written and oral testimony. Because Type IV applications require evidentiary public hearings before the initial Review Authority and before the City Council, public notice is required for each hearing. Public notice shall be mailed and posted on the subject property.

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(1) Oregon Department of Land Conservation and Development Notice.
Notice to the Oregon Department of Land Conservation and Development is required for certain Type IV applications, pursuant to ORS 197.610. Notice to the Oregon Department of Land Conservation and Development shall be provided as follows:

(A) The City shall mail notice of the application to the Oregon Department of Land Conservation and Development ~~not less than five forty five days prior to the first evidentiary public hearing~~ no later than the minimum number of days required by ORS Chapter 197. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice to the Oregon Department of Land Conservation and Development shall be provided on forms provided by the Oregon Department of Land Conservation and Development. The notice shall be accompanied by information of sufficient detail to convey the nature and effect of the application and approval being sought, and the certificate of mailing of the notice.

(2) Mailed Notice. Mailed notice shall be provided as follows:

(A) Applicant Initiated Applications.

(i) **Initial Public Hearing.** When a Type IV application is applicant initiated, the City shall mail notice of the initial evidentiary hearing a minimum of twenty days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of the initial public hearing shall be mailed to:

- (aa) The applicant(s) and/or authorized representative(s);
- (bb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;
- (cc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

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(dd) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(ee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(ff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City; and

(gg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park.

(ii) Subsequent Public Hearings. The City shall mail notice of a subsequent public hearing, including, but not limited to, a final hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

(aa) The applicant(s) and/or authorized representative(s);

(bb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;

(cc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(dd) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(ee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(ff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;

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(gg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park;

(hh) Any group or individual who submitted testimony for the record prior to the close of the initial public hearing; and

(ii) Any group or individual who requested notice of the initial decision of the Review Authority making recommendation to the City Council.

(B) City Initiated Applications.

(i) **Initial Public Hearing.** When a Type IV application is City initiated, the City shall mail notice of the initial evidentiary hearing a minimum of twenty days prior to the hearing. The City shall mail notice of the final public hearing a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of the initial public hearings shall be mailed to:

(aa) The owner(s) or contract purchaser(s) of record of the subject property;

(bb) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(cc) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(dd) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(ee) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;

(ff) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone

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change affecting all or part of the manufactured home or mobile home park.

(ii) Subsequent Public Hearings. The City shall mail notice of any subsequent public hearing, including, but not limited to, a final public hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

- (aa)** The owner(s) or contract purchaser(s) of record of the subject property;
- (bb)** Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (cc)** Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (dd)** Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;
- (ee)** Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
- (ff)** The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park;
- (gg)** Any group or individual who submitted testimony for the record prior to the close of the initial public hearing; and
- (hh)** Any group or individual who requested notice of the initial decision of the Review Authority making recommendation to the City Council.

(C) Contents. Mailed notice of each public hearing on a Type IV application shall include:

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- (i) The names of the applicant(s) and any representative(s) of the applicant, if applicable, and the owner(s) of the subject property;
- (ii) The type of application and a concise description of the nature of the request;
- (iii) Site plan, if applicable;
- (iv) The street address or other easily understood geographical reference to the subject property;
- (v) A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
- (vi) A list of the approval criteria by name and code section;
- (vii) The date, time, and place of the public hearing;
- (viii) A statement that the application and/or all documents and evidence submitted are available for review, and that copies can be obtained at a reasonable cost;
- (ix) A brief summary of the decision making process for the application;
- (x) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (xi) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, or in writing, shall be entitled to appeal;
- (xii) A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;
- (xiii) A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;

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(xiv) For the initial public hearing, a statement that subsequent to the close of the hearing a recommendation will be forwarded to the City Council; and for the final public hearing a statement that subsequent to the close of the hearing notice of the decision will be mailed to the applicant, if applicable, the property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested notice of the decision; and

(xv) The name and contact information for the staff case manager.

(3) Posted Notice. Posted notice is required for Type IV applications. Posted notice shall be provided for each public hearing as follows:

(A) The applicant, or City, if application is City-initiated, shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the public hearing. The notice shall remain in place through the day of the public hearing. An affidavit of posting shall be filed no later than five days after the date of the original posting.

(B) Notice shall be posted on each street frontage of the subject property in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.

(C) Posted notice shall be on signs prepared by the Planning Administrator.

(D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.

(E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days in an undamaged and reusable condition.

1 **(c) Application Review and Staff Report.** Staff shall review the application, and
2 written comments, and evidence submitted prior to each public hearing and prepare
3 staff reports summarizing the application, comments received to-date, and the relevant
4 issues associated with the application. Each staff report shall make a recommendation
5 to the Review Authority. The staff reports shall be made available to the public for
6 review a minimum of seven days prior to each public hearing.

7 **(d) Public Hearings.** An initial evidentiary public hearing shall be held before the
8 applicable Review Authority. The purpose of the initial evidentiary public hearing is
9 for the Review Authority to receive evidence and testimony on the application and to
10 forward a recommendation to the City Council. A final public hearing shall be held
11 before the City Council. The purpose of the final public hearing before the City
12 Council is to receive additional evidence and testimony and the recommendations of
13 the Review Authority and staff and to make a final decision on the application. Each
14 hearing shall be conducted as provided in SRC 300.900.

15 **(e) Recommendation.** Subsequent to the close of the initial public hearing, the
16 Review Authority shall make a recommendation to approve, approve with conditions,
17 or deny the application, based upon the facts contained in the record and according to
18 the applicable standards and criteria. The recommendation of the Review Authority
19 shall be a written order that shall include:

- 20 (1) A list of the approval criteria by section number;
- 21 (2) A statement of the facts relied upon by the Review Authority in making its
22 recommendation. The Review Authority may direct the party whose position is
23 adopted to prepare the statement of facts, or adopt or incorporate a staff report or
24 written findings prepared by any party to the proceeding into the order;
- 25 (3) A statement of conclusions based on the statement of facts; and
- 26 (4) The recommendation of the Review Authority.

27 **(f) Notice of Recommendation.** Notice of the recommendation shall be mailed within
28 seven days from the date the Review Authority adopts its order. An affidavit of
29 mailing shall be prepared and made part of the file.

- 30 (1) Notice of recommendation shall be mailed to:

- 1 (A) The applicant(s) and/or authorized representative(s), if applicable;
2 (B) The owner(s) or contract purchaser(s) of record of the subject property;
3 (C) Any City-recognized neighborhood association whose boundaries
4 include, or are adjacent to the subject property;
5 (D) Any group or individual who submitted testimony prior to the close of the
6 public hearing;
7 (E) Any governmental agency which is entitled to notice by law or under an
8 intergovernmental agreement with the City, and any governmental agency
9 which submitted testimony prior to the close of the public hearing; and
10 (F) Any community organizations, agencies, or individuals who submitted
11 written requests for notice of the recommendation.
- 12 (2) Notice of recommendation shall include:
- 13 (A) A brief description of the application;
14 (B) A description of the site sufficient to inform the reader of its location,
15 including site address, if available, map and tax lot number, and the
16 comprehensive plan designation, and zoning;
17 (C) A brief summary of the recommendation;
18 (D) A statement of the facts relied upon by the Review Authority in making
19 its recommendation;
20 (E) A brief statement explaining the next steps in the Type IV application
21 process; and
22 (F) A statement that the complete case file is available for review. The notice
23 shall state where the case file is available and the name and telephone number
24 of the staff case manager to contact about reviewing the case file.
- 25 (g) **Decision.** Subsequent to the close of the final public hearing, the City Council
26 shall approve, approve with conditions, or deny the application, taking into
27 consideration the recommendations of the Review Authority and staff; and based upon
28 the facts contained within the record and according to the applicable standards and
29 criteria; or refer the matter back to the Review Authority for further consideration. The
30 decision of the City Council shall be a written order that shall include:

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- (1) A list of the applicable approval criteria by section number;
- (2) A statement of the facts relied upon by the City Council in making its decision. The City Council may direct the party whose position is adopted to prepare the statement of facts, or adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order;
- (3) A statement of conclusions based on the statement of facts; and
- (4) An order approving, approving with conditions, or denying the application.

(h) Notice of Decision. Notice of the decision shall be mailed within seven days from the date the City Council adopts its written order. An affidavit of mailing shall be prepared and made part of the file.

- (1) Notice of decision shall be mailed to:
 - (A) The applicant(s) and/or authorized representative(s), if applicable;
 - (B) The owner(s) or contract purchaser(s) of record of the subject property;
 - (C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to the subject property;
 - (D) Any group or individual who submitted testimony for the record prior to the close of the public hearing;
 - (E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;
 - (F) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision to the City; and
 - (G) The Oregon Department of Land Conservation and Development for decisions which required initial notice to the Oregon Department of Land Conservation and Development.
- (2) Notice of decision shall include:
 - (A) A brief description of the application;
 - (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and the comprehensive plan designation and zoning;

- 1 (C) A brief summary of the decision, and conditions of approval, if any;
2 (D) A statement of the facts relied upon by the City Council in making its
3 decision;
4 (E) The date the City Council's decision becomes the City's final decision;
5 (F) The date, time, and place by which an appeal must be filed and where
6 further information may be obtained concerning the appeal process; and
7 (G) A statement that the complete case file, including findings, conclusions,
8 and conditions of approval, if any, is available for review. The notice shall
9 state where the case file is available and the name and telephone number of
10 the staff case manager to contact about reviewing the case file.
- 11 (i) **Appeals.** The decision of the City Council on a Type IV application shall become
12 the City's final decision on the date when written notice of the decision is mailed to
13 persons entitled to notice of the decision. Appeals of Type IV applications are to the
14 Oregon Land Use Board of Appeals.
- 15 (j) **Expiration of Approval.** Approval of a Type IV application does not expire.

16 **Section 3.** SRC 300.1110 is amended to read as follows:

17 **300.1110. Legislative Procedure.**

- 18 (a) **Initiation.** Legislative land use proceedings may be initiated by the City Council,
19 Planning Commission, Historic Landmarks Commission, or staff.
- 20 (1) The City Council may initiate a legislative land use proceeding by the
21 adoption of a resolution, which shall state whether the matter is to be referred to
22 another Review Authority for public hearing and recommendation.
- 23 (2) The Planning Commission or Historic Landmarks Commission may initiate a
24 legislative land use proceeding by the adoption of a resolution referring the matter
25 to public hearing for review and recommendation to the City Council.
- 26 (3) Staff may initiate a legislative land use proceeding by preparing an ordinance
27 bill and placing the ordinance on the City Council agenda for first reading. The
28 City Council may schedule a public hearing on the ordinance bill, may refer the
29 ordinance bill to public hearing before the Planning Commission or Historic
30 Landmarks Commission, as applicable, for its review and recommendation, may

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refer the ordinance to a subcommittee for further review, prior to holding a public hearing, or may decline to advance the ordinance to second reading.

(b) Public Hearings; When Required.

(1) Except as provided in paragraph (2) of this subsection, at least one hearing shall be held for the purpose of receiving evidence and testimony in a legislative land use proceeding. The hearing may be held by the Planning Commission, the Historic Landmarks Commission, or the City Council.

(2) No public hearing is required in a legislative land use proceeding if the purpose of the amendment is to conform to new requirements in state land use statutes, Statewide Land Use Planning Goals, or administrative rules of the Oregon Land Conservation and Development Commission implementing state land use statutes or Statewide Land Use Planning Goals, if the Oregon Department of Land Conservation and Development confirms in writing that the only effect of the proposed change is to conform the Salem Area Comprehensive Plan or City’s land use regulations to the new state requirements. The City Council, may, in its discretion, hold a public hearing although none is required under this section, in which case the hearing procedures in this section shall be followed.

(bg) Concurrency Requirement. The Comprehensive Plan requires concurrent review and action on certain legislative land use proceedings initiated by one jurisdiction sharing the Salem/Keizer Urban Growth Boundary be coordinated with one or more of the other regional jurisdictions. The regional jurisdictions within the Salem/Keizer Urban Growth Boundary include the City of Salem, the City of Keizer, Marion County, and Polk County. Land use decisions identified by the Salem Area Comprehensive Plan as requiring concurrence are defined as “Regional Planning Actions” and “Non-Regional Planning Actions.” The review of regional and non-regional planning actions shall be conducted as provided in the Salem Area Comprehensive Plan.

~~**(c) Public Notice.** Public notice is required for public hearings in legislative land use proceedings. The purpose of this notice is to provide citizens, affected property owners~~

1 and other interested parties with the opportunity to submit written comments
2 concerning the proposal and to invite participation in the public hearing process.

3 **(1d) Oregon Department of Land Conservation and Development Pre-Adoption**
4 **Notice.** Notice to the Oregon Department of Land Conservation and Development is
5 required for all legislative land use proceedings, unless state land use statutes,
6 Statewide Planning Goals, or administrative rules of the Oregon Land Conservation and
7 Development Commission implementing state land use statutes or Statewide Land Use
8 Planning Goals do not apply to the legislative land use proceeding, in which case no
9 notice is required. Where notice of a legislative land use proceeding is required, (The
10 City shall ~~mail~~provide notice to the Oregon Department of Land Conservation and
11 Development a minimum of forty five days prior to the first evidentiary public hearing
12 on the proposal no later than the minimum number of days required by ORS Chapter
13 197.610 and any administrative rules adopted to implement ORS Chapter 197.610. An
14 affidavit of submission or affidavit of mailing shall be prepared and made part of the
15 file. Notice shall be on forms provided by the Oregon Department of Land
16 Conservation and Development and be accompanied by the information of sufficient
17 detail to convey the nature and effect of the proposal; and the certificate of mailing of
18 the notice, required by ORS 197.610.

19 **(e) Public Notice.** Public notice is required for public hearings in legislative land use
20 proceedings. The purpose of this notice is to provide citizens, affected property
21 owners, and other interested parties with the opportunity to submit written comments
22 concerning the proposal and to invite participation in the public hearing process.

23 **(21) Mailed Notice.**

24 (A) **First Evidentiary Hearing.** The City shall mail notice of the first
25 evidentiary public hearing in a legislative land use proceeding not more than
26 forty days, but not less than twenty days, prior to the first evidentiary hearing.
27 Affidavits of mailing shall be prepared and made part of the file. Notice of
28 the first evidentiary public hearing shall be mailed to:

- 29 (i) The Boards of Commissioners of Marion and Polk Counties;
30 (ii) All City-recognized neighborhood associations;

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- (iii) The owner(s) or contract purchaser(s) of record of each property that will be rezoned, as defined by ORS 227.186(9), in order to comply with the proposal, if adopted;
- (iv) The Oregon State Department of Parks and Recreation for all comprehensive plan and zone code text amendments relating to the goals and policies of the Willamette River Greenway and the Willamette Greenway Zone; and for all proposed modifications to the boundaries of such zone;
- (v) The Oregon State Department of Geology and Mineral Resources for all zone code text amendments relating to mining, quarry operations, or mineral aggregate extraction;
- (vi) The Capitol Planning Commission for every zone code text amendment relating to a Public zone;
- (vii) The Federal Insurance Administration, U.S. Department of Housing and Urban Development, for all zone code text amendments relating to the Flood Plain Overlay Zones; and for all proposed modifications to the boundaries of such zones;
- (viii) The tenants of manufactured home or mobile home parks for comprehensive plan map and/or zone changes affecting all or part of a manufactured home or mobile home park;
- (ix) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and
- (x) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification of legislative land use proceedings.

(B) Subsequent Public Hearings. The City shall mail notice of each subsequent evidentiary public hearing in a legislative land use proceeding a minimum of ten days prior to the evidentiary hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of each subsequent evidentiary hearing shall be mailed to:

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(i) Any group or individual who submitted testimony prior to the close of first evidentiary hearing.

(ii) All City-recognized neighborhood associations;

(iii) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and

(iv) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification of subsequent evidentiary hearings.

(C) Mailed notice of a public hearing shall include:

(i) A concise description of the proposal;

(ii) A map identifying the property affected by the proposal, if applicable, in relation to major streets or other landmarks;

(iii) A list of the applicable standards or criteria;

(iv) The date, time, and location of the public hearing;

(v) A brief summary of the decision making process;

(vi) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

(vii) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision;

(viii) A statement that a copy of the staff report with recommendation will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;

(ix) The information required under ORS 227.186, if the hearing is the first evidentiary hearing and the final decision by the City Council would require the rezoning of land, as defined by ORS 227.186.

(x) If the hearing is the first evidentiary hearing and held before the Planning Commission or the Historic Landmarks Commission, a statement

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that subsequent to the close of the hearing a recommendation will be forwarded to the City Council;

(xi) For the final public hearing before the City Council, if held, a statement that subsequent to the close of the hearing notice of a decision adopting a new land use regulation will be mailed to all neighborhood associations, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice; and

(xii) The name and contact information for the staff case manager.

