



**AGENDA BILL 2010-09-13-06**

**Subject:** Proposed code amendments to establish a Historic Review Board and to extend the terms of office for board and commission members until the position is reappointed or replaced.

**For Council:** September 13, 2010

**Land Use Case Number:** CDC-10-01

**Public Hearing:** Yes

**City Manager's Initials:** KW

**Attachments:**

1. Staff Memorandum to City Manager
2. Decision Tree Guide and Decision Tree
3. Planning Commission Recommendation Code Language
4. Option 4 Code Language

**Initiated by:**

- Planning Department

**Budget Impact:**

- None

**Sustainability Considerations:**

- None

**Policy Question(s) for Council Consideration:**

- Should the City Council establish a Historic Review Board (HRB) to replace and assume the duties of the Clackamas County Historic Review Board (CCHRB) and the City's Historic Resources Advisory Board (HRAB)?
- Should the Planning Commission review and decide upon projects involving design review and other land use applications for properties that are located in the Willamette Falls Drive Commercial District which were previously only subject to Historic Review Board review?
- Should the City Council allow terms of office for boards, commissions, and committees to extend until the position is reappointed or replaced?

**Summary:**

- The City has relied on the CCHRB since the 1980s as the review body for historic design review projects. As of September 30, 2010, the CCHRB will cease to serve as the City's historic review body.
- The proposed amendments will establish a new HRB that will assume the duties of both the CCHRB and the current City HRAB.
- The proposed amendments will require applications for a proposed project that would otherwise be heard by both the Planning Commission and HRB to be heard and decided by the

Planning Commission, with consideration of the HRBs recommendation (consolidation of proceedings). They will also require Planning Commission approval of Class II design review projects in the Willamette Falls Drive Commercial District.

- Proposed amendments to CDC chapters 25, 26, 55, 58, and 99 clarify and consolidate duplicative provisions of the code and reflect state law regarding the protection of historic resources of statewide significance.
- In addition, the amendments proposed by staff will extend the terms of office for board, commission, and committee members until the Council reappoints or replaces the position. (Note that this amendment was not the subject of a Planning Commission recommendation).

**Recommended Motion:**

- *Move to adopt Ordinance No. 1597 establishing a Historic Review Board and extending the terms of office for positions on boards, commissions and committees until the Council reappoints or replaces the position.*



## Memorandum

Date: August 30, 2010  
To: Chris Jordan, City Manager  
From: Sara Javoronok, Associate Planner  
Subject: Establishment of a Historic Review Board

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### **Purpose**

Staff is seeking City Council approval of proposed amendments to Chapter 2 of the Municipal Code and chapters 25, 26, 55, 58, and 99 of the Community Development Code (CDC). Upon adoption, these proposed amendments will establish a Historic Review Board (HRB) to assume the responsibilities of the City's Historic Resources Advisory Board (HRAB) and the Clackamas County Historic Review Board (CCHRB) pertaining to West Linn. The proposed amendments also provide for the extension of terms of office for board, commission, and committee members until the Council has the opportunity to reappoint or replace them. The purpose of this memo is to respond to requests for information from Councilors following their hearing on August 9, 2010 and to facilitate the Council's decision making regarding this project.

### **Background**

The following updates the background information pertaining to the proposed amendments included in staffs' July 30, 2010 memo regarding establishment of a HRB.

Council work session. The City Council conducted a work session on August 2, 2010 to review the proposed code amendments. Members of the Planning Commission and HRAB in attendance explained their rationale and perspectives regarding the proposed amendments. The single area of contention pertains to approval authority for projects with both historic and land use issues.

Public hearing. On August 9, 2010, the Council conducted a public hearing regarding the proposed amendments and the alternatives under consideration. Charles Awalt, a member of the HRAB and resident of the Willamette Historic District, testified in support of Option 4, which provides for review of historic properties by the HRB and Planning Commission but defers decision for undesignated structures in the Willamette Falls Drive Commercial District to the Planning Commission. This option is described in detail in Attachment 4.

Council direction. Following the close of the hearing on August 9, the Council directed staff to prepare code amendments that would implement Option 4 for their consideration and asked staff to provide additional information. (The alternative code language is contained in Attachment 4. The information requests and staff responses are contained in the discussion portion of this memo.)

The Council scheduled a work session for September 7, 2010 and continued the public hearing to September 13, 2010 to allow for additional public comment and to enable public review of potential changes to the amendments.

**Discussion**

Council decisions and additional proposed amendments. In response to the Council’s discussion following the hearing on August 9, 2010, staff prepared a decision tree (Attachment 2) and additional potential code amendments (Attachment 4) for the Council’s consideration.

Response to issues raised by Council. The Council requested that staff research and address several issues. These issues are addressed below:

- **How would landmarks be reviewed under Option 4?**

**Response:** Landmark projects would be reviewed and approved by the HRB for compliance with chapters 25, 26, and 58 of the CDC, as applicable. If the project had a land use component, for example, a Class II Design Review, this would be reviewed and approved by the Planning Commission for compliance with Chapter 55, Design Review, and other chapters of the CDC, as applicable.

- **Would the HRB meetings be televised?**

**Response:** If desired, the HRB’s Policies and Procedures could require that some (e.g., where a decision or recommendation is on the agenda) or all of the HRB meetings be televised.

- **What is the difference between a public meeting and a public hearing? What is required?**

**Response:** To maintain its status as a Certified Local Government, the City’s HRB is required to have review authority over all applications affecting properties located within historic districts and all historic landmarks. The HRB is not required to have approval authority.

Under the Planning Commission’s recommended approach, the HRB would review applications and make a recommendation to the Planning Commission in a meeting open to the public. However, the public would not be given formal opportunity to testify regarding the project. Since it would not be a public hearing, there would not be continuances or appeals at that level, which is helpful given the 120-day limit for reaching a final decision on a project.

The HRB would hold regularly scheduled meetings and the City’s practice is to post agendas 10 days in advance. HRB public hearings require a “Class B” notice as detailed in CDC Section 99.080 B. This requires notice of the hearing at least 14 days in advance to the applicant, the affected neighborhood association, and all property owners of record within 100 feet. If desired, there is latitude to provide for additional notice.

- **What criteria will the HRB use for their review?**

**Response:** With both options, the HRB would review projects for compliance, as applicable, with the criteria listed for the Historic District in CDC Chapter 25, Historic Landmarks in CDC Chapter 26, and design standards for the Willamette Falls Drive Commercial District in CDC Chapter 58. The HRB would not review projects for compliance with other chapters of the CDC.

▪ **What criteria will the Planning Commission use for their review?**

**Response:** Under the Planning Commission recommendation contained in the City Council Public Hearing Draft: The Planning Commission would review projects for compliance with all relevant chapters of the CDC, including chapters 25, 26, and 58, which the HRB will utilize for their review.

Under Option 4: The Planning Commission would not review projects for compliance with chapters 25, 26, and 58. The HRB would have the authority to review and approve projects under these chapters. The Planning Commission would review projects for compliance with all other applicable chapters of the CDC.

▪ **How did the process work for the Willamette Falls Drive Commercial District with the CCHRB?**

**Response:** The CDC currently gives the approval authority for new construction, major renovation, and additions in the Willamette Falls Drive Commercial District to the CCHRB. This review was solely based on the criteria in Chapter 58 – the design standards for the Willamette Falls Drive Commercial District. Access, water resource areas, parking, and other issues which are typically considered under Class II Design Review in Chapter 55, were not specifically addressed by this review body. The Planning Commission did not review these projects.

▪ **Have other communities that require HRB and Planning Commission approval had applicants who were not willing to extend the 120-day clock?**

**Response:** Staff talked with two other communities that have a similar process and they have not had an applicant unwilling to extend the 120-day clock. Generally, the applicants were willing to extend the clock since they were typically requesting a conditional use, variance, or other application requesting something in addition to what the code typically permits and wanted consistent decisions from both review bodies.

▪ **How often does a project require Planning Commission and HRB review?**

**Response:** Staff talked with an Oregon City planner who estimates that there are approximately 100 properties in Oregon City that could be subject to planning and historic review. She estimates that she receives 1-2 applications per year that require planning and historic review. For West Linn, staff estimates that there are approximately 10 designated historic properties that have the potential to require planning and historic review. In addition, there are approximately 35 properties in the Willamette Falls Drive Commercial

District that have the potential to be subject to both planning and historic review. However, many of these structures are unlikely to have significant changes in the future.

