

Memorandum

Date: July 26, 2013

To: Planning Commission

From: Chris Kerr, Economic Development Director

Subject: Code and process streamlining project: "Cut the Red Tape" (CDC 13-01)

Purpose

Staff is seeking a recommendation from the Planning Commission regarding the attached proposed amendments to various chapters of the Community Development Code (CDC) and the Comprehensive Plan. The purpose of the proposed amendments is to modify our codes and processes to remove inefficient and unnecessary regulatory barriers to businesses and developers, and to create greater opportunities for positive economic development in the City. This project is one of the City Council's highest priorities for this year. It serves as a key supporting component of the Council's stated mission to keep West Linn, "*on the path to becoming the finest community in the state to live, work and play – both for ourselves and future generations.*"

Background

Following initiation of the project and presentation of the schedule for adoption by the City Council in March, Staff held a joint worksession with the Council and Planning Commission on April 1st to discuss and receive authorization for the specific scope, purpose and outreach efforts to be undertaken. The following purpose of this project was approved:

In support of the City Council's goal of promoting economic development and business activity in the City, this project will review and modify our existing codes and processes to;

- (1) Remove ineffectual and redundant regulatory and procedural practices that act as barriers to economic development and businesses; and*
- (2) Incorporate best practices to streamline and provide incentives for future economic development activity in the City.*

Since the project "kick-off" in April, Staff has been working with the Economic Development Committee to solicit input for the project (labeled "Cut the Red Tape"), specifically targeting feedback from those who have had experience conducting business in the City. In addition to meeting with professional organizations and completing an internal review of our current City practices to identify areas that can be reformed and improved, an extensive outreach and notification effort was completed that included:

- Numerous one-on-one interviews with business operators, potential private developers and investors;
- Survey hosted online on the City's web site (over 60 respondents);
- Email to every licensed business in the City requesting feedback;

- Standard press release to all media outlets;
- Headlined in the West Linn Update mailer (over 9,000 households)
- Postcards distributed in person and in bulk throughout the community (over 250 dispersed)
- Inclusion in individual Councilor e-blasts
- Individual Tidings article focused on the project; as well as numerous other ‘mentions’ about the project in other articles in the Tidings;
- Promotion on the City’s main web page and constant presence on the City’s Economic Development web page;
- Multiple promotions utilizing the City’s social media catalog, including e-newsletter (5,600 recipients); Facebook (2,300 friends), Twitter (521 followers) and the LinkedIn group “West Linn Business Exchange”;

The project was also included on posted agendas and discussed at numerous other regularly scheduled City meetings of the City Council, Planning Commission, Economic Development Committee, Sustainable Advisory Board and neighborhood associations. All of the above actions are in addition to the required public hearing notification processes and procedures that will be undertaken with the upcoming hearings before the Planning Commission and City Council.

Public Comments

At the time this Staff Report was prepared, the only official written responses received have come from the online survey and a resolution passed by the Robinwood Neighborhood Association; both are attached as Attachment A. Also, although written the Resolution has not yet been signed, the Economic Development Committee (EDC) recommended approval of the amendments under consideration on a 6-1 vote. The dissenting vote was based on two issues: (1) the proposal to have appeals held “on the record” and the (2) proposal to reduce the number of items that would go to the Planning Commission for review.

Discussion

Generally, the amendments either eliminate inefficiencies or streamline procedures and regulations to allow for greater flexibility and opportunities for economic development. However, for the purposes of this staff report, the amendments have been divided into six categories, highlighted below.

A summary of the amendments is included below with a reference to the accompanying page number where the specific Code language can be found in the Planning Commission Public Hearing Draft.

