

## LEGAL MEMORANDUM

TO: John Williams, Interim City Manager  
Jennifer Arnold, Associate Planner

FROM: Tim Ramis, City Attorney

DATE: February 18, 2020

RE: Chapter 80 Review

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You have inquired from Jordan Ramis as to what procedure should be implemented and followed in order to accommodate the Planning Commission's desire to interpret certain language within the City's Community Development Code (CDC).

### **SUMMARY**

We recommend that the record reflect that the Chapter 80 unlisted use determination was initiated by the Planning Commission as applicant. The notice and hearing procedure should follow the relevant parts of the legislative process described in Chapter 98, the closest analogy to this process.

### **DISCUSSION**

By way of background, on December 4, 2019, the Planning Commission approved a motion, by a majority vote of 5-1, to hold a Chapter 80 hearing to determine whether water detention facilities should be classified as a minor or major utility facility.

Currently, a minor utility facility or service is defined within Chapter 2 of the CDC as including, but not limited to, "overhead or underground electric, telephone or cable television poles and wires, and distribution lines for electric, gas, water, drainage and sewerage collection systems, or other similar use." A major utility facility includes, but is not limited to, "a substation; pump station; water storage tank; sewerage treatment plant; water treatment plant; and transmission lines for water, drainage or sewerage collection systems, gas or electric, or other similar use." The issue for the Planning Commission is where to fit storm water detention facilities in this regulatory framework.

Chapter 80 does not set forth any specific requirements relating to the procedures, including notice, for holding a hearing for the determination of an unlisted use. In order to provide reasonable notice to the public and provide an opportunity for public comment, we recommend utilizing the notice

requirements as set forth within Chapter 98 for the consideration of legislative changes to the provisions to the Comprehensive Plan, implementing ordinances and maps.

In relevant part, Section 98.070 provides that any public hearing held by the Planning Commission shall require:

- 1) At least 10 days prior to the scheduled hearing date notice shall be sent to:
  - a) Any affected governmental agency, including the Oregon Department of Transportation, Metro, and Tri-Met;
  - b) Affected recognized neighborhood associations or citizens advisory committees; and
  - c) Any person who requests such notification in writing.
- 2) At least 10 days prior to the hearing or meeting date, notice shall be given in a newspaper of general circulation in the City. An affidavit of publication shall be made part of the administrative record.
- 6) The City should make reasonable efforts to post notice of the proposal on the City's website at least 20 days prior to the hearing or meeting. Failure to comply with this section is not a procedural defect entitling any party to a delay in the hearing process.

The Planning Commission shall approve or deny the unlisted use application based on findings that:

- A. The use is consistent with the Comprehensive Plan;
- B. The use is consistent with the intent and purpose of the applicable zone;
- C. The use is similar to and of the same general type as the uses listed in the zone;
- D. The use has similar intensity, density, and off-site impacts as the uses listed in the zone; and
- E. The use has similar impacts on the community facilities as the listed use.