

Secretary of State
 Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
 A Statement of Need and Justification accompanies this form..

LUBA 1-2009 (TEMP)

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on August 5, 2009 by the
 Date prior to or same as filing date

Land Use Board of Appeals OAR Chapter 661
 Agency and Division Administrative Rules Chapter Number

William F. Wilson 550 Capitol Street NE, Suite 235, Salem, OR 97301 (503) 373-1265
 Rules Coordinator Address Telephone

to become effective August 5, 2009 through December 31, 2009.
 Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Amends Land Use Board of Appeals' administrative rules to implement fee increases in HB 3199.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

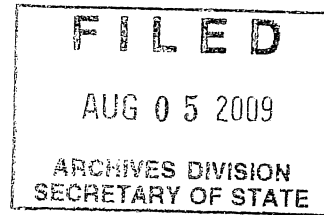
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

661-010-0015
661-010-0038
661-010-0050

SUSPEND:



Stat. Auth.: ORS ORS 183.545 and ORS 197.820(4)

Other Auth.:

Stats. Implemented: ORS 197.830

RULE SUMMARY

OAR 661-010-0015 is being amended to conform to HB 3199 (2009) which increases the filing fee for a notice of intent to appeal to \$200 from \$175.

OAR 661-010-0038 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for state agency briefs.

OAR 661-010-0050 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for motions to intervene.

Authorized Signer Tod A. Bassham August 5, 2009
 Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
 ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Land Use Board of Appeals
Agency and Division

OAR Chapter 661
Administrative Rules Chapter Number

In the Matter of:

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Amends Land Use Board of Appeals' administrative rules to implement fee increases in HB 3199.

Statutory Authority: ORS 183.545 and ORS 197.820(4)

Other Authority:

Stats. Implemented: ORS 197.830

Need for the Temporary Rule(s):

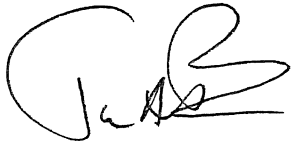
Temporary rules are needed because a failure to act promptly would result in serious prejudice to the public interest and the interest of parties appearing before the Land Use Board of Appeals (LUBA). Serious prejudice would result because HB 3199 was signed by the Governor and became effective August 4, 2009. HB 3199 amends ORS 197.830 and increases the filing fee for a notice of intent to appeal with LUBA from \$175 to \$200. HB 3199 also imposes a \$100 filing fee for state agency briefs and for motions to intervene. Unless LUBA's rules are amended they will be inconsistent with amended ORS 197.830.

Documents Relied Upon, and where they are available:

LUBA relied upon HB 3199 in considering the need for and in preparing the temporary rules. HB 3199 may be located at the Oregon State Legislature.

Justification of Temporary Rule(s):

The temporary rules are necessary to conform LUBA's rules to the fee increases contained in HB 3199 and amended ORS 197.830. The temporary rules implement those fee increases.



Authorized Signer

Tod. A Bassham

Printed name

August 5, 2009

Date

**LAND USE BOARD OF APPEALS
OAR Chapter 661**

**DIVISION 010
RULES OF PROCEDURE FOR APPEALS**

661-010-0015

Notice of Intent to Appeal

(1) Filing of Notice:

(a) The Notice, together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3) through (5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number. If a Notice is received without payment of the fee and deposit required by section (4) of this rule, the petitioner will be given an opportunity to submit the required fee and deposit. If the filing fee and deposit for costs are not paid within the time set by the Board, the Board will dismiss the appeal.

(c) If the Board determines that a Notice identifies more than one final decision as the subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the Notice if the petitioner fails to submit within the date specified by the Board either a written election to appeal only one decision, or a separate Notice and separate filing fee and deposit, as required by section (4) of this rule, for each additional decision.

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed. Service of the Notice as required by this section may be in person or by first class mail. The date of serving such notice shall be the date of mailing.