1. Comprehensive Plan amendments: PAGE 2

- a. Council Goals: The City Council Goals should be removed from the Comprehensive Plan. The Comprehensive Plan is the long-range plan for the City and all other plans and ordinances in the City must be consistent with it. The Council can always initiate amendments to the Plan through the land use process (as is the case with this project).
- b. Definitions. Under the definition section of the Plan, Staff is clarifying language stating that the definition of the terms used in Plan are only applicable within the Plan itself, and not to all other documents in the City. Also, Staff is modifying the definition of “conditional use” to accurately define the term. The current definition lists an inaccurate set of criteria for conditional uses. The definition proposed matches the definition found in the CDC and DLCD’s model code.

c. Goal 9. Staff proposes modifying the language under this Goal to more accurately recognize the importance of Economic Development as a priority in the City and to incorporate elements of the City's approved Economic Development Plan into the Comprehensive Plan.

2. Land Use Appeals PAGE 7

The City's land use appeal process is proposed to be modified such that the Council decision will be based on the entire record of the proceedings as well as all arguments presented at the Council hearing. This will result in significant cost savings (since 2010 the City has spent in excess of \$250,000 processing "de novo" appeal applications – while collecting less than \$1,000.00 in fees), higher quality applications being submitted to the Planning Commission, reduced risk for the City in making their decision and more effective citizen involvement for the community. Under the proposed language, the scope of the appeal hearing would be limited to the specific issues requested by the appellant to be reviewed. Arguments will be permitted written and orally, but no new evidence would be permitted to be entered into the record. The proposed amendment includes allowances to permit the Council to open the record in limited circumstances (e.g. to correct procedural or factual errors). The current appeal process devalues the Planning Commission hearing to a recommending advisory board. It simply allows the party that was not successful to 'continue' the hearing process, and start anew, for a small fee (or no fee). This is directly contrary to productive citizen involvement, in part, because it requires all interested parties to continually monitor and be responsible for all of the new information that is presented in order to be able to respond to it anew at the Council meeting. This has the effect of overemphasizing the last testimony received and discounting the value of testimony received prior to and during the Planning Commission meeting.

Additionally, the current process allows an applicant to change their application after a denial by the Planning Commission, further devaluing the previous process for all involved. Assuming the appeal process is modified to make the appeals heard "on the record", which is expected to reduce the costs of appeals by thousands of dollars, Staff proposes maintaining the current \$400.00 fee for appeals for the time being. However, the current practice of waiving appeal fees exclusively for neighborhood associations should end. Appeal hearings have significant costs to the City, both in tax dollars and opportunity costs. Appealing a decision is not free for the applicant, adjacent neighbors, homeowner associations, or any other organization. The \$400.00 is not an amount that recaptures the costs of the appeal, but it does help serve to avoid frivolous appeals from being filed, which serve to simply delay projects and drive up costs for the applicant and City. Neighborhood associations have special standing in the process, such as the required NA meeting (which is paid for by the applicant). If at the end of that process, they disagree with the decision and choose to appeal, it seems fair that they should pay no less than any other party in the City to appeal the decision. Of course, it should be noted that the City Council can still decide to call-up a decision for appeal, which would remove the fee for any party.

3. Variances and Special Waivers PAGE 12

a. Class I variances: Currently, the Code permits commercial applications to receive "exceptions" from certain code provisions (parking, landscaping, setbacks) under the Design Review process, while residential properties are permitted similar minor variances as part of Chapter 75 Variances under a different set of criteria. This has proven to be unwieldy and confusing. Staff is

grouping the exception and minor variance language together into Chapter 75 that will be applicable to all applications. The thresholds for modifications are only slightly modified and the criteria for approvals is now standardized. Currently, the criteria for approving a Class I and II variance is the same. This makes prohibits opportunities for any flexibility in design for single-family residential projects. The new standards still include criteria requiring applicants to show that they will not adversely impact adjacent properties while allowing greater flexibility.

b. Class II variances: Staff, in particular the City attorney, recommend modifying the criteria for Class II variances to make them easier to understand, justify and prepare legally supportable findings. Notably, the language regarding topography and the takings requirements have been revised.

c. Special Waivers: Based on feedback from the Planning Commission and the City Council, Staff is proposing a new, alternative approach that would permit applicants to request a waiver of a code provision that is in excess of the minor Class I variance thresholds. They are intended to allow an applicant to offer an alternative design that furthers the intent of the regulation to be waived and which doesn't adversely impact their surroundings. These waivers are discretionary and do not require an applicant to demonstrate that a hardship exists. This is similar to provisions found in "planned developments". A Special Waiver would require review and approval by the Planning Commission.

