



## **Agenda Report 2016-07-11-02 – Item 9b**

Date: July 25, 2016

To: Russ Axelrod, Mayor  
Members, West Linn City Council

From: John Boyd AICP, Interim Community Development Director - JB

Through: Eileen Stein, City Manager - *ES*

Subject: CDC 16-01 Community Development Code Amendments

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### **Purpose**

City Council has submitted code amendments for Planning Commission recommendation. These amendments are identified as CDC 16-01.

### **Question(s) for Council:**

Shall the City Council adopt Ordinance 1647 as recommended by the Planning Commission and send the 2015 draft PUD Code to the Planning Commission for review and recommendations?

### **Public Hearing Required:**

Yes.

### **Background & Discussion:**

Ordinance Number 1647 proposes amendments to Community Development Code (CDC) Chapters 2, 21, 24, 32, 55, and 85. The proposed amendments address:

- CDC definitions;
- Office Business Center zoning, including uses permitted under prescribed conditions to clarify that multiple family as a mixed use must have commercial development that utilizes the entire first floor;
- Planned Unit Development applicability and a new three acre minimum standard;
- Water Resource Area Protection, referencing the METRO Urban Growth Management Functional Plan and considering new exempted uses; and
- Removing requirements for easements and dedications in Water Resource Areas, in Greenways, and in tree protection areas.

The Planning Commission held a public hearing on June 1 and 15<sup>th</sup>. The Commission closed the public hearing and deliberated to a recommendation on July 6, 2016. The Planning Commission approved a motion to “Recommend approval of Ordinance 1647 with one change. For Council to take no action on the PUD section and instead request Council take off the table the [2015] draft PUD Code and return it to the Planning Commission for review and recommendations.”

### **July 11 Council Discussion**

This public hearing was opened and continued to the August 8<sup>th</sup> City Council meeting due to the delay in the Planning Commission’s hearing on these code changes.

**Budget Impact:**

Minimal for Code publishing action to update the online code.

**Council Options:**

1. Adopt the version of Ordinance 1647 as recommended by the Planning Commission, and take the 2015 draft PUD Code off the table and return it to the Planning Commission for review and recommendations.
2. Adopt the version of Ordinance 1647 that adds a three acre minimum standard to Chapter 24, Planned Unit Development.
3. Adopt the version of Ordinance 1647 that adds a three acre minimum standard to Chapter 24, Planned Unit Development, and take the 2015 draft PUD Code off the table and return it to the Planning Commission for review and recommendations.

**Staff Recommendation:**

Staff recommends approval of Ordinance 1647 as proposed by the Planning Commission on July 6, 2016, and requests on behalf of the Planning Commission that the City Council take off the table the [2015] draft PUD Code and return it to the Planning Commission for review and recommendations.

**Potential Motion:**

Option 1

1 & 2. Move to approve First Reading, and if unanimous, move to approve Second Reading and adopt the ordinance.

**Council:** *Move to approve First Reading of Ordinance 1647, as recommended by the Planning Commission on July 6, 2016, which modifies provisions of the Community Development Code, and set the matter for Second Reading.*

If the motion passes unanimously, the Council may: *Move to approve Second Reading for Ordinance 1647, as recommended by the Planning Commission on July 6, 2016, which modifies provisions of the Community Development Code and adopt the ordinance.*

**Council:** *Move for City Council to take off the table the [2015] draft PUD Code and return it to the Planning Commission for review and recommendations.*

Option 2

1 & 2. Move to approve First Reading, and if unanimous, move to approve Second Reading and adopt the ordinance.

**Council:** *Move to approve First Reading of Ordinance 1647, which modifies provisions of the Community Development Code and includes a new three acre minimum standard for planned unit developments, and set the matter for Second Reading.*

If the motion passes unanimously, the Council may: *Move to approve Second Reading for Ordinance 1647, which modifies provisions of the Community Development Code and includes a new three acre minimum standard for planned unit developments, and adopt the ordinance.*

Option 3

1 & 2. Move to approve First Reading, and if unanimous, move to approve Second Reading and adopt the ordinance.

**Council:** *Move to approve First Reading of Ordinance 1647, which modifies provisions of the Community Development Code and includes a new three acre minimum standard for planned unit developments, and set the matter for Second Reading.*

If the motion passes unanimously, the Council may: *Move to approve Second Reading for Ordinance 1647, which modifies provisions of the Community Development Code and includes a new three acre minimum standard for planned unit developments, and adopt the ordinance.*

**Council:** *Move for City Council to take off the table the [2015] draft PUD Code and return it to the Planning Commission for review and recommendations.*

**Attachments:**

1. Ordinance 1647 as modified by the Planning Commission.
2. Ordinance 1647 as modified by the City Council.
3. Planning Commission draft meeting notes for July 6, 2016.
4. Planning Commission meeting notes for June 15, 2016.
5. Planning Commission Staff Report dated May 20, 2016, for the hearing dated June 1, 2016.
6. WRA Overlay Map identifying houses built prior to 2006.
7. Councilor Martin's original proposal.

## ORDINANCE NO. 1647

### AN ORDINANCE RELATING TO DEFINITIONS, OFFICE BUSINESS CENTER MIXED USES, WRA EXEMPTIONS AND ELIMINATION OF CONSERVATION EASEMENTS, AND AMENDING COMMUNITY DEVELOPMENT CODE CHAPTERS 2, 21, 32, 55, and 85

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are bold underlined.

**WHEREAS**, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

**WHEREAS**, the City Council adopted on February 8, 2016, the City Council Goals including “Address Community Development Code and Comprehensive Plan Changes;”

**WHEREAS**, the Planning Commission held work sessions on March 2, 2016, and discussed the issue on May 18, 2016; and

**WHEREAS**, the Planning Commission held a public hearing on June 1, 2016, and June 15, 2016, and closed the public hearing and deliberated to a final recommendation for the City Council on July 6, 2016.

