

ORDINANCE NO. NS -2308

AN ORDINANCE AMENDING BEND DEVELOPMENT CODE (BDC) CHAPTER 4.2 MINIMUM DEVELOPMENT STANDARDS REVIEW, SITE PLAN REVIEW AND DESIGN REVIEW.

Findings:

- A. The application was processed in accordance with Bend Development Code (BDC) 4.1.500. The City provided timely and sufficient notice of the legislative changes pursuant to Section 4.1.515 of the Bend Development Code.
- B. The City submitted a Notice of Proposed Amendment to the Oregon Department of Land Conservation and Development on March 8, 2018.
- C. Notice of the April 23, 2018, Planning Commission public hearing and of the May 2, 2018, City Council public hearing was printed in the Bend Bulletin on April 1, 2018, and was mailed to the neighborhood associations on March 19, 2018.
- D. The Planning Commission held a public hearing for the proposed amendments on April 23, 2018, to accept testimony on the request. At the conclusion of the hearing, the Planning Commission voted to recommend the proposed text amendments be approved by the City Council.
- E. The City Council held a public hearing on May 2, 2018, to accept evidence, receive public testimony and consider the Planning Commission's recommendation. The City Council found that the text amendments satisfy the criteria for approval contained in Section 4.6.200 of the Bend Development Code and voted on the amendments to the Bend Development Code.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

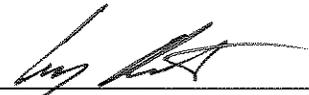
Section 1. The Bend Development Code is amended as depicted below in Exhibit A.

Section 2. In addition to the findings set forth above, the City Council adopts the findings in Exhibit B.

First Reading: May 2, 2018

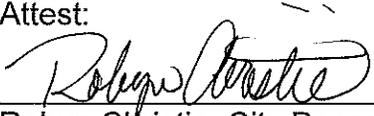
Roll call and second Reading Date: May 16, 2018

YES:	Casey Roats, Mayor	NO: Sally Russell
	Bruce Abernethy	
	Bill Moseley	
	Nathan Boddie	
	Justin Livingston	
	Barb Campbell	



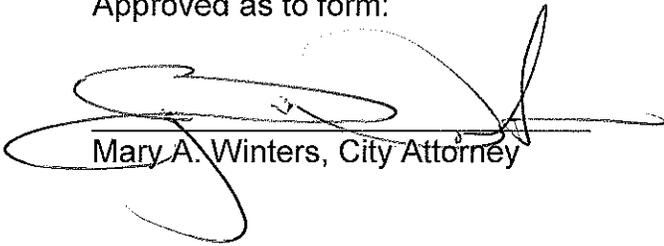
Casey Roats, Mayor

Attest:



Robyn Christie, City Recorder

Approved as to form:



Mary A. Winters, City Attorney

Exhibit A
DRAFT
Development Code Update
May 16, 2018

Prepared by:
City of Bend Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~strikethrough~~ typeface is proposed to be deleted

***Indicates where text from the existing code has been omitted because it will remain unchanged.

Chapter 4.2

MIMINUM DEVELOPMENT STANDARDS REVIEW, SITE PLAN REVIEW AND DESIGN REVIEW

4.2.400 Minimum Development Standards Review.

A. Minimum Development Standards Review for Single-Family Detached Dwellings, Single-Family Attached Townhomes, Accessory Dwelling Units and Duplex Dwellings.