(3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed, or a copy of either the notice of decision or the decision to be reviewed;

1 (f) The name, address and telephone number of each of the following:

2 (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's
3 name, address and telephone number shall be included. If an attorney represents the
4 petitioner, the attorney's name, address and telephone number shall be substituted for that
5 of the petitioner. If two or more petitioners are unrepresented by an attorney, one
6 petitioner shall be designated as the lead petitioner, but the Notice shall include the
7 names, addresses, and telephone numbers of all such unrepresented petitioners. See
8 OAR 661-010-0075(7)(a);

9 (B) The governing body and the governing body's legal counsel;

10 (C) The applicant, if any (and if other than the petitioner). If an applicant was represented
11 by an attorney before the governing body, then the name, address and telephone number
12 of the applicant's attorney shall also be included;

13 (D) Any other person to whom written notice of the land use decision or limited land use
14 decision was mailed as shown on the governing body's records. The telephone number
15 may be omitted for any such person.

16 (g) A statement advising all persons, other than the governing body, that in order to
17 participate in the review proceeding a person must file a motion to intervene pursuant to
18 OAR 661-010-0050.

19 (h) On the last page, a signature by each petitioner, or the attorney representing that
20 petitioner, on whose behalf the Notice is filed.

21 (i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

22 (4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of
23 \$200 and a deposit for costs in the amount of \$150 payable to the Land Use Board of
24 Appeals. One check, State of Oregon purchase order or money order for \$350 may be
25 submitted. If a check providing the filing fee or deposit for costs or both is returned for
26 insufficient funds and the filing fee and deposit for costs are not paid within the time set
27 by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

28 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

29 Stat. Implemented: ORS 197.620; 197.830(1) and (9).

30
31 **661-010-0038**

32 **State Agency Briefs**

33 A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief
34 together with four copies within the time required for respondent's brief. A state agency
35 brief shall have yellow front and back covers. A state agency brief shall be accompanied
36 by a filing fee of \$100.

37 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

38 Stat. Implemented: ORS 197.830(8).

39
40 **661-010-0050**

41 **Intervention**

42 (1) Standing to Intervene: The applicant and any person who appeared before the local
43 government, special district or state agency may intervene in a review proceeding before
44 the Board. Status as an intervenor is recognized when a motion to intervene is filed, but
45 the Board may deny that status at any time.

1 (2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date
2 the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended
3 notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant
4 to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and
5 are unrepresented by an attorney, a lead intervenor shall be designated as the contact
6 person for the purpose of receiving documents from the Board and other parties. The
7 motion to intervene (see Exhibit 3) shall:

8 (a) List the names, addresses, and telephone numbers of all persons moving to intervene.
9 If an attorney represents the intervenor(s), the attorney's name, address and telephone
10 number shall be substituted for that of the intervenor(s);

11 (b) State whether the party is intervening on the side of the petitioner or the respondent;

12 (c) State the facts which show the party is entitled to intervene, supporting the statement
13 with affidavits or other proof;

14 (d) On the last page, be signed by each intervenor, or the attorney representing that
15 intervenor, on whose behalf the motion to intervene is filed;

16 (e) Be served upon the Board and all parties.

17 (3) Intervenor's Brief:

18 (a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for
19 filing the petition for review, and shall satisfy the requirements for a petition for review in
20 OAR 661-010-0030.

21 (b) If intervention is sought as a respondent, the brief shall be filed within the time for
22 filing a respondent's brief and shall satisfy the requirements for a respondent's brief in
23 OAR 661-010-0035.

24 (4) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100
25 payable to the Land Use Board of Appeals. If a motion to intervene is received without
26 payment of the filing fee or a check providing the filing fee is returned for insufficient
27 funds, the intervenor will be given an opportunity to submit the required fee. If the filing
28 fee is not paid within the time set by the Board, the Board shall deny the motion to
29 intervene. Cash shall not be accepted.

30 Stat. Auth.: ORS 183.545 and ORS 197.820(4).

31 Stat. Implemented: ORS 197.830(2) and (7).