

Memorandum

Date: May 30, 2024

To: West Linn Planning Commission

From: Aaron Gudelj, Associate Planner

Subject: 2024 Code Process Amendments - Appeal Process for Land Use Decisions

At its June 5, 2024 meeting, the Planning Commission (PC) will hold a second work session to discuss proposed code amendments addressing how the City processes an appeal for a land use decision (CDC Chapter 99.325). The appeals process for land use decisions is one of the four “Code Process Concepts” that staff were directed by City Council to work on with the PC and develop draft code amendments for adoption. Planning Commission last discussed the appeal process for land use decisions code amendments at its April 3, 2024 work session.

The goals of the June 5th work session are:

1. Recap the April 3rd discussion and confirm PC direction.
2. Discuss additional questions regarding the proposed code amendments.
3. Ask clarifying questions and/or request additional information.
4. Provide feedback on proposed code amendments.

The tentative schedule to review and adopt the four “Code Process Concepts” is as follows:

| Meeting Date | Meeting Type | Anticipated Agenda |
|--------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 06/05/2024 | PC Work Session | <ul style="list-style-type: none"> ▪ Appeal process for Land Use Decisions (Draft Code Review) ▪ Extensions of Approval (Draft Code Review) |
| 07/17/2024 | PC Work Session | <ul style="list-style-type: none"> ▪ Appeal Process for Land Use Decisions (Final Code Review) ▪ Extensions of Approval (Final Code Review) ▪ Home Occupation Permits (Draft Code Review) |
| 08/07/2024 | PC Work Session | <ul style="list-style-type: none"> ▪ Home Occupation Permits (Final Code Review) ▪ Expedited Land Divisions (Draft Code Review) |
| 08/21/2024 | PC Work Session | <ul style="list-style-type: none"> ▪ Expedited Land Divisions (Final Code Review) |
| 09/18/2024 | PC Work Session | <ul style="list-style-type: none"> ▪ Final Code Amendment Package Review |
| 10/16/2024 | PC Public Hearing | <ul style="list-style-type: none"> ▪ Code Amendment Package Hearing |

| | | |
|------------|-------------------|---------------------------------------------|
| 11/04/2024 | CC Work Session | ▪ Recommended Code Amendment Package Review |
| 11/18/2024 | CC Work Session | ▪ Recommended Code Amendment Package Review |
| 12/09/2024 | CC Public Hearing | ▪ Code Amendment Package Hearing |

Work Session 1 Recap (Appeal Process for Development Permits - April 3, 2024)

At it April 3, 2024 meeting the Planning Commission had an initial discussion on the appeal process for development permits and two(2) questions from Staff were proposed as they relate to the appeals process. Here is a summary of what was discussed:

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?*

Planning Commission feedback – appellant should state at least one code criteria that is not being met/misapplied.

2. *Does the PC believe the appeal should be only applicable to the appellant’s specified concern(s) and only their concerns(s)?*

Planning Commission feedback - “De-Novo with Focus” mentioned. Appellants should specify their issue/concern; lack of specifics of appeal doesn’t allow preparations by all parties involved.

At its April 3, 2024 meeting the Planning Commission expressed a desire to better understand neighboring jurisdictions appeals process; below is a table with a breakdown of neighboring jurisdictions appeals processes and general notes:

Neighboring Jurisdictions Appeals Process

| Jurisdiction | Appeals Process | Notes |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Oregon City | <ul style="list-style-type: none"> •Type I Decision = Land Use Board of Appeals •Type II, III, and IV Decisions = On the Record | <p>Section 17.50.190</p> <ul style="list-style-type: none"> •Requires specific ground for appeal. •No new evidence considered. •Type II & III appeals are conducted by the City Commission; |
| Tigard | <p>Type I Decision = Land Use Board of Appeals</p> <p>Type II and III Decisions = De novo</p> | <p>Section 18.710.100</p> <ul style="list-style-type: none"> •”Detailed statement describing the basis of the appeal” required •Scope of hearing not limited to issues raised on appeal. New evidence, testimony, and argument are allowed to be presented. |

