

Memorandum

Date: March 28, 2024

To: West Linn Planning Commission

From: Aaron Gudelj, Associate Planner
Darren Wyss, Planning Manager

Subject: 2024 Community Development Code (CDC) Process & Amendments Discussion

At its April 3, 2024 meeting, the Planning Commission will hold the first of four scheduled work sessions to discuss proposed code amendments that were part of the “Code Process Concepts” previously presented to City Council (CC) and Planning Commission (PC). The process concepts were developed by staff and the City Attorney’s office in response to development review related hearings or processes the CC and PC have been involved in recently. Based on discussion during these items, there is room for improvement in our Community Development Code (CDC) to make our process more effective in serving community needs. The intent is to make the CDC more clear and objective, make decision-making more efficient and effective, and alleviate potential appeals and legal challenges and the associated costs.

At the March 18, 2024 joint meeting of the CC and PC, staff were directed to work with the PC to develop draft code amendment language for four of the five process concepts and prepare to bring the amendment package forward for adoption. Here are the four code sections:

1. Expedited Land Division Approval Authority ([ORS 197.360 to 380](#), [CDC Chapter 99](#))
 - Amend CDC Chapter 99.060.E for compliance with State Statute.
2. Appeal Process for Development Projects ([CDC Chapter 99.250](#))
 - Require appellant to identify code criteria not met or misapplied and why.
3. Home Occupation Permits ([CDC Chapter 37](#))
 - Clean-up ambiguous terms, clarify policy on ‘vehicle trips’ exemption for schools, and review application process.
4. Extensions of Approval ([CDC Chapter 99.325](#))
 - Clarify extension approval date, expiration date, number allowed, and clarify policy on approval authority and length of extension.

The tentative work session schedule for the PC:

April 3, 2024 – introduction of four code amendment topics, initial discussion, and identification of any information the PC needs to get to a recommendation.

June 5, 2024 – review of information requested by PC at Work Session 1, review of draft code amendment language and recommend edits.

July 17, 2024 – review of updated draft code amendment language, recommend edits, and direction to staff on additional work session or ready for public hearing.

August 7, 2024 – final review of draft code amendments (if necessary) and preparation for public hearing.

Staff have provided some general information about each of the four code amendment topics below (see attached code process concepts for additional information). Included are questions that staff need PC feedback on at the meeting in order to complete a draft of proposed code amendments for the next work session in June. In addition, this meeting will be an opportunity for the PC to identify any additional information or context to help in its decision-making.

Topic #1 – Expedited Land Divisions Approval Authority (CDC Chapter 99)

Pursuant to [Oregon State Statute 197.365\(4\)\(b\)\(A\)](#) a local government shall not hold a hearing on an expedited land division application. Currently, West [Linn CDC Chapter 99.060\(E\)](#) requires an expedited land division to be “processed by the Planning Commission without a public hearing”. The City Attorney’s office has provided legal guidance that given the public nature of a Planning Commission meeting and members deliberating to a decision, , even if no oral or written testimony is given at the meeting, it meets the test of a public hearing and opens the City up to potential legal challenges and the associated costs. Based on this legal guidance, staff has been processing SB458 middle housing expedited land divisions as a staff level decision.

It should be noted that the appeal process of an expedited land division would go to a ‘public hearings officer’ pursuant to Oregon State Ordinance [197.375\(2\)](#) as opposed to the City Council.

Topic #2 – Appeal Process for Development Permits (CDC Chapter 99)

Currently [CDC Chapter 99.250](#) does not require an appellant to identify the code criteria they feel has not been met or misapplied, or a procedural error that has occurred. This can create an unfair burden to the parties involved including the applicant, staff, City Council, and the public. It does not allow for reasonable preparation for the appeal hearing by all parties without the benefit of knowing the appellant’s basic argument.

Prior to the adoption of [City of West Linn Ordinance 1663](#) (November 2017) the City required an appellant to provide specific criteria that were the subject of the appeal. Below are the amendments made as part of the ordinance.

99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of appeal shall contain:

1. A reference to the application sought to be appealed; and
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140. ~~;~~
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.~~

The intent would be to retain the current “de-novo” review allowed by [CDC Chapter 95.250\(C\)](#) (See Addendum 1), which allows the introduction of new evidence during the appeal. However, the introduction of new evidence would be limited to only the criteria identified in the appeal application and the City Council decision would also be limited to the same identified criteria.

Questions for Planning Commission on Topic #2: Appeal Process for Development Permits

1. How much specificity should be required regarding the appeal criteria on an appeal application? Should it allow a general statement as to why the specific code sections are believed to be non-compliant or should the City require the appellant to identify evidence in the record to support their appeal application?
2. Does the PC agree that the appeal review should only be applicable to the appellant’s specified concern(s) and only their concern(s)?

Topic #3 Home Occupation Permits (HOP’s) (CDC Chapter 37)

There are three components to this topic. The first is currently [CDC Chapter 37](#) contains many ambiguous approval criteria that need to be cleaned up to be clear and objective as an HOP decision is intended to be non-discretionary. This means all people should easily reach the same conclusion on what the approval criteria mean and require. A recent example was a debate

about whether outdoor space could be used for a home occupation. The existing code language reads:

1. The home occupation shall be a secondary use to the primary use of the house as a residence.
2. In no way shall the appearance of the residential structure or yard be altered, or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character...
3. There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.
4. An accessory building which meets the provisions of Chapter 34 CDC may be used for the home occupation.

Staff has interpreted the criteria to mean there shall be no outside activity associated with the home occupation in order to minimize impacts to the neighborhood. Providing clear and succinct criteria would eliminate any confusion.

The second component is vehicle trips to the property associated with the home occupation, including employees, deliveries, and customers. Currently, [CDC Chapter 37.020\(13\)](#) limits vehicle trips to eight (8) per day, but provides an exemption for “Home occupations with pupils or students, such as, but not limited to, dance, music or language classes...”. Based on an issue that arose in 2022, staff recommends the Planning Commission examine the exemption language in [CDC Chapter 37.020\(13\)](#) to see if such an exemption on vehicle trips is consistent with the purpose of the Home Occupation Permit.

The third component is whether the current application/approval process should be modified to better serve the community. Currently, an HOP application is processed online with a business license application. In many cities a home occupation is processed as a land-use application that may include notice to the surrounding properties and a staff analysis of the proposed use against the criteria in the CDC. The City utilized this process in the past, but moved away from this land-use review for HOP’s several years ago, potentially to reduce the number of land use applications processed by staff. This change in policy has resulted in unanticipated consequences as the present system does not provide an opportunity for staff to hold a discussion with an applicant to explain the meaning of code requirements so the applicant can properly determine whether their proposed use complies with the standards of CDC Chapter 37. If it is agreed to change the process back to a land-use application, staff will work with the PC to develop code amendment language but would wait until next year (2025) to bring forward for adoption and implementation as several internal processes will need to be set-up, including outreach to current HOP businesses, as well as a review of the City’s fee schedule

Questions for the Planning Commission on Topic #3: Home Occupancy Permits

1. Should the City return to processing HOP’s as a land-use review?
 - a. The common process in the Metro area involves two types of decisions. Type I review (no employees or customers/clients on premises) requires no notice and

is processed over the counter. Type II decisions (employees or customers/clients are on premises) require notification to neighborhood and an appeal process.

2. Should the existing uses currently exempt from vehicle trips – dance, music or language classes....with pupils or students,”- continue to be exempt from vehicle trips?
3. Does the PC agree with the staff interpretation that HOP businesses should not be allowed to conduct any of their business outside, including storage of materials or equipment?

Topic #4 Extensions of Approval on Development Permits (CDC Chapter 99)

There are five components to this topic. The first three focus on current [CDC Chapter 99.325](#) language that does not specify 1) if an extension must be *applied for or approved* prior to expiration of the original approval; 2) the expiration date of the extension; and 3) the number of extensions permitted; 4) should the length of an extension be modified or remain at two (2) years?; 5) should the extension approval authority be modified?

Previous direction by the City Attorney’s office in 2020 was that if an extension application was deemed complete before the expiration date of the approval, the applicant had the right to a decision, even if the new decision was rendered after the expiration date of the original approval.

