

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

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3  
4 GENE COPE, HARRIET COPE, COLLEEN )  
5 DONNELLY, ROBERT DONNELLY )  
6 CAROLYN R. DRANEAS, JOHN H. )  
7 DRANEAS, MARY GARTSHORE, PETER )  
8 GARTSHORE, JACK G. KAADY, MARSHA )  
9 LAFARGE, JACK STUTZMAN, SHARON )  
10 STUTZMAN, BETTY WILSON, LLOYD )  
11 WILSON, WILLIAM G. HAY, GEORGIANA ) LUBA  
12 Nos. 92-019 and 92-020  
13 F. HAY, WILLIAM J. ALLRED, and )  
14 HALLMARK INNS & RESORTS, INC., ) FINAL OPINION  
15 ) AND ORDER  
16 Petitioners, )  
17 )  
18 vs. )  
19 )  
20 CITY OF CANNON BEACH, )  
21 )  
22 Respondent. )  
23  
24

25 Appeal from City of Cannon Beach.

26  
27 John H. Draneas and Dean N. Alterman, Portland, filed  
28 the petition for review and argued on behalf of petitioners.  
29 With them on the brief was Draneas, Gregores & Beran; and  
30 Kell, Alterman & Runstein.

31  
32 William Canessa, Seaside; and Mark J. Greenfield and  
33 Edward J. Sullivan, Portland, filed the response brief.  
34 With them on the brief was Campbell, Moberg & Canessa; and  
35 Preston, Thorgrimson, Shidler, Gates & Ellis. Mark J.  
36 Greenfield argued on behalf of respondent.

37  
38 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,  
39 Referee, participated in the decision.

40  
41 AFFIRMED 05/06/92

42  
43 You are entitled to judicial review of this Order.  
44 Judicial review is governed by the provisions of ORS  
45 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an ordinance amending the city's  
4 comprehensive plan and zoning ordinance to prohibit the  
5 short term rental use of dwellings in certain residential  
6 zones.

7 **FACTS**

8 Prior to November 5, 1987, the city's comprehensive  
9 plan prohibited the rental of dwellings, for periods less  
10 than 14 days, in certain residential zones. On November 5,  
11 1987, the city amended its plan and zoning ordinance to  
12 permit a property owner to rent one residential property in  
13 the city, for periods of less of than 30 days at a time.

14 In 1990, the city planning commission conducted a study  
15 concerning the city's housing needs. In a report issued on  
16 February 28, 1991, the planning commission recommended that  
17 the city once again institute a prohibition on short term  
18 rental use of residential real property. In March 1991, the  
19 city council directed its staff to draft an ordinance  
20 prohibiting certain short term rental uses of residential  
21 real property.<sup>1</sup> After conducting several public hearings,  
22 the city council adopted the challenged ordinance. The

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<sup>1</sup>Actually, the city directed its staff to draft two different ordinances concerning the short term rental of real property in the city, and the city council ultimately adopted four ordinances concerning such short term rental use of residential real property. However, because only one of those ordinances is challenged in this appeal, we do not address the others.

1 challenged ordinance prohibits the use of dwellings in  
2 certain residential zones for "transient occupancy."  
3 "Transient occupancy" is defined to mean the use of a  
4 dwelling by a person who pays to occupy a dwelling for a  
5 period of less than 14 days. The challenged ordinance also  
6 authorizes owners of real property who used their property  
7 for "transient occupancy" purposes between November 5, 1987  
8 and February 28, 1991, to continue such use for a period of  
9 five years from the effective date of the challenged  
10 ordinance.

11 **MOTION TO STRIKE**

12 The city moves to strike two documents attached to  
13 petitioners' brief. One of those documents (attachment B)  
14 is a letter postdating the adoption of the challenged  
15 ordinance. The other document, attachment C, is a map.

16 Attachment B is not a part of the local record, and is  
17 not a document of which we may take official notice. The  
18 city's motion to strike attachment B is allowed. Attachment  
19 C is a map derived from information in the record and is  
20 attached to the petition for review solely for the purpose  
21 of illustrating some of petitioners' arguments. The city's  
22 motion to strike attachment C is denied.

23 **FIRST ASSIGNMENT OF ERROR**

24 "The comprehensive plan amendments and municipal  
25 ordinance amendments violate statewide land use  
26 Goal 8."

1 **SECOND ASSIGNMENT OF ERROR**

2 "The comprehensive plan amendments and city code  
3 amendments violate statewide land use Goal 9."