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**SECTION 1. Amendment.** West Linn CDC Section 2.030 is amended as follows:

#### **2.030 SPECIFIC WORDS AND TERMS**

...

~~**Conservation easement.** An easement established by the property owner that limits, but does not prohibit, use of the area within the conservation easement. For example, limitations may include tree protection, or protection of a wetland or creek. The property owner owns the land within easement boundaries.~~

...

**Dedication.** The legal conveyance of land, typically from a private property owner to the City. ~~Dedication is typically required of developers where it can be shown that additional land for right-of-way is needed for adjacent street improvements or public facilities such as foot paths or utility corridors. Dedication is also appropriate for the purpose of protecting a resource area, such as a wetland or forested area, from development or disturbance. Dedication is preferred over establishing a conservation easement since~~

~~the original property owner no longer has any right to the property and is, therefore, less likely to impact or disturb a resource area.~~

**SECTION 2. Amendment.** West Linn CDC Section 21.050 is amended as follows:

21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED  
CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units **only above the first floor of the structure**, as a mixed use in conjunction with commercial development **that utilizes the entire first floor**, ~~only above the first floor of the structure.~~
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.
6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments, subject to the following limitations:
  - a. The use shall constitute no more than 20 percent of the total floor area of the building in which it is located.
  - b. The use shall not include any drive-through facilities.

**SECTION 3. Amendment.** West Linn CDC Section 32.040 is amended as follows:

32.040 EXEMPTIONS

The following development, activities or uses are exempt from a WRA permit but must conform to any applicable requirements of this section.

...

**E. METRO CODE CHAPTER 3.07 URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN -  
Exempt Uses and Conditioned Activities.**

**Where construction of a residence was completed before January 1, 2006, the owners  
or residents shall not be restricted from engaging in any development that was**

**allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.**

**SECTION 4. Amendment.** West Linn CDC Section 32.060 is amended as follows:

**32.060 APPROVAL CRITERIA (STANDARD PROCESS)**

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

**A. WRA protection/minimizing impacts.**

1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

**B. Storm water and storm water facilities.**

1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:
  - a. The surface water management plan calls for alternate configurations (culverts, piping, etc.); or
  - b. Under CDC 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not clearly channelized.Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.
2. Public and private storm water detention, storm water treatment facilities and storm water outfall or energy dissipaters (e.g., rip rap) may encroach into the WRA if:
  - a. Accepted engineering practice requires it;

- b. Encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City's Tree Technical Manual and mitigated per CDC 32.090;
- c. There shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and
- d. There are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

3. Roadside storm water conveyance swales and ditches may be extended within rights-of-way located in a WRA. When possible, they shall be located along the side of the road furthest from the water resource. If the conveyance facility must be located along the side of the road closest to the water resource, it shall be located as close to the road/sidewalk as possible and include habitat friendly design features (treatment train, rain gardens, etc.).

4. Storm water detention and/or treatment facilities in the WRA shall be designed without permanent perimeter fencing and shall be landscaped with native vegetation.

5. Access to public storm water detention and/or treatment facilities shall be provided for maintenance purposes. Maintenance driveways shall be constructed to minimum width and use water permeable paving materials. Significant trees, including roots, shall not be disturbed to the degree possible. The encroachment and any tree loss shall be mitigated per CDC 32.090. There shall also be no adverse impacts upon the hydrologic conditions of the site.

~~C. Dedications and easements. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement. Nothing in this section shall prohibit the City from condemning property if:~~

- ~~1. The property is necessary to serve an important public purpose; and~~
- ~~2. Alternative means of obtaining the property are unsuccessful.~~
- ~~...~~

**SECTION 5. Amendment.** West Linn CDC Section 55.100 is amended as follows:

**55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW**

The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application.

A. The provisions of the following chapters shall be met:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
3. Chapter 40 CDC, Building Height Limitations, Exceptions.
4. Chapter 42 CDC, Clear Vision Areas.
5. Chapter 44 CDC, Fences.
6. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
7. Chapter 48 CDC, Access, Egress and Circulation.
8. Chapter 52 CDC, Signs.
9. Chapter 54 CDC, Landscaping.

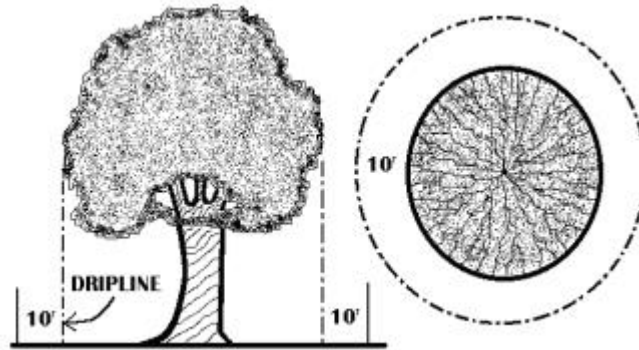
B. Relationship to the natural and physical environment.

1. The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the municipal code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction.