1. Applicability. This section applies to the construction of a new single-family detached dwelling, single-family attached townhome, accessory dwelling unit or duplex dwelling. Dwellings shall are also be considered new if new construction is equal to or greater than 50 percent of the square footage of the existing dwelling (including partial to full demolition replaced with new square footage).
2. Exemptions. Single-family detached dwellings that have existing full utility and full street frontage infrastructure are exempt.
3. Approval Criteria. The Review Authority shall must approve, approve with conditions, or deny an application for Minimum Development Standards Review based upon the criteria listed below.
 - a. The proposed land use is a permitted or conditionally permitted use in the zoning district.
 - b. In addition to the standards below, conditionally permitted uses require approval of a Conditional Use Permit and shall must meet the criteria in BDC 4.4.400.
 - c. The following standards are met:

- i. The land use, building/yard setback, lot area, lot dimensions, density, lot coverage, building height, design review standards and other applicable standards of the underlying zoning district are met.
- ii. Single-family attached townhomes, accessory dwelling units and duplexes shall must comply with the corresponding standards of BDC Chapter 3.6, Special Standards and Regulations for Certain Uses.
- iii. Where available, public water and sewer mains shall must be extended through the length of the property frontage with services provided to the dwelling unit(s).
- iv. Street and Alley Improvements.
 - (A) Full street and/or alley improvements shall must be constructed along the frontages of the property when an improved street and/or alley has been built to the property line. When a street and/or alley has been built to the property line and is not constructed to City standards, an alternative design may be approved by the City Engineer to match existing improvements. The Development Services Director may grant a waiver of this requirement under BDC 3.4.150. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall must be recorded against the property; however, a waiver shall must be processed as a Type II process.
 - (B) For properties over one acre in size where future division of the property is allowable, street and/or alley improvements are not required if any portion of the dwelling is located more than 300 feet from an improved street or alley. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall must be recorded against the property.
 - (C) Street improvements are not required for accessory dwelling units.
- v. When an existing public sidewalk exists within 600 feet of the front property line on the same side of the street of any of the frontages, sidewalks shall must be constructed along all frontage(s) of the site. A corner lot or parcel has two or more front property lines and frontages. Sidewalks are not required for accessory dwelling units.

- vi. Driveways and required parking areas shall must be paved with asphalt, concrete or comparable surfacing; a durable nonpaving material (e.g., grass-crete, eco-stone) may be used to reduce surface water runoff and to protect water and air quality. Gravel is not allowed. Driveway apron design and location shall must conform to City of Bend Standards and Specifications and the City's adopted accessibility standards for sidewalks and walkways.

**EXHIBIT B
FINDINGS OF FACT
BEND DEVELOPMENT CODE (BDC) UPDATE
AMENDMENT PZ 18-0193**

Procedural Findings

Notice of the proposed amendment was provided to the Department of Land Conservation and Development (DLCDD) on March 8, 2018. A notice of the April 23, 2018, Planning Commission public hearing and May 2, 2018, City Council public hearing was printed in the Bend Bulletin on April 1, 2018 and was mailed to the neighborhood associations on March 19, 2018. Staff emailed the proposed amendments to the Bend Development Code Update Group and to the ADU Committee on March 12, 2018.

The Planning Commission held a public hearing on April 23, 2018, and recommended approval of the proposed text amendments to the City Council. On May 2, 2018, the City Council held a public hearing and conducted the first reading and on May 16, 2018, the Council held a second reading and voted unanimously for adoption of the amendments.

Criteria of Approval

- (1) The Bend Comprehensive Plan
- (2) Bend Development Code
 - (a) Chapter 4.6, Land Use District Map and Text Amendments; Section 4.6.200(B), Criteria for Legislative Amendments

Applicable Procedures

- (1) Bend Development Code
 - (a) Chapter 4.1, Land Use Review and Procedures

Findings Regarding Compliance with Applicable Criteria:

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6,
LAND USE DISTRICT MAP AND TEXT APMENTS**

4.6.200 Legislative Amendments.

A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed

using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

FINDING: The recommended amendments to the text of the BDC involve broad public policy rather than application to an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The proposed amendments are consistent with the applicable State land use law. In particular, they satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, Goal 10: Housing, and Goal 12: Transportation.

Goal 1, Citizen Involvement, is satisfied by following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

On March 12, 2018, staff emailed the proposed amendment to the Development Code Update Group. The group includes community members comprised of architects, lawyers, developers, engineers, a representative from COBA, representatives from Central Oregon LandWatch, and a land use planner. Staff also emailed the code update to the ADU Committee that helped staff draft changes adopted for ADUS in 2016. A notice of the April 23, 2018, Planning Commission public hearing and of the May 2, 2018, City Council public hearing was printed in the Bend Bulletin on April 1, 2018 and was mailed to the neighborhood associations on March 19, 2018.

On April 23, 2018, the Planning Commission held a public hearing to consider the proposed amendment and recommended approval of the amendments to the City Council. On May 2, 2018, the City Council held a public hearing and conducted the first reading and on May 16, 2018, the Council held a second reading and voted to adopt the amendments.

Therefore, Goal 1 has been met.

Goal 2, Land Use Planning, requires a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The Goal is met because the City followed the land use planning process and policy framework established in the

City's acknowledged Comprehensive Plan and BDC as a basis for the decisions and actions related to the new regulation and to assure an adequate factual base for these decisions and actions. The proposed amendments will be adopted by the City Council after a public hearing. Multiple opportunities were provided for review and comment by citizens and affected governmental units during the preparation of this ordinance.

Goal 2 specifically states that minor plan changes should be based on special studies or other information, which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. According to the Bend Housing Needs Analysis (HNA), Bend is planning for growth of about 38,500 people between 2008 and 2028, requiring nearly 16,700 new dwelling units. In addition, according to the HNA, baby boomers and millennials will increase the need for more affordable housing units and some Baby Boomers may choose to downsize their housing, resulting in greater demand for small single-family dwellings, cottages, accessory dwelling units, townhomes, apartments, and condominiums. The update to exempt ADUs from the requirement to construct sidewalks will reduce construction cost which may encourage more ADUs to be constructed and help meet Bend's identified housing needs.

Therefore, the proposed amendment is justified and needed, and compliance with Goal 2 is maintained.

Goal 3, Agricultural Lands, Goal 4, Forest Lands, and Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. Goals 3 and 4 are not applicable because there are no Agricultural or Forest Lands in the City. Goal 5 is not applicable because these amendments do not affect any regulation that implements Goal 5 and the City's acknowledged regulations implementing Goal 5 remain in effect with no change in applicability.

Goal 6, Air, Water and Land Resources Quality is not applicable because the City's acknowledged regulations implementing Goal 6 remain in effect with no change in applicability.

Goal 7, Areas Subject to Natural Hazards is not applicable because the City's acknowledged regulations implementing Goal 7 remain in effect with no change in applicability.

Goal 8, Recreational Needs is not applicable to the proposed Development Code amendments because the amendments do not limit any recreational uses in any zone.

Goal 9, Economic Development, is implemented through Oregon Administrative Rule (OAR) Division 9, which is intended to ensure that each jurisdiction maintain an adequate land supply for economic development and employment growth. Goal 9 is not applicable because these amendments do not affect any regulation that implements

Goal 9 and the City's acknowledged regulations implementing Goal 9 remain in effect with no change in applicability.

Goal 10, Housing, requires provisions to provide for the housing needs of citizens of the state. The amendment may encourage more ADUs to be constructed which would help provide Bend's identified needed housing. Therefore, compliance with Goal 10 is maintained.

Goal 11, Public Facilities and Services, requires the City to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The proposed amendments will not result in the need to adjust or amend existing policies or projects in the City's adopted facility plans. Therefore, compliance with Goal 11 is maintained.

Goal 12, Transportation, requires the City to provide and encourage a safe and convenient and economic transportation system.