4 Petitioners argue the challenged ordinance violates  
5 Statewide Planning Goals 8 (Recreational Needs) and 9  
6 (Economic Development), because short term rental use of  
7 residential real property is essential to the city's tourist  
8 based economy and, therefore, is protected by those goals.

9 The challenged ordinance states, among other things:

10 "The rental of a dwelling unit for transient  
11 occupancy is one type of potential tourist  
12 accommodation available in the city, others are  
13 motel units, bed and breakfast establishments,  
14 recreational vehicle sites, and tent sites. The  
15 suitable locations for tourist accommodations are  
16 the city [Residential/Motel, Manufactured Dwelling  
17 and Recreational Vehicle Park and Open  
18 Space/Recreational zones] that allow for such  
19 uses. Residential zones are not suitable  
20 locations for large number of tourist  
21 accommodations. The above referenced zones  
22 provide an adequate supply of visitor  
23 accommodations to meet the temporary housing needs  
24 of visitors who come to the city for recreational  
25 purposes \* \* \*. Thus the prohibition on the  
26 transient occupancy of dwelling units does not  
27 prevent the city from meeting the recreational  
28 needs of its visitors.

29 \* \* \* \* \*

30 "Tourism is the main element of the city's  
31 economy. The city has determined that future  
32 economic development must maintain a balance  
33 between tourism and the stability of the  
34 residential areas \* \* \* because tourism has the  
35 capability of adversely affecting the city's \* \* \*  
36 residential areas." Record 31-32.

37 "Goal 10 Housing states that its intent is 'to

1 provide for the housing needs of citizens of the  
2 state.'

3 "\* \* \* The purpose of Goal 10 is to ensure that  
4 local communities provide 'buildable land for  
5 residential use.' [Goal 10] puts particular  
6 emphasis on providing what is described as 'needed  
7 housing units.'

8 "Goal 10 defines needed housing as 'housing types  
9 determined to meet the need shown for housing  
10 within an urban growth boundary at particular  
11 price ranges and rent levels.' Needed housing is  
12 also to include government assisted housing. \* \*  
13 \* [N]eeded housing refers to housing, either owner  
14 occupied or long-term rental, that is affordable  
15 to persons of low or moderate incomes \* \* \*. The  
16 transient occupancy of a dwelling is not a needed  
17 housing type as defined by the goals. It does not  
18 provide long term housing for persons of low and  
19 moderate income.

20 "Not permitting the transient use of dwelling  
21 units in residential zones will not have an  
22 adverse impact on the supply of buildable  
23 residential land for residential use. In fact, it  
24 will enhance the supply of land available for  
25 full-time housing by eliminating a competing  
26 demand, that of housing which is built or  
27 purchased with the specific purpose of transient  
28 rentals. In addition, the prohibition on the  
29 transient rental of dwellings may increase the  
30 stock of housing that is available for long term  
31 rental. \* \* \*" Record 33-34.

32 The city's findings determine that while there is an  
33 adequate supply of tourist accommodations within the city  
34 without the use of dwellings in residential zones for  
35 tourist accommodations, there is an inadequate amount of  
36 affordable housing available for long term residential use  
37 in those zones. The city's findings make it clear that the  
38 city balanced Goals 8 and 9 against Goal 10, and determined

1 that Goals 8 and 9 were adequately served by other tourist  
2 accommodations in the city, without using dwellings in  
3 residential zones for transient lodging purposes. The  
4 findings also establish the city determined the challenged  
5 ordinance is required to provide for the housing needs of  
6 the city, as required by Goal 10. Balancing the  
7 requirements of Goals 8 and 9 against the housing  
8 requirements established by Goal 10 in this manner does not  
9 violate these goals.<sup>2</sup>

10 One final point merits comment. Petitioners argue  
11 there is not substantial evidence in the whole record to  
12 support the city's findings that there is an adequate supply  
13 of tourist accommodations within the city without allowing  
14 use of dwellings in residential zones for tourist  
15 accommodations. In Lima v. Jackson County, 56 Or App 619,  
16 625-26, 643 P2d 355 (1982), the Court of Appeals stated the  
17 following regarding a legislative land use decision and the  
18 requirement in ORS 197.835(7)(a)(C) that LUBA review  
19 decisions for substantial evidence in the whole record:

20 "The more logical reading of [ORS  
21 197.835(7)(a)(C)], in our view, is that the

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<sup>2</sup>We note that at the time the city's plan and land use regulations were acknowledged, the short term rental use of dwellings (transient occupancy of dwellings for periods less than 14 days) was prohibited by the city's plan and zoning ordinance. Accordingly, at least at the time the city's plan was acknowledged as being in compliance with the goals by the Land Conservation and Development Commission (LCDC), such a prohibition on short term rental use of dwellings was determined to be consistent with Goals 8 and 9.

