

ORDINANCE NO. 1663

AN ORDINANCE RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE

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 City Council on June 2, 2014 passed Ordinance 1622 that in part amended Community Development Code (CDC) sections 99.250, 99.270, and 99.280;

WHEREAS, the City Council on August 7, 2017 moved to initiated steps for the restoration of DeNovo review appeal process as an interim measure; and

WHEREAS, amending the Community Development Code Sections 99.250, 99.270, and 99.280 implements the City's Council's direction that the DeNovo process as previously existing to Ordinance No. 1622 be reinstated;

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

SECTION 1. Amendment. West Linn Community Development Code Section 99.250, APPLICATION FOR APPEAL, is amended to read as follows:

99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of appeal shall contain:

1. A reference to the application sought to be appealed;
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140; and
- ~~3. A statement clearly and distinctly identifying the grounds for which the decision should be reversed or modified. The appeal shall identify:~~

- ~~a. Applicable approval criteria that were misapplied, or~~
- ~~b. Procedural irregularity, and~~
- ~~c. If petitioner is requesting that the Council re-open the record to allow submission of additional written testimony and evidence as part of the appeal, petitioner must show that:

 - ~~i. The Planning Commission committed a procedural error, through no fault of the petitioner, that prejudiced the petitioner's substantial rights, and that reopening the record before the Council is the only means of correcting the error, or~~
 - ~~ii. A factual error occurred before the Planning Commission, through no fault of the petitioner, which is relevant to an approval criterion and material to the decision.~~~~

B. The appeal application shall be accompanied by the required fee.

C. The hearing on the appeal **or review** shall be **de novo; however, all evidence presented to any lower approval authority shall be made part of the record.** ~~limited to the provisions of CDC 99.280.~~ (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

D. The appeal or review application may state grounds for appeal or review. (Ord. 1474,2001; Ord. 1568, 2008)

SECTION 2. Amendment. West Linn Community Development Code Section 99.270, CONTENTS OF NOTICE OF APPEAL, is amended to read as follows:

99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List ~~the~~ **any** grounds for appeal or review stated in the application **for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;**
- E. State **that the hearing on appeal shall be de novo**~~the grounds on which new argument or testimony may be presented, if any;~~

F. Include the name of government contact and phone number; and

G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

SECTION 3. Amendment. West Linn Community Development Code Section 99.280, TYPE OF APPEAL HEARING AND SCOPE OF REVIEW, is amended to read as follows:

A. ~~All~~ appeals and reviews shall be de novo of a decision made by the Planning Director shall ~~be heard on the record.~~

1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.

2. If any party requests a continuance of the appeal hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal.

B. ~~Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:~~

~~1. Those issues set forth in the request to appeal; and~~

~~2. The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;~~

C. ~~The Council may reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that:~~

~~1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or~~

~~2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.~~

D. ~~Except when limited reopening of the record is granted, pursuant to this section, the Council shall not re-examine issues of fact and shall limit its review to determine whether there is substantive evidence in the record to support the findings by the lower decision-making body, or to determine if errors in law were committed by the City. Review shall be limited to the issues clearly identified in the notice of appeal. No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)~~

SECTION 4. 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 5. 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 6. 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 4-6) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 7. Effective Date. This ordinance shall take effect on the 30th 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 _____, 2017, and duly PASSED and ADOPTED this _____ day of _____, 2017.

RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY