

# **Exhibits:**

## **Recent Public Submittals**

Peter-

Can you please add this to the record regarding the proposed zoning code amendment? Can you also add me to your mailing list if any more information comes out or a decision is made?

Thanks,

Melynda

Dear Mayor King and Members of the West Linn City Council:

My name is Garrin Royer and I live at 3050 S. Roxbury Drive in West Linn. Three and one-half years ago, I purchased a 1.7 acre parcel of land at 4111 Elmran Drive in the Cedar Oak neighborhood. After extensive and costly work with the City's planners, engineers and arborist, I received preliminary plat approval for a six (6) lot subdivision called "Bella Flats" on May 7, 2007. My wish is to someday live in the subdivision along with my new neighbors. To date, I have incurred approximately \$120,000 in engineering, surveying, planning and application fees. I have now been informed that if my entire project is not completed with installation of all the public improvements by May 7, 2010, my land division approval will be void and the money that I spent on the approval will have been wasted.

In the current market, I cannot make these public improvements because I cannot sell the houses. The value of the land is now substantially less than what I paid for it. The City's required public improvements, while I could have afforded them in the prior market, at the current housing values now make this project infeasible.

I understand that the City is considering an amendment to its Code that would allow some extensions to current land use approvals. I urge you to approve this amendment so that my investment and the investments of other small business owners and West Linn residents are not lost. Were this an ordinary market, I would not be making this request. However, all of us can agree that this is an extraordinary time in Oregon's economy and we need to do everything we can to help West Linn businesses maintain their investments so that the City's economy and reputation for desirable housing remain strong.

I hope that this letter will persuade you that the approval of this amendment is important.

Respectfully yours,

Garrin W. Royer



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November 23, 2009

**VIA EMAIL**

Mayor Patti Galle  
City of West Linn  
22500 Salamo Road, #100  
West Linn, OR 97068

**Re: Extension Ordinance**

Dear Mayor Galle and Members of the City Council:

This office represents Jeff Smith. Please find enclosed a summary of action by the City of Eugene City Council approving an extension for land use applications. The ordinance provides for a three (3) year extension without any additional process. I have asked your staff to place this in the official Planning Department record for the legislative application and before you at your public hearing on December 14, 2009.

Very truly yours,

Michael C. Robinson

MCR:crl

Enclosure

91004-0005/LEGAL17350174.1

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Perkins Coie LLP and Affiliates

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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Action: Adoption of an Ordinance Concerning Time Extensions for Approved Developments; and Providing an Effective Date (City File CA 09-5)

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Meeting Date: November 9, 2009  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 4  
Staff Contact: Gabe Flock  
Contact Telephone Number: 541/682-5697

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## ISSUE STATEMENT

The City Council is scheduled to take action on an ordinance that would provide a three-year extension to the expiration period for certain approved land use applications.

## BACKGROUND

Earlier this year, as part of the City's local economic stimulus efforts, the City Council initiated amendments that would provide time extensions for approved land use applications. Similar to the recent actions of several other jurisdictions in Oregon, this proposal will allow more time for the completion of development projects that have already undergone extensive public process and received City approval, but may be slowed down or stalled due to difficult economic conditions.

The proposed ordinance will provide a one-time, automatic three-year extension for all Type II (e.g. partitions and subdivisions) and Type III (e.g. conditional use permits and planned unit development) land use application approvals that have not yet expired. Some of these projects have been approved with multiple construction phases, involving a series of expiration dates. This ordinance would automatically adjust the timeline for these future phases by three years as well. As proposed, there would be no submittal requirements, fees or processing time associated with granting the time extensions, and applicants would be notified of the additional time granted by the City. This provides a cost-effective, simple, and targeted approach for extending existing approvals that are most likely affected by the current economic downturn, consistent with council direction. For reference, the draft ordinance is included as Attachment A.

The Planning Commission held a public hearing on the proposed ordinance on September 22, 2009, and took action the same night to unanimously recommend approval of the ordinance with a three-year time extension. The City Council held a public hearing on the proposed ordinance on October 19, 2009. Public testimony was received at both hearings in support of the proposed ordinance; no testimony has been received in opposition.

In response to questions raised by the council, it is noted that Portland recently passed a date-specific time extension of *more* than three years (from December 2008 to June 2012) for approved land use applications. Other jurisdictions, including Bend and Gresham, have either permanently extended the expiration periods for certain land use approvals, or created an entirely new process and criteria to

facilitate time extension requests in the future. Eugene's proposed ordinance is most similar to Portland's example, by providing a one-time extension of three years.

