



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

August 29, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Salem Plan Amendment
DLCD File Number 012-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 12, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Steve Oulman, DLCD Regional Representative
Bryce Bishop, City of Salem

<paa> ya/

NOTICE OF ADOPTION

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: City of Salem

Local File Number: CA 08-3

Date of Adoption: August 11, 2008

Date Mailed: August 20, 2008

Date the Notice of Proposed Amendment was Mailed to DLCD: April 18, 2008

Is this a **REVISED** Proposal previously submitted to DLCD: ___ YES x NO Date Submitted:

___ Comprehensive Plan Text Amendment

___ Comprehensive Plan Map Amendment

x 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."

Amended Salem Revised Code (SRC) Chapter 63 (Subdivisions) and SRC Chapter 114 (Proceedings on Land Use Actions) to establish a process whereby units of land created through sale, but not through an approved land division process, prior to January 1, 2007, can be validated as legal parcels. The proposed amendments implement the provisions of State Enrolled House Bill 2723.

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

Same

Plan Map changed from: NA

To: NA

Zone Map Changed from: NA

To: NA

Location: NA

Acres Involved: NA

Specify Density: Previous:

New:

Applicable Statewide Planning Goals:

Was an Exception Proposed: ___ YES ___ NO

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

Forty-five (45) days prior to first evidentiary hearing? x Yes ___ No

If no, do the statewide planning goals apply? ___ Yes ___ No

If no, did Emergency Circumstances require immediate adoption? ___ Yes ___ No

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

Local Contact: Bryce Bishop, Interim Senior Planner

Phone: (503) 588-6173 Extension: 7599

Address: 555 Liberty Street SE, Room 305

City: Salem

Zip: 97301

Fax Number: (503) 588-6005

E-Mail Address: bbishopo@cityofsalem.net

DLCD File No: 012-08 (16851)

ORDINANCE BILL NO. 34-08

AN ORDINANCE RELATING TO LAND DIVISIONS, CREATING A PROCESS FOR THE VALIDATION OF UNITS OF LAND NOT LAWFULLY CREATED; AMENDING SRC 63.030, SRC 63.335, AND SRC 114.020; AND CREATING NEW PROVISIONS

The City of Salem ordains as follows:

Section 1. SRC 63.030 is amended to read:

63.030. Definitions. As used in this Chapter, except where the context otherwise clearly requires, words and phrases defined in SRC Chapter 111 shall have the meanings set forth therein unless another definition is set forth in this section.

(a) "Accessway" means the portion of a flag lot or parcel, or abutting lot or parcel, providing legal access to a street either through fee-simple ownership or by an access easement and associated reciprocal and irrevocable access rights for all lots or parcels using the accessway.

(b) "Affected units of land" means abutting units of land for which a common property line is being relocated.

(c) "Alley" means a public way not more than ~~twenty~~20 feet and not less than ~~ten~~10 feet in width, that has been deeded to the public or dedicated and accepted by the city for public use, that provides a secondary means of motor vehicle access to abutting property.

(d) "Arterial street" - See "Major Arterial" and "Minor Arterial" in the "Street" definition.

(e) "Block" means the properties abutting one side of a street:

(1) Between two cross streets;

(2) Between the city limits and the nearest cross street;

(3) When there is only one cross street:

(A) Between a cross street and the dead end of a street;

(B) Between a cross street and a line projected from the centerline of an intersecting street, such as a "T" intersection;

(4) When there are no cross streets, then the block shall be between the points 600 feet from the mid-point of the front property line for the prop-

erty under consideration and along the street.

(f) "Building" means a structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

(g) "Building setback line" means an imaginary line established by subdivision regulation or the Salem Zoning Code requiring all buildings to be set back to or beyond that line which is a certain distance from lot, parcel, or property lines or a point within street right-of-way.

(h) "Collector street" - See "Street."

(i) "Commission" means the Planning Commission of the City of Salem.

(j) "Cul-de-sac" - See "Street."

(k) "Curb line" means the line indicating the edge of the vehicular roadway within the overall right-of-way.

(l) "Current developed area" means that area of the Salem urban area so designated pursuant to SRC 66.030.

(m) "Division of land" means the creation of lots or parcels.

(n) "Final plat" - See "Plat."

