

Memorandum

Date: October 27, 2016

To: Planning Commission

From: Megan Thornton, Assistant City Attorney

Subject: CDC amendments for eating and drinking establishments.

Purpose

These amendments allow small businesses that produce and sell products, including food and beverages, to engage in those activities in commercial zones in the City.

Background and Discussion

Eating and Drinking Establishments

The City Manager authorized staff to draft CDC amendments that would allow a restaurant owner to produce and sell beer, cider, wine, or other food and beverage products in conjunction with the restaurant use. The Economic Development Committee (EDC) completed a community survey that indicates the Community would like to see small scale businesses of this type. Modifying the CDC to make these businesses permitted or conditional uses in certain zones will make it easier for these businesses to locate in West Linn. The following draft amendments, attached as Exhibit A, modify the CDC definitions to allow the on-site production and retail sale of food and beverage products. The uses are also modified throughout the CDC to coordinate with the revised definition of “eating and drinking establishments.” At a minimum, the City needs to revise the definition of “eating and drinking establishments” to provide additional opportunities in West Linn.

Small Scale Enterprises

In addition, staff proposes a new use for the Planning Commission to consider for a future amendment, “small scale enterprises.” The modification to “eating and beverage establishments” would allow the small scale production and sale of food and beverage products. However, businesses may not be allowed that want to produce and sell artisan crafts or other goods on a small scale. The following definition is proposed for the Commission’s consideration:

Small scale enterprises. Businesses that produce and sell commodities on-premises, operate within an enclosed structure, and are limited in size to ensure the enterprise does not dominate the character of the commercial area. On-premises sales do not include sales to secondary retailers or wholesalers. Typical uses include, but are not limited to, artisan crafts, such as pottery and glass-blowing.

By adding “small scale enterprises” to the CDC, a small business that wants to produce and sell its products would be allowed in commercial zones as conditional uses if approved by the Planning Commission. Including this use as a conditional use ensures that the decision-maker can limit the size of these businesses so they are appropriate for a commercial zone pursuant to CDC 60.070(A)(2), which requires the site size and dimensions to provide enough space for “[a]dequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.” The decision-maker can also add conditions to ensure small scale enterprises do not have adverse impacts that are different in kind or amount from the commercial uses in the zone pursuant to CDC 60.070(C). The conditional use permit criteria are at the end of this memorandum.

Conclusion

Staff requests that the Commission:

- 1) Review the changes proposed to allow eating and drinking establishments that include an on-premises sale component; and
- 2) Provide direction regarding the addition of “small scale enterprises” as a new use in the CDC.

Attachments

Exhibit A - Proposed CDC Changes

CDC 60.070, Conditional Use Permit Approval Standards and Conditions

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 is consistent with the overall 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.

B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter [55](#) CDC.

C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:

1. Limiting the hours, days, place, and manner of operation.
2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.
3. Requiring additional setback areas, lot area, or lot depth, or width.
4. Limiting the building height, size or lot coverage, or location on the site.
5. Designating the size, number, location and design of vehicle access points.
6. Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan.
7. Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a conditional use application for the property) indicates the application should contribute toward.
8. Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.
9. Limiting the number, size, location, height, and lighting of signs.
10. Limiting or setting standards for the location and intensity of outdoor lighting.
11. Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.
12. Requiring and designating the size, height, location, and materials for fences.
13. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

EXHIBIT A
PROPOSED COMMUNITY DEVELOPMENT CODE CHANGES

EATING AND DRINKING ESTABLISHMENTS

02.030 SPECIFIC WORDS AND TERMS

For the purpose of these regulations, the following terms or words are defined as follows.

Drive-through restaurant. An eating and drinking establishment organized so that motorists may order and pick up orders without the necessity of leaving the vehicle.

Eating and drinking establishments. Establishments or places of business **that are not drive-through restaurants that primarily engage engaged** in the sale of prepared **or produced** food and beverages for on-premises consumption, **on-premises sale, or take out service. On-premises sales do not include sales to secondary retailers or wholesalers.** Typical uses include, **but are not limited to:** fast **order** food establishments, **restaurants, delicatessens, brew-pubs, coffee shops, with and without drive-up facilities and sit-down eating establishments,** taverns, bars and lounges.

Extended-hour businesses. Businesses which are open to the public 17 or more hours a day on any given day of the week, or open between midnight and 6:00 a.m., including, but not limited to: eating and drinking establishments, convenience sales and personal services, drive-through restaurants, amusement enterprises, food and beverage retail sales, and general retail sales.

Food and beverage retail sales. Establishments or places of business primarily engaged in the retail sale of food and beverages for home consumption. Typical uses include: groceries, delicatessens, or liquor stores, and excludes eating and drinking establishments.