1 section authorizes LUBA to reverse or remand a  
2 decision which is not supported by substantial  
3 evidence only if there is a requirement from  
4 sources outside the Act that there be evidence.  
5 [ORS 197.835(7)(a)(C)] is but one of the  
6 provisions which defines LUBA's scope of review,  
7 but [it] does not purport to create substantive  
8 review requirements for the things being reviewed.  
9 We are convinced that, had that been the  
10 legislature's intent, it would not have chosen  
11 such an oblique way to convert the comprehensive  
12 plan adoption process into a protracted series of  
13 unrelated quasi-judicial zoning actions."

14 See also Alexiou v. Curry County, \_\_\_\_ Or LUBA \_\_\_\_ (LUBA  
15 No. 91-185, February 14, 1992). In Lima, the Court of  
16 Appeals made it clear that LUBA lacks authority to review  
17 the legislative land use decisions of local government for  
18 substantial evidence under ORS 197.835(7)(a)(C) unless there  
19 is an explicit requirement, from some other source, that  
20 such decisions be supported by substantial evidence.  
21 Petitioners cite no independent basis for a requirement that  
22 the challenged legislative decision be supported by  
23 substantial evidence. Accordingly, this aspect of these  
24 assignments of error provides no basis for reversal or  
25 remand of the challenged decision.<sup>3</sup>

26 The first and second assignments of error are denied.

27 **THIRD ASSIGNMENT OF ERROR**

28 "Given that the comprehensive plan amendments  
29 violate statewide land use goals and are therefore

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<sup>3</sup>Moreover, the city's findings explain the city has approximately 630 existing motel units and land properly zoned for 130 more. The comprehensive plan identifies a need for only 450 motel rooms.

1           invalid, the city code amendments conflict with  
2           the valid portions of the comprehensive plan and  
3           are therefore also invalid."

4           Under the first and second assignments of error, we  
5           determine the challenged ordinances do not violate Goals 8  
6           and 9.     Because this assignment of error depends on a  
7           determination that the challenged ordinance violates Goals 8  
8           and 9, it is denied.

9           The third assignment of error is denied.

10        **TWELFTH ASSIGNMENT OF ERROR**

11           "The choice of February 28, 1991 as the cutoff  
12           date violates the rights of persons who began to  
13           use their properties for short term rentals after  
14           February 28, 1991 and before the ordinance was  
15           adopted."

16           The challenged decision provides:

17           "Registration of Dwelling Units. Any person who  
18           rented a dwelling unit to transients \* \* \*  
19           between November 5, 1987 and February 28, 1991, or  
20           who otherwise claims a nonconforming use, shall  
21           establish the nonconforming use status of their  
22           short-term rental by substantiating their actual  
23           use of the property for short-term rental  
24           purposes. \* \* \*" (Emphasis supplied.) Record 17-  
25           18.

26           The challenged decision goes on to provide the:

27           "\* \* \* nonconforming use of dwellings for  
28           transient occupancy established in [the  
29           Registration of Dwelling Units provision quoted  
30           above] shall be amortized within a five year  
31           period from the effective date of this ordinance.  
32           \* \* \*" Record 18.

33           Petitioners provide a host of arguments why the city's  
34           choice of February 28, 1991 as the cut off date for



1 attaining nonconforming use status is erroneous. However,  
2 we disagree with petitioners' initial premise. The  
3 challenged ordinance does not select February 28, 1991 as  
4 the absolute cut off date for establishing nonconforming use  
5 status for purposes of amortization. Rather, the challenged  
6 ordinance provides alternative tests. One must either (1)  
7 establish that she or he rented to transients during the  
8 requisite time period, or (2) otherwise claim nonconforming  
9 use status.<sup>4</sup> Because petitioners' arguments under this  
10 assignment of error rely on a faulty premise, this  
11 assignment of error is denied.

12 The twelfth assignment of error is denied.

13 **FOURTH ASSIGNMENT OF ERROR**

14 "The challenged decision works an uncompensated  
15 taking of property rights of petitioners and  
16 others, in violation of the Fifth and Fourteenth  
17 Amendments to the United States Constitution."