(32) Published Notice. The City shall cause notice of each hearing in a legislative land use proceeding to be published in a newspaper of general circulation within the City at least once a week for two consecutive weeks prior to the hearing, with the second notice to be published at least two days immediately preceding the hearing. An affidavit of publication from the newspaper shall be obtained and made part of the file.

~~(df) Application Review and Staff Report.~~ Staff shall review the proposal and the written comments and evidence submitted and, prior to each hearing prepare a staff report summarizing the legislative land use proposal, the any comments received, ~~to date,~~ and the relevant issues associated with the proposal; and making recommendation on the proposal. Staff reports shall be made available to the public for review a minimum of seven days prior to the hearing or first reading of the ordinance, if no hearing is held.

~~(e) Public Hearings.~~ At least one hearing shall be held for the purpose of receiving evidence and testimony in all legislative land use proceedings. The hearing may be held by the Planning Commission, the Historic Landmarks Commission, or the City Council.

(fg) Recommendation. If the proposal has been referred to the Planning Commission or Historic Landmarks Commission for review and recommendation, ~~subsequent to the close of the hearing,~~ the Planning Commission or Historic Landmarks Commission, as the case may be, shall, within any time frame set by the City Council, ~~make~~ adopt a recommendation to adopt, to adopt with modifications, or to not adopt the proposal

1 based upon the facts in the record and according to applicable standards or criteria. The
2 recommendation shall be a written order and include:

- 3 (1) A list of the applicable standards or criteria;
- 4 (2) A statement of facts relied upon in making the recommendation. The order
5 may adopt or incorporate a staff report or written findings prepared by any party
6 to the proceeding into the order; and
- 7 (3) The recommendation.

8 **(gh) Notice of Recommendation.** Notice of the recommendation shall be mailed
9 within seven days from the date the Planning Commission or Historic Landmarks
10 Commission adopts its written order. An affidavit of mailing shall be prepared and
11 made part of the file.

12 (1) Notice of recommendation shall be mailed to:

- 13 (A) Any group or individual who submitted testimony prior to the close of
14 ~~the~~ public hearing;
- 15 (B) All City-recognized neighborhood associations;
- 16 (C) Any governmental agency which is entitled to notice by law or under an
17 intergovernmental agreement with the City, and any governmental agency which
18 submitted testimony for the record prior to the close of the public hearing; and
- 19 (D) Any community organizations, agencies, or individuals who submitted
20 written requests for notice of the recommendation to the City.

21 (2) Notice of recommendation shall include:

- 22 (A) A brief description of the proposal;
- 23 (B) A brief summary of the recommendation;
- 24 (C) A brief statement explaining the next steps in the review process; and
- 25 (D) A statement that the complete case file is available for review. The
26 notice shall state where the case file is available and the name and telephone
27 number of the staff case manager to contact about reviewing the case file.

28 **(hj) Decision.** City Council action on legislative land use proposals shall, in addition
29 to the requirements of this Chapter, conform to the Salem City Charter and City
30 Council Rules.

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(1) Subsequent to receiving a recommendation, the City Council may in its sole discretion:

- (A) Proceed with enactment of an ordinance;
- (B) Refer the proposal back to the Planning Commission or Historic Landmarks Commission for additional deliberation;
- (C) Abandon the proposal; or
- (D) Hold a public hearing on the proposal, and, after the hearing, proceed as provided in subparagraphs ~~(a)-(e)~~(A)-(C) of this paragraph.

(2) Decisions in legislative land use proceedings may be accompanied by findings demonstrating the proposal's conformance with any applicable standards or criteria.

(j) Notice of Decision. Notice of final decision in a legislative land use proceeding shall be mailed within ~~seventy~~twenty days from the date the ordinance is enacted. An affidavit of mailing shall be prepared and made part of the file. Notice of the final decision shall be provided as follows:

- (1) Notice of final decision shall be mailed to:
 - (A) Any group or individual who submitted testimony prior to the close of the public hearing;
 - (B) All City-recognized neighborhood associations;
 - (C) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;
 - (D) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision; and
 - (E) The Oregon Department of Land Conservation and Development, on forms provided by the Oregon Department of Land Conservation and Development.
- (2) Notice of final decision shall include:
 - (A) A brief description of the proposal;

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(B) A brief summary of the final decision and any modifications to the proposal;

(C) The date, time, and place by which an appeal must be filed and where further information may be obtained concerning the appeal process; and

(D) A statement that the complete case file, including findings, conclusions, modifications, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(jk) Appeals. Appeals of final decisions in legislative land use proceedings are ~~sent to~~ the Oregon Land Use Board of Appeals and must be filed with the Oregon Land Use Board of Appeals within twenty-one days of the mailing date of the notice of enactment of the ordinance as provided pursuant to subsection (j) of this section.