The circular language in [CDC Chapter 99.325\(A\)](#) does not explicitly prohibit and appears to allow an extension of an extension. Most jurisdictions clearly state the specific number, typically one(1), of extensions that can be granted for an approved application.

Currently, the original approval authority must grant the extension. If the extension is permitted by code and there is no modification to the original approval, does it make sense to require a Planning Commission hearing and decision, or could this be processed as a staff decision? Any extension that requested a modification would require Planning Commission review and approval.

Questions for the Planning Commission on Topic #4: Extensions of Approval

1. Should the City require approval of the extension prior to the expiration of the original approved application? This would mean if the applicant does not receive approval prior to the expiration date, the entitlement would be expired and a new application submitted.
 - a. This format requires an applicant to submit an extension application a minimum of a couple months ahead of the expiration date in order for Staff to deem the application is complete, schedule a public hearing date if required, and account for a potential appeal.
2. Should the expiration of an extension approval (currently two years) be tied to the original expiration date (moot point if #1 above is implemented) or the date of approval under the current process/policy? This was an issue when a granted extension was appealed and the final decision was not rendered until almost four months later.
3. Should the City limit the number of extensions permitted and if yes, what should be the maximum number?

4. Should the length of extension remain at two years or would an increase to three years make sense, especially if the number of extensions permitted were capped in #3 above?
5. Should the City process an extension application as a staff decision if there are no proposed modifications, regardless of the original decision-maker? This would potentially help avoid issues around timing if the extension were required to be approved prior to the expiration as discussed in #1 above.

Conclusion

The City Attorney's office and staff have been working together since mid-2023 to bring these topics to the Planning Commission and ultimately the City Council for discussion and potential amendments to the Community Development Code. At this point Staff seeks input and recommendations from the Planning Commission on these four(4) topics/code sections in order to bring more clarity to the code. Staff has provided questions for the topics to assist the PC in its discussion so when staff drafts code amendments for review they reflect the PC policy position. These questions are recommendations for the discussion as opposed to limitations on the boundaries of the discussion. Staff has provided the existing code language for reference.

If you have questions about the meeting or materials, please feel free to contact Aaron Gudelj (agudelj@westlinnoregon.gov – 503-742-6057). As always, please submit questions before the meeting to increase the efficiency and effectiveness of the discussion as it allows staff to prepare materials and distribute them for your consideration.

Topic #1: Expedited Land Divisions Approval Authority

West Linn Community Development Code Chapter Code 99.060(E)

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.

Topic #2: Appeal Process for Development Permits

West Linn Community Development Code Chapter 99.250

- A. The notice of appeal shall contain:
 1. A reference to the application sought to be appealed; and
 2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC [99.140](#).
- 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 and shall be considered and given equal weight as evidence presented on appeal.
- D. The appeal or review application may state grounds for appeal or review. (Ord. [1474](#), 2001; Ord. [1568](#), 2008; Ord. [1622](#) § 5, 2014; Ord. [1663](#) § 1, 2017; Ord. [1745](#) § 1 (Exh. A), 2023)

Topic #3: Home Occupation Permits

West Linn Community Development Code Chapter 37

37.010 PURPOSE

The purpose of this chapter is to provide for home occupations in residential zones as a means of providing convenient employment opportunities and decreasing the dependence on the auto. The standards contained in this chapter are intended to assure that home occupations will be compatible and consistent with the residential uses, and will not have a detrimental effect on neighboring properties. (Ord. [1396](#), 1996)

