



## **Agenda Report 2014-06-02-03**

Date: May 23, 2014

To: John Kovash, Mayor  
Members, West Linn City Council

From: Zach Pelz, AICP, Associate Planner

Through: Chris Kerr, Community Development Director  
Chris Jordan, City Manager *CJ*

Subject: Ordinance 1626 – Amending the West Linn Community Development Code to require Class II Design Review for all paths and trails greater than 200-feet in length

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### **Purpose**

The Planning Commission proposes to amend Chapter 56 of the West Linn Community Development Code to require that all paths and trails, that are proposed to be greater than 200-feet in length, be heard as part of a Class II Design Review process; with a public hearing and decision by the Planning Commission.

### **Question(s) for Council:**

- Considering this amendment applies primarily to projects that are initiated, funded and managed by the City of West Linn, and have been approved in concept by the City Council through the adoption of the 2013 West Linn Trails Master Plan and/or the 2007 Parks and Open Space Master Plan: do the potential impacts from all paths and trails greater than 200-feet in length warrant the additional expense and time associated with preparing for and conducting a public hearing before the Planning Commission, instead of the current practice of an Administrative review by the City's Planning Director?

### **Public Hearing Required:**

Yes. Public Hearing was held and closed May 12, 2014.

### **Background & Discussion:**

The Planning Commission believes that potential impacts caused by trails greater than 200-feet in length warrant the additional discretion and public hearing that is afforded by the Class II process. Currently, trails greater than 200-feet in length are reviewed through a Class I Design Review process and decided by the Planning Director. While there is no public hearing under the current Class I procedure, notice of the proposal is delivered to all properties within 300-feet of the proposed project and public comments are accepted and incorporated in the Planning Director's decision. In addition, the Planning Director's decision may be appealed to the City Council.

### **Budget Impact:**

- Unknown, but likely to be considerable: Additional noticing, document preparation, submittal requirements and criteria associated with Class II Decisions; additional application fees (Class II fee equals 4 percent of the project construction value, with a minimum deposit of \$2,000, Class I Design Review equals a flat fee of \$2,100; additional \$650 for the pre-application conference);

additional staff time attending public hearing, additional Planning Commission time attending public hearing.

**Council Options:**

1. Approve the recommendation
2. Deny the recommendation
3. Accept the recommendation of the Parks and Recreation Advisory Board to postpone a decision on this item until Parks and Recreation Staff has had adequate time to understand the rationale for the Planning Commission's recommendation, and to study and report to the Board, the Planning Commission and the City Council the potential impacts on the City which may result from adopting such a provision.

**Staff Recommendation:**

- Staff recommends that the City Council deny the Planning Commission's recommendation.

**Potential Motion:**

- Move to retain the current process regarding design review of paths.

**Attachments:**

1. Ordinance 1626

**ORDINANCE NO. 1626**

**AN ORDINANCE AMENDING WEST LINN COMMUNITY DEVELOPMENT CODE (CDC) CHAPTER 56 REQUIRING ALL PATHS AND TRAILS GREATER THAN 200-FEET TO UNDERGO CLASS II DESIGN REVIEW**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~**bold lined through**~~ and additions are **bold underlined**.

**WHEREAS**, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

**WHEREAS**, the above referenced grant of power has been broadly interpreted to allow local governments to decide upon the scope of their powers in their charter so that specific statutory authorization is not required for a city to exercise its powers, LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978); and

**WHEREAS**, the City of West Linn provided legislative notice of its intent to undertake a review of the CDC and propose revisions pursuant to the applicable notice provisions; and

**WHEREAS**, the City of West Linn published notice of the City Council public hearing for the proposed amendment; and

**WHEREAS**, the proposed amendment meet the criteria for approval of legislative amendments stated in Section 98.100 of the CDC; and

**WHEREAS**, the proposed amendment is compliant with the goals and policies of the Comprehensive Plan and Statewide Planning Goals; and

**WHEREAS**, the measures adopted by this Ordinance comply with the state and other governing laws and are reasonably related to the public health, safety and welfare; and

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**SECTION 1. Amendment.** Section 56.020 of the West Linn Community Development Code, relating to trails and paths is amended to read as follows:

**56.020 APPLICABILITY**

A. This chapter applies to the development of all new parks and natural resource areas. It also applies to changes including the introduction of new facilities and major repairs at existing parks and natural resource areas. No work, except as exempted in CDC

56.025, may take place in these parks and natural resource areas without first obtaining a permit through this chapter and through the appropriate decision-making body. Chapter 55 CDC, Design Review, shall not apply to park development or structures or facilities in parks. Unless specifically exempted by this chapter, all relevant CDC chapters shall apply.

B. There are two classes of Park Design Review – Class I and Class II. Class I park design review applies to minor changes to park facilities. It is reasonable and appropriate that a simpler but more focused set of standards shall apply. Class II park design review applies to the development of any new park or significant changes to an existing park or natural area. The specific submittal standards and approval criteria are explained in CDC 56.070 through 56.100.