Section 4. Emergency Clause. This act being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect from and after the date of its passage.

PASSED by the City Council this 11th day of June, 2012.

ATTEST:

Kathy Hall

City Recorder

Approved by City Attorney: *[Signature]*

Checked by: _____

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FOR COUNCIL MEETING OF:
AGENDA ITEM NO. :

May 29, 2012
4 (c)

TO: MAYOR AND CITY COUNCIL
THROUGH: LINDA NORRIS, CITY MANAGER
FROM: VICKIE HARDIN WOODS, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT
SUBJECT: AMENDMENTS TO SALEM REVISED CODE (SRC) CHAPTER 300 TO
CONFORM THE CHAPTER TO RECENT CHANGES TO STATE LAND
USE LAW (CA 12-02)

ISSUE

Should the City Council advance Ordinance Bill No. 9-12, amending SRC Chapter 300 to conform to recent changes to state land use law, to second reading for enactment?

RECOMMENDATION

Staff recommends that the City Council advance Ordinance Bill No. 9-12, amending SRC Chapter 300 to conform to recent changes to state land use law, to second reading for enactment.

BACKGROUND

SRC Chapter 300 – Procedures for Land Use Applications and Legislative Land Use Proposals, establishes procedural requirements for land use decisions for the City of Salem. The 2011 Oregon legislature passed House Bill 2129 (HB 2129), which was signed in to law by the Governor, and became effective on January 1, 2012. HB 2129 made a number of changes to the State's land use statutes, and required the Oregon Department of Land Conservation and Development (DLCD) to make corresponding changes to its administrative rules.

As relevant here, HB 2129 reduced the period required for a local government to give notice to DLCD of proposed changes to a local government's acknowledged comprehensive plan and land use regulations from 45 days to 35 days.

In addition, HB 2129 allows a local government to forego a public hearing prior to adopting a change to its comprehensive plan or land use regulations, when the change is for the purpose of conforming to new requirements of the State's land use laws, and DLCD has provided a written statement confirming that the change is limited to that purpose.

Ordinance Bill No. 9-12 amends SRC Chapter 300 to conform the City's procedures for land use decisions with state law.

FACTS AND FINDINGS

Procedural Findings

1. SRC 300.1110(a)(3) permits City staff to initiate a legislative land use proceeding by preparing an ordinance bill and placing it on the City Council agenda for first reading. City Council may schedule a public hearing to consider the proposal, refer the matter to the appropriate review authority for hearing, refer the matter to a City Council subcommittee for further review, or decline to advance the ordinance to second reading.
2. On April 23, 2012, Ordinance Bill No. 9-12 was presented to the City Council for first reading. The Council voted to hold a public hearing on the proposed ordinance bill and a public hearing date was subsequently set for May 29, 2012.
3. SRC 300.1110(c)(1) requires the City to send notice to DLCD 45 days prior to conducting a hearing to consider an amendment to the Salem Area Comprehensive Plan or the City's land use regulations. Notice was sent to DLCD on March 30, 2012.
4. Notice of public hearing on the proposed amendments was mailed on May 9, 2012, and published in the newspaper.

Proposed Code Amendments

5. ORS 197.610 and DLCD's administrative rules have been amended to reduce the time required to give notice to DLCD from 45 days to 35 days, and to allow a local government to amend its comprehensive plan or land use regulations without conducting a public hearing if the purpose of the amendment is to conform to new requirements of the State's land use laws.
6. The proposed amendments to SRC Chapter 300 change the period required to give notice to DLCD from 45 days to 35 days, and would allow, but not require, the City to forego a public hearing prior to adopting changes to the Salem Area Comprehensive Plan and the City's land use regulations, when those changes are for the purpose of conforming to new requirements in state land use laws and DLCD provides written confirmation that the amendments are limited to that purpose.



Glenn W. Gross, Urban Planning Administrator