2. All heritage trees, as defined in the municipal code, all trees and clusters of trees ("cluster" is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of subsections (B)(2)(a) through (f) of this section. In cases where there is a difference of opinion on the significance of a tree or tree cluster, the City Arborist's findings shall prevail. It is important to acknowledge that all trees are not significant and, further, that this code section will not necessarily protect all trees deemed significant.

a. Non-residential and residential projects on Type I and II lands shall protect all heritage trees and all significant trees and tree clusters by limiting development in the Protected Area. The

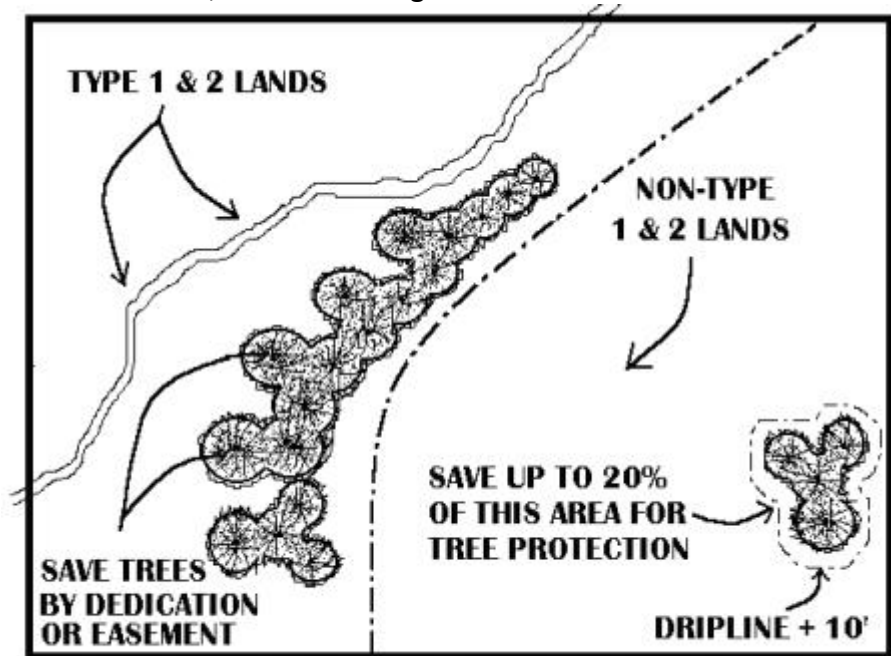
**Protected Area includes the protected tree, its dripline, and an additional ten (10) feet beyond the dripline, as depicted in the figure below.** ~~either the dedication of these areas or establishing tree conservation easements.~~ Development of Type I and II lands shall require the careful layout of streets, driveways, building pads, lots, and utilities to avoid heritage trees and significant trees and tree clusters, and other natural resources pursuant to this code. The method for delineating the protected trees or tree clusters (“dripline + 10 feet”) is explained in subsection (B)(2)(b) of this section. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply.



**PROTECTED AREA = DRIPLINE + 10 FEET**

b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the ~~area~~ **Protected Areas** ~~to protect for significant trees and tree clusters that are determined to be significant,~~ plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, ~~either by dedication or easement~~ **by limiting development in the Protected Areas.** The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than

20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.



### **METHOD OF PERCENTAGE CALCULATION**

E.G., DRIPLINE + 10 FT. AREA = 2,500 SQ. FT. OR 18% OF TOTAL  
NON-TYPE I AND II LAND DENSITY CALCULATIONS FOR THIS  
PARCEL WILL BE BASED ON REMAINING NET SQ. FOOTAGE OF  
SITE (EXCLUDING THE 2,500 SQ. FT.)

**SECTION 6. Amendment.** West Linn CDC Section 85.010 is amended as follows:

#### **85.010 PURPOSE**

A. The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources.

B. The purpose is further defined as follows:

1. To improve our sense of neighborhood and community and increase opportunities for socialization.
2. To comply with the State's Transportation Planning Rule (TPR), which seeks to encourage alternate forms of transportation and reduce reliance upon the private automobile and vehicle miles traveled by increasing accessibility within and between subdivisions and neighborhoods. This

may be accomplished by designing an easily understood, interconnected pattern of streets, bicycle and foot paths, and accommodation of transit facilities. Cul-de-sacs are to be discouraged unless site conditions dictate otherwise.

3. To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists.
4. To protect natural resource areas such as drainageways, Willamette and Tualatin River greenways, creeks, habitat areas, and wooded areas **as required by other provisions of this Code** ~~by dedication of those lands to the City, by protective easement, or by the sensitive~~ layout of streets and graded areas so as to minimize their disturbance.
5. To protect the natural features and topography by minimizing grading and site disturbance and by requiring proper erosion control techniques.
6. To arrange the lots and streets so as to minimize nuisance conditions such as glare, noise, and vibration.
7. To maximize passive solar heating benefits by orienting the streets on an east-to-west axis which increases exposure to the sun.
8. To arrange for the efficient layout of utilities and infrastructure as well as their extension to adjacent properties in a manner consistent with either adopted utility plans or sound engineering practices.
9. To arrange lots and roads to create reasonably buildable lots and acceptable driveway grades.
10. To encourage the arrangement of increased densities and smaller lots in proximity to needed services and schools as well as transportation corridors so as to reduce vehicle miles traveled and to encourage alternate modes of travel.
11. To encourage design experimentation and creativity.
12. To arrange for the mitigation of impacts generated by new development. These impacts include increased automobile, foot, and bicycle traffic. These impacts are to be mitigated at the developer's cost, by the provision of streets, sidewalks, bicycle and foot paths, and traffic control devices within, contiguous to, and nearby the development site.

Similarly, increased demand on local infrastructure such as water lines, sanitary sewer lines, and storm drainage and detention facilities, should be offset by improving existing facilities or providing new ones.

~~Protection of natural resource areas (wetlands, drainageways, greenways, etc.) from impacts associated with increased development shall be provided by dedication or easement as appropriate.~~

**SECTION 7. Amendment.** West Linn CDC Section 85.200 is amended as follows:

**85.200 APPROVAL CRITERIA**

...