Based on council direction to focus this effort on existing approvals affected by the current economic situation, additional options that would expand the scope of this proposal are not included in the proposed ordinance. It is also noted that testimony at the Planning Commission recommended revisiting the need for additional time extensions in the event that a continuing economic recession may warrant it. The possibility of creating a new application process and criteria to allow expedited review and approval of future time extension requests, or expanding the scope of the ordinance to include new applications within the next year, could be revisited in the future based on council direction.

#### **RELATED CITY POLICIES**

Findings addressing consistency with Statewide Planning Goals and related City policies, including applicable adopted plans, are included as an exhibit to the ordinance (Exhibit A of Attachment A).

#### **COUNCIL OPTIONS**

The City Council may consider the following options:

1. Approve the ordinance.
2. Approve the ordinance with specific modifications as determined by the City Council.
3. Deny the ordinance.

#### **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends the City Council adopt the ordinance (Attachment A).

#### **SUGGESTED MOTION**

Move to adopt an ordinance concerning time extensions for approved developments; and providing an effective date.

#### **ATTACHMENTS**

- A. Proposed Ordinance and Findings

#### **FOR MORE INFORMATION**

Staff Contact: Gabe Flock  
Telephone: 541/682-5697  
Staff E-Mail: gabriel.flock@ci.eugene.or.us

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING TIME EXTENSIONS FOR APPROVED DEVELOPMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**The City Council of the City of Eugene finds that:**

A. To aid economic recovery in difficult economic conditions, the City Council wishes to be proactive and programmatic in granting a three-year extension to those unexpired development approvals that were granted by the city after a process that included a public notice and comment period.

B. For land use approvals that include an extended phasing plan, it is intended that the three-year extension be applied to the current phase of development and that the time periods for all phases be adjusted to accommodate the one-time extension granted by this Ordinance.

**NOW, THEREFORE, based on the above findings,**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** The legislative findings attached as Exhibit A hereto are adopted in support of this Ordinance.

**Section 2.** The expiration dates for all Type II and III land use application approvals in effect on the date this Ordinance takes effect are hereby extended by three years. Further extensions for these land use approvals may be sought pursuant to Chapter 9 of the Eugene Code, 1971.

**Section 3.** For any Type II or III land use application approval with an executed performance agreement in effect on the date this Ordinance takes effect, each reference to a specific year within in the Time Schedule section of said performance agreement (referencing a commencement or a completion year) is hereby extended by three additional years.

**ATTACHMENT A**

**Section 4.** This Ordinance shall take effect pursuant to Section 32 of the Eugene Charter 2002, or on the date of its acknowledgement as provided in ORS 197.625, whichever is later.

**Passed by the City Council this**

\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
AIC City Recorder

**Approved by the Mayor this**

\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Mayor

## EXHIBIT A

### Findings

#### Land Use Application Timeline Extensions (CA 09-5)

Eugene Code Section 9.8065 requires that the proposed ordinance comply with the following approval criteria (in bold and *italics*):

- (1) ***The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

Goal 1 - Citizen Involvement. *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The proposed action only extends the effective date for land use applications that have already been approved. These approved land use applications have already undergone a codified process that involves citizens through public comment and/or hearings and appeal processes. This action does not amend the citizen involvement provisions included in these application processes. The process for adopting these amendments complies with Goal 1 because it is consistent with, and will not change the City's existing and acknowledged citizen involvement provisions.

The Planning Commission public hearing on the proposed ordinance was duly noticed to the City of Springfield, Lane County, and all neighborhood organizations, as well as community groups and individuals who have requested notice. In addition, notice of the public hearing was also published in the Register Guard. The City Council then held a duly noticed public hearing to consider approval, modification, or denial of the proposed ordinance. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the proposed ordinance is consistent with Statewide Planning Goal 1.

Goal 2 - Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The City's acknowledged land use code specifies the procedures and criteria to be used for decisions and actions related to land use applications. The proposed ordinance does not change the planning process, policy framework or information relied on in making decisions and actions related to land use applications. The ordinance extends the time that these decisions are effective once the process has been completed and the policy framework and facts of each application have been determined and decided.

The record also shows that there is an adequate factual basis for the proposed ordinance. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of these amendments with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to Lane County, Springfield and the Department of Land Conservation and Development.

There are no Goal 2 Exceptions required for the proposed ordinance. Therefore, it is consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. *To preserve agricultural lands.*

The proposed ordinance does not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. *To conserve forest lands.*

The does not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. *To conserve open space and protect natural and scenic resources.*

*OR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The proposed ordinance does not create or amend the City=s adopted inventory of Goal 5 resources, and does not amend any code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The proposed ordinance does not allow new uses that could be conflicting uses with a significant Goal 5 resource site and does not amend the acknowledged UGB. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and land Resource Quality. *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendments to not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. *To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The ordinance does not affect the City's existing restrictions and approval criteria regarding development in areas subject to natural disasters and hazards. The proposed action only extends the effective date for land use applications that have already been approved. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The proposed ordinance does not affect the City's provisions for recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Land Study (October 1992) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 9 and its Administrative Rule. The amendment does not affect the amount of land designated or zoned for commercial use and will have no direct impact on the existing supply of or any existing commercially designated land.