- **How many projects does the CCHRB review for the County on an annual basis? How do they review similar projects?**

**Response:** Clackamas County staff estimates that the CCHRB reviews approximately six applications for designated historic properties in the County on an annual basis. The CCHRB has reviewed approximately 4-5 applications per year for the City. Staff talked with a Clackamas County planner who stated that a design review application that required planning and historic review would first be reviewed by the CCHRB, then the County's Design Review Committee. She did not anticipate that the 120-day clock would be an issue.

**Options:**

- A. The City Council could approve the amendments, as proposed; or
- B. The City Council could approve of some, or all, of the amendments with modifications; or
- C. The City Council could deny the proposal, thereby leaving the Code 'as is'.

**Recommendation**

Option B. Staff recommends that Council work though the attached decision tree and direct staff to prepare an ordinance implementing your tentative decisions for Council consideration on September 13, 2010.



## Decision Tree Guide

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The decision tree uses the following five step approach for deciding upon the potential code amendments:

- **First**, decide upon the approach to use when processing applications with both historic and land use issues:
  - The approach recommended for approval by the Planning Commission as incorporated into the City Council Public Hearing Draft, or
  - Option 4, described at the top right on the following decision tree. (The code language to implement Option 4 is included in Attachment 4).
- **Second**, consider and decide on possible amendments specific to the preferred alternative. The code language following the decision tree contains potential code provisions specific to each alternative that address the issues raised by the City Council following the public hearing on August 9, 2010.
  - Should the Council choose to proceed with the Planning Commission recommendation, Council will be asked to consider language that would require HRB review of demolitions and to provide the HRB with free appeals of Planning Commission decisions. Council will also be asked to review proposed complementary actions that would be implemented through the revision of the Planning Commission Policies and Procedures and in the drafting of such provisions for the new HRB.
  - Should the Council choose to proceed with Option 4, Council will be asked to review language implementing that option. We will also discuss how to handle appeals of projects subject to both Planning Commission and HRB decisions.
- **Third**, consider and provide direction on proposed amendments that apply to both alternatives. This includes changes recommended by staff on August 9, 2010 and the size of the HRB. These are included in Attachments 3 and 4. Also we will ask the Council to identify and discuss any other changes that they may desire.
- **Fourth**, confirm that the language in Section 2.060 that extends the terms of offices for board, committee, and commission members is acceptable.
- **Finally**, there will be limited opportunity for discussion of the proposed amendments at the September 13, 2010 Council meeting. As such, staff requests that the Council direct staff to prepare an ordinance implementing the proposed amendments tentatively agreed to at the September 7, 2010 work session for consideration on September 13, 2010. (The Clackamas County Historic Review Board will stop serving as the City's Historic Review Board as of September 30, 2010).

Decision Tree

**Step 1: Decide on Basic Approach**

**Planning Commission Recommendation**

- The Historic Review Board (HRB) would retain approval authority for residential additions and single family home construction.
- The HRB would make a recommendation to the Planning Commission (PC) pertaining to historic aspects of historic landmarks, properties in a historic district, and properties in the Willamette Falls Drive Commercial District subject to PC purview.
- The PC would have the approval authority for such projects, with consideration of the HRB's recommendation.

or

**Option 4**

- The HRB would have the approval authority for the historic aspects of projects for properties that are designated historic (landmarks and districts).
- The HRB would review the historic aspects of projects for the remaining properties in the Willamette Falls Drive Commercial District, but would not have approval authority.
- The PC or Planning Director, as applicable, would have the approval authority for site planning aspects of all projects. (See Attachment 4 for the implementing code language.)

**Step 2: Consider and decide on possible amendments specific to the preferred alternative**

Decide on the approval authority for demolitions.

Consider whether to offer free appeal of PC decisions for the HRB.

**Discuss complementary actions and policies and procedures regarding PC and HRB Coordination**

- Televising HRB meetings and/or PC member attendance at HRB meetings.
- HRB attendance at PC meetings.
- Option for joint work session following PC hearing.

Consider appeal options and implications.

**Step 3: Consider and provide direction regarding other potential amendments**

- Consider recommended changes in August 9, 2010 staff memo.
- Reconsider the size of the HRB (5 or 7 members).
- Other changes desired by Council.

**Step 4: Review provision pertaining to terms of office.**

Confirm that the language in Section 2.060 extending the terms of office is acceptable.