J. Supplemental provisions.

1. Wetland and natural drainageways. Wetlands and natural drainageways shall be protected as required by Chapter 32 CDC, Water Resource Area Protection. Utilities may be routed through the protected corridor as a last resort, but impact mitigation is required.

2. Willamette and Tualatin Greenways. ~~The approval authority may require the dedication to the City or setting aside of greenways which will be open or accessible to the public. Except for trails or paths, such greenways will usually be left in a natural condition without improvements. Refer to Chapter 28 CDC for further information on t~~The Willamette and Tualatin River Greenways shall be protected as required by Chapter 28, Willamette and Tualatin River Protection.

3. Street trees. Street trees are required as identified in the appropriate section of the municipal code and Chapter 54 CDC.

4. Lighting. To reduce ambient light and glare, high or low pressure sodium light bulbs shall be required for all subdivision street or alley lights. The light shall be shielded so that the light is directed downwards rather than omni-directional.

5. Dedications and exactions. The City may require an applicant to dedicate land and/or construct a public improvement that provides a benefit to property or persons outside the property that is the subject of the application when the exaction is roughly proportional. No exaction shall be imposed unless supported by a determination that the exaction is roughly proportional to the impact of development.

6. Underground utilities. All utilities, such as electrical, telephone, and television cable, that may at times be above ground or overhead shall be

buried underground in the case of new development. The exception would be in those cases where the area is substantially built out and adjacent properties have above-ground utilities and where the development site's frontage is under 200 feet and the site is less than one acre. High voltage transmission lines, as classified by Portland General Electric or electric service provider, would also be exempted. Where adjacent future development is expected or imminent, conduits may be required at the direction of the City Engineer. All services shall be underground with the exception of standard above-grade equipment such as some meters, etc.

7. Density requirement. Density shall occur at 70 percent or more of the maximum density allowed by the underlying zoning. These provisions would not apply when density is transferred from Type I and II lands as defined in CDC 02.030. Development of Type I or II lands are exempt from these provisions. Land divisions of three lots or less would also be exempt.

8. Mix requirement. The "mix" rule means that developers shall have no more than 15 percent of the R-2.1 and R-3 development as single-family residential. The intent is that the majority of the site shall be developed as medium high density multi-family housing.

9. Heritage trees/significant tree and tree cluster protection. All heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction. All non-heritage trees and clusters of trees (three or more trees with overlapping dripline; however, native oaks need not have an overlapping dripline) that are considered significant by virtue of their size, type, location, health, or numbers shall be saved pursuant to CDC 55.100(B)(2). Trees are defined per the municipal code as having a trunk six inches in diameter or 19 inches in circumference at a point five feet above the mean ground level at the base of the trunk.

**SECTION 8. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 9. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing

situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 10. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[8-11]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 11. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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RUSSELL B. AXELROD, MAYOR

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KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

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CITY ATTORNEY

## ORDINANCE NO. 1647

### AN ORDINANCE RELATING TO DEFINITIONS, OFFICE BUSINESS CENTER MIXED USES, PLANNED UNIT DEVELOPMENT APPLICABILITY, WRA EXEMPTIONS AND ELIMINATION OF CONSERVATION EASEMENTS, AND AMENDING COMMUNITY DEVELOPMENT CODE CHAPTERS 2, 21, 24, 32, 55, and 85

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**WHEREAS**, the City Council adopted on February 8, 2016, the City Council Goals including "Address Community Development Code and Comprehensive Plan Changes;"

**WHEREAS**, the Planning Commission held work sessions on March 2, 2016, and discussed the issue on May 18, 2016; and

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**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

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#### **2.030 SPECIFIC WORDS AND TERMS**

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**Conservation easement.** ~~An easement established by the property owner that limits, but does not prohibit, use of the area within the conservation easement. For example, limitations may include tree protection, or protection of a wetland or creek. The property owner owns the land within easement boundaries.~~

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**Dedication.** The legal conveyance of land, typically from a private property owner to the City. ~~Dedication is typically required of developers where it can be shown that additional land for right-of-way is needed for adjacent street improvements or public facilities such as foot paths or utility corridors. Dedication is also appropriate for the purpose of protecting a resource area, such as a wetland or forested area, from development or~~

~~disturbance. Dedication is preferred over establishing a conservation easement since the original property owner no longer has any right to the property and is, therefore, less likely to impact or disturb a resource area.~~

**SECTION 2. Amendment.** West Linn CDC Section 21.050 is amended as follows:

**21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS**

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor, ~~only above the first floor of the structure.~~
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.
6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments, subject to the following limitations:
  - a. The use shall constitute no more than 20 percent of the total floor area of the building in which it is located.
  - b. The use shall not include any drive-through facilities.

**SECTION 3. Amendment.** West Linn CDC Section 24.060 is amended as follows:

**24.060 AREA OF APPLICATION**

- A. ~~Planned unit developments (PUDs) may be established in all residential, commercial, and industrial districts on lots or parcels of land which are suitable for and of sufficient size that are a minimum of three acres in size. to be planned and developed in a manner consistent with the purposes of this section.~~ can be utilized
- B. ~~All qualifying non-residential, all mixed use developments, and all qualifying residential developments of five or more lots shall be developed as PUDs with the Hearings Officer as the decision making body, while all qualifying residential~~

developments of four or fewer lots shall be developed as a PUD with the Planning Director as the decision-making body, whenever one of the following qualifying criteria apply:

- ~~1. Any development site composed of more than 25 percent of Type I or Type II lands, as defined by CDC 24.060(C), shall be developed as a PUD.~~
- ~~2. More than 20 percent of the dwelling units are to be attached on common wall except in the R-3 and R-2.1 zones. A PUD is not required in R-3 and R-2.1 zones where common wall/multi-family projects are proposed. However, other criteria (such as density transfer, mixed uses, etc.) may trigger a PUD.~~
- ~~3. A large area is specifically identified by the Planning Director or Planning Commission as needing greater design flexibility, increased open space, or a wider variety of housing types.~~

**SECTION 4. Amendment.** West Linn CDC Section 32.040 is amended as follows:

#### 32.040 EXEMPTIONS

The following development, activities or uses are exempt from a WRA permit but must conform to any applicable requirements of this section.

...

#### **E. METRO CODE CHAPTER 3.07 URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN - Exempt Uses and Conditioned Activities.**

**Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.**

**SECTION 5. Amendment.** West Linn CDC Section 32.060 is amended as follows:

#### 32.060 APPROVAL CRITERIA (STANDARD PROCESS)

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

##### A. WRA protection/minimizing impacts.

1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.

2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

B. Storm water and storm water facilities.

1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:

a. The surface water management plan calls for alternate configurations (culverts, piping, etc.); or

b. Under CDC 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not clearly channelized.

Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.

2. Public and private storm water detention, storm water treatment facilities and storm water outfall or energy dissipaters (e.g., rip rap) may encroach into the WRA if:

a. Accepted engineering practice requires it;

b. Encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City's Tree Technical Manual and mitigated per CDC 32.090;

c. There shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and

d. There are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

3. Roadside storm water conveyance swales and ditches may be extended within rights-of-way located in a WRA. When possible, they shall be located along the side of the road furthest from the water resource. If the conveyance facility must be located along the side of the

road closest to the water resource, it shall be located as close to the road/sidewalk as possible and include habitat friendly design features (treatment train, rain gardens, etc.).

4. Storm water detention and/or treatment facilities in the WRA shall be designed without permanent perimeter fencing and shall be landscaped with native vegetation.

5. Access to public storm water detention and/or treatment facilities shall be provided for maintenance purposes. Maintenance driveways shall be constructed to minimum width and use water permeable paving materials. Significant trees, including roots, shall not be disturbed to the degree possible. The encroachment and any tree loss shall be mitigated per CDC 32.090. There shall also be no adverse impacts upon the hydrologic conditions of the site.

~~C. Dedications and easements. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement. Nothing in this section shall prohibit the City from condemning property if:~~

~~1. The property is necessary to serve an important public purpose; and~~

~~2. Alternative means of obtaining the property are unsuccessful.~~

~~...~~

**SECTION 6. Amendment.** West Linn CDC Section 55.100 is amended as follows:

#### **55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW**

The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application.

A. The provisions of the following chapters shall be met:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
3. Chapter 40 CDC, Building Height Limitations, Exceptions.
4. Chapter 42 CDC, Clear Vision Areas.
5. Chapter 44 CDC, Fences.
6. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
7. Chapter 48 CDC, Access, Egress and Circulation.
8. Chapter 52 CDC, Signs.

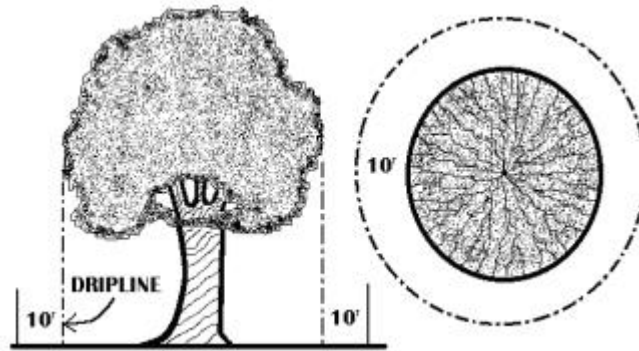
9. Chapter 54 CDC, Landscaping.

B. Relationship to the natural and physical environment.

1. The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the municipal code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction.

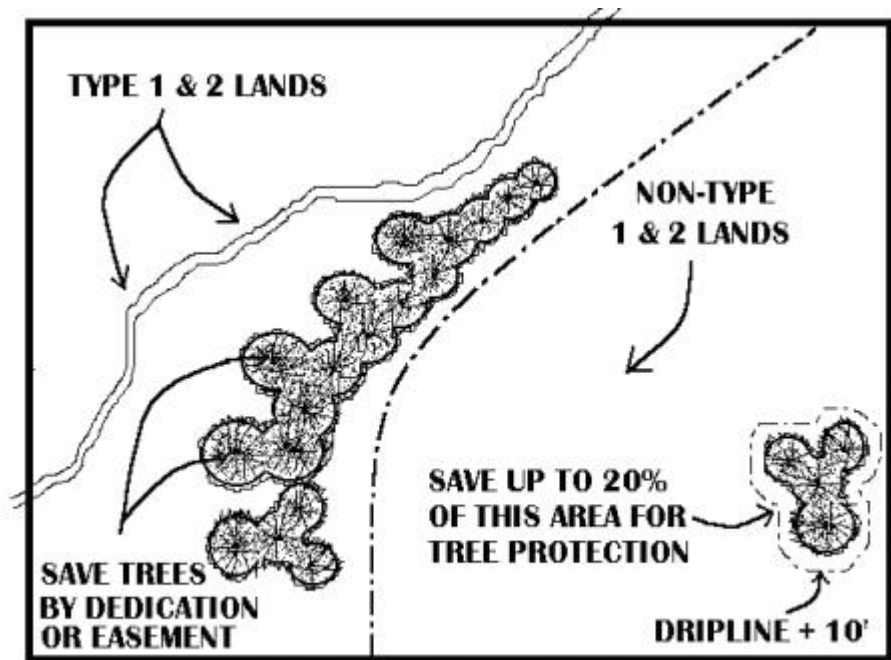
2. All heritage trees, as defined in the municipal code, all trees and clusters of trees ("cluster" is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of subsections (B)(2)(a) through (f) of this section. In cases where there is a difference of opinion on the significance of a tree or tree cluster, the City Arborist's findings shall prevail. It is important to acknowledge that all trees are not significant and, further, that this code section will not necessarily protect all trees deemed significant.

a. Non-residential and residential projects on Type I and II lands shall protect all heritage trees and all significant trees and tree clusters by **limiting development in the Protected Area. The Protected Area includes the protected tree, its dripline, and an additional ten (10) feet beyond the dripline, as depicted in the figure below.** ~~either the dedication of these areas or establishing tree conservation easements.~~ Development of Type I and II lands shall require the careful layout of streets, driveways, building pads, lots, and utilities to avoid heritage trees and significant trees and tree clusters, and other natural resources pursuant to this code. The method for delineating the protected trees or tree clusters ("dripline + 10 feet") is explained in subsection (B)(2)(b) of this section. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply.



**PROTECTED AREA = DRIPLINE + 10 FEET**

b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the ~~area~~ **Protected Areas** ~~to protect for significant trees and tree clusters that are determined to be significant~~, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, ~~either by dedication or easement~~ **by limiting development in the Protected Areas**. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.



### **METHOD OF PERCENTAGE CALCULATION**

**E.G., DRIPLINE + 10 FT. AREA = 2,500 SQ. FT. OR 18% OF TOTAL NON-TYPE I AND II LAND DENSITY CALCULATIONS FOR THIS PARCEL WILL BE BASED ON REMAINING NET SQ. FOOTAGE OF SITE (EXCLUDING THE 2,500 SQ. FT.)**

**SECTION 7. Amendment.** West Linn CDC Section 85.010 is amended as follows:

#### **85.010 PURPOSE**

- A. The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources.
- B. The purpose is further defined as follows:
  1. To improve our sense of neighborhood and community and increase opportunities for socialization.
  2. To comply with the State's Transportation Planning Rule (TPR), which seeks to encourage alternate forms of transportation and reduce reliance upon the private automobile and vehicle miles traveled by increasing accessibility within and between subdivisions and neighborhoods. This may be accomplished by designing an easily understood, interconnected pattern of streets, bicycle and foot paths, and accommodation of transit

facilities. Cul-de-sacs are to be discouraged unless site conditions dictate otherwise.

3. To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists.
4. To protect natural resource areas such as drainageways, Willamette and Tualatin River greenways, creeks, habitat areas, and wooded areas **as required by other provisions of this Code** ~~by dedication of those lands to the City, by protective easement, or by the sensitive~~ layout of streets and graded areas so as to minimize their disturbance.
5. To protect the natural features and topography by minimizing grading and site disturbance and by requiring proper erosion control techniques.
6. To arrange the lots and streets so as to minimize nuisance conditions such as glare, noise, and vibration.
7. To maximize passive solar heating benefits by orienting the streets on an east-to-west axis which increases exposure to the sun.
8. To arrange for the efficient layout of utilities and infrastructure as well as their extension to adjacent properties in a manner consistent with either adopted utility plans or sound engineering practices.
9. To arrange lots and roads to create reasonably buildable lots and acceptable driveway grades.
10. To encourage the arrangement of increased densities and smaller lots in proximity to needed services and schools as well as transportation corridors so as to reduce vehicle miles traveled and to encourage alternate modes of travel.
11. To encourage design experimentation and creativity.
12. To arrange for the mitigation of impacts generated by new development. These impacts include increased automobile, foot, and bicycle traffic. These impacts are to be mitigated at the developer's cost, by the provision of streets, sidewalks, bicycle and foot paths, and traffic control devices within, contiguous to, and nearby the development site. Similarly, increased demand on local infrastructure such as water lines, sanitary sewer lines, and storm drainage and detention facilities, should

be offset by improving existing facilities or providing new ones.  
~~Protection of natural resource areas (wetlands, drainageways, greenways, etc.) from impacts associated with increased development shall be provided by dedication or easement as appropriate.~~

**SECTION 8. Amendment.** West Linn CDC Section 85.200 is amended as follows:

**85.200 APPROVAL CRITERIA**

...

J. Supplemental provisions.

1. Wetland and natural drainageways. Wetlands and natural drainageways shall be protected as required by Chapter 32 CDC, Water Resource Area Protection. Utilities may be routed through the protected corridor as a last resort, but impact mitigation is required.
2. Willamette and Tualatin Greenways. ~~The approval authority may require the dedication to the City or setting aside of greenways which will be open or accessible to the public. Except for trails or paths, such greenways will usually be left in a natural condition without improvements. Refer to Chapter 28 CDC for further information on t~~The Willamette and Tualatin River Greenways **shall be protected as required by Chapter 28, Willamette and Tualatin River Protection.**
3. Street trees. Street trees are required as identified in the appropriate section of the municipal code and Chapter 54 CDC.
4. Lighting. To reduce ambient light and glare, high or low pressure sodium light bulbs shall be required for all subdivision street or alley lights. The light shall be shielded so that the light is directed downwards rather than omni-directional.
5. Dedications and exactions. The City may require an applicant to dedicate land and/or construct a public improvement that provides a benefit to property or persons outside the property that is the subject of the application when the exaction is roughly proportional. No exaction shall be imposed unless supported by a determination that the exaction is roughly proportional to the impact of development.
6. Underground utilities. All utilities, such as electrical, telephone, and television cable, that may at times be above ground or overhead shall be buried underground in the case of new development. The exception would be in those cases where the area is substantially built out and

adjacent properties have above-ground utilities and where the development site's frontage is under 200 feet and the site is less than one acre. High voltage transmission lines, as classified by Portland General Electric or electric service provider, would also be exempted. Where adjacent future development is expected or imminent, conduits may be required at the direction of the City Engineer. All services shall be underground with the exception of standard above-grade equipment such as some meters, etc.