General retail services. The sale or rental of commonly used goods, and merchandise for personal or household use, but excludes those classified as agricultural sales, animal sales and services, automotive and equipment, business equipment sales and service, construction sales and services, food and beverage retail sales, and vehicle fuel sales. Typical uses include: department stores, apparel stores, furniture stores, pet stores or book stores.

NEIGHBORHOOD COMMERCIAL

18.030 PERMITTED USES

The following are uses permitted outright in this zone:

1. Convenience grocery store.
2. Cultural exhibits and library services.
3. Family day care.
4. Utilities, minor.
5. Transportation facilities (Type I).
6. Single-family residential unit above a permitted use. (Ord. 1226, 1988; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1613 § 2, 2013)

18.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

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1. Signs, subject to the provisions of Chapter 52 CDC.
2. Temporary use, subject to the provisions of Chapter 35 CDC.
3. Wireless communication facilities, subject to the provisions of Chapter 57 CDC. (Ord. 1408, 1998)

18.060 CONDITIONAL USES

The following are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Uses.

1. Children's day care center.
2. Consumer repair services.
3. Convenience sales and personal services.
4. Food and beverage retail sales.
5. Financial, insurance and real estate services.
6. Nursery.
7. Medical and dental services.
8. Personal service facilities.
9. Professional and administrative services.
10. Utilities, major.
11. Extended-hour businesses. CUPs shall be required when:
 - a. New extended-hour business is proposed by construction of a new building.
 - b. Expansion of the size of existing buildings for use by an extended-hour business is proposed.
12. Postal services.
13. Public safety facilities.
14. Public support facilities.
15. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1180, 1986; Ord. 1401, 1997; Ord. 1402, 1997; Ord. 1590 § 1, 2009)

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GENERAL COMMERCIAL

19.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Agricultural sales.
2. Agricultural services.
3. Animal sales and services, grooming.
4. Building maintenance services.
5. Business equipment sales and services.
6. Business support services.
7. Communications services.
8. Consumer repair services.
9. Convenience sales and personal services.
10. Eating and drinking establishments.
- 11. Drive-through restaurants.**
- ~~11.~~ Family day care.
- ~~12.~~ Financial, insurance and real estate services.
13. Food and beverage retail sales.
14. General retail services.
15. Hotel/motel, including those operating as extended hour businesses.
16. Laundry services.
17. Senior center.
18. Medical and dental services.
19. Parking facilities.
20. Participant sports and recreation, indoor.
21. Personal service facilities.
22. Professional and administrative services.

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23. Research services.
24. Utilities, minor.
25. Cultural exhibits and library services.
26. Extended-hour businesses that do not include the construction of a new building or expansion of an existing structure.
27. Transportation facilities (Type I).
28. Lodge, fraternal, community center, and civic assembly within the commercial districts along Highway 43, Salamo Road or Blankenship Road.
29. Religious institutions within the commercial districts along Highway 43, Salamo Road, or Blankenship Road. (Ord. 1226, 1988; Ord. 1411, 1998; Ord. 1590 § 1, 2009; Ord. 1622 § 23, 2014)

19.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Single-family residential unit and attached single-family units above a permitted use or a commercial use or place of assembly authorized as a conditional use (e.g., children's day care center, superstore, amusement enterprise, transient lodging, religious institution, school, lodge or community center), and multiple-family units: as a mixed use in conjunction with commercial development, only above the first floor of the structure, except in the Willamette Falls Drive Commercial Design District where dwellings may also occupy a portion of the ground floor pursuant to CDC [58.050](#).
2. Animal sales and services: kennels, as prescribed with no exterior runs or storage.
3. Animal sales and services: veterinary (small animals), as prescribed with no exterior runs or storage.
4. Signs, subject to the provisions of Chapter [52](#) CDC.
5. Temporary use, subject to the provisions of Chapter [35](#) CDC.
6. Home occupations, subject to the provisions of Chapter [37](#) CDC.
7. Wireless communication facilities, subject to the provisions of Chapter [57](#) CDC. (Ord. 1192, 1987; Ord. 1385, 1996; Ord. 1565, 2008; Ord. 1613 § 3, 2013; Ord. 1638 § 3, 2015)

19.060 CONDITIONAL USES

The following are conditional uses which may be allowed in this zone subject to the provisions of Chapter [60](#) CDC, Conditional Uses:

1. Children's day care center.

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2. Automotive and equipment:
 - a. Cleaning.
 - b. Repairs, heavy equipment.
 - c. Repairs, light equipment.
 - d. Sales/rentals, heavy equipment.
 - e. Sales/rentals, light equipment.
 - f. Storage, recreation vehicles and boats.
3. Construction, sales and services.
4. Heliports.
5. Hospitals.
6. Light industrial, manufactured.
7. Light industrial, finished products.
8. Spectator sports facilities.
9. Vehicle fuel sales.
10. Utilities, major.
11. Wholesale storage and distribution:
 - a. Mini-warehouse.
 - b. Light.
12. Single-family homes, which were non-conforming structures and were damaged, whereby the cost of rebuilding the damaged portions would exceed 50 percent of the then current replacement cost of the entire building. Determination of rebuilding costs shall be per CDC [66.070\(A\)](#).
13. Household hazardous waste depot.
14. Super stores.
15. Amusement enterprises.
16. Public agency administration.
17. Public safety facilities.

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18. Public support facilities.
19. Recycle collection center.
20. *Repealed by Ord. 1622.*
21. Postal services.
22. Religious institutions not listed as permitted uses in CDC [19.030](#).
23. Schools (with under 200 students).
24. Transportation facilities (Type II). See CDC [60.090](#) for additional approval criteria.
25. Lodge, fraternal, community center and civic assembly not listed as permitted uses in CDC [19.030](#).
26. Extended hour businesses that include a new building or expansion of an existing structure. (Ord. 1192, 1987; Ord. 1339, 1992; Ord. 1463, 2000; Ord. 1523, 2005; Ord. 1590 § 1, 2009; Ord. 1604 §§ 16, 17, 2011; Ord. 1622 § 23, 2014)

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OFFICE BUSINESS CENTER

21.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Business equipment sales and services.
2. Business support services.
3. Communications services.
4. Cultural exhibits and library services.
5. Family day care.
6. Financial, insurance and real estate services.
7. Hotel/motel, including those operating as extended hour businesses.
8. Medical and dental services.
9. Parking facilities.
10. Participant sports and recreation, indoor.
11. Personal services and facilities.
12. Professional and administrative services.
13. Utilities, minor.
14. Transportation facilities (Type I). (Ord. 1226, 1988; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1622 § 23, 2014)

21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor.
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.

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6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments, ~~subject to the following limitations:~~
 - a. ~~The use shall that do not~~ constitute ~~no~~ more than 20 percent of the total floor area of the building in which it is located.
 - b. ~~The use shall not include any drive-through facilities. (Ord. 1226, 1988; Ord. 1408, 1998; Ord. 1442, 1999; Ord. 1565, 2008; Ord. 1647 § 2, 2016)~~

21.060 CONDITIONAL USES

The following uses are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Use:

1. Children's day care center.
2. Convenience sales and personal services.
3. Food and beverage retail sales.
4. Heliports.
5. Research services.
6. *Repealed by Ord. 1622.*
7. Utilities, major.
8. Vehicle fuel sales.
9. Single-family homes, which were non-conforming structures and were damaged, whereby the cost of rebuilding the damaged portions would exceed 50 percent of the then current replacement cost of the entire building. Determination of rebuilding costs shall be per CDC 66.070(A).
10. Postal services.
11. Public safety facilities.
12. Public support facilities.
13. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1172, 1985; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1604 § 18, 2011; Ord. 1622 § 23, 2014)

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CAMPUS INDUSTRIAL

22.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Research services.
2. Manufacturing of finished products; provided, that:
 - a. The use is employee intensive, providing approximately 15 or more jobs for every developed acre of land.
 - b. The use is not of a type or intensity which produces odor, smoke, fumes, noise, glare, heat or vibrations which are incompatible with other primary uses allowed in this district.
 - c. The physical and operational requirements of the use, including type of structure used and volume of heavy traffic generated, are similar to other industrial and office uses allowed in this district.
3. Business support services.
4. Personal service facilities primarily serving the business community within the area.
5. Corporate headquarters or regional offices with 50 or more employees.
6. Offices, except corporate headquarters or regional offices allowed under subsection 5 of this section, and those offices specified as limited uses under CDC [22.050\(B\)](#), may occupy up to 70 percent of the total floor area of the development.
7. Participant sports and recreation, indoor and outdoor, developed to serve primarily the recreational needs of residents and employees of the district.
8. Transportation facilities (Type I). (Ord. 1590 § 1, 2009)

22.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

A. The following uses are allowed on a limited basis as part of the development of this district when developed concurrently with or after the primary uses, subject to the provisions of subsection B of this section:

1. Convenience sales and personal services.
2. Banks.
3. Medical and dental services.
4. **Eating and drinking establishments.** ~~Bars and cocktail lounges in conjunction with a restaurant.~~

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5. Drive through restaurants.

6. Drive through window service for all uses allowed in this subsection in conjunction with uses the limitations in subsection B of this section ~~and including restaurants may be allowed.~~

B. Limitations and conditions on the development of the uses in subsection A of this section shall be as follows:

1. The total combined floor area occupied by all the listed uses shall not exceed 10 percent of the total floor area occupied by the permitted use. Formula: 0.10 times permitted floor area equals listed use floor area.
2. All listed uses shall be located, arranged and integrated within the development to serve primarily the shopping and service needs of employees of the district.
3. No outdoor storage of materials associated with the listed use shall be allowed.
4. Uses shall not be of a type or intensity which produces odor, smoke, fumes, noise, glare, heat or vibrations which are incompatible with associated permitted uses in the area.
5. All listed uses shall comply with the dimensional and development standards under CDC 22.070 and 22.080.