4. Procedural Amendments PAGE 19

a. Neighborhood Association (NA) meetings: Staff is proposing to simplify the requirements that applicants must meet to request their NA meeting as well as some of the recording requirements from the meeting. Staff is also proposing that NA meetings not be required for multi-family developments of less than five units.

b. Non-discretionary decision review: Staff is proposing that many of the non-discretionary land use decisions that are currently subject to Planning Commission review be made by the Planning Director. All legislative and discretionary decisions (e.g. Planned Unit Development (PUD), Conditional Use Permit (CUP), rezoning, variances, subdivisions exceeding 25 units, and certain appeals) would still require Planning Commission approval. This change would 'move' non-discretionary decisions currently heard by the Planning Commission to the Planning Director for decisions but would maintain the same, more extensive, notification requirements that currently exist.

c. Class 1 Design review exemptions: Certain minor activities are proposed to be excepted from the Class 1 design review process. These include public sidewalks, fences and walls on commercial property, and transit shelters. These would still be subject to other standards, such as ADA requirements and compatible design standards under Chapter 55; but they would not be subject to the Class 1 process or fee for approval.

d. Conditional Use: The amendments revise standards related to "meeting the overall needs of the community" and "the use will comply with applicable policies of the comprehensive plan". These standards are overly broad, subjective and inconsistent with the purposes of conditional uses. Proposed is alternative language that addresses the need to provide a design that does not adversely impact the surroundings. Staff is also proposing that amendments to approved

Conditional Uses be reviewed under the same requirements as a design review application. Currently, *any* modification to an approved Conditional Use is required to be reviewed as a new approval.

5. Greater Flexibility **PAGE 27**

a. Uses in commercial zones (GC and OBC): The proposal would not add any new uses to the district, but instead would make certain uses - hotel and community center, permitted in the district rather than having to be reviewed as Conditional Uses. Staff is also proposing that extended hour businesses in the GC district not be subject to Conditional Use approval (the current Code is not clear on this point).

b. Dimensional and bulk requirements: The amendments are intended to make the most efficient use of land in the City by increasing the amount of buildable area on a site and allowing greater flexibility in design. This includes expanding lot coverage in commercial areas, allowing for increases in building heights in multi-family residential and commercial zones and measuring building height in those areas by “floors” rather than “feet”. These would still be subject to the current ‘transitional setbacks’ when adjacent to residential housing.

c. Parking: The changes will allow on-street parking to count toward minimum requirements for new development and revise minimum and maximum parking requirements to be consistent with the Regional Transportation Plan. The amendments also clarify the shared parking requirements under the Code; which are difficult to utilize.

d. Tree protection: The amendments will modify the way in which subdivisions and design review applications are to protect trees. The purpose is to have more involvement and input from the City Arborist during the review of applications and to specifically protect 20 percent of significant trees on the developable portion of the site (areas outside of the Type I and II land). The current code language is opaque and preserves land area rather than trees. Additionally, the amendments will eliminate the requirement to apply conservation easements over individual trees.

e. A-frame signage: Staff is proposing to ease the restrictions on A-frame signs to promote them, with restrictions, in pedestrian-friendly commercial areas. The City currently regulates these as ‘temporary signs’; these amendments would restrict them to the GC district, require them to be in close proximity to the business entrance and would remove the requirement to get a permit and pay a fee.

f. Domesticated chickens: Sections of both the Municipal Code and CDC are proposed to be amended to clarify circumstances in which chickens are allowed to be kept. The action would codify the City’s unofficial policy of permitting chickens; subject to standards. The policy the City has been using is not consistent with the WLMC or the CDC. Based on reviews of other City’s ordinances, Staff is recommending that no permit be required, but that standards be established and enforced through the Nuisance chapter of the Municipal Code (similar to regulations for dogs in the City).

6. Removal of Ineffectual or Redundant Code **PAGE: 61**

a. These changes are intended to remove unnecessary submittal requirements throughout the Code, such as the number and type of copies required. The Planning Director will have greater discretion to require electronic or paper copies depending on the application. Also proposed is the removal of the Stormwater, public works, and erosion control standards from the CDC. These engineering requirements are reviewed and approved by other means in the City. Keeping the language in the CDC only leads to confusion and errors. For example, the detailed engineering requirements for stormwater should not be duplicated in the CDC. They are not criteria for review, can cause conflicts; and in any case, are already required under the City's public works standards.

CDC Chapter 98 provides administrative procedures for legislative amendments such as those being proposed. CDC Section 98.100 lists factors (goals and polices) to be addressed when considering legislative amendments. The applicable factors along with staff's assessment of the proposed amendments are listed in the Addendum.

Alternatives

The Planning Commission may choose to take a different regulatory approach or decide not pursue all or part of the proposed amendments. All of the Planning Commission's specific recommendations and/or modifications will be forwarded to the City Council as part of the final recommendation.

Recommendation

Staff recommends that the Planning Commission consider the proposed CDC amendments in light of public comments, revise them as warranted, and recommend approval to the City Council.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
July 26, 2013

**STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE CRITERIA**

CDC Section 98.100 lists the factors to be addressed in the staff report for legislative proposals. The applicable factors along with staff's response are as follows:

- 1. *The Statewide Planning Goals and rules adopted under ORS Chapter 197 and other applicable state statutes.***

Staff Response: Staff reviewed the Statewide Planning Goals and found that the following goals are applicable. Staff is not aware of any other state regulations that apply to the proposed amendments that are not reflected in the Metro and City plans and regulations addressed in this Addendum.

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".*

Staff Response: The City has a citizen involvement program which has been acknowledged and adopted by the State. There are specific amendments proposed, for example: lowering the thresholds of review of non-discretionary decisions, and simplifying the notice requirements for requesting neighborhood meetings that could directly impact the citizen involvement process. Staff has determined that the proposed amendments will not adversely hinder opportunities for involvement, but rather that they should create more easily understood requirements and will result in more varied and effective opportunities for citizen involvement. In addition, two public hearings will be held as required by CDC Chapter 98.

Goal 2, Land Use Planning: *"To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." Guidelines for implementing Goal 2 call for collection of factual information pertaining to ordinances implementing land use plans and consideration of alternative solutions.*

Staff Response: The Public Hearing Draft contains appendices with factual background information pertaining to the proposed amendments. Some alternative solutions for dealing with the issues are proposed and all will be considered as part of the public hearing process. Alternative solutions that are proposed by the Planning Commission will be provided to the City Council for consideration.

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. Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state."*

The Guidelines under this goal include the following provision - "A principal determinant in planning for major industrial and commercial developments should be the comparative advantage of the region within which the developments would be located."

Staff Response: The proposed amendments, particularly those to the Comprehensive Plan, directly address the direction to identify the "comparative advantage of the region". More broadly, the intent of the amendments is clearly to increase economic development opportunities and vitality and is consistent with Goal 9.

Goal 14, Urbanization: "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Staff Response: The proposed amendments serve to increase the livability of the community by making more efficient use of land (e.g. expanding lot coverage, reducing parking requirements, increasing building heights) in commercial areas and provide for more flexibility in design. This reduces the need to expand the Urban Growth Boundary. Therefore, the proposed amendments are consistent with Goal 14.