Goal 9 further requires cities take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, to include land use controls and ordinances. The proposed ordinance related to timeline extensions is specifically intended help applicants overcome economic hardships by extending the expiration period for already approved land use applications. Therefore, to the extent applicable, the amendment is consistent with Goal 9.

Goal 10 - Housing. *To provide for the housing needs of citizens of the state.*

Goal 10 requires that communities plan for and maintain an inventory of buildable residential land for needed housing units. The proposed ordinance does not impact the supply or availability of residential lands included in the City's documented supply of "buildable land" that is available for

residential development as inventoried in the acknowledged 1999 Residential Lands Study. Therefore, to the extent applicable, the amendments are consistent with Statewide Planning Goal 10.

Goal 11- Public Facilities and Services. *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 ordinance does not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. *To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented through the Transportation Planning Rule (TPR, OAR 660-12). TransPlan provides the regional policy framework through which the TPR is enacted at the local level.

The proposed ordinance will not significantly affect any transportation facility. The level of development currently permitted through existing code and zoning regulations will remain the same. No change in the functional classification of streets will result from the proposed ordinance. In addition, no changes are proposed to the standards that implement the functional classification system. Therefore, the amendments are consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. *To conserve energy.*

The proposed ordinance does not affect any of the City's energy conservation measures or programs. Therefore, Statewide Planning Goal 13 does not apply.

Goal 14 - Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

The proposed ordinance does not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The proposed ordinance does not include any changes that affect the regulation of areas within the adopted Willamette River Greenway boundaries. Therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

The proposed ordinance does not include any changes related to coastal, ocean, estuarine, or beach and dune resources. Therefore, these goals are not relevant and the proposed ordinance will not affect compliance with Statewide Planning Goals 16 through 19.

- (2) The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***

The proposed ordinance granting timeline extensions for approved land use applications does not include any change in adopted land use designations or policy, nor does it change any requirements in the City's land use code concerning compliance with the Metro Plan and applicable refinement plans. There are no policies or other applicable provisions in the Metro Plan or adopted refinement plans that specifically serve as mandatory approval criteria in this instance or otherwise limit the expiration period for approved land use applications. Therefore, the proposed ordinance complies with the above criterion.

- (3) The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The proposed ordinance does not establish a special area zone. Therefore, this criterion does not apply.



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November 12, 2009

**VIA E-MAIL**

Mayor Patti Galle  
City of West Linn, Oregon  
22500 Salamo Road, #100  
West Linn, OR 97068

**Re: Extension Ordinance to be Considered by City Council on November 23, 2009**

Dear Mayor Galle and Members of the City Council:

This office represents Jeff Smith. I am writing to urge the City Council to approve the extension ordinance recommended to the City Council by the Planning Commission following its work session on October 7, 2009. As you know, on November 22, 2008, the City Council initiated the extension ordinance. The City Council's motion directed that the ordinance be returned within one (1) year to the City Council. The Planning Commission has now twice recommended approval of the extension ordinance. The extension ordinance will allow all land use applicants an opportunity (but not a guarantee of approval) to request an extension. An applicant must submit an application for the extension and be heard by the Planning Commission in a public hearing in order for an extension to be granted.

There are a number of reasons why the City Council should approve the extension ordinance, not the least of which is the fact that both the professional Planning staff and the Planning Commission, composed of citizens of West Linn, have recommended its approval. Some of the reasons are as follow:

- There is no dispute that the recent recession has taken a heavy toll on the homebuilding business in Oregon. The number of housing starts has declined significantly. The ability to obtain loans for the construction and development of land and construction of homes has also become more difficult, meaning that many approved applications must wait until market and lending conditions return

to normal. Thus, while applicants have approvals in place, they cannot act on them.

- The homebuilding business in West Linn, as it is in most of Oregon, is mainly composed of family businesses.
- Because of the severe recession, projects have been deferred. It is a terrible waste of resources, both public and private, to allow existing approvals to expire because of circumstances beyond the control of either the City or the businesses.
- West Linn has had one of the strictest positions on extensions: none. Moreover, West Linn has required final plats to be recorded (not just submitted for review) by the third anniversary of the tentative approval. This schedule, combined with the inability to bond for improvements, effectively means that the process for recording the final plat must be started about eighteen (18) months ahead of the three (3) year anniversary in order to complete the public improvements, have the public improvements accepted by the City, submit the final plat to the City for review and the County Surveyor for approval and have it recorded. ~~Almost every~~ other county and city in the metropolitan area allows not just extensions, but also allows public improvements to be bonded so the improvements do not have to be constructed before recording of the final plat. This extension ordinance simply does what most other cities have been doing for a long time.
- Many other communities have recognized the severity of the economic downturn and have extended land use approvals for a year.

