

ORDINANCE NO. 1655

AN ORDINANCE RELATING TO TEMPORARY STRUCTURES AND USES, CONDITIONAL USES, PROCEDURES FOR DECISION MAKING; LEGISLATIVE; PROCEDURES FOR DECISION MAKING: QUASI-JUDICIAL AND AMENDING COMMUNITY DEVELOPMENT CODE CHAPTERS 35, 60, 98 and 99.

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

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

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

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

**WHEREAS**, the City Council adopted on February 8, 2016, the City Council Goals including "Address Community Development Code and Comprehensive Plan Changes;"

**WHEREAS**, the Planning Commission held a work session on November 2, 2016, and

**WHEREAS**, the Planning Commission held a public hearing on November 16, 2016, and closed the public hearing and deliberated to a final recommendation for the City Council on \_\_\_\_ \_\_, 2016.

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

**SECTION 1. Amendment.** West Linn Community Development Code ("CDC") Section 35.050 is amended to read as follows:

35.050 DURATION OF TEMPORARY USES

Temporary uses may be allowed for up to one year ~~60 days~~, with one additional renewal for no greater duration than the original approval, except as follows:

A. Construction trailers and associated parking and staging areas beyond the site approved for the associated development may be allowed for the duration of active construction projects.

B. Drop boxes, structures serving a similar function, and trailers authorized under CDC 35.030(A) will be allowed indefinitely, but they will be revoked if they are unused or abandoned for a period of 60 days or if material is not contained by the drop box or trailer and allowed to accumulate outside of the drop box, structure, or trailer.

Upon revocation of the approval, the applicant shall be responsible for removing the drop box, structure, or trailer unless it is abandoned; in that case, removal shall be the responsibility of the property owner.

~~C. Temporary uses approved by the City Council pursuant to CDC [99.060\(C\)\(1\)\(d\)](#) shall be for up to one year with one possible renewal of up to one year, for a maximum of two years.~~

**SECTION 2. Amendment.** West Linn CDC Section 60.070 is amended to read as follows:

60.070 APPROVAL STANDARDS AND CONDITIONS

A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC [36.030](#), or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide:
  - a. Adequate area for the needs of the proposed use; and
  - b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will provide for a facility that **provides is consistent with the an overall benefit to needs of** the community.
4. Adequate public facilities will be available to provide service to the property at the time of occupancy.
5. The applicable requirements of the zone are met, except as modified by this chapter.
6. The supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are met.
7. The use will comply with the applicable policies of the Comprehensive Plan.

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SECTION 3. New Section. West Linn CDC Section 98.035 is added to read as follows:

**98.035 CITIZEN ENGAGEMENT IN LEGISLATIVE CHANGES**

- A. **Purpose. The purpose of a legislative working group is to provide a forum to discuss different points of view on a proposed land use legislative change.**
- B. **Creation of working group. New and modified land use legislative changes to this code will be developed by a representative working group of citizens and assisted by planning staff.**
- a. **The working group will contain interested stakeholders, a member of the Planning Commission, and a staff representative.**
  - b. **The working group will be recommended by the Committee for Citizen Involvement (CCI) and approved by the City Council.**
  - c. **The working group shall comply with WLMC 2.060 regarding the selection of officers and the other generally applicable citizen advisory group provisions.**
- B. **Conduct of working group meetings.**
1. **Staff will prepare a suggested draft of the proposed changes. This draft will provide a starting point for discussion and education.**
  2. **Committee members will use the draft as a starting point for education and discussion, but then reconcile the implications of the draft with the Council's vision.**
  3. **After each meeting staff will incorporate approved changes and prepare an updated working draft.**
  4. **All meetings will be public meetings with an opportunity for anyone in attendance to provide public comment. Written minutes will be published.**
  5. **In the event a consensus cannot be reached on an issue, the group will prepare alternatives. Each alternative and its rationale will be presented to the Planning Commission.**
  6. **Prior to submission to the Planning Commission, proposed code changes will be submitted to legal counsel for review. The review should be limited to the identification of areas where the proposed language conflicts with other parts of this code, state law or federal law. As an alternative, legal counsel may attend and advise during the creation of the draft.**

**C. Presentation to the Planning Commission** When the working group reaches consensus that the code changes are ready, the proposed code changes will be presented to Planning Commission pursuant to Section 98.040(A)(2). If the working group fails to reach a consensus on the code changes, all proposals will be presented to the Planning Commission.

**SECTION 4. Amendment.** West Linn CDC Section 99.060 is amended to read as follows:

99.060 APPROVAL AUTHORITY

This section explains the authority of the Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

A. Planning Director authority. The Planning Director shall have the authority to:

1. Approve, deny, or approve with conditions the following applications:
  - a. A temporary use or structure application for a period of up to one year (Chapter [35](#) CDC), not including uses allowed through another land use approval process.
  - b. A home occupation application (Chapter [37](#) CDC).
  - c. Access restrictions (Chapter [48](#) CDC).
  - d. A minor partition (Chapter [85](#) CDC).
  - e. A final subdivision plat (Chapter [89](#) CDC).
  - f. A final partition plat (Chapter [89](#) CDC).
  - g. A lot line adjustment (Chapter [85](#) CDC).
  - h. Enlargement or alteration of a non-conforming single-family structure containing a conforming use (Chapter [66](#) CDC).
  - i. Decide applications for a determination of unlisted parking requirements (Chapter [46](#) CDC).
  - j. A minor alteration to a historic landmark or a structure in the Historic District (Chapter [25](#) CDC).
  - k. Parks Design Review, Class I (Chapter [56](#) CDC).
  - l. Design Review, Class I (Chapter [55](#) CDC).
  - m. A sign application (Chapter [52](#) CDC).

- n. Sidewalk use permit (Chapter [53](#) CDC).
  - o. Flood management area permit (Chapter [27](#) CDC).
  - p. *Repealed by Ord. 1622.*
  - q. Tualatin River protection permit (Chapter [28](#) CDC).
  - r. Water resource area permit (Chapter [32](#) CDC).
  - s. Class I variance (Chapter [75](#) CDC).
  - t. Willamette River Greenway permit (Chapter [28](#) CDC).
  - u. Extensions of approval when the Planning Director acted as the initial decision-making authority.
  - v. Class I historic design review (Chapter [25](#) CDC).
  - w. A demolition permit for a non-contributing or not in period primary structure or an accessory structure (Chapter [25](#) CDC).
2. Approve a use permitted under prescribed conditions provided all of the conditions are satisfied.
  3. Make initial interpretations of the provisions of the code.
  4. Make the initial determination regarding the status of the following:
    - a. Non-conforming structure (Chapter [66](#) CDC).
    - b. Non-conforming structure involving a non-conforming use (Chapter [65](#) CDC).
    - c. Non-conforming use of land (Chapter [67](#) CDC).

B. Planning Commission authority. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:
  - a. A quasi-judicial Comprehensive Plan Map amendment (Chapter [105](#) CDC).
  - b. A quasi-judicial zone change application pursuant to Chapter [105](#) CDC, excluding applications requesting the designation or removal of a designation for a historic resource.

2. Approve, deny, or approve with conditions the following applications:
  - a. A temporary use or structure application (Chapter [35](#) CDC) **for a period of one year, not** including uses allowed through another land use approval process.
  - b. A conditional use (Chapter [60](#) CDC).
  - c. Enlargement of a non-conforming use or alteration for a structure containing a non-conforming use (Chapter [66](#) CDC).
  - d. Enlargement or alteration of a non-single-family residential non-conforming use (Chapter [66](#) CDC).
  - e. Class II variance or special waiver (Chapter [75](#) CDC).
  - f. Subdivision (Chapter [85](#) CDC).
  - g. Planned unit development (Chapter [24](#) CDC).
  - h. Design review, Class II (Chapter [55](#) CDC).
  - i. Parks design review, Class II (Chapter [56](#) CDC).
  - j. Any matter not specifically assigned to another approval authority.
  - k. Extensions of approval when the Planning Commission acted as the initial decision-making authority.
3. Revoke or modify an approval as provided by CDC [99.330](#) for any application approved by the Planning Commission or Planning Director.
4. Make an unlisted use determination.
5. An appeal of the Planning Director's interpretation of the code pursuant to CDC [01.060](#).

C. City Council authority. The Council shall have the authority to:

1. Approve, deny, or approve with conditions applications for the following development applications:
  - a. A quasi-judicial Comprehensive Plan Map amendment (Chapter [105](#) CDC).
  - b. A quasi-judicial zone change application pursuant to Chapter [105](#) CDC.
  - c. Boundary change proposals (Chapter [81](#) CDC).

~~d. Temporary use or structure application (Chapter 35 CDC), including uses allowed through another land use approval process.~~

2. Consider an appeal or review of a decision made by the Planning Director under the provisions of CDC [99.240](#)(A) and [99.080](#)(B).
3. Consider an appeal or review of a decision made by the Planning Commission or Historic Review Board whether on the Council's own motion, or otherwise as provided by CDC [99.240](#).
4. Decide an appeal of the Director's interpretation of zoning boundaries as provided by CDC [05.040](#).
5. Revoke or modify an approval as provided by CDC [99.330](#) for any application approved by the City Council, including an application approved by the City Council on appeal from another City decision-making authority.

D. Historic Review Board authority. The Historic Review Board shall review an application for compliance with Chapters 25 and 58 CDC, as applicable. The Historic Review Board shall have the authority to:

1. Approve, deny, or approve with conditions an application regarding the following:
  - a. Class II historic design review;
  - b. A demolition permit for a historic landmark or primary contributing structure within a historic district;
  - c. Relocation of a historic resource;
  - d. Revocation or modification of an approval as provided by CDC [99.330](#) for any application approved by the Historic Review Board; and
  - e. An extension of an approval when the Historic Review Board acted as the initial decision-making authority.
2. Make recommendations to the approval authority specified in this section regarding the following:
  - a. Designation of a historic resource;
  - b. Removal of historic resource designation;
  - c. Class I or Class II design review on a property within the Willamette Falls Drive Commercial Design District that is not a historic landmark or within the Willamette Historic District;

- d. New construction within the Willamette Falls Drive Commercial Design District that is not a historic landmark or within the Willamette Historic District;
- e. A partition or subdivision of property containing a historic resource;
- f. Conditional use of property containing a historic resource.

E. Expedited land divisions. Expedited land divisions shall be processed by the Planning Commission without a public hearing pursuant to Oregon Revised Statutes (ORS) [197.360](#) through [197.380](#). Pursuant to ORS [197.360](#)(3), the following City permits may be processed concurrently with an expedited land division application:

1. Pursuant to ORS [197.360](#)(3), the following City permits may be processed concurrently with an expedited land division application:
  - a. Planned unit development.
  - b. Willamette River Greenway.
  - c. Flood management area.
  - d. Tualatin River.
  - e. Water resource area.
  - f. Design review.
2. The Planning Commission shall make their decision based solely upon the record and staff recommendation.
3. Appeals of the Planning Commission decision on an expedited land division shall be review pursuant to Chapter [197](#) ORS.

**SECTION 5. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 6. Savings.** Notwithstanding this amendment/ repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.



**SECTION 7. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[5-8]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 8. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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RUSSELL B. AXELROD, MAYOR

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KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

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CITY ATTORNEY