2. Any federal or state statutes or rules found to be applicable;

Staff Response: Staff is not aware of any applicable state or federal regulations which are not implemented by the Metro and City plans and codes addressed in this Addendum.

3. Metro plans and rules found to be applicable

Staff Response: Many of the proposed modifications are direct recommendations or outright requirements under Metro's Urban Growth Management Functional Plan. One of the central tenants of the Plan is to promote more vibrant commercial/mixed use centers and corridors. The proposed amendments will result in more efficient use of land, greater flexibility in design, removal of ineffective code provisions and less costly approval processes, which are all consistent with the Plan. Additionally, specific modifications regarding parking requirements have been written to exactly meet the requirements under the Regional Transportation Functional Plan (RTFP).

4. Applicable Comprehensive Plan provisions;

Goal 1 sub-goals:

4. *Provide clear, simple, user-friendly information about how the planning process works and how citizens can be involved in land use and other City policy decisions.*

Policy 5: *Communicate with citizens through a variety of print and broadcast media early in and throughout the decision-making process.*

Staff response: The proposed amendments include provisions that will make the City's development process easier to understand and will allow for more effective participation in the process. For example, making appeal decisions based on the record will result in a clear understanding between all parties that the information provided at the initial decision making body is 'final' and that changes made after the hearing (and after many individuals have participated) will

not be permitted. Regarding Policy 5; as outlined in the background section, the outreach/involvement process undertaken as part of this project utilized not just print and broadcast media, but also online and social media.

Land use goals:

1. *Develop/redevelop commercial areas as mixed use/commercial districts that blend housing and commercial uses to: enhance the community's identity; encourage strong neighborhoods; increase housing choices; promote socioeconomic diversity; promote alternative modes of transportation; promote civic uses; and improve community interaction and involvement.*
2. *Allow mixed residential and commercial uses in existing commercial areas only in conjunction with an adopted neighborhood plan designed to ensure compatibility and maintain the residential character of existing neighborhoods.*
3. *Develop incentives to encourage superior design, preserve environmentally sensitive open space, and include recreational amenities.*
8. *Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.*

Neighborhood Commercial goal:

Provide convenient shopping opportunities and services adjacent to, or within residential neighborhoods, reducing the need to travel by automobile and increasing opportunities to walk to shopping for frequently needed items.

Mixed Use / Commercial Development

Goal 2. Consider the development of commercial and office facilities in West Linn that will increase employment opportunities, reduce dependence on services outside of the City, and promote energy-efficient travel and land use patterns, while recognizing that there will be limits imposed by West Linn's topography and limited available land

Staff response: The proposed amendments are designed to make it easier to develop, redevelop, and improve commercial areas. Reducing the bulk requirements and use limitations will also lead to more vibrant mixed use opportunities. Staff does not find adopted neighborhood plan polices that are contrary to the proposed allowances since the same design review standards and transitional setback requirements are still applicable.

Economic Goal 9:

Encourage the retention and economic viability of existing business and industry.

Policy 9: *Adopt City regulations that are easy to understand and contain development standards that can be uniformly applied.*

Policy 11: *Encourage the economic vitality of the four existing commercial areas.*

Staff response: As previously noted, these amendments are designed to assist existing businesses and future investors to create a more economically viable community. This project aligns directly with the above Policy to make development standards more clear and easily understood. These

amendments will result in greater housing in commercial districts which will also expand the customer base for local businesses.

Housing Policy 2: *Provide the opportunity for development of detached and attached single-family units, duplexes, garden apartments, town houses, row houses, multiplex units and boarding houses, lodging or rooming houses, and manufactured housing.*

Staff response: As noted previously, by removing unnecessary processes and adding flexibility to the Code, the opportunities to create additional housing choices will be greatly expanded.

5. *Portions of implementing ordinances relevant to the proposal*

Staff response: Staff is not aware of any ordinances relevant to the proposed amendment that are not addressed above.