The opponents of the extension ordinance have raised several issues that miss the mark.

First, Ms. Schwarz in an opinion letter to the West Linn Tidings, said that Jeff Smith cut down 40 trees on his property. First, as the City Council well knows, Mr. Smith's property was outside of the City when he did so and Clackamas County did not have, nor does it have, a tree-cutting ordinance. Mr. Smith removed the trees lawfully and in compliance with all applicable laws and did so to plant a vineyard – a farm use allowed outright in that zoning district – that is now located on the property. Ms. Schwarz's letter suggests that he should not have been allowed to follow the laws that existed. However, whatever the reason that Mr. Smith removed the trees, he did so lawfully and his action has no bearing on the current proposal before the City Council.

Second, as noted above, West Linn's regulations governing when a final plat must be recorded are, if not unique, certainly in the minority. Moreover, most other jurisdictions

allow public improvements to be secured rather than be constructed prior to recording of the final plat. Finally, most other jurisdictions allow extensions. All of these things allow homebuilders and other land use applicants to moderate the effects of the market by timing their improvements. West Linn's current system does not allow that.

Ms. Schwarz also argued that this proposal is analogous to an individual who has had his water service terminated. No one is asking for a "special extension." Just like the friend cited in her letter, applicants for an extension must pay a fee. The proposal initiated by the City Council, as recommended to you by the Planning Commission, requires a new fee and a new application for an extension and a hearing on the extension.

Further, Ms. Schwarz suggested that there is only an "alleged economic hardship"? It is clear to everyone that the country, state and city have been through a severe economic downturn that is not yet over.

Ms. Schwarz also wrote that the extension ordinance would give something that her friend, who had to pay to have his water turned back on, didn't get, in her words, a "deal." Not only is there no guarantee of an extension, but those who want an extension must make an application (with a fee) and have it approved by the Planning Commission. So, even if the water story is relevant, the people who might ask for an extension are on the same footing as Ms. Schwarz's friend.

Ms. Schwarz also suggested that the economic downturn is over and that the economy is "beginning to revive." What Ms. Schwarz fails to understand is that the delay caused by the economic downturn, even if she is right about the economic recovery, has caused a delay in land development. The extension ordinance simply gives all applicants (professional builders and homeowners alike) the opportunity to get back to where they were when their approvals were granted.

Finally, Ms. Schwarz lists several reasons that the City Council should vote no. First, she suggested that land use applicants should not have five (5) years. This is not an unreasonable amount of time (since the economic downturn has gone on for two (2) years and they had three (3) years to implement their approval) and nothing requires the Planning Commission to give a full two (2) year extension.

Second, it is not unfair because this is something that is provided for by almost every other county and city. Land development is heavily regulated and the current West Linn system imposes built-in timelines that make it virtually impossible to develop land within three (3) years because of the current economy.

Mayor Patti Galle  
November 12, 2009  
Page 4

Finally, whether or not the economic downturn has been reversed is a matter of debate and there is no consensus. However, even if it is true, lending for land development has not returned to its prior status and the delay over the last several years in lending on projects so that they can be approved merits an extension for this time, which is just about a two (2) year period. As we all know, the downturn began in late 2007 and it is now late 2009. That precisely matches the maximum extension that the Planning Commission has recommended that you consider in this ordinance.

No one can predict the future; all we can do is review what has happened in the past. There is no debate that the economic downturn has been the severest in at least the last quarter century and that it has been ongoing for about two (2) years. There is no debate that it has substantially affected all aspects of land development, but especially the homebuilding business. There is no dispute that most of the builders in West Linn are individuals and families who depend on this for their livelihood and others, in turn, depend on those builders for their livelihood. There is no dispute that this two (2) year period has caused a significant delay in homebuilding. All the extension ordinance does is recognize these facts, give any applicant a fair opportunity to make an application for an extension and avoid wasted resources, both public and private, for the unnecessary expiration of an approval. This is not about one individual; it is about a reasonable request initiated by the City Council, recommended to the Planning Commission by your professional Planning staff and recommended to you by your Planning Commission to address circumstances beyond the control of an applicant.

On behalf of Jeff and others, I urge the City Council to approve the ordinance that the Planning Commission has recommended to the City Council.

Very truly yours,



Michael C. Robinson

MCR:cfr

cc: Mr. Jeff Smith (via email)  
Mr. Chris Jordan (via email)  
Mr. John Sonnen (via email)  
Mr. Peter Spir (via email)  
Mr. Tim Ramis (via email)  
Mr. Ernie Platt (via email)