7. Density requirement. Density shall occur at 70 percent or more of the maximum density allowed by the underlying zoning. These provisions would not apply when density is transferred from Type I and II lands as defined in CDC 02.030. Development of Type I or II lands are exempt from these provisions. Land divisions of three lots or less would also be exempt.

8. Mix requirement. The "mix" rule means that developers shall have no more than 15 percent of the R-2.1 and R-3 development as single-family residential. The intent is that the majority of the site shall be developed as medium high density multi-family housing.

9. Heritage trees/significant tree and tree cluster protection. All heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction. All non-heritage trees and clusters of trees (three or more trees with overlapping dripline; however, native oaks need not have an overlapping dripline) that are considered significant by virtue of their size, type, location, health, or numbers shall be saved pursuant to CDC 55.100(B)(2). Trees are defined per the municipal code as having a trunk six inches in diameter or 19 inches in circumference at a point five feet above the mean ground level at the base of the trunk.

**SECTION 9. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 10. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 11. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[9-12]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 12. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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RUSSELL B. AXELROD, MAYOR

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KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

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CITY ATTORNEY



# CITY OF West Linn

## PLANNING COMMISSION Meeting Notes of July 6, 2016

**Members present:** Michael Babbitt, Charles Mathews, Joel Metlen, Chris Myers and Gary Walvatne  
**Members absent:** Jim Farrell  
**Staff present:** John Boyd, Planning Manager and Megan Thornton, Assistant City Attorney

(00:06:50)

### **REGULAR MEETING - CALL TO ORDER**

(00:06:55)

#### **APPROVAL OF MEETING NOTES: MAY 18, JUNE 1, AND JUNE 15, 2016**

Commissioner Gary Walvatne **moved** to approve the meeting notes of May 18, 2016.

Commissioner Joel Metlen **seconded** the motion.

**Ayes:** Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt

**Nays:** None

**Abstentions:** None

**The motion passed 5-0-0**

Commissioner Gary Walvatne **moved** to approve the meeting notes of June 1, 2016.

Commissioner Joel Metlen **seconded** the motion.

**Ayes:** Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt

**Nays:** None

**Abstentions:** None

**The motion passed 5-0-0**

Commissioner Chris Myers **moved** to approve the meeting notes of June 15, 2016.

Commissioner Joel Metlen **seconded** the motion.

**Ayes:** Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt

**Nays:** None

**Abstentions:** None

**The motion passed 5-0-0**

(00:09:20)

### **PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA**

None.

(00:09:30)

### **PUBLIC HEARING – CONTINUED FROM JUNE 15, 2016: MISCELLANEOUS COMMUNITY DEVELOPMENT CODE AMENDMENTS, CDC-16-01**

Mr. Boyd reminded the commissioners they are in the deliberation stage of the process. Chair Babbitt provided some history of the PUD process. After discussing a few remaining concerns, the commissioners were ready to make a recommendation.

Commissioner Gary Walvatne **moved** to recommend approval of Ordinance 1647 with one change. For Council to take no action on the PUD section and instead request Council take off the table the draft PUD code and return it to the planning commission for review and recommendations.

Commissioner Joel Metlen **seconded** the motion.

**Ayes: Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: None**

**Abstentions: None**

**The motion passed 5-0-0**

(01:02:19)

**ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

None.

(01:02:23)

**ITEMS OF INTEREST FROM STAFF**

Mr. Boyd noted that advertising for the planning commission vacancy has begun, and that the commissioners have a joint work session and training with city council on July 18. Training opportunities are being looked into for the commissioners.

(01:09:34)

**ADJOURNMENT**

There being no further business, Chair Babbitt adjourned the meeting.



## PLANNING COMMISSION

Meeting Notes of June 15, 2016

Members present: Jim Farrell, Jesse Knight, Charles Mathews, Joel Metlen, and Chris Myers  
Members absent: Michael Babbitt and Gary Walvatne  
Staff present: John Boyd, Planning Manager and Megan Thornton, Assistant City Attorney

### PREHEARING MEETING

Vice Chair Knight called the work session to order in the Rosemont Room at City Hall. There was discussion of continuing the hearing again until Chair Babbitt and Commissioner Walvatne are present.

### REGULAR MEETING - CALL TO ORDER

Not on video.

(00:04:37)

### APPROVAL OF MEETING NOTES: APRIL 20, AND MAY 4, 2016

Commissioner Chris Myers **moved** to approve the meeting notes from April 20 and May 4, 2016.

Commissioner Jim Farrell **seconded** the motion.

**Ayes: Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Jim Farrell, Commissioner Chris Myers and Vice Chair Jesse Knight**

**Nays: None**

**Abstentions: None**

**The motion passed 5-0-0**

(00:06:03)

### PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA

Scott Warner spoke.

(00:00:00)

### PUBLIC HEARING CONTINUED— MISCELLANEOUS COMMUNITY DEVELOPMENT CODE AMENDMENTS, CDC-16-01

Vice Chair Knight reminded everyone of the Planning Commission's role in the legislative process. Before continuing with the hearing, Vice Chair Knight polled the commissioners on whether to move forward with deliberations and make a decision or continue the meeting until July 6, 2016, when the other commissioners will be in attendance. It was agreed to continue the public hearing.

Commissioner Charles Mathews **moved** to continue the deliberations and vote on CDC-16-01 to July 6, 2016, at 6:00 p.m.