**Step 5: Council Direction**

Direct staff to prepare ordinance to implement the City Council direction for consideration on September 13.

# Planning Commission Code Language

**Note:**

Plain text = existing regulation

~~Strike through~~ = proposed deletion to existing regulations

Underline = proposed addition

*Italic* = staff comment

... = unaffected text omitted

**Bold Highlight** = proposed addition since City Council public hearing draft

**Highlight** = proposed removal since the City Council public hearing draft

## STEP 1

### Planning Commission Recommendation

- The Historic Review Board (HRB) would retain approval authority for residential additions and single family home construction.
- The HRB would make a recommendation to the Planning Commission (PC) pertaining to historic aspects of historic landmarks, properties in a historic district, and properties in the Willamette Falls Drive Commercial District subject to PC purview.
- The PC would have the approval authority for such projects, with consideration of the HRB's recommendation.

The Planning Commission's recommended approach for processing applications with both historic and land use issues is detailed on pages 63-66 of the City Council public hearing draft. It is duplicated here for convenience.

D. The Historic Review Board shall have the authority to:

1. Approve, deny, or approve with conditions an application for compliance with chapters 25, 26 and 58, as applicable, and as needed to provide for consolidated review for the following: applications for the following development applications.

*(Staff comment: The Planning Commission asked that this Section be revised to clarify the Historic Review Board's and Planning Commission's roles. The proposed revisions would change the authority of the Historic Review Board and the Planning Commission. A flowchart depicting the proposed process is included on pages 15 and 16.*

*The Historic Review Board currently has approval authority for design review of commercial structures in the Willamette Falls Drive Commercial District. The proposed amendments would give the Planning Commission approval authority over commercial and other construction within the Willamette Falls Drive Commercial District that are subject to Class II Design Review under Chapter 55. The Historic Review Board would have the opportunity to review these projects and make a recommendation to the Planning Commission (the information would be given to them at least 10 days prior to their meeting as with quasi-judicial projects; however, the review would not include a public hearing). Up to two Planning Commission members would attend the Historic Review Board meeting. The Historic Review Board recommendation would be included in staff's report for the Planning Commission and up to two representatives from the Historic Review Board would attend the Planning Commission meeting. They would have the opportunity to speak after staff's presentation to the Planning Commission and respond to questions from the Planning Commission.*

*The Planning Commission and Historic Review Board would have the option of conducting a joint work session following the public hearing to discuss the project prior to the Planning Commission taking action. These procedures would be incorporated in the policies and procedures for both the Planning Commission and Historic Review Board.*

*The Historic Review Board would retain approval authority for projects that are subject to Class I Design Review per Section 99.070, Consolidation of Proceedings (see page 14), and over remodels, alterations, and additions that are not subject to Chapter 55, Design Review.)*

- a. Major or minor remodel, alteration, or addition to a historic landmark, property within a historic district, or property within the Willamette Falls Drive Commercial District that is not subject to Class II Design Review under Chapter 55;
- b. New construction within a historic district that is not subject to Class II Design Review under Chapter 55;
  - 1. ~~New home construction in the Historic District.~~
  - 3. ~~Major renovation or additions to historic landmarks, and major renovation or additions to structures in the Historic District~~

- 6. ~~New construction, major renovation, and additions in the Willamette Falls Drive Commercial Overlay Zone.~~
- c. ~~4. Construction of a non-exempt accessory structure or garage on a historic landmark property, or property within a historic district; Construction of non-exempt accessory structures and garages to historic landmark properties and properties within a historic district.~~
  - d. ~~5. A demolitions permits for a historic landmark or property within a historic district; for the Historic District, to historic buildings in the Willamette Falls Drive Commercial Overlay Zone, and to Historic landmark structures.~~
  - e. ~~7. Revocation Revoke or modification modify of an approval as provided by Section 99.330 for any application approved by the Historic Review Board; and~~
  - f. ~~8. An Extensions of an approval when the Historic Review Board acted as the initial decision making authority.~~
- 2. ~~Creation of new historic districts.~~
- 2. The Historic Review Board shall review an application for compliance with chapters 25, 26 and 58, as applicable, and make a recommendation to the approval authority specified in Section 99.060. This authority shall apply for the following:
  - a. Designation of a historic landmark or a historic district;
  - b. Major or minor remodel, alteration, or addition to a historic landmark, property within a historic district, or property within the Willamette Falls Drive Commercial District that is subject to Class II Design Review under Chapter 55;
  - c. New construction within a historic district or new construction within the Willamette Falls Drive Commercial District that is subject to Class II Design Review under Chapter 55;
  - d. A partition or subdivision of property containing a historic landmark or property within a historic district;
  - e. Conditional use of property containing a historic landmark; and

- f. A zone change for property containing a historic landmark or property within a historic district.