(o) "Interested person" means any person owning land within 250 feet of a subdivision or partitioning, as shown on the records of the county assessor. "Interested person" includes affected private and public utilities and public agencies.

(p) "Local street" - See "Street."

(q) "Lot" means a unit of land that is created by a subdivision or partitioning of land. Except where otherwise stated, the term "lot" includes the term "parcel."

(1) "Corner lot" means a lot having two or more adjacent front lot lines in which the interior angle formed by the extensions of the front lot lines in the direction which they take at their intersections with the side lot lines forms an angle of 135 degrees or less. In the event a street front lot line is a curve at its point of intersection with a side lot line, the tangent to the curve at that point shall be considered the direction of the front lot line.

(2) "Flag lot" means a flag-shaped lot or parcel with its widest point, and

1 majority of land area (called the "flag"), set back from the street at the rear
2 of another lot or parcel, and having a comparatively narrow strip of land
3 connecting to the street via an accessway (called the "pole") which
4 provides legal access to the "flag."

5 **(3)** "Infill lot" means a residential flag lot created by the partition of land
6 after February 8, 2006.

7 **(r)** "Lot area" means the area in square feet or acres (43,560 square feet equals
8 one acre) of a horizontal plane bounded by the vertical extension of the lot lines.

9 **(s)** "Lot depth" means the horizontal distance between the front lot line and the
10 rear lot line measured at a point half-way between the side lot lines.

11 **(t)** "Lot width" means the horizontal distance between the side lot lines,
12 measured at right angles to the lot depth at a point mid-way between the front and
13 rear lot lines.

14 **(u)** "Major Arterial" - See "Street"

15 **(v)** "Map" means a final diagram or drawing of a partition.

16 **(w)** "Minor Arterial" - See "Street"

17 **(x)** "Neighborhood Activity Centers" includes, but is not limited to, existing or
18 planned schools, parks, shopping areas, transit stops, or employment centers.

19 **(y)** "Neighborhood organization" means a neighborhood organization officially
20 recognized pursuant to SRC 64.250-64.350.

21 **(z)** "Official zoning map" means the official zoning map as adopted, amended,
22 and replaced pursuant to SRC 113.020 - 113.070.

23 **(aa)** "Outside property lines" means the line forming the exterior boundaries of a
24 lot, including lots as defined under SRC 111.130(g).

25 **(bb)** "Owner" means the owner of record of real property as shown on the latest
26 tax rolls or deed records of the county, and includes a person who furnishes
27 evidence that the person is purchasing property under a written recorded or
28 unrecorded land sale contract.

29 **(cc)** "Parkway" - See "Street"

30 **(dd)** "Partition" means an act of partitioning land or an area or tract of land so

1 partitioned.

2 (ee) "Partition land" means to divide land into two or three parcels of land within
3 a calendar year, but does not include:

4 (1) Divisions of land resulting from lien foreclosures;

5 (2) Divisions of land resulting from foreclosures of recorded contracts for
6 the sale of real property;

7 (3) Division of land resulting from the creation of cemetery lots;

8 (4) Adjustment of a property line by the relocation of a common
9 boundary where an additional unit of land is not created and where the
10 existing unit of land reduced in size by the adjustment complies with any
11 applicable law or ordinance, including but not limited to provisions
12 pertaining to minimum area, frontage, average width, vehicular access and
13 required setbacks;

14 (5) The sale of a lot in a recorded subdivision, even though the lot may
15 have been acquired prior to the sale with other contiguous lots or property
16 by a single owner;

17 (6) Divisions of land resulting from purchase or the exercise of the power
18 of eminent domain by a governmental entity having lawful authority to do
19 so;

20 (7) A sale or grant by a person to a public agency or public body for state
21 highway, county road, city street, or other right-of-way purposes provided
22 that such road or right-of-way complies with the comprehensive plan and
23 applicable statutes. However, any property for state highway, county
24 road, city street, or other right-of-way purposes shall continue to be
25 considered a single unit of land until such time as the property is further
26 subdivided or partitioned;

27 (ff) "Planning administrator" means the planning administrator, department of
28 community development, City of Salem, or the planning administrator's desig-
29 nated representative.

30 (gg) "Plat" means a final map, diagram, drawing, replat, or other writing

1 containing all the descriptions, locations, specifications, dedications, restrictions,
2 provisions, and other information concerning a subdivision or partition. Except
3 where otherwise stated, the term "plat" includes the term "map."