C. Class I design review. The following is a non-exclusive list of Class I design review activities or facilities.

1. New sidewalks, if over 200 feet long (see CDC 56.025).

~~2. New trails, if over 200 feet long (see CDC 56.025).~~

~~3. New paths, if over 200 feet long (see CDC 56.025).~~

4. Additional recreation amenities or facilities including playground equipment, picnic shelters, and playing fields so long as those facilities are consistent with the program established for the park and the impacts are expected to be minor. (An example of program consistency would be Class I design review of a proposal to add two more swing sets at an active-oriented park; conversely, it would be a Class II if the proposal would add swing sets in a natural resource area.)

5. Fences and walls, over 200 feet long (see CDC 56.025).

6. Addition or reduction of less than 10 percent of total square footage of an existing building so long as there is no encroachment towards a resource area.

7. Minor road realignment under 200 feet long. Realignment must not come closer to any existing resource area than it currently is.

8. Ten percent additions or reduction of parking stalls so long as required minimum number of spaces is still met.

9. Major modification of a landscape plan (including water features, ponds, pergolas, arbors, artwork, sculptures, etc.). Replacement of one type of flowers with another or tree planting would not have to go through review.

10. Minor modifications and/or minor upgrades or repairs of public or private utilities in the park or resource area. Any proposed excavation or grading within a drainageway will require Class I review and will be covered with a natural drainageway permit. Emergency repairs, authorized by the City Manager, would

be exempt from this chapter per CDC [56.025](#). Post-emergency site restoration or mitigation would, however, be required.

11. Americans with Disability Act (ADA) compliance (e.g., ramps and paths) is exempt when the improvement is outside of a natural resource area per CDC [56.025](#). Construction of ADA-accessible interpretive paths and related facilities in natural resource areas shall go through Class I design review.

12. Freestanding art and statuary under five feet tall.

13. The addition or removal of a park or natural open space facility or site feature. This could involve, for example, the elimination of a softball diamond.

14. Other land uses and activities may be added if the Planning Director makes written findings that the activity/use will not increase impacts to any nearby resource area or abutting residential property, does not conflict with the program established for the specific park or natural resource area/open space, and is consistent with the type and/or scale of activities/uses listed above.

D. Class II design review. The following is a non-exclusive list of Class II parks design review activities or facilities:

1. Site preparation for and/or development of a new park or natural area.

2. Outward expansion of an existing park or natural area.

3. Addition or reduction of more than 10 percent of total square footage of an existing building, including any dimensional change if it would result in encroachment towards a natural resource area.

4. Any program change that results in a change in the function and classification of the park or resource area (e.g., from active park with playing fields to passive park with no playing fields. Any change that puts park program at odds with, or in violation of, Parks Master Plan).

5. Any change or proposed development which, by its scale or scope of work, requires that a full and comprehensive review be undertaken in the public forum. See CDC [56.025](#), Exemptions, for buildings over 10,000 square feet.

**6. New trails, if over 200 feet long (see CDC 56.025).**

**7. New paths, if over 200 feet long (see CDC 56.025).**

**SECTION 2. Amendment.** Section 56.025 of the West Linn Community Development Code, relating to trails and paths is amended to read as follows:

| Exemptions (CDC 56.025)  | Class I (CDC 56.020(C))   | Class II (CDC 56.020(D))  |
|--|---|---|
| Sidewalks, paths, walls and fences up to 200 feet long outside of the natural resource area (NRA). | <del>Sidewalks, paths, sidewalks, walls and fences over 200 feet long and all those within NRA.</del> | Development of a park or park facility and all other major construction projects.             |
| Architectural or other "replacement in kind." Substituting one sports program for another.         | Addition or elimination of a park facility (e.g., baseball diamond).                                  | Program changes to park that result in it being reclassified as a different type of park.     |
| Color changes.   | Additional playground equipment.  | <b><u>Sidewalks, paths, walls and fences over 200 feet long and all those within NRA.</u></b> |
| Minor road realignment under 200 feet long outside of NRA.   | Minor road realignment of over 200 feet and all work in NRA.  |   |
| Revisions to circulation and parking layout.   | Ten percent increase or decrease in building size.  | Over 10 percent increase in building size.  |
| Up to 10 percent change in parking lot.  |   |   |
| Directional and interpretive signs.  | Over 10 percent increase or decrease in parking lot.  |   |
| ADA compliance outside of NRA.   | ADA compliance in resource area.  |   |
| Emergency repairs.   | Art under five feet tall.   | Art over five feet tall.  |
| Minor landscape plan modification. Ivy removal.  | Major landscape plan modification.  |   |
| Transit shelters.  |   |   |

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| Buildings over 10,000 square feet (Chapter 55 CDC applies). |  |  |
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**SECTION 3. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 4. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 5. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[3-6]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 6. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the 2nd day of June 2014, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

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JOHN KOVASH, MAYOR

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KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

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CITY ATTORNEY