## STEP 2

Decide on the approval authority for demolitions.

### 99.070 CONSOLIDATION OF PROCEEDINGS

Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding, **except that the Historic Review Board shall retain approval authority for all demolition permits listed in Subsection 99.060 D(1)(d).** In such cases, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 99.060, in the following order of preference: City Council, Planning Commission, Historic Review Board, or the Planning Director, except for expedited land division applications which shall be processed as described in ORS Chapter 197. For example, if a conditional use permit (CUP) and Class I design review application were submitted, ordinarily the CUP would be heard by the Planning Commission, and Class I design review by the Planning Director. This hierarchy dictates that the higher body, the Planning Commission, would hear the consolidated hearing.

Consider whether to offer free appeal of PC decisions for the HRB.

### 99.240 AUTHORITY TO APPEAL OR SEEK REVIEW OF A DECISION - EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Oregon Revised Statutes require that prior to filing an appeal at the State Land Use Board of Appeals (LUBA), an appellant must first utilize the appeal opportunities provided by the City. A case cannot be brought before LUBA unless an appeal or petition for review is first filed with the appropriate city review body. It is the purpose of this section to provide parties information about possible remedies prior to litigation. To that end, the filing of an appeal or petition for review is a condition precedent for further administrative or judicial review.

- A. Any decision made by the Planning Director pursuant to Section 99.160 or the Planning Commission or Historic Review Board (except for expedited

land divisions) on a development application as provided by Section 99.170, may be appealed to the City Council pursuant to Section 99.160 (C) (1) or Section 99.170 (G) (1) or may be reviewed by the City Council pursuant to Section 99.160 (C)(2) or Section 99.170 (G) (2).

- B. Any decision made by the Historic Review Board, or Planning Commission under Section 99.170 may be reviews by the Council if the matter is referred under Section 99.170 (C) to the Council, upon closure of the hearing, when the case presents a policy issue which required Council deliberation and determination.
- C. Formally recognized neighborhood associations may appeal land use decisions to the appropriate bodies without cost if the Planning Director finds:
  - 1. The Community Development Code appeal procedures are followed.
  - 2. A member of the association must have established standing on behalf of the association. The member must have explicitly identified themselves, in writing or in testimony, as representing the association.
  - 3. The association submits a copy of the meeting minutes and vote taken supporting the appeal.
  - 4. The neighborhood association appeal is related to the property within the association's recognized boundaries, or an application outside the association's boundaries that shall have significant impacts upon the association's neighborhood.
  - 5. The neighborhood association may appeal without cost on behalf of an individual or group with standing who is not represented by a recognized association if "a," "b," and "c" above are met and the neighborhood association finds the issue(s) are of City-wide concern related to the West Linn Comprehensive Plan or the West Linn CDC.

**D. The Historic Review Board shall have standing in all decisions involving historic review and land use review and may appeal land use decisions, following Community Development Code appeal procedures, to the appropriate bodies without cost.**

# STEP 3

- Consider recommended changes in August 9, 2010 staff memo.
- Reconsider the size of the HRB (5 or 7 members).
- Other changes desired by Council.

- **Recommended changes in August 9, 2010 staff memo.**

## 2.085 Boards, Committees and Commissions

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### O. ~~HISTORIC RESOURCES ADVISORY REVIEW BOARD~~

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(3) Powers and Duties. The ~~Historic Resources Advisory Review Board~~ shall:

- (a) Meet at least four times a year and as required to conduct business in a timely fashion.

~~Disseminate information to educate the public as to state and federal laws protecting antiquities and historic places. (Staff Comment: The stricken language is incorporated in d.)~~

- (b) Have the powers and duties which are **now or hereafter** assigned to it by the charter, ordinances and resolutions of West Linn and state law.