| | | |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tualatin | <ul style="list-style-type: none"> •Type I Decision = Land Use Board of Appeals •Type II and II Decisions = De Novo | <p>Section 32.310</p> <ul style="list-style-type: none"> •No specific appeal criteria required •New evidence and argument can be presented |
| Milwaukie | <ul style="list-style-type: none"> •Type I and III Decision = ‘unrestricted’ de novo* •Type II Decision = ‘on the record’ de novo** | <p>Section 19.1010.3</p> <ul style="list-style-type: none"> •Type I or III: appeal statement must identify which approval criterion or standard is believed to be overlooked or incorrectly applied and/or incorrectly evaluated •Type II: appeal statement must identify the manner in which the person filing the appeal was adversely impacted or aggrieved, or type I and type II statement. |
| Wilsonville | <ul style="list-style-type: none"> •Scope of hearing is at the discretion of the hearing body. May limit to on the record or de novo | <p>Section 4.022</p> <ul style="list-style-type: none"> •Appeal shall “indicate nature of the action or interpretation that is being appealed...” |
| Lake Oswego | <ul style="list-style-type: none"> •City Manager or City Engineer Decision = on the record •City Council Review = on the record w/ exception | <p>Section 50.07.003</p> <ul style="list-style-type: none"> • Appeal must contain specific issues raised for Council’s consideration and the specific reasons why the appellant contends that a hearing body decision is incorrect or not in conformance with the applicable criteria. • City Council de novo review exception allowed if appellant “demonstrates a procedural error was committed...” or “new evidence material to the decision on appeal exists and could not have been initially presented.” |
| Gladstone | <p>“Evidentiary” hearing</p> | <p>Section 17.92.050</p> <ul style="list-style-type: none"> •Appeal should state the grounds upon which the applicant deems themselves aggrieved. •New evidence can be presented after initial evidentiary hearing. |

**City of Milwaukie: An unrestricted de novo hearing allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.*

*** City of Milwaukie: An on the record de novo hearing does not allow for the presentation of new evidence by any party. New testimony is allowed. New arguments are allowed based on evidence already*

in the record and testimony that is new or already in the record. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review for an on the record de novo hearing is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments.

Conclusion

Staff seeks a continued discussion from the Planning Commission on the appeals process and feedback on the proposed DRAFT code. If appropriate, Staff will return with a final draft Code for further discussion and review on July 17, 2024 at the regularly scheduled Planning Commission meeting.

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.

Attachment 1
EXISTING West Linn Code Chapter 99.250 through 99.280

~~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.~~

~~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)~~

~~99.260 PERSONS ENTITLED TO NOTICE ON APPEAL – TYPE OF NOTICE~~

~~Upon appeal, notice shall be given by the Director to all persons having standing as provided by CDC 99.140 to notice as required by CDC 99.080. (Ord. 1568, 2008; Ord. 1622 § 5, 2014; Ord. 1745 § 1 (Exh. A), 2023)~~

~~99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING~~

~~1. 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 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; however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal;~~

~~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; Ord. 1663 § 2, 2017; Ord. 1745 § 1 (Exh. A), 2023)~~

~~**99.280 TYPE OF APPEAL HEARING AND SCOPE OF REVIEW**~~

~~A. All appeals and reviews shall be de novo.~~

~~3. 1. The record of the previous application, hearing, and decision shall be incorporated and considered as evidence in the appeal procedure.~~

~~4. 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. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014; Ord. 1663 § 3, 2017; Ord. 1745 § 1 (Exh. A), 2023)~~

Attachment 1
PROPOSED West Linn Code Chapter 99.250 through 99.280

New Text

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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 application shall include a detailed statement identifying the approval criterion or development standard believed 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.

E. If the appeal application and applicable fee are not submitted within the required appeal period, or if the appeal application does not contain the required items specified in West Linn CDC Section 99.250 above, the application shall not be accepted by the City.

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