37.020 GENERAL STANDARDS

A. A home occupation shall comply with all the following operating standards:

1. The home occupation shall be a secondary use to the primary use of the house as a residence.
2. In no way shall the appearance of the residential structure or yard be altered, or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character by the use of colors, materials, construction, lighting, show windows, signs, or advertising visible outside the premises to attract customers or clients, other than a sign as permitted per subsection (A)(9) of this section.
3. There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.
4. An accessory building which meets the provisions of Chapter [34](#) CDC may be used for the home occupation.
5. Any parking generated by patrons shall be accommodated on site.
6. Off-street parking areas with three or more spaces shall be screened by a fence constructed per Chapter [44](#) CDC specifications, topography, vegetation, or a combination of these methods. Screening vegetation must be in place by the time the applicant submits a home occupation application, or be reasonably expected to provide effective screening within one and one-half years of approval of said application.
7. No equipment or process shall be used in a home occupation which creates noise, odor, smoke, fumes, fallout, vibration, heat, glare, or electrical interference resulting detectable to the normal senses off the lot.
8. No more than three employees, other than the residents, shall be engaged in service on the premises at any given time.
9. The use of signs shall meet the requirements of Chapter [52](#) CDC unless modified by this chapter.
10. Occupied or unoccupied vehicles associated with the home occupation shall not have engines idling at any time, except during the immediate loading or unloading of cargo, mail, packages or passengers. Vehicles associated with the home occupation shall not be loaded or unloaded between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.
11. The owner of the business must reside in the primary structure on the premises.
12. Only one vehicle no larger than a three-quarter-ton truck may be used by the occupant, directly or indirectly, in connection with a home occupation. An off-street parking space shall be provided for this vehicle.

13. The use creates no more than eight total vehicle trips per day including employees, all deliveries, and customers. One trip is equal to one vehicle entering the site and exiting the site. Home occupations with pupils or students, such as, but not limited to, dance, music or language classes, are exempt from the vehicle trip limitation. (Ord. [1463](#), 2000; Ord. [1565](#), 2008; Ord. [1590](#) § 1, 2009; Ord. [1606](#) § 1, 2012; Ord. [1675](#) § 35, 2018)

37.030 SPECIFIC HOME OCCUPATION USES PROHIBITED

- A. *Repealed by Ord. [1635](#).*
- B. Any home occupation involving the on-site sale or resale of automobiles, trucks, boats, trailers, or other motorized vehicles. (Ord. [1463](#), 2000; Ord. [1635](#) § 21, 2014)

37.040 THE APPLICATION

- A. A home occupation application shall be initiated by the occupant. If the occupant is not the owner of the premises, the signature of the owner is required on the application.
- B. The applicant shall pay the requisite fee. (Ord. [1463](#), 2000; Ord. [1547](#), 2007)

37.050 PERMITS

- A. A home occupation permit shall be required for a home occupation, subject to the provisions of this chapter, prior to issuance of a business license.
- B. A copy of each home occupation permit, including the permit number, shall be kept by the Planning and Building Department and on the premises of the business.
- C. A home occupation permit is non-transferable to any other person or any other property, and shall expire upon discontinuance of the home occupation by the person to whom it is issued. (Ord. [1463](#), 2000; Ord. [1604](#) § 39, 2011)

37.060 ADMINISTRATION AND APPROVAL STANDARDS

- A. Home occupations.
 - 1. A home occupation is a decision made by the Planning Director in accordance with the provisions of CDC [99.060](#)(A), except that no notice shall be required.
 - 2. The Planning Director shall approve, approve with conditions, or deny an application for a home occupation in accordance with the standards set forth in CDC [37.020](#)(A) for home occupations.
 - 3. The Director's decision may be appealed by the applicant to the City Council as provided in CDC [99.240](#)(A). (Ord. [1463](#), 2000; Ord. [1474](#), 2001; Ord. [1565](#), 2008)

37.070 APPROVAL AND STRICT COMPLIANCE REQUISITE FOR BUSINESS LICENSE

No business license will be issued for a home occupation until the home occupation application is approved and the applicant certifies that the home occupation will be operated in strict compliance with the provisions of this chapter and the conditions of approval.