OAR 660-012-0045 requires local governments to adopt land use or subdivision regulations for urban areas that require bikeways to be along arterials and major collectors and sidewalks to be along arterials, collectors and most local streets. The City of Bend land division and site plan review applications are subject to BDC 3.4.200, Transportation Improvement Standards which requires sidewalks, planter strips, curbs, and bicycle lanes to be installed in conformance with the applicable provisions of the BDC, Bend Urban Area Transportation System Plan (TSP), Bend Comprehensive Plan, and City of Bend Standards and Specifications. Also, MDS applications, except for ADUs, will continue to be required to construct a sidewalk along all frontage(s) of the development site when there is an existing public sidewalk that exists within 600 feet of the front property line on the same side of the street of any of the frontages. These requirements provide for safe and convenient bike and pedestrian circulation necessary to carry out OAR 660-012-0045(3)(b).

The proposed amendments are also not site specific and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore the proposed text amendments do not cause a "significant effect" under ORS 660-012-0060.

Therefore, compliance with Goal 12 is maintained.

Goal 13, Energy Conservation is not applicable because the City's acknowledged regulations implementing Goal 13 remain in effect with no change in applicability

Goal 14, Urbanization, requires the City to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The proposed amendments do not encourage sprawl or lower

than targeted densities. The management of the City's land use inventories is unaffected by these proposed amendments and therefore, the City's long standing acknowledgment of compliance with Goal 14 is maintained.

Goal 15, Willamette River Greenway, Goal 16, Estuarine Resources, Goal 17, Coastal Shorelands, Goal 18, Beaches and Dunes, and Goal 19, Ocean Resources are not applicable to the proposed Development Code amendment.

Based on the above discussion, the proposed text amendment to the BDC is consistent with the statewide planning goals and therefore complies with the requirement that the amendment be consistent with state land use planning law.

Because the proposed code amendment is limited in scope, there are no other Administrative Rules applicable to this amendment. Likewise, there are no other applicable Oregon Revised Statutes that are criteria applicable to this amendment (Note, consistency with the Transportation Planning Rule (TPR) is discussed further in this document).

2. The request is consistent with the applicable Bend Comprehensive Plan goals and policies;

FINDING: The "goals" established in the Comprehensive Plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies," which are statements of public policy. The following Goals and Policies are applicable:

Chapter 1: Plan Management and Citizen Involvement

Goals:

- **Create Housing Options and Affordability.** Bend residents have access to a variety of high quality housing options, including housing affordable to people with a range of incomes and housing suitable to seniors, families, people with special needs, and others. Housing design is innovative and energy efficient.

FINDING: ADUs provide additional housing options and according to the Bend Housing Needs Analysis, ADUs are an identified housing need. Exempting ADUs from having to construct sidewalks could help contribute to more ADUs being constructed.

Citizen Involvement

1-15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.

1-16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public

forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

FINDING: On March 12, 2018, staff emailed the proposed text amendment to the Development Code Update Group. The group includes community members comprised of architects, lawyers, developers, engineers, a representative from COBA, representatives from Central Oregon LandWatch, and a land use planner. Staff also emailed the text amendment to the ADU Committee that helped staff draft changes adopted for ADUS in 2016.

A notice of the April 23, 2018, Planning Commission public hearing and May 2, 2018, City Council public hearing was printed in the Bend Bulletin on April 1, 2018, and was mailed to the neighborhood associations on March 19, 2018.

Therefore, compliance with Chapter 1 has been met.

Chapter 5: Housing and Residential Lands

Goals:

- Keep our neighborhoods livable by offering a variety of living styles and choices, creating attractive neighborhoods located close to schools, parks, shopping and employment.
- Accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community.
- Promote more flexibility in development standards to balance the need for more efficient use of residential land and preservation of natural features.

FINDING: In certain situations, the cost associated with constructing and permitting an ADU is a barrier to the City's needed housing goals. Removing the requirement to add sidewalks for a new ADU where a primary residence already exists will help reduce the cost to construct an ADU, which could help encourage more ADUs to be constructed.

Transportation connectivity

5-44 Sidewalks will be required in all new developments. Separated sidewalks will be required on all new streets. However, an alternative system of walkways that provide adequate pedestrian circulation may be approved.

5-45 Per the City's Transportation Systems Plan, the City will complete or connect priority walkways on routes to schools, parks, or commercial areas.

FINDING: Although ADUs will not be required to install sidewalks, all other

developments subject to MDS will be required to if there is an existing public sidewalk within 600 feet of the front property line on the same side of the street of any of the frontages. In addition, land division and site plan review applications are subject to BDC 3.4.200, Transportation Improvement Standards which requires sidewalks to be installed in compliance with the applicable provisions of the BDC, Bend Urban Area Transportation System Plan (TSP), Bend Comprehensive Plan and City of Bend Standards and Specifications.

Therefore, the proposed amendments satisfy Chapter 5.

Chapter 7: Transportation Systems

Pedestrian and Bicycle Systems

Objectives:

- To support and encourage increased levels of bicycling and walking as an alternative to the automobile
- To provide safe, accessible and convenient bicycling and walking facilities

7-33 Property-tight sidewalks shall be included on both sides of all new streets except where extreme slopes, severe topographical constraints, or special circumstances exist. Landscape strips shall separate curbs and sidewalks on new and reconstructed roads. Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the pedestrian system.

FINDING: The code update will exempt ADUs from having to construct sidewalks as part of the MDS review. All other applications subject to MDS will continue to be required to construct a sidewalk along all frontage(s) of the development site when there is an existing public sidewalk that exists within 600 feet of the front property line on the same side of the street of any of the frontages. In addition, land division and site plan review applications are subject to BDC 3.4.200, Transportation Improvement Standards which requires sidewalks to be installed in compliance with the applicable provisions of the BDC, Bend Urban Area Transportation System Plan (TSP), Bend Comprehensive Plan and City of Bend Standards and Specifications. Installing sidewalks help support and encourage increased levels to walk as an alternative to the automobile and will help provide safe, accessible and convenient walking facilities.

Therefore, compliance with Chapter 7 has been met.

Based on the findings stated above, staff concludes that the proposed text amendment is consistent with the applicable Bend Comprehensive Plan Goals and Policies.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: The amendment to exempt ADUs from having to construct sidewalks could encourage more ADUs to be developed which would help provide additional identified needed housing.

Therefore, the proposed amendment to the BDC meet this criterion.

4.6.500 Record of Amendments.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

FINDING: In the event the BDC text amendment is adopted by ordinance, the City Recorder will maintain a record of the amendment and the revised provision will be included as part of the BDC available to the public on the City's website.

4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDING: OAR 660-012-0045 requires local governments to adopt land use or subdivision regulations for urban areas that require bikeways to be along arterials and major collectors and sidewalks to be along arterials, collectors and most local streets. Land division and site plan review applications are subject to BDC 3.4.200, Transportation Improvement Standards which requires sidewalks, planter strips, curbs, and bicycle lanes to be installed in conformance with the applicable provisions of the BDC, Bend Urban Area Transportation System Plan (TSP), Bend Comprehensive Plan, and City of Bend Standards and Specifications. Also, applications subject to MDS, except for ADUs, will continue to be required to construct a sidewalk along all frontage(s) of the development site when there is an existing public sidewalk that exists within 600 feet of the front property line on the same side of the street of any of the frontages. These requirements provide for safe and convenient bike and pedestrian circulation necessary to carry out OAR 660-012-0045(3)(b).

The new text amends the Bend Development Code, a functional component of the Bend Comprehensive Plan, and is an amendment to a land use regulation as noted in OAR 660-012-0060. The amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation

system; therefore the proposed text amendments do not cause a “significant effect” under ORS 660-012-0060.

Conclusion: The proposal is in compliance with this section of the TPR.

V. CONCLUSIONS: Based on the above Findings, the proposed BDC amendments meet all applicable criteria for adoption.