18 The question under this assignment of error is whether  
19 the challenged ordinance constitutes a taking of  
20 petitioners' property in violation of the Fifth and  
21 Fourteenth Amendments to the United States Constitution.  
22 Petitioners argue that there is no provision in Oregon law  
23 which allows a local government to amortize a nonconforming  
24 use. Petitioners also argue that even if an amortization  
25 scheme for eliminating lawful nonconforming short term

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<sup>4</sup>We note that Cannon Beach Zoning Ordinance (CBZO) Article 7 provides procedures and standards for establishing nonconforming use status.

1 rental use of dwellings in residential zones could  
2 theoretically be lawful in Oregon, the city's amortization  
3 scheme is inadequate.<sup>5</sup>

4 The challenged ordinance allows property rented for  
5 short term occupancy between November 5, 1987 and February  
6 28, 1991, or for which it is otherwise established that the  
7 property owner has a nonconforming right to use the property  
8 for short term rental use, to have a five year amortization  
9 period. Additionally, section 4 of the challenged ordinance  
10 provides:

11 "A hardship provision is established for property  
12 owners who can substantiate that an investment  
13 made exclusively in the nonconforming use of a  
14 dwelling for transient occupancy can not be  
15 adequately amortized within the period of time  
16 specified by [the challenged ordinance]. An  
17 application for hardship relief under the  
18 provisions of this section shall also provide  
19 information on the specific investments that were  
20 made with respect to the nonconforming, short-term  
21 rental use of the property. The transient rental  
22 business license review committee shall determine,  
23 based on accepted accounting practices, whether  
24 there is a basis for hardship relief and the  
25 establishment of a longer amortization period than  
26 specified [by the challenged ordinance]. If the  
27 committee determines that a longer amortization  
28 period is warranted, it shall establish a period  
29 of time that permits the reasonable amortization,  
30 based on accepted accounting practices, of the  
31 investment of the property owner. At the  
32 conclusion of that specific amortization period,  
33 the transient occupancy of the dwelling shall be

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<sup>5</sup>Petitioners also argue that there is an inherent constitutional right to continue an existing lawful use. However, in view of our disposition of this assignment of error, we do not consider this issue.

1 terminated. \* \* \*" Record 19.

2 On its face, the challenged ordinance does not work a  
3 taking because any property owner may apply for hardship  
4 relief if such property owner can substantiate "that an  
5 investment made exclusively in the nonconforming use of a  
6 dwelling for transient occupancy cannot be adequately  
7 amortized within the period of time specified" by the  
8 challenged ordinance. We believe that property owners have  
9 no basis to contend their property has been taken until they  
10 apply for and are denied the hardship relief specifically  
11 provided in the challenged ordinance. See Dolan v. City of  
12 Tigard, 20 Or LUBA 411, 421-23 (1991).

13 Consequently, petitioners have not established the  
14 challenged ordinance "takes" their property in violation of  
15 the Fifth and Fourteenth Amendments to the United States  
16 Constitution.

17 The fourth assignment of error is denied.

18 **FIFTH ASSIGNMENT OF ERROR**

19 "The implementing ordinance is unconstitutionally  
20 vague in violation of the Fourteenth Amendment [of  
21 the United States Constitution] because many  
22 affected property owners cannot determine whether  
23 their structures are 'Dwelling Units' whose rental  
24 is prohibited or 'Motel Rental Units' whose rental  
25 is allowed."

26 In this assignment of error, petitioners argue the  
27 challenged ordinance is unconstitutionally vague. This  
28 charge rests on the premise that the ordinance provides for  
29 criminal, rather than civil penalties for its violation.

1 The challenged ordinance provides the following:

2 "A person convicted of violating a provision of  
3 [this ordinance] is punishable by a fine of not  
4 less than \$100.00 nor more than more than \$500.00.  
5 Each day in which a violation of [this ordinance]  
6 occurs shall be considered a separate violation."  
7 Record 19.

8 The maximum penalty for each separate violation of the  
9 challenged ordinance is \$500.<sup>6</sup> In Groener v. Oregon Gov't  
10 Ethics Comm., 59 Or App 459, 469, 651 P2d 736 (1982), the  
11 Court of Appeals determined that a \$1,000 penalty for a  
12 state ethics violation was not sufficiently penal to  
13 constitute a criminal sanction justifying application of the  
14 vagueness rules applicable to criminal penalties. Further,  
15 after analyzing several factors, the Attorney General has  
16 determined that for purposes of federal constitutional  
17 analysis:

18 "\* \* \* a \$1,000 civil penalty for a land use  
19 violation is unlikely to be considered 'criminal'  
20 \* \* \*." Letter of Advice, dated February 28,  
21 1992, to the Honorable Dick Springer (OP 6410).