37.080 REVOCATION

The Director may revoke a home occupation permit if the criteria of CDC [37.020](#)(A), respectively, are violated. (Ord. [1463](#), 2000; Ord. [1565](#), 2008)

Topic #4 Extensions of Approval on Development Permits

West Linn Community Development Department Chapter 99.325

- A. An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC [99.060](#)(A), (B), (C), (D) or (E), as applicable, upon finding that:
1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and
 2. There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or
 3. The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC.
- B. *Repealed by Ord. [1675](#).*
- C. *Repealed by Ord. [1675](#).*
- D. *Repealed by Ord. [1635](#).*
- E. Extension procedures.
1. The application for extension of approval with modifications to the original approval may be submitted only after a pre-application meeting under CDC [99.030](#)(B). If no modifications are made to the original approval, a pre-application conference is not required.
 2. The application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC [99.038](#) for those cases that require compliance with that section. If no modifications are made to the original approval, no neighborhood meeting is required.
 3. Applications for extensions must be submitted along with the appropriate deposit to the Community Development Department.
 4. Notice of the decision shall be issued consistent with CDC [99.080](#).
 5. The decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to this chapter. (Ord. [1589](#) § 1 (Exh. A), 2010; Ord. [1621](#) § 25, 2014; Ord. [1635](#) § 43, 2014; Ord. [1675](#) § 57, 2018; Ord. [1745](#) § 1 (Exh. A), 2023)

Community Development Code Process Concepts

City Council Work Session, October 16, 2023

1. Appeal Process for Development Projects

[Currently CDC 99.250](#) (Application for Appeal or Review) does not require an appellant to identify the code criteria they feel is proposed to have not been met or have been misapplied. Prior to the adoption of [Ordinance 1663](#), the CDC required an appellant to provide this information. For reference, the last five appeals have been based on:

- AP-21-01 “require a two-way street on east side of property”
- AP-21-02 “the proposed plan failed to meet the goals of WL Comp Plan”, “not opposed to school, but prefer a different configuration”, “fear increased traffic would lock in the exit from cul-de-sac”
- AP-22-01 “I do not believe the denial has legal or factual merit”, “violation of due process provisions of US Constitution”, “code has been interpreted erroneously by the planning director”
- AP-23-01 “inappropriate/incorrect interpretation/application of WRA regulations/code”, “establish precedent that would further threaten the safety/welfare citizens”, “the basis for concerns are found in CDC Chapters 32, 34, 99 and the City Charter”.
- AP-23-02 “We appeal the decision because certain criteria for approval of the permits were not met”.

Not requiring an appellant to identify the grounds for appeal is potentially unfair to some parties as the applicant, staff, public, and City Council cannot reasonably prepare fully and efficiently for the appeal hearing without the benefit of knowing the appellant’s basic argument. The present system essentially sets the City up for an entirely new round of decision-making by a second review authority.

Amending the code to require the appellant to identify the code criteria they believe has been violated and provide at least initial argument as to why the decision is not consistent with the City’s code - that is identify what was code is not met/misapplied - should be considered. That explanation should be required to be submitted with the appeal application so the appeal hearing can be conducted fairly.

The hearing can remain de novo, except that the hearing will be focused on addressing only the limited basis of the appeal as stated by the appellant so any criteria that was not submitted with the appeal application would be off limits. If this change to appeal process is pursued for review, language will need to be developed for consideration saying a decision will only be reviewed on the basis of the code criteria cited by the appellant as not being met or has been misapplied. The hearing will be conducted de novo rather than on the record on the criteria so identified as not being met or has been misapplied.

Some language that could be added to the code might be:

“An appeal shall include a detailed statement describing the basis of the appeal” or
“An appeal application shall contain the following information:

- a) Date and file number of the decision being appealed.
- b) Documentation that the person filing the appeal application has standing to appeal.
- c) Detailed statement describing the basis of the appeal that is:
A statement that identifies which approval criterion or development standard is believed by the appellant to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated by the approval authority.
- d) If the appeal application and applicable fee are not submitted within the established appeal period, or if the appeal application does not contain the required statement with details in item c above, the application shall not be accepted by the City.

2. Appeal Authority

Currently [CDC 99.060.C](#) and [CDC 99.240](#) give authority to the City Council to hold a public hearing and decide on an appeal of a Planning Director, Planning Commission, or Historic Review Board decision. Many jurisdictions have adopted procedures that send an appeal of a non-discretionary decision (commonly known as Type I or Type II decisions) to a Hearings Officer. The City could determine whether to have either or both appeals of Type I and Type II decisions processed using a Hearings Officer. In West Linn’s case, this could be limited to all decisions made by the Planning Director. Decisions from the HRB or PC would continue to be appealed to City Council.

