

## Memorandum

Date: July 9, 2024

To: West Linn Planning Commission

From: Aaron Gudelj, Associate Planner

Subject: 2024 Code Process Amendments Work Session #3 - Appeal Process for Land Use Decisions

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At the July 17, 2024 meeting, the Planning Commission (PC) will review the proposed Appeals Process 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, tentatively scheduled for 09/18/2024.

### **Work Session #3 Goals – July 17, 2024**

1. Recap the two previous appeals process work sessions on April 3, 2024 & June 5, 2024.
2. Identify remaining concerns, questions, ask clarifying questions, and request additional information (if necessary).
3. Provide feedback on the proposed code amendments.
4. (If appropriate) Direct staff to return to the PC with the Appeal Process code amendments as part of the final Code Amendment Package – tentatively scheduled for September 18, 2024.

Attached to this memo is draft code language for Chapter 99.250, 99.260, 99.270, 99.280 of the West Linn Community Development Code relative to the appeals process and for Land Use Decisions. This draft code language was prepared based on the feedback received from the 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. Requirement for the appellant to provide a detailed statement of the approval criteria or standard that was overlooked or misapplied.
2. Maintaining existing de-novo style hearing.
3. Minor text edits for more clear and objective language.

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### **Background and Previous Work Session Recaps**

At its April 3, 2024 and June 5, 2024 meetings, the Planning Commission (PC) held work sessions to discuss proposed code amendments addressing how the City processes an appeal for a land use decision.

### **Work Session #1 Recap – April 3, 2024**

At the 4/3/2024 PC meeting, staff presented the PC with two questions related to the appeals process, which are found below along with PC feedback/direction.

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.

The PC directed staff to return to the PC with code language maintaining the current de-novo process while also requiring an appellant to state the code section and/or approval criteria that was misapplied as part of the appeal application. A copy of the staff report and meeting minutes can be found on the City’s website [here](#).

### **Work Session #2 Recap – June 5, 2024**

West Linn resident Karie Oakes (President Marylhurst Association) spoke in support of de novo appeals stating that de novo helps the city make better decisions.... does not think appellants have enough time to find the applicable criteria for the appeal and an appellants issue would be on record from the previous hearings.

The PC came to a consensus to require an appellant to provide specificity of the issue(s) of concerns within the appellants application; also noting that without the specificity of the appellants issue(s) the public, city staff, and governing body cannot properly prepare for the hearing without knowing the appellants base issue. Additionally, the PC came to a consensus that the de-novo stlyle hearing should be maintained.

The PC directed staff to return to the PC with code language maintaining the current de-novo process while also requiring an appellant to state the code section and/or approval criteria that was misapplied as part of the appeal application. A copy of the draft meeting minutes can be found on the City’s website [here](#) and a link to the PC meeting can be found [here](#).

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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 -Appeal Process Draft Code Amendments**

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

### 99.250 APPLICATION FOR APPEAL OR REVIEW

A. ~~The notice of~~ **An** appeal **application** shall contain **the following information**:

1. **Date and case file number of** ~~A reference to the~~ **decision being** ~~application sought to be appealed;~~ ~~and~~

2. **Documentation that the person filing the application** ~~A statement explaining how the petitioner~~ qualifies as a party of standing, as provided by CDC 99.140.

3. **Detailed statement describing the basis of the appeal, including:**

**a. The West Linn Municipal Code and/or Community Development Code approval criteria or development standard believed to have been overlooked or incorrectly interpreted or applied; and or**

**b. The aspect of the proposal believed to have been overlooked or incorrectly evaluated.**

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

**C. 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.A(1-3) above, the application shall not be accepted by the City.**

~~C.~~ **D.** 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.

### 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.

### 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 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.

#### 99.280 TYPE OF APPEAL HEARING AND SCOPE OF REVIEW

A. All appeals and reviews shall be de novo.

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