C. The following uses are allowed in this zone under prescribed conditions:

1. Sign, subject to the provisions of Chapter 52 CDC.
2. Temporary use, subject to the provisions of Chapter 35 CDC.
3. Water dependent uses, subject to the provisions of Chapters 28 and 34 CDC.
4. Wireless communication facilities, subject to the provisions of Chapter 57 CDC. (Ord. 1408, 1998)

22.060 CONDITIONAL USES

A. The following are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Uses, and, in addition, the proposed use:

1. Will have minimal adverse impact on the appropriate development of permitted uses on abutting properties and the surrounding area considering location, size, design and operating characteristics of the use.
2. Will not create offensive odor, dust, smoke, fumes, noise, glare, heat or vibrations which are incompatible with permitted uses allowed in this zone.
3. Will be located on a site occupied by a permitted use or a use permitted under prescribed conditions or, if separate, in a structure which is compatible with the character and scale of uses allowed within the district, and on a site no larger than necessary for the use and operational requirements of the use.

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4. Will provide vehicular and pedestrian access, circulation, parking and loading areas which are compatible with similar facilities for uses on the same site or adjacent sites.

5. Transportation facilities (Type II). See CDC [60.090](#) for additional approval criteria.

B. Uses allowed subject to the above conditions are:

1. Transient lodging and associated convention facilities.

2. Heliports.

3. Retail and service commercial uses.

4. Household hazardous waste depot. (Ord. 1172, 1985; Ord. 1339, 1993; Ord. 1590 § 1, 2009)

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EXHIBIT A

WILLAMETTE NEIGHBORHOOD MIXED USE TRANSITIONAL ZONE

59.030 PERMITTED USES

The following are uses permitted outright in this zone:

1. Single-family detached dwelling;
2. Multi-family dwelling;
3. Common-wall single-family dwellings above a permitted use;
4. Residential use of the second floor or a portion of the ground floor of a permitted use;
5. Residential home;
6. Family day care;
7. Bed and breakfast lodging. (Ord. 1515, 2005; Ord. 1547, 2007; Ord. 1604 § 60, 2011)

59.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Signs, subject to the following provisions:
 - a. Wall signs. Shall not exceed 10 percent of the square footage of the front elevation. The calculation of allowable signage is explained in CDC [52.300](#). The sign(s) shall be proportionate to buildings and signs on adjacent buildings. The 10 percent shall be broken up into multiple signs. The sign(s) shall be mounted or painted on the second floor, on the valance of the awning, on the windows at pedestrian level, or on four-by-four awning posts.
 - b. Ground-mounted signs. One ground-mounted sign is permitted in the front yard with a maximum size of 16 square feet, a maximum height of four feet, and a minimum setback of five feet from the right-of-way.
 - c. No signs shall be the internally lit "can" type. No backlit signs are permitted. Illumination by spotlight is permitted for either sign type. Neon signs are permitted only inside the windows. No flashing signs are allowed. By temporary sign permit only, neon colored lettering or designs painted on windows or on paper or banners in the windows are allowed, but discouraged. Small signs or plaques that describe the building in a historical sense are exempt from the allowable square footage restrictions. Signs cannot project from the building face.
 - d. Temporary signs. Temporary sandwich board signs are permitted without the temporal restrictions of Chapter [52](#) CDC.

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- e. All other provisions of Chapter 52 CDC. Signs are applicable unless they conflict with the provisions of this chapter.
2. Temporary use, subject to the provisions of Chapter 35 CDC.
3. Home occupations, subject to the provisions of Chapter 37 CDC. (Ord. 1515, 2005; Ord. 1547, 2007)

59.060 CONDITIONAL USES

Only the following conditional uses are allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Uses:

1. Children's day care center.
2. Community center for civic or cultural events.
3. Small appliance repair services.
4. Governmental offices.
5. Religious institution.
6. Senior or community center.
7. Public support and public safety facilities, including public parking lots.
8. Nursery.
9. Parks and open space.
10. Boutiques.
11. Small business equipment sales and service.
12. Craft shops.
13. Cultural exhibits and library services.
14. Eating and drinking establishments ~~except no drive-through service~~.
15. Retail sales and service, except no drive-through service.
16. Professional and administrative services.
17. Medical or dental offices or clinics.
18. Financial, insurance, and real estate services, except no drive-through service. (Ord. 1515, 2005; Ord. 1547, 2007)