3. Home Occupation Permits (HOP)

- a. Ambiguous Terms. [CDC Chapter 37](#) contains many ambiguous approval criteria that need to be cleaned up to be clear and objective as an HOP Permit should be a Type I Decision (non-discretionary).
- b. Vehicle Trips for Schools. Based on an issue that arose in 2022, the Council also needs to weigh in on the policy question about the code criteria that exempts “home occupations with pupils or students” from the cap on vehicle trips. This has the potential for significant impacts on a neighborhood as there are trends in West Linn and other cities where more types of “schools” are being added to the list of educational or recreational pursuits being offered by instructors in their homes.
- c. Application Process. Another consideration is to return to the traditional application process and review of Type I and Type II decision-making for an HOP. In many cities a home occupation is processed as a land use application that may include notice to the surrounding properties and a staff analysis of the proposed use against established criteria in the CDC. The City moved away from this process several years ago, possibly to reduce the number of land use applications processed by staff. However, the change has resulted in unanticipated consequences as the present system does not provide an opportunity for staff to hold a discussion with an applicant to explain the meaning of code restrictions so the applicant can properly determine whether their proposed use can be allowed as a home occupation, and if approved, whether they can conform to the limits.

The code has certain limitations which an applicant should fully understand to avoid independently concluding that they can meet all code criteria. Without staff input, an applicant could err and violate city standards and community expectations. Without the benefit of staff input, an applicant could interpret the code incorrectly and invest in a

venture that is not approvable under the CDC. Presently, approvals are done through the business license software, which doesn't leave a very good trail and record of what information the applicant reviewed and understood as they accepted the terms associated with being granted a HOP permit. Requiring submittal of an application with more details, which could be kept in perpetuity with other land use records, would be beneficial for any enforcement needs in the future.

4. Expedited Land Divisions (ORS 197.360 to 380)

[ORS 197.365\(4\)\(b\)\(A\)](#) states the local government shall not hold a hearing on an expedited land division application. Currently, [CDC 99.060.E](#) requires an expedited land division to be processed by the Planning Commission without a public hearing. While it may come down to semantics, if a meeting of the Planning Commission is held with seven members of the community deliberating to a decision, even if no oral testimony is taken, such a meeting seems to qualify as a hearing. It is the nature of a Planning Commission to want to know what the approval criteria are that apply to an application, how the staff interprets an application meets or does not meet the criteria, what the public has to say about an application, and what role the Commission has in interpreting the code to apply it to the facts of an application. An expedited land division under Oregon law does not allow for this process and could open the City up to legal challenges. The staff has been processing HB2001/SB458 expedited land divisions as a staff level decision based on legal guidance from the City Attorney's office. Amending the code to eliminate the Planning Commission from approval of expedited land division applications to be consistent with the practice should be considered to avoid potential legal challenges.

5. Extensions of Approval

[CDC 99.325](#) does not specify if an extension must be applied for and approved by the Planning Commission or Planning Director prior to expiration of the approval. Previous direction on an expiring application given by City Attorney Tim Ramis in 2020 was that if the extension application was deemed complete before the expiration date, the applicant had the right to a decision, even if the decision was rendered after the expiration. Mr. Ramis' interpretation of the code and his logic may have been influenced by the unclear language and the additional fact that Covid-19 was affecting development activities, contributing to the need for extensions. Since that time, three additional extension applications have been processed through the Planning Commission where the applications were filed late in the three-year period when development was to have taken place.

Another issue is the circular language in [99.325\(A\)](#) that allows an extension of an extension. Most jurisdictions clearly state only one extension can be granted for an application. The City could benefit by having updated code language so applicants and the community have a clear understanding of the extension process and the number of extensions that can be granted.

Language to be considered could be as simple as:

"An extension may be granted by the original decision-making body for one, but not more than one, additional two-year period to complete the project from the effective date of approval pertaining to upon finding that:

1.

2.
3.

“In order for an extension to be granted, an application for an extension under CDC 99.325 must be filed and approved by the original decision-making body prior to the established expiration date of the effective date of the original decision.”