4 **(hh)** "Property line" means the boundary line between two units of land.

5 **(ii)** "Property line adjustment" means the relocation of a common property line
6 between two abutting properties.

7 **(jj)** "Public access way" means a walkway that provides pedestrian and bicycle
8 passage either between two or more streets or from a street to a building or other
9 destination, such as a park, or transit stop.

10 **(kk)** "Reasonably direct" means either a route that does not deviate unnecessarily
11 from a straight line, or a route that does not involve a significant amount of out-
12 of-direction travel by likely users.

13 **(ll)** "Replat" means the act of platting lots, parcels, and easements in a recorded
14 subdivision or partition plat to achieve a reconfiguration of the existing subdivi-
15 sion or partition plat or increase or decrease the number of lots in a previously
16 recorded plat.

17 **(mm)** "Reserve block" means a strip of land, usually one foot in width, deeded or
18 dedicated to the City, reserved across the end of a street or alley and terminating
19 at the boundary of a subdivision or partition; or a strip of land deeded to the City
20 between a dedicated street and adjacent property; in either case reserved or held
21 by the City for future street extension or widening, or to prohibit access from
22 property adjacent to a street.

23 **(nn)** "Safe and convenient" means bicycle and pedestrian routes, facilities, and
24 improvements which:

25 (1) Are reasonably free from hazards, particularly types or levels of
26 automobile traffic which would interfere with or discourage pedestrian or
27 cycle travel for short trips;

28 (2) Provide a reasonably direct route of travel between destinations such
29 as between a transit stop and a store; and

30 (3) Meet travel needs of cyclists and pedestrians considering destination

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

and length of trip; and considering that the optimum trip length of pedestrians is generally 1/4 to 1/2 mile.

(oo) "Salem Transportation System Plan" or "TSP" means the detailed transportation plan of the City adopted under SRC 64.230.

(pp) "Street" means a public or private way that is created to provide ingress or egress to one or more lots, parcels, areas, or tracts of land, excluding a private way that is created to provide ingress or egress to land in conjunction with the use of the land for forestry, mining, or agricultural purposes. The term "street" shall include such designations as "highway," "thoroughfare," "parkway," "throughway," "road," "avenue," "boulevard," "lane," "court," "place," "loop," "drive," "circle," and other such terms. A public right-of-way or accessway ~~twenty~~20 feet or less in width or a private way of travel ~~twenty-five~~25 feet or less in width providing access to no more than four lots or parcels and zoned for residential uses shall not constitute a street. A private way of travel on property zoned for commercial or industrial uses, and greater than ~~twenty-five~~25 feet in width, may be allowed at the discretion of the Planning Administrator.

(1) "Parkway" means a major facility for moving large volumes of both intra-city traffic and regional traffic at high speeds. It is typically a divided highway with a minimum of four travel lanes and extremely limited access, as shown in the Salem Transportation System Plan.

(2) "Major Arterial" means a major facility for moving large volumes of intra-city and regional traffic. It serves as the main radial and provides peripheral routes through the city. The ultimate cross-sectional width is a multi-lane facility, as shown in the Salem Transportation System Plan.

(3) "Minor Arterial" means a facility providing primarily intra-area and inter-neighborhood access. It is designated to have a minimum of two travel lanes with left-turn pockets and center left~~turn~~turn lanes where appropriate, as shown in the Salem Transportation System Plan.

(4) "Collector street" means a facility that allows traffic within an area or neighborhood to connect to the arterial system. It is given priority over

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

local streets in any traffic control installations. Single family and duplex access may be limited according to standards on file with the Director of Public Works.

(5) "Local street" means a facility not designated on one of the higher systems. It serves primarily to provide direct access to abutting land and offers the lowest level of traffic mobility.

(6) "Cul-de-sac" means a dead-end street having a turnaround area at the dead end. Cul-de-sac length shall be measured from the nearest right-of-way line of the nearest intersecting street to the throat or point of beginning of the turnaround area.

(7) "Dead-end street" means a street which terminates without a turnaround area and is intended to continue through at some future time.

(8) "Half-street" means a ~~fifty~~50 percent portion of the ultimate width of a street, usually along the edge of a subdivision or partition, and including pavement, curb, gutter, sidewalk, piped drainage, street lights, and signing, where specified by the Director of Public Works.

(9) "Three-quarter street" means a half-street improvement on the development side plus a minimum ~~twelve~~12-foot wide turnpike travel lane with shoulders and drainage ditches where needed on the opposite side, where specified by the Director of Public Works.

(10) "Under improved street" means any public street, road or right-of-way which lacks any of the following: paving, curbing, sidewalks, piped drainage, adequate right-of-way geometry or paving width, grade and structural sections required under the standards and specifications on file in the office of the Director of Public Works.

(qq) "Subdivide land" means to divide an area or tract of land into four or more lots within a calendar year, when such area or tract of land existed as a unit or contiguous units of land under a single ownership at the beginning of such year.

(rr) "Subdivision" means an act of subdividing land or an area or tract of land which has been subdivided.

1 (ss) "Tentative plan" means a preliminary diagram or drawing concerning a
2 partition or subdivision.

3 (tt) "Tree" means a tree having a caliper of more than eight inches measured at
4 four feet above grade.

5 (uu) "Unit of land" means a lot, ~~created by a subdivision of land, a parcel, created~~
6 ~~by partitioning of land, or any other discrete area or tract of land~~ described by a
7 ~~metes and bounds,~~ resulting from the lawful division of real property by deed or
8 other legal instrument which is lawfully established and ~~which~~ has been recorded.

9 A lot, parcel or tract is "lawfully established" only if:

10 (1) The lot or parcel was created in compliance with all applicable
11 planning, zoning, and subdivision or partition ordinances and regulations
12 in effect at the time of creation; or

13 (2) ~~The lot, parcel or tract has been validated pursuant to SRC 63.150.~~

14 (vv) "Urban Service Area" means that portion of the Salem urban area so
15 designated pursuant to SRC Chapter 66.

16 (ww) "Utilities" means water, gas, sewer, storm drainage, electrical, telephone,
17 and wire communication service, cable television, and all persons and companies
18 supplying the same.

19 (xx) "Variance" means an exception to the requirements of this Chapter for the
20 subdivision or partitioning of land.

21 (yy) "Walkway" means a right-of-way deeded, dedicated, and designated for the
22 use of nonmotorized vehicles and pedestrians.

23 **Section 2.** The following SRC 63.150 is hereby added to SRC Chapter 63:

24 **63.150. Validation of Units of Land.**

25 (a) The purpose of this section is to implement 2007 Or Laws Chapt. 866, Sec.
26 2, by creating a process whereby persons may obtain validation of units of land
27 that are not lawfully established. For purposes of this section, a unit of land is not
28 "lawfully established" if the lot, parcel or tract of land was created by a sale that
29 did not comply, but could have complied, with the criteria that were applicable to
30 the creation of the unit of land at the time of sale. For purposes of this section, a

1 unit of land does not include a unit of land that was created solely to establish a
2 separate tax account, created by gift, or through any other method that is not
3 considered a sale. This section shall only be used to validate those units of land
4 that were created, but not lawfully established, on or before January 1, 2007.

5 **(b) Application Requirements.** An application for a validation of a unit of land
6 shall include:

7 (1) The submittal requirements required for partitions as listed in SRC
8 63.038;

9 (2) The recorded deed or land sales contract that created the unit of land;
10 and

11 (3) A copy of the land division and zoning code regulations applicable to
12 the property at the time in which the unit of land was created.

13 **(c) Review Procedure.** Validation proceedings shall be heard by the hearings
14 officer pursuant to SRC 114.020(b)(4). The hearings officer may approve,
15 approve with conditions, or deny an application for the validation of a unit of
16 land.

17 **(d) Approval Criteria.** No application for a validation of a unit of land shall be
18 approved unless the applicant demonstrates that:

19 (1) The unit of land is not a lawfully established unit of land;

20 (2) The unit of land was created through sale by deed or land sales
21 contract, executed and recorded before January 1, 2007; and

22 (3) The unit of land could have complied with applicable criteria for the
23 creation of the unit of land in effect when the unit of land was sold.

24 **(e)** Notwithstanding subsection (d)(3) of this section, the hearings officer may
25 approve an application to validate a unit of land that was not lawfully created
26 prior to January 1, 2007, if approval was issued for a permit to allow the construc-
27 tion or placement of a dwelling or other building on the unit of land after the sale.