22 Here, the only penalty for violating the challenged  
23 ordinance is the above stated monetary penalty. There is no  
24 possibility of imprisonment for violating the challenged  
25 ordinance. We conclude the penalties provided in the  
26 challenged ordinance are civil, not criminal in nature.

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<sup>6</sup>This is not a situation in which the challenged ordinance provides for increased monetary penalties due to "continued violation," based on a single ordinance violation event.

1 Because petitioners' vagueness challenge erroneously assumes  
2 the ordinance provides for criminal sanctions, this  
3 assignment of error provides no basis for reversal or remand  
4 of the challenged decision.

5 The fifth assignment of error is denied.

6 **SIXTH ASSIGNMENT OF ERROR**

7 "The ordinance is a rent control measure,  
8 prohibited by ORS 91.225."

9 Petitioners argue the challenged ordinance constitutes  
10 unlawful rent control under ORS 91.225(2), which provides in  
11 part:

12 "\* \* \* a city \* \* \* shall not enact any ordinance  
13 or resolution which controls the rent that may be  
14 charged for the rental of any dwelling unit."

15 We disagree. What ORS 91.225 prohibits is local  
16 regulations controlling the amount of rent a property owner  
17 may charge for a dwelling unit. The effect of the  
18 challenged ordinance may be to free dwelling units for long  
19 term rental use, which commands a lower rental rate than  
20 short term rental use. However, this does not convert the  
21 challenged ordinance into a prohibited rent control  
22 regulation. The challenged ordinance does not purport to  
23 control the amount of rent charged for units. The  
24 challenged ordinance simply prohibits the rental of  
25 dwellings in certain residential zones for periods of less  
26 than 14 days. There is no violation of ORS 91.225.

27 The sixth assignment of error is denied.

1 **SEVENTH ASSIGNMENT OF ERROR**

2 "The finding of fact that the supposed adverse  
3 impacts of short term rental housing are  
4 'virtually unmitigatable' is not supported by  
5 substantial evidence in the whole record, nor by  
6 any evidence, in violation of ORS  
7 197.835(7)(a)(C); absent this finding, the city  
8 cannot constitutionally terminate a legal  
9 preexisting use."

10 **NINTH ASSIGNMENT OF ERROR**

11 "The finding of fact that Cannon Beach is a  
12 residential community is clearly erroneous and not  
13 supported by the evidence; without this finding,  
14 the city cannot justify protecting the  
15 'residential character' by terminating the  
16 predominant vacation housing use."

17 In these assignments of error, petitioners argue the  
18 city's findings that (1) the short term rental use of  
19 dwellings have certain unmitigatable adverse effects, and  
20 (2) the city is a "residential community," are unsupported  
21 by substantial evidence in the record. However, petitioners  
22 do not explain why these findings are necessary to the  
23 challenged decision, and we do not see that they are. Where  
24 findings are not essential to the challenged decision, it is  
25 unnecessary for LUBA to determine whether those findings are  
26 supported by substantial evidence in the record. Lung v.  
27 Marion County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 91-015, June 18,  
28 1991); Moorefield v. City of Corvallis, 18 Or LUBA 95, 119  
29 (1989).

30 The seventh and ninth assignments of error are denied.

1 **EIGHTH ASSIGNMENT OF ERROR**

2 "The city made no finding that its amendments to  
3 the zoning code would not adversely affect the  
4 ability of the city to satisfy water use needs, in  
5 violation of City Code Section 17.86.070(A)(2)."

6 Petitioners argue the challenged decision violates  
7 CBZO 17.86.070(A)(2), which provides:

8 "Before an amendment to the text of the [CBZO] is  
9 approved, findings will be made that the following  
10 criteria are satisfied:

11 "\* \* \* \* \*

12 "(2) The amendment will not adversely affect the  
13 ability of the city to satisfy land and water  
14 use needs."

15 Petitioners argue the city failed to make any finding  
16 concerning the city's ability to satisfy domestic water  
17 needs.

18 The city argues:

19 "[The phrase 'water use needs'] refers to docks,  
20 marinas, and other water related uses and  
21 facilities. 'Water use' needs are distinguished  
22 from 'land use' needs and relate to activities  
23 addressed in LCDC's coastal goals and permitted in  
24 the City's estuarine zone. \* \* \* Because these  
25 uses have no relevance to a decision addressing  
26 the short term regulation and long term  
27 elimination of transient occupancy of dwelling  
28 units in residential zones, any finding on water  
29 use needs would have been superfluous and  
30 unnecessary to the decision." Respondent's Brief  
31 37.

32 Goal 17 provides that inventories of coastal resources  
33 must "establish a sound basis for land and water  
34 management." Goal 17 goes on to articulate the requirements

1 of various coastal shoreland uses for water resources. We  
2 believe that the "water use needs" to which CBZO  
3 17.86.070(A)(2) refers, relate to the needs of water  
4 dependent uses for water resources associated with coastal  
5 shorelands and the ocean. Consequently, the city's  
6 interpretation of CBZO 17.86.070(A)(2) is correct, and the  
7 phrase "water use needs" refers to needs of water dependent  
8 uses for coastal shoreland and for oceanic water resources,  
9 rather than needs for domestic water use.

10 Because the challenged decision has nothing to do with  
11 coastal shoreland or oceanic water resources, the  
12 requirement of CBZO 17.86.070(A)(2) that a CBZO amendment  
13 include findings concerning whether the "amendment will  
14 adversely affect the ability of the city to satisfy water  
15 use needs," is inapplicable.

16 The eighth assignment of error is denied.

17 **TENTH ASSIGNMENT OF ERROR**

18 "The decision must be reversed under ORS  
19 197.835(5)(a) because it violates Economy Policies  
20 1 and 2 of the city's comprehensive plan;  
21 alternatively, it must be remanded because the  
22 finding of consistency with Economy Policies 1 and  
23 2 is unsupported by any evidence."

24 Petitioners contend the challenged decision fails to  
25 establish compliance with the city's Comprehensive Plan  
26 (plan) economy policies 1 and 2.

27 Economy policy 1 provides:

28 "The city seeks to achieve a moderate level of  
29 controlled growth which permits the city to



1 maintain the important elements of its small town  
2 character and preserve its unique natural setting.

3 Economy policy 2 provides:

4 "The city's efforts will be directed toward  
5 maintenance and enhancement of its existing  
6 economic base, which consists of tourism and  
7 maintaining residential areas."

8 Economy policies 1 and 2 are relevant to the challenged  
9 ordinance amendment because these policies provide broad  
10 policy direction to the city in its adoption of zoning  
11 ordinances. Consequently, it must be established that the  
12 challenged decision satisfies these policies.

13 We agree with the city that its findings explain that  
14 the adoption of the challenged ordinance is an effort to  
15 protect its tourism economic base, in part by insuring  
16 adequate affordable housing opportunities for those who  
17 serve the tourist industry. Record 31-32. Further, the  
18 findings explain that, overall, the city is seeking to  
19 achieve a moderate level of controlled growth by prohibiting  
20 short term transient accommodations in certain residential  
21 zones. Id. We believe the challenged ordinance complies  
22 with economy policies 1 and 2.<sup>7</sup>

23 The tenth assignment of error is denied.

24 **ELEVENTH ASSIGNMENT OF ERROR**

25 "The decision violates Learning Opportunities

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<sup>7</sup>We note we determine above that there is no requirement under ORS 197.835(7)(C) for a legislative land use decision to be supported by substantial evidence.

1 Policy 2 of the city's comprehensive plan."

2 Petitioners argue the challenged decision violates  
3 Learning Opportunities (LO) policy 2, which provides:

4 "The city should seek to support continuing  
5 education programs in Cannon Beach, notably  
6 Portland State University's Haystack Program in  
7 the Arts, the Haystack Awareness Program, and  
8 Clatsop County Community College programs.  
9 Programs of this type should be encouraged to  
10 function in the off-season as well as during the  
11 summer."

12 Petitioners contend students in the above stated  
13 programs typically utilize dwellings for short term rental  
14 purposes in connection with those programs. Petitioners  
15 argue that because the challenged decision prohibits short  
16 term rental use of the dwellings normally used by such  
17 students, the ordinance will negatively impact such  
18 programs.

19 LO policy 2 does not require the city to support the  
20 educational programs at the expense of its long term housing  
21 stock. The challenged decision does not violate LO policy  
22 2.

23 The eleventh assignment of error is denied.

24 The city's decision is affirmed.