

## Memorandum

Date: July 3, 2024

To: West Linn Planning Commission

From: Aaron Gudelj, Associate Planner

Subject: 2024 Code Process Amendments Work Session #3 – Extensions of Approval

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At the July 17, 2024 meeting, the Planning Commission (PC) will review the proposed Extensions of Approval draft code amendments to ensure the proposal is in agreement with PC direction from the previous two work sessions. If no further changes are requested, staff will bring the proposed draft code language back to PC with the other three Code Process concepts for final review.

Goals of the July 17<sup>th</sup> work session:

1. Recap the two previous extensions of approval work sessions on April 3, 2024 and June 5, 2024.
2. Provide feedback on the proposed code amendments.
3. Find consensus on final draft code amendments to bring forward as part of the Final Code Process Package – tentatively scheduled for final work session on September 18, 2024.

Attached to this memo is draft code language for Chapter 99.060, 99.080, and 99.325 of the West Linn Community Development Code relative to extensions of approval. This draft code language was prepared based on the feedback received from the Planning Commission (PC) at its previous two work sessions on 4/3/2024 and 6/5/2024. Staff would note the following proposed code language edits:

1. New Planning Director Approval Authority language identifies the Planning Director 'Designee' as having approval authority for extensions of approval (when applicable).
2. Extensions of Approval without modifications would be subject to Planning Director or designee approval.
3. Extensions of Approval with modifications would be subject to review and approval by the Planning Commission.
4. A total of one (1) extension of approval is allowed.
5. Approval of the extension of approval is required prior to expiration of the original approval.
6. Required technical reports like transportation studies, natural resources areas, geotechnical, etc. are required to provide a letter from a recognized professional acknowledging that conditions have not changed since the original approval and no new analysis is warranted.

Background and Previous Work Session Recaps

On April 3, 2024 and June 5, 2024, the PC held work sessions to discuss proposed code amendments addressing how the City processes an extension of approval. Staff presented the PC with five questions related to extensions of approval, which are found below with PC feedback/direction.

- 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 for Staff to deem the application is complete, schedule a public hearing date if required, and account for a potential appeal.*

Planning Commission Feedback – Require approval of the extension prior to expiration of original approval.

- 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.*

Planning Commission Feedback – No discussion as this is a moot point given feedback on question 1.

- 3) *Should the City limit the number of extensions permitted and if yes, what should be the maximum number?*

Planning Commission Feedback – Yes, limit the number of extensions permitted to one.

- 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?*

Planning Commission Feedback – An approved extension should remain good for two years.

- 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.*

Planning Commission Feedback – Yes, if no modifications are proposed then staff level decision is acceptable. If modifications are proposed the extension needs to go back to the original decision maker.

A copy of the April 3<sup>rd</sup> staff report – including the questions posed to the PC and the initial feedback - and meeting minutes can be found on the City’s website [here](#).

A copy of the June 5<sup>th</sup> staff report – including updated draft code language in response to earlier PC direction – and meeting minutes can be found on the City’s website [here](#).

If you have questions about the meeting or materials, please feel free to contact Aaron Gudelj ([agudelj@westlinnoregon.gov](mailto: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 - Extensions of Approval Draft Code Amendments**

Existing Code   ~~Removed Text~~   **New Text**

99.060 Approval Authority

This section explains the authority of the Planning Director **or designee**, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

A. Planning Director Authority. The Planning Director, **or designee**, shall have the authority to:

1. Approve, deny, or approve with conditions the following applications:
  - a. A temporary use or structure application for a period no more than 120 days, including all extensions (Chapter 35 CDC), and not associated with another land use approval.
  - ...
  - t. Willamette River Greenway Permit (Chapter 28 CDC).
  - u. Extensions of approval ~~without modifications when the Planning Director acted as the initial decision-making authority.~~
  - v. **Extension of approval with proposed modifications when the Planning Director acted as the initial decision-making authority.**
  - ~~w. w.~~ Class I Historic Design Review (Chapter 25 CDC).
  - ~~x. w.~~ A demolition permit for a non-contributing or not in period primary structure or an accessory structure (Chapter 25 CDC).
  - ...

B. Planning Commission authority. The Planning Commission shall have the authority to:

- ...
2. Approve, deny, or approve with conditions the following applications:
  - a. A temporary use or structure application (Chapter 35 CDC) for a minimum of 121 days to no more than one year, or an application associated with another land use approval.
  - ...
  - k. Extensions of approval **with proposed modifications** when the Planning Commission acted as the initial decision-making authority.
  - ...

D. Historic Review Board authority. The Historic Review Board shall review an application for compliance with Chapters 25 and 58 CDC, as applicable. The Historic Review Board shall have the authority to:

1. Approve, deny, or approve with conditions an application regarding the following:
  - a. Class II Historic Design Review;
  - ...

- e. ~~An~~ Extension of an approval **with proposed modifications** when the Historic Review Board acted as the initial decision-making authority.

99.080 Notice

Notice shall be given in the following ways:

...

E. Table of notices. The following notice summary identifies the appropriate type of notice for the various land use applications of CDC 99.060.

Land Use Action	Type of Notice
Code Interpretation	Notice to parties requesting the interpretation
...	...
<b><u>Extension of Approval – No modification</u></b>	<b><u>B</u></b>
Extension of Approval – <b><u>Proposed modification</u></b>	Same notice as original application
...	...

99.325 Extensions of Approval

**A. Purpose.**

**The purpose of this chapter is to provide an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.**

**B. Applicability**

**This chapter applies to all approved land use applications that are subject to expiration but have not yet expired.**

**C. General Provisions**

- 1. An approved land use application is eligible for one extension.**
- 2. An extension application must be approved by the decision-making authority prior to the expiration date of the original approval, including resolution of all appeal periods.**
- 3. If an extension is approved, the expiration date for the original approval is extended an additional 2 years from the effective date of the original approval.**

**D. Approval Process**

- 1. If the extension application does not propose modification to the original approval, the assigned approval authority is the Planning Director, as provided in Section 99.060(A). If no modifications are proposed to the original approval, no neighborhood meeting is required.**
- 2. If the extension application proposes modifications of the original approval or any conditions of approval, the extension application shall comply with amendment procedures set forth in CDC Section 99.120, and CDC Section(s) 55.050 and CDC Section 85.085 when applicable.**
- 3. An application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC 99.038, if a neighborhood meeting was required of the original application.**
- 4. If the original approval included multiple applications and does not propose modifications, a single extension application may include all applications associated with the original approval.**

#### **E. Approval Criteria**

**The approval authority will approve an extension application when all of the following criteria are met:**

- 1. The applicant has provided evidence that a good faith effort was made to utilize the approval within the specified time period or the need for the extension is the result of conditions or circumstances outside the control of the applicant or property owner; and**
- 2. If the original application included a transportation impact study, a natural resources report, geotechnical report, and/or tree inventory report an updated report must be provided with the extension application that shows no significant changes on or near the development site have occurred that would affect the conclusions and recommendations of the existing report(s). A letter from a recognized professional satisfies this criterion if it states that conditions have not changed since the approval of the original application and no new analysis is warranted.**

~~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.~~