

Memorandum

Date: August 14, 2024

To: West Linn Planning Commission

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

Subject: Planning Docket 2024 - Code Process Concepts 2024 Amendment Package

At its August 21, 2024 meeting, the Planning Commission (PC) will hold a fifth work session to review the full package of proposed code amendments that are part of the four “Code Process Concepts” previously discussed by the PC individually. The process concepts were developed by staff and the City Attorney’s office in response to development review related hearings or processes the City Council (CC) and PC have been involved in recently. There is room for improvement in our Community Development Code (CDC) to make City processes 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.

City Council, at a joint meeting with PC on March 18, 2024, directed staff to work with the PC to develop draft code amendment language and bring the amendment package forward for adoption. The four process concepts/topics:

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 PC has held four work sessions to discuss the topics; April 4, 2024, June 5, 2024, July 17, 2024, and August 7, 2024. Based on the PC discussion and direction from the four work sessions, staff has drafted the attached amendments to the West Linn Community Development Code (CDC).

The purpose of the August 21st meeting is to provide the opportunity to ask any remaining questions and/or suggest any code language changes in preparation to bring the proposed amendments into the legislative process. Here is information on the four topics and a summary of the work session discussions.

Topic #1 – Appeal Process for Development Projects (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.

April 3, 2024 PC Worksession (Appeals)

[April 3, 2024 PC Work Session Video](#); [April 3, 2024 PC Meeting Notes](#); [April 3, 2024 Code Process Concepts Staff Memorandum](#)

At the April 3 work session Staff presented the PC with two questions:

1. *How much specificity should be required regarding the appeal criteria on an appeal application? Should a general statement as to why the specific code sections are believed to be non-complaint, or should an appellant be required to identify evidence in the record to support their appeal application?*

PC Direction: Appellants should state at least one code criteria not being met or being misapplied.

2. *Should the appeal hearing only be applicable to the appellants specified concerns and their concerns only?*

PC Direction: Appellants should specify their issue/concern. “De-novo with Focus” was mentioned but ultimately the existing full de-novo style hearing should be retained.

The PC requested staff bring information on neighboring jurisdictions appeals process for discussion at the next worksession.

June 5, 2024 PC Worksession (Appeals)

[June 5, 2024 PC Work Session Video](#); [June 5, 2024 PC Meeting Notes](#); [June 5, 2024 Staff Memorandum \(Appeals\)](#)

- o West Linn Resident Karie Oakes (President Marylhurst Neighborhood Association) spoke in favor of de-novo appeal hearings stating that de novo helps the city make better decisions, does not think appellants have enough time to find applicable criteria for the appeal application, and appellants issue is on the record from the previous hearings.

- The PC came to a consensus to require an appellant to provide specificity of the issue(s)/concern(s) in the appeal application.
- Lack of specificity by an appellant does not allow for proper preparation for the appeal hearing by the public, city staff, applicant, and governing body.
- The PC came to a consensus that the de-novo style appeal hearing should be maintained.

July 17, 2024 PC Worksession (Appeals)

[July 17, 2024 PC Work Session Video](#); [July 17, 2024 DRAFT PC Meeting Notes](#); [July 17, 2024 Staff Memorandum \(Appeals\)](#)

The PC requested removal of the word ‘detailed’ from the proposed code amendments as it is too subjective and directed staff to bring forward into the legislative process.

Based on direction from the PC, the proposed amendments to CDC Chapter 99.250 are attached.

Topic #2 – Extensions of Approval (CDC Chapter 99)

The code language for extensions of approval is ambiguous in places and staff presented five questions to the PC for feedback in amending this language. One issue to resolve is the 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.

Additionally, 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, 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.

April 3, 2024 PC Worksession (Extensions of Approval)

[April 3, 2024 PC Work Session Video](#); [April 3, 2024 PC Meeting Notes](#); [April 3, 2024 Code Process Concepts Staff Memorandum](#)

The Planning Commission was asked the following five questions:

1. *Should the City require approval of an extension prior to expiration of the original approved application?*

PC Direction: 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?*

PC Direction: No discussion as this is a moot point given the feedback on question #1.

3. *Should the City limit the number of extensions permitted? If yes, what should be the maximum number allowed?*

PC Direction: No consensus. One and two extensions were discussed; more PC discussion and direction needed.

4. *Should the length of the extension remain at two years or would an increase to three years make sense?*

PC Direction: 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 of the extension if the extension were required to be approved prior to the expiration date (as discussed in #1 above).*

PC Direction: No clear direction at his meeting. PC requested information on neighboring jurisdiction processes.

June 5, 2024 PC Worksession (Extensions of Approval)

[June 5, 2024 PC Work Session Video](#); [June 5, 2024 PC Meeting Notes](#); [June 5, 2024 Staff Memorandum \(Extensions of Approval\)](#)

Staff returned with a comparison of neighboring jurisdiction processes and revisited the two unanswered questions with the PC.

3. *Should the City limit the number of extensions permitted? If yes, what should be the maximum number allowed?*

PC Direction: After further discussion, consensus was reached to limit the number of extensions to one, which is consistent with neighboring jurisdictions.

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 of the extension if the extension were required to be approved prior to the expiration date (as discussed in #1 above).*

PC Direction: After further discussion, consensus was reached to allow extensions with no modifications to be a staff level decision and if modifications are proposed the extension

application goes to the original decision maker, which is consistent with neighboring jurisdictions.

The PC also requested the Planning Director approval authority language to include the Planning Director *'or designee'* for clarity.

July 17, 2024 PC Worksession (Extensions of Approval)

[July 17, 2024 PC Work Session Video](#); [July 17, 2024 DRAFT PC Meeting Notes](#); [July 17, 2024 Staff Memorandum \(Extensions of Approval\)](#)

The PC requested documentation that the Planning manager has the authority to act as the Planning Director as that position no longer exists and the Community Development Code approval authority is designated to the Planning Director.

August 7, 2024 PC Worksession (Extensions of Approval)

[August 7, 2024 PC Worksession Video](#); [August 7, 2024 Staff Memorandum \(Appeals, Home Occupations, Extensions of Approval\)](#)

Staff provided a memo from the City Manager verifying the Planning Manager as the approval authority in lieu of the Planning Director.

Based on direction from the PC, the proposed amendments to CDC Chapter 99.060, 99.080, and 99.325 are attached.

Topic #3 Home Occupation Permits (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. 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 recommended the Planning Commission examines 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. Staff requested input from the PC on moving back to this review process.

April 3, 2024 PC Worksession (Home Occupations)

[April 3, 2024 PC Work Session Video](#); [April 3, 2024 PC Meeting Notes](#); [April 3, 2024 Code Process Concepts Staff Memorandum](#)

Staff presented the PC with three questions:

1. *Should the City return to processing Home Occupations as a land-use review i.e. Type I and Type II review?*

PC Direction: Consensus that the current review process at the City of West Linn should remain as-is. There was no support for changing to a Type I and Type II review 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?*

PC Direction: No consensus was reached and the PC requested information to compare other jurisdictions' code language on vehicle trips.

3. *Does the PC believe that HOP businesses should not be allowed to conduct any of their business outside, including storage of materials or equipment?*

PC Direction: Agreement with staff interpretation of the code that a Home Occupation should not be allowed to conduct business or store materials/equipment associated with the business outside.

The PC requested a comparison of surrounding jurisdictions code language relative to Home Occupations as well as their review process.

July 17, 2024 PC Worksession (Home Occupations)

[July 17, 2024 PC Meeting Video](#); [July 17, 2024 PC \(Draft\) Meeting Notes](#); [July 17, 2024 Home Occupation Staff Memorandum](#)

Staff returned with a comparison of neighboring jurisdiction code/processes and revisited the the unanswered question regarding vehicle trip exemptions with the PC.

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?*

PC Direction: The PC agreed remove the exemption because of potential neighborhood impacts and to allow for Home Occupations with ‘pupils and students’ to have 12 total vehicle

trips per day while maintaining the existing eight total vehicle trips per day for all other Home Occupations.

August 7, 2024 PC Worksession (Home Occupations)

[August 7, PC meeting Video](#); [August 7, 2024 Staff Memorandum \(Home Occupaitons, Appeals, Extensions\)](#)

No further revisions or discussion on draft proposed language.

Based on direction from the PC, the proposed amendments to CDC Chapter 37.010 through 37.080 are attached.

Topic #4 – Expedited Land Divisions and Middle Housing Land Divisions (CDC Chapter 85)

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 an independent referee pursuant to Oregon State Ordinance [197.375\(2\)](#) as opposed to the City Council.

April 3, 2024 PC Worksession (Expedited and Middle Housing Land Divisions)

[April 3, 2024 PC Work Session Video](#); [April 3, 2024 PC Meeting Notes](#); [April 3, 2024 Code Process Concepts Staff Memorandum](#)

Staff presented information on state statutes and the expedited land division process for a regular partition/subdivision and a middle housing land division. This included a discussion on the referee appeal process mandated by statute.

The PC expressed concern regarding an appeal being processed and decided by an independent referee from outside of the community but acknowledged the need for the City to comply with state statute. The PC directed staff to return with preliminary code language for review and discussion.

August 7, 2024 PC Worksession (Expedited and Middle Housing Land Divisions)

[August 7, PC meeting Video](#); [August 7, 2024 Staff Memorandum \(Expedited Land Divisions & Middle Housing\)](#)

Staff introduced draft proposed code amendments for new definitions and language to clarify the submittal requirements and approval criteria for expedited land divisions and middle housing land divisions. Below is a summary of proposed amendments.

Community Development Code Chapter 2: Definitions

1. Proposed addition of definitions for middle housing and middle housing land division. The new definitions will provide clarity and support for the proposed code amendments found in other sections of the CDC.

Community Development Code Chapter 85: Land Divisions – General Provisions

1. Proposed additions to CDC 85.070 are intended to distinguish between differing types of land division applications. The differing types include:
 - Partition (reviewed by the Planning Director)
 - Subdivision (review by the Planning Commission)
 - Expedited Land Division, Partition or Subdivision (reviewed by the Planning Director)
 - Middle Housing Land Division (reviewed by the Planning Director)
2. Proposed addition of section CDC 85.220 is intended to provide clarity to applicants and the community on what are the submittal requirements and approval criteria for an expedited land division application. An expedited land division application, even though processed in accordance with ORS 197.360 to 380, must comply with the requirements of CDC Chapter 85. Currently, the code does not clearly provide that connection and the addition of this section will close the gap in the code.
3. Proposed addition of section CDC 85.230 is intended to provide clarity to applicants and the community on what are the submittal requirements and approval criteria for a middle housing land division application. A middle housing land division application, processed in accordance with ORS 197.360 to 380, is only required to comply with ORS 92.031 and not with CDC Chapter 85. Staff have been processing middle housing land divisions by directly applying state statute, which does not address submittal requirements. The addition of this section will clearly set expectations for the submittal of a middle housing land division.

Community Development Code Chapter 99: Procedures for Decision Making: Quasi-Judicial

1. Per ORS 197.365 and City Attorney guidance, proposed addition of the following application types to the Planning Director approval authority in CDC Chapter 99.060.A(1).
 - Expedited Land Divisions
 - Middle Housing Land Divisions
2. Per ORS 197.365 and City Attorney guidance, proposed amendment of current CDC Chapter 99.060(E) by deleting existing language that gives approval authority to the Planning Commission.

3. Per ORS 197.360, proposed amendment of current CDC Chapter 99.060(E) by deleting existing language that allows concurrent processing of other applications, specifically natural resource protections, which is inconsistent with state statute.
4. Renaming and reformatting CDC Chapter 99.060(E) to be consistent with the remainder of the Approval Authority sections.

The PC did not request any changes to the proposal. Based on direction from the PC, the proposed amendments to CDC Chapter 2, CDC Chapter 85.070, 85.220, and 85.230, and CDC Chapter 99.060 are attached.

Subsequent to the PC review, staff identified the following addition to CDC 99.080 that will provide clarity on the statutory noticing process for an appeal of an expedited or middle housing land division.

Land Use Action	Type of Notice
<u>Appeal of Expedited Land Division or Middle Housing Land Division</u>	<u>Per State Statute Requirements</u>

Next Steps

Staff has scheduled two work sessions for the PC to review the full draft proposed code amendment package. If the second work session is not needed, staff will prepare for the legislative public hearing with the PC in October to make its recommendation to City Council.

Meeting Date	Meeting Type	Anticipated Agenda
08/21/2024	PC work Session	<ul style="list-style-type: none"> ▪ Final review of DRAFT Code Process Concepts Amendment package in preparation for the public hearing
09/18/2024	PC Work Session (if needed)	<ul style="list-style-type: none"> ▪ Final review of DRAFT Code Process Concepts Amendment package in preparation for the public hearing
10/16/2024	PC Public hearing	<ul style="list-style-type: none"> ▪ Hold legislative public hearing and provide recommendation on proposal to the City Council
11/04/2024	CC Work Session	<ul style="list-style-type: none"> ▪ Review PC recommended amendment package, ask questions, request information/edits, etc.
11/18/2024	CC Work Session (if needed)	<ul style="list-style-type: none"> ▪ Review PC recommended amendment package, ask questions, request information/edits, etc.
12/09/2024	CC Public Hearing	<ul style="list-style-type: none"> ▪ Hold legislative public hearing and make final decision on Code Process Concepts Amendment Package

If you have questions about the meeting or materials, please feel free to email or call me at agudelj@westlinnoregon.gov or 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. Thanks, and hope to see everyone at the meeting.

Code Concept Process 2024 Amendment Package

~~Removed Text~~

Existing Text

New Text

WEST LINN COMMUNITY DEVELOPMENT CODE

Chapter 2 DEFINITIONS

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02.030 SPECIFIC WORDS AND TERMS

For the purpose of these regulations, the following terms or words are defined as follows:

Accessory dwelling unit (ADU). Attached or detached dwelling unit which is secondary to the primary dwelling unit. The unit includes its own independent living facilities with provisions for living, sleeping, eating, cooking, and sanitation, and is designed for residential occupancy independent of the primary dwelling unit.

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Medical and dental services. Establishments primarily engaged in the provision of personal health services ranging from prevention, diagnosis and treatment (including outpatient surgery), or rehabilitation services provided by physicians, dentists, nurses, and other health personnel as well as the provision of medical testing and analysis services, but excludes those classified as any civic use or group residential use types. Typical uses include: medical offices, eye care offices, dental offices and laboratories, or health maintenance organizations.

Middle Housing. A type of housing that includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters as defined in Oregon Revised Statute 197A.420.

Middle Housing Land Division. The division of a lot or parcel of land that contains middle housing under the rules established in Oregon Revised Statute 92.031.

Minor modification. A change in the approved design that is equal to or less than a 10 percent increase in the length, width or height of the facility. A change of location by under 20 feet laterally for any part of the structure, ramp, dock, etc., also constitutes a minor modification.

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Chapter 37 HOME OCCUPATIONS

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.

37.020 GENERAL STANDARDS

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

1. The home occupation shall be **incidental and accessory** ~~a secondary use to the residential use of the property~~ ~~primary use of the house as a residence.~~
2. **The home occupation must be operated entirely within the dwelling unit or a fully enclosed accessory structure that meets building code requirements.** ~~In no way shall the appearance of the residential structure or yard be altered to accommodate the Home Occupation, 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. **No part of the home occupation shall be operated outdoors, including the display or storage of merchandise, materials, or equipment on the premises or any adjacent right-of-way.** ~~There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.~~
4. **There shall be no outward appearance of the business activity other than a sign permitted per CDC Chapter 52.** ~~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.~~
5. ~~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.
6. ~~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.~~
7. ~~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~~5:00 p.m. to 9:00 a.m.

on Saturday and Sunday and **Federal Holidays**. ~~Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.~~

~~8. 11.~~ The owner of the business must reside in the **dwelling unit** ~~primary structure~~ on the premises.

~~9. 12.~~ ~~Only one~~ **One commercial vehicle, as defined by the Oregon Vehicle Code**, no larger than a three-quarter-ton **gross vehicle weight** ~~truck~~ may be **parked outside of a structure**. ~~used by the occupant, directly or indirectly, in connection with a home occupation. An off street parking space shall be provided for this vehicle.~~

~~10. 13.~~ The **home occupation** 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, **can create no more than twelve total vehicle trips per day including employees, all deliveries, and customers.** ~~are exempt from the vehicle trip limitation.~~

37.030 SPECIFIC HOME OCCUPATION USES PROHIBITED

A. *Repealed by Ord. [1635](#).*

B. Any home occupation involving the on-site sale, ~~or~~ resale, **repair, or restoration** of automobiles, trucks, boats, trailers, or other motorized vehicles.

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Chapter 85 LAND DIVISIONS – GENERAL PROVISIONS

85.070 Administration and Approval Process

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

B. Action on the application for a tentative plan shall be as provided by Chapter [99](#) CDC.

1. The Planning Director shall approve, deny, or approve with conditions an application for a partition subject to the provisions of CDC [85.200](#), [99.060\(A\)](#), and [99.110](#). The Director's decision may be appealed to the City Council as provided by CDC [99.240\(A\)](#).

2. The Planning Commission shall approve, deny, or approve with conditions an application for a tentative plan for a subdivision subject to the provisions of CDC [85.200](#), [99.060\(B\)](#), and [99.110](#). A petition for review of the Planning Commission's decision may be filed as provided by CDC [99.240](#).

3. The Planning Director shall approve, deny, or approve with conditions an application for an expedited land division subject to the provisions of CDC 85.220, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

4. The Planning Director shall approve, deny, or approve with conditions an application for a middle housing land division subject to the provisions of CDC 85.230, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

~~3.~~ **5. Action on the final plat shall be ministerial and taken by the Planning Director and City Engineer, and the Planning Director and City Engineer shall approve a final subdivision or partition plat upon the finding that the approval criteria set forth in CDC 89.050 have been satisfied. The Planning Director's and City Engineer's decision may be appealed to the Planning Commission by the applicant, and the Planning Commission shall make its decision based on testimony from the applicant and the Director.**

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85.220 EXPEDITED LAND DIVISIONS

An expedited land division, as defined by ORS 197.360, is an alternative process for the review of preliminary partition or subdivision plats. An expedited land division compresses review timelines, provides for different noticing requirements, and mandates a specific appeal process.

A. Submittal Requirements.

- 1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.**
- 2. Confirmation of participation in a pre-application conference per CDC 85.140.**
- 3. Required neighborhood meeting materials per CDC 99.038 for subdivision proposals.**
- 4. Materials identified in CDC 85.150 to CDC 85.190.**

B. Approval Criteria.

- 1. Oregon Revised Statute 197.360 to 380.**
- 2. West Linn Community Development Code Chapter 85.200**

85.230 MIDDLE HOUSING LAND DIVISIONS

A middle housing land division, as defined by ORS 92.031, permits the division of property that contains middle housing. A middle housing land division is subject to limited review criteria and processed using the expedited land division rules of ORS 197.360 to 380.

A. Submittal Requirements.

- 1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.**
- 2. Written responses to Oregon Revised Statute 92.031.**
- 3. Tree plan that includes:**
 - a. Site plan with existing trees identified.**
 - b. Inventory by tree size, tree species, and proposed to retain or remove.**

- 4. Site plan that includes:
 - a. Utility connections and locations.
 - b. Access locations.
 - c. Proposed easements for utilities, access, or common areas.
 - d. Proposed street improvement details and right-of-way dedications.
 - e. Footprint of middle housing structures and proposed property lines.
- 5. Approved Tualatin Valley Fire and Rescue service provider permit.
- 6. Preliminary plat that includes:
 - a. Property lines and dimensions.
 - b. Public and private utility easements.
 - c. Required right-of-way dedication.

B. Approval Criteria.

- 1. Oregon Revised Statute 92.031.

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Chapter 99 PROCEDURES FOR DECISION MAKING: QUASI JUDICIAL

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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.

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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. ~~v.~~ 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).

y. Expedited Land Division

z. Middle Housing Land Division

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

1. Make a recommendation to approve, deny, or approve with conditions to the Council:

...

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

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k. Extensions of approval **with proposed modifications** when the Planning Commission acted as the initial decision-making authority.

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C. City Council authority. The Council shall have the authority to:

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

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~~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.~~

- ~~2. The Planning Commission shall make their decision based solely upon the record and staff recommendation.~~
- ~~3. Appeals of the Planning Commission decision on an expedited land division shall be reviewed pursuant to Chapter [197](#) ORS.~~

E. Land Use Referee

- 1. Approve, deny, or approve with conditions the following applications:**
 - a. Appeal of an expedited land division per ORS 197.375.**
 - b. Appeal of a middle housing land division per ORS 197.375.**

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99.080 NOTICE

Notice shall be given in the following ways:

- A. Class A Notice. Notice of proposed action or a development application pursuant to CDC [99.060](#) shall be given by the Director in the following manner:

...

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
Amendment or Modification of Application or Permit	Same as original application
Appeal or Review of Decision	A
<u>Appeal of Expedited Land Division or Middle Housing Land Division</u>	<u>Per State Statute requirements</u>

Boundary Change	Special
Code Interpretation	Notice to parties requesting the interpretation
...
<u>Extension of Approval – No modification</u>	<u>B</u>
Extension of Approval – <u>Proposed modification</u>	Same notice as original application

...

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. **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.

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99.325 EXTENSIONS OF APPROVAL

~~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.~~

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.