~~Act as a coordinator for local preservation groups, educational workshops, signing and monumentation projects, and other similar programs. (Staff Comment: The stricken language is substantially incorporated in d.)~~

- (c) **Apply Enforce** appropriate state and local legislation pertaining to the designation and protection of historic resources and, subject to applicable state law, archaeological resources.

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## 99.060 APPROVAL AUTHORITY

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### PLANNING COMMISSION AUTHORITY

- B. The Planning Commission shall have the authority to:
  - 1. Make a recommendation to approve, deny, or approve with conditions to the Council:

...  
c. The designation of a historic landmark. The Planning Commission's consideration of a proposal shall be limited to a determination of the adequacy of findings made by the Historic Review Board regarding applicable goals and policies of the Comprehensive Plan and the CDC.

- **Size of HRB (5 or 7 members).**

**2.085 Boards, Committees and Commissions**

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O. ~~HISTORIC RESOURCES ADVISORY~~ REVIEW BOARD

- (1) Establishment; Membership; Term. There is hereby established a Historic ~~Resources Advisory~~ Review Board of the City of West Linn consisting of seven ~~five~~ regular members appointed for three-year terms, except as necessary to comply with Section 2.060 (2). ~~, except that the initial appointments shall be made so that the terms of not more than two members expire in any given year.~~ (*Staff Comment: The staggering of terms is addressed by Section 2.060 (2) above.*)

**STEP 4**

Confirm that the language in Section 2.060 extending the terms of office is acceptable.

**Chapter 2, GOVERNMENT AND ADMINISTRATION**

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**2.060 Appointment. Term. Removal of Members**

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- (2) Qualifications for appointment and term of office for a position on a City advisory board, committee or commission shall be as provided in the enabling provision for such board, committee or commission in this chapter, provided that the term of office shall extend until the Council reappoints or replaces the position. If a position becomes vacant before the expiration of the term, the Council shall appoint a person to fill the vacancy for the remainder of the term. Initial terms for a newly created advisory board, committee or commission shall be staggered in the resolution of appointment so that a majority of the positions do not become vacant in the same year and so that an equal or approximately equal number of positions become vacant each year.

# Option 4 Code Language

**Note:**

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**Highlight** = proposed addition since City Council public hearing draft

~~Highlight~~ = proposed removal since the City Council public hearing draft

## STEP 1

### Option 4

- The HRB would have the approval authority for the historic aspects of projects for properties that are designated historic (landmarks and districts).
- The HRB would review the historic aspects of projects for the remaining properties in the Willamette Falls Drive Commercial District, but would not have approval authority.
- The PC or Planning Director would have the approval authority for site planning aspects of all projects —those that are designated historic and those that are not.

The following amendments to the August 9, 2010 City Council Public Hearing Draft would implement Option 4:

### 99.060 APPROVAL AUTHORITY

D. The Historic Review Board shall have the authority to:

1. Approve, deny, or approve with conditions an application for compliance with chapters 25, 26 and 58, as applicable, and as needed to provide for consolidated review for the following: applications for the following development applications.

- a. Major or minor remodel, alteration, or addition to a historic landmark **or** property within a historic district, **or property within the Willamette Falls Drive Commercial District that is not subject to Class II Design Review under Chapter 55;**
  - b. New construction within a historic district **that is not subject to Class II Design Review under Chapter 55;**
    - 1. ~~New home construction in the Historic District.~~
    - 3. ~~Major renovation or additions to historic landmarks, and major renovation or additions to structures in the Historic District~~
    - 6. ~~New construction, major renovation, and additions in the Willamette Falls Drive Commercial Overlay Zone~~
  - c. ~~4. Construction of a non-exempt accessory structure or garage on a historic landmark property, or property within a historic district; Construction of non-exempt accessory structures and garages to historic landmark properties and properties within a historic district.~~
  - d. ~~5. A demolitions permits for a historic landmark or property within a historic district; ~~for the Historic District, to historic buildings in the Willamette Falls Drive Commercial Overlay Zone, and to Historic landmark structures.~~~~
  - e. ~~7. Revocation **Revoke** or modification **modify** of an approval as provided by Section 99.330 for any application approved by the Historic Review Board; ~~and~~~~
  - f. ~~8. An ~~E~~extensions of an approval when the Historic Review Board acted as the initial decision making authority.~~
  - 2. ~~Creation of new historic districts.~~
2. The Historic Review Board shall review an application for compliance with chapters 25, 26 and 58, as applicable, and make a recommendation to the approval authority specified in Section 99.060. This authority shall apply to the following:
- a. Designation of a historic landmark or a historic district;
  - b. Major or minor remodel, alteration, or addition to a **historic landmark, property within a historic district, or property within the Willamette Falls Drive Commercial District that **is not a historic landmark or within the Willamette Historic District** is subject to Class II Design Review under Chapter 55;**
  - c. New construction within **a historic district or new construction within the Willamette Falls Drive Commercial District that **is not a historic landmark or within the Willamette Historic District** is subject to Class II Design Review under Chapter 55;**