28 **(f)** A copy of the hearings officer findings shall be mailed by first class mail,
29 postage prepaid, to the applicant, the owners of property that would be affected by
30 the application, and any person who appeared and submitted oral or written

1 comments prior to the close of the hearing.

2 (g) The applicant shall record a partition plat in the land records of the county
3 within which the property lies no later than ninety days after the date the decision
4 approving the validation of the unit of land becomes final.

5 (h) Development or improvement of a unit of land validated pursuant to this
6 section must comply with all applicable laws, regulations, and zoning code
7 standards in effect at the time a complete application for development or
8 improvement of the parcel is submitted.

9 **Section 3.** SRC 63.335 is amended to read:

10 **63.335. Appellate Review.**

11 (a) Any person, organization, or agency entitled to service of a copy of the
12 decision as provided in SRC 63.046(d), SRC 63.047, SRC 63.048(c), or SRC
13 63.352 may appeal the decision of the planning administrator to the Planning
14 Commission. ~~Any person, organization, or agency entitled to service of a copy of~~
15 ~~the decision as provided in SRC 63.150(f) may appeal the decision of the hearings~~
16 ~~officer to the Planning Commission.~~ Appeal shall be taken by filing written
17 notice of appeal with the planning administrator and paying the appeal fee
18 specified in SRC 63.041 within ~~fifteen~~15 days of the date of mailing of the
19 decision. Notice of appeal shall state ~~wherein the reasons why the decision was in~~
20 ~~error.~~ ~~planning administrator failed to conform to the provisions of this chapter.~~

21 (b) Unless the City Council initiates review pursuant to SRC 63.337, upon
22 receipt of a notice of appeal conforming to subsection (a) of this section, the
23 planning administrator shall schedule the matter for a de novo public hearing
24 before the Planning Commission. The Planning Commission's decision shall be
25 final.

26 **Section 4.** SRC 114.020 is amended to read:

27 **114.020. Hearings Required; Jurisdiction.**

28 (a) Hearings are required for Planned Unit Developments, conducted by the planning
29 administrator or designees.

30 (b) Hearings are required for the following land use actions conducted by the hearings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

officer:

- (1) Application-initiated zone change without a concurrent comprehensive plan change;
- (2) Conditional or specific conditional use;
- (3) Zoning variance;
- (4) Legal parcel validation;
- (4)(5) Appeal of adjustment decision of planning administrator;
- (5)(6) Appeal of mobile home park permit decision by planning administrator.
- (6)(7) Appeal of a decision of designating or redesignating wetland under SRC Chapter 126.

(c) Hearings are required for the following land use actions conducted by the Planning Commission:

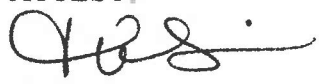
- (1) Zone change concurrent with a comprehensive plan change;
- (2) Appeal of application-initiated zone change without a concurrent comprehensive plan change;
- (3) Appeal of a conditional or specific conditional use decision;
- (4) Appeal of a zoning variance decision;
- (5) Applicant-initiated expansion of the Urban Service Area; or
- (6) Adoption of, or major amendment to a master plan under SRC 143C.

(d) Hearings are required for any appeal to or review by the City Council from the decision of the planning administrator, hearings officer or Planning Commission where such appeal is provided for in this zoning code.

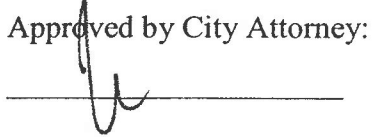
/////
/////
/////
/////
/////
/////
/////
/////
/////
/////

1 **Section 5. Severability.** Each section of this ordinance, and any part thereof, is severable, and
2 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of
3 this ordinance shall remain in full force and effect.

4 PASSED by the City Council this 11th day of August, 2008.

5 ATTEST:
6 

7 **DEPUTY** City Recorder

8 Approved by City Attorney:
9 

10 Checked by: B. Bishop

11 G:\GROUP\LEGAL\Council\072808 Lot Validation ord.doc

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

CITY OF SALEM
PLANNING DIVISION
655 LIBERTY ST SE ROOM 305
SALEM, OR 97301-3503

DEPARTMENT OF LAND CONSERVATION &
DEVELOPMENT
635 CAPITOL STREET NE, SUITE 200
SALEM, OR 97301-2540