- d. A partition or subdivision of property containing a historic landmark or property within a historic district;
- e. Conditional use of property containing a historic landmark; and
- f. A zone change for property containing a historic landmark or property within a historic district.

...

**99.070 CONSOLIDATION OF PROCEEDINGS**

Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding. In such cases, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 99.060, in the following order of preference: City Council, Planning Commission, **Historic Review Board**, or the Planning Director, except for expedited land division applications which shall be processed as described in ORS Chapter 197. For example, if a conditional use permit (CUP) and Class I design review application were submitted, ordinarily the CUP would be heard by the Planning Commission, and Class I design review by the Planning Director. This hierarchy dictates that the higher body, the Planning Commission, would hear the consolidated hearing.

## STEP 2

Consider appeal options and implications.

▪ **Existing Council option to call up.**

Section 99.240 A allows for the City Council to call up any decision made by the Planning Director, Planning Commission, or Historic Review Board. This provision addresses the concerns of the City Attorney regarding an applicant that would appeal one decision and not another. The existing language from 99.240 A is below:

**99.240 AUTHORITY TO APPEAL OR SEEK REVIEW OF A DECISION - EXHAUSTION OF ADMINISTRATIVE REMEDIES**

...

- A. Any decision made by the Planning Director pursuant to Section 99.160 or the Planning Commission or Historic Review Board (except for expedited land divisions) on a development application as provided by Section 99.170, may be appealed to the City Council pursuant to Section 99.160

(C) (1) or Section 99.170 (G) (1) or may be reviewed by the City Council pursuant to Section 99.160 (C)(2) or Section 99.170 (G) (2).

▪ **Mandatory joint appeal.**

The City Council could require the review of both the Planning Commission and Historic Review Board decisions with the following language:

**99.170 AN ADMINISTRATIVE ACTION - HEARING PROCEDURE**

- A. Unless otherwise provided by the Rules of Procedure adopted by the Planning Commission, City Council, and Historic Review Board shall conduct a public hearing on all matters over the board, commission, or council has original jurisdiction pursuant to Section 99.060 of this chapter; and:
1. Determine who qualifies as a party.
  2. Regulate the course, sequence, and decorum of the hearing. The sequence of the hearing shall also include the right to establish procedures for continuances of hearings.
  3. Dispose of procedural requirements or similar matters.
  4. Rule on offers of proof and relevancy of evidence and testimony.
  5. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross examination of witnesses and rebuttal testimony.
  6. Take such other action appropriate for conduct commensurate with the nature of the hearing.
  7. Approve or deny applications or approve with conditions pursuant to Section 99.110 of this ordinance.
- B. At the commencement of the hearing, a statement shall be made to those on attendance that:
1. Lists the applicable substantive criteria (by chapter) that applies to the application before the hearing body.
  2. States the testimony, arguments and evidence must be directed toward the applicable substantive criteria which the person testifying believes to apply to the decision.
  3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the State Land Use Board to Appeals based on that issue.
- C. Unless otherwise provided in Rules and Procedure adopted by the Council, the following rules shall apply to the general conduct of the hearing:
1. The approval authority may ask questions at any time prior to the final decision; however, the answers shall be limited to the substance of the question and if new evidence is admitted after the close of the hearing, upon request, rebuttal shall be allowed.

2. Parties or the Director must receive approval from the approving authority to submit directly questions to other parties or witnesses or the Director;
  3. A reasonable amount of time shall be given to persons to respond to questions;
  4. No person shall testify without first receiving recognition from the approval authority and stating a full name and address;
  5. The approval authority may require that testimony be under oath or affirmation;
  6. Audience demonstrations such as applause, cheering and display of signs or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer; and,
  7. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
- D. The Planning Commission or Historic Review Board may refer any matter for Council action on the record made before it.
- E. Prior to the conclusion of the initial evidentiary public hearing on the application, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The request shall be granted through one of the following means:
1. Continuation of the public hearing to a date, time, and place certain at least seven days from the date of the initial evidentiary public hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.
  2. Leaving the record open for at least seven days for the presentation of additional written evidence, arguments, or testimony. At the conclusion of this period, any participant may file a request for an opportunity to respond to any additional written evidence, arguments, or testimony. Such a request shall be granted with an additional seven days (at minimum) to file such a written response.
- F. If requested an applicant shall be granted an additional period of at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. Any such time period granted to the applicant shall not be subject to the time limit provisions of ORS 215 regarding local government decision making on quasi-judicial applications.

- G. A decision made by the Planning Commission or Historic Review Board shall be final provided by the Section 99.230 unless:
1. A Party to the action files a written appeal with the Director within 14 days of the final decision pursuant to Section 99.240.
  2. Not less than two members of the Council order a review within 14 days of the final decision pursuant to Section 99.240; or,
  3. It is an expedited land division application for which the provisions of ORS Chapter 197 shall apply.

**H. If a Planning Commission or a Historic Review Board decision for a project that requires a decision by both bodies is appealed, both decisions are automatically appealed and will be reviewed in a combined hearing.**

## STEP 3

- Recommended changes in August 9, 2010 staff memo.
- Size of HRB (5 or 7 members).

- **Recommended changes in August 9, 2010 staff memo.**

### 2.085 Boards, Committees and Commissions

...

#### O. ~~HISTORIC RESOURCES ADVISORY REVIEW BOARD~~

...

(3) Powers and Duties. The ~~Historic Resources Advisory Review~~ Board shall:

- (a) Meet at least four times a year and as required to conduct business in a timely fashion.

~~Disseminate information to educate the public as to state and federal laws protecting antiquities and historic places. (Staff Comment: The stricken language is incorporated in d.)~~

- (b) Have the powers and duties which are **now or hereafter** assigned to it by the charter, ordinances and resolutions of West Linn and state law.

~~Act as a coordinator for local preservation groups, educational workshops, signing and monumentation projects, and other similar programs. (Staff Comment: The stricken language is substantially incorporated in d.)~~

- (c) **Apply Enforce** appropriate state and local legislation pertaining to the designation and protection of historic resources and, subject to applicable state law, archaeological resources.

...

**99.060 APPROVAL AUTHORITY**

...

**PLANNING COMMISSION AUTHORITY**

- B. The Planning Commission shall have the authority to:
  - 1. Make a recommendation to approve, deny, or approve with conditions to the Council:

...

- c. The designation of a historic landmark. The Planning Commission's consideration of a proposal shall be limited to a determination of the adequacy of findings made by the Historic Review Board regarding applicable goals and policies of the Comprehensive Plan and the CDC

- **Size of HRB (5 or 7 members).**

**2.085 Boards, Committees and Commissions**

...

**O. ~~HISTORIC RESOURCES ADVISORY~~ REVIEW BOARD**

- (1) Establishment; Membership; Term. There is hereby established a ~~Historic Resources Advisory~~ Review Board of the City of West Linn consisting of ~~seven~~ five regular members appointed for three-year terms, except as necessary to comply with Section 2.060 (2). ~~except that the initial appointments shall be made so that the terms of not more than two members expire in any given year.~~

**STEP 4**

Confirm that the language in Section 2.060 extending the terms of office is acceptable.

**Extending Terms of Office**

**Chapter 2, GOVERNMENT AND ADMINISTRATION**

...

**2.060 Appointment. Term. Removal of Members**

...

- (2) Qualifications for appointment and term of office for a position on a City advisory board, committee or commission shall be as provided in the enabling provision for such board, committee or commission in this chapter, provided that the term of office shall extend until the Council reappoints or replaces the position. If a position becomes vacant before the expiration of the term, the Council shall appoint a person to fill the vacancy for the remainder of the term. Initial terms for a newly created advisory board, committee or commission shall be staggered in the resolution of appointment so that a majority of the positions do not become vacant in the same year and so that an equal or approximately equal number of positions become vacant each year.



CITY OF  
**West  
Linn**

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