Commissioner Joel Metlen **seconded** the motion.

**Ayes: Commissioner Joel Metlen, Commissioner Charles Mathews, Commissioner Jim Farrell, Commissioner Chris Myers and Vice Chair Jesse Knight**

**Nays: None**

**Abstentions: None**

**The motion passed 5-0-0**

(00:16:52)

**ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Vice Chair Knight asked a general ex parte question of Ms. Thornton.

(00:20:15)

**ITEMS OF INTEREST FROM STAFF**

Mr. Boyd provided an overview of upcoming meetings.

(00:20:54)

**ADJOURNMENT**

There being no further business, Vice Chair Knight adjourned the meeting.

## Memorandum

Date: May 20, 2016

To: Planning Commission

From: John Boyd, Interim Community Development Director

Subject: Code Maintenance Project: (CDC 16-01 ) June 1, 2016 Hearing – Staff Report

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### **Purpose**

Staff is seeking a recommendation from the Planning Commission regarding the attached June 1, 2016 Hearing Staff Report for “CDC 16-01 – Maintenance amendments to the Community Development Code”. This staff report supports four of the five proposed amendments to various chapters of the Community Development Code (CDC). It recommends that the Water Resource Area Protection proposed exemption be removed. The purpose of the proposed amendments is to modify the CDC to address:

- CDC definitions,
- Office Business Center zoning, including use permitted under prescribed conditions to clarify that multiple family as a mixed use must have commercial development that utilizes the entire first floor,
- Planned Unit Development requirements, including a new three acre minimum standard,
- Water Resource Area Protection, referencing the METRO Urban Growth Management Functional Plan and considering new exempt uses, and
- Removing requirements for easements and dedications in Water Resource Areas, Greenways, and tree protection areas.

This project is a City Council goal listed for completion within this year.

### **Background**

The City Council adopted on February 8, 2016, the City Council Goals including “Address Community Development Code and Comprehensive Plan Changes.”

Beginning in March 2, 2016, and continuing over the spring, the Planning Commission and Staff have discussed potential changes to the Community Development Code. The project was discussed with the Planning Commission at two meetings and is scheduled for discussion at a public hearing:

- A workshop on May 4, 2016,
- A staff update on May 18, 2016, and
- A public hearing on June 1, 2016.

The project was also introduced and discussed at a joint workshop with the City Council, Planning Commission and Commission for Citizen Involvement on March 4, 2016, along with general discussion at numerous other regularly scheduled City meetings of the City Council. All of the above actions are in addition to the required public hearing notification processes and procedures that will be undertaken with the upcoming hearings before the Planning Commission (June 1<sup>st</sup>) and City Council (July 11<sup>th</sup>).

## **Public Comments**

At the time this Staff Report was prepared, seven written responses containing no comments but requesting additional information were submitted. Another response was a letter received from Jennifer Donnelly, Regional Representative DLCD with concerns regarding impacts on the Willamette Greenway, METRO Title 13 program and needed housing. The eight responses are attached to this staff report.

## **Discussion**

Generally, these maintenance amendments address five areas: remove the definition of conservation easement and modify the definition of dedication, clarify the mixed use zoning requirement to require commercial uses that utilize the entire first floor, require a minimum lot size for planned unit development, to add an additional exemption for the WRA, and removing conservation easement requirements for water resource areas. The proposed amendment packet is attached to this staff report and is summarized as follows.

The maintenance packet contains needed amendments for:

- 1. CDC definitions,**
- 2. Office Business Center zoning, including use permitted under prescribed conditions to clarify that multiple family as a mixed use must have commercial development that utilizes the entire first floor,**
- 3. Planned Unit Development applicability and a new three-acre minimum standard,**
- 4. Water Resource Area Protection, referencing the METRO Urban Growth Management Functional Plan and considering new exempted uses, and**
- 5. Removing requirements for easements and dedications in Water Resource Areas, in Greenways, and in tree protection areas.**

## **Recommendation**

Staff recommends that the Planning Commission

- consider the proposed CDC amendments,
- proposes the removal of the new Water Resource Area Protection exempted uses,
- if warranted, to revise the remaining amendments, and
- recommend approval of the modified draft ordinance to the City Council.

Attachments:

Public Comments

Draft Ordinance No. 1647 (as noticed)

2003 Excerpt of CDC (Title page, development definition and Chapter 32)

# **ADDENDUM**

## **PLANNING COMMISSION STAFF REPORT**

**For the public hearing dated June 1, 2016**

### **STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE WITH APPLICABLE CRITERIA**

CDC Section 98.100 lists the factors to be addressed in the staff report for legislative proposals. The applicable factors along with staff's response are as follows:

**1. *The Statewide Planning Goals and rules adopted under ORS Chapter 197 and other applicable state statutes.***

**Staff Response:** Staff reviewed the Statewide Planning Goals and found that the following goals are applicable. Staff is not aware of any other state regulations that apply to the proposed amendments that are not reflected in the METRO and City plans and regulations addressed in this Addendum.

*Goal 1: Citizen Involvement: "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process".*

**Staff Response:** The City has a citizen involvement program which has been acknowledged and adopted by the State. None of the proposed amendments directly impact the Citizen involvement program. However, a "Measure 56" notice was mailed to all property owners in the city to make them aware of the proposed amendments and support opportunities for involvement. This legislative update process to review the packet of proposed amendments will require two public hearings (one before the Planning Commission on June 1<sup>st</sup> and one before City Council on July 11<sup>th</sup>) pursuant to CDC Chapter 98.

*Goal 2, Land Use Planning: "To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." Guidelines for implementing Goal 2 call for collection of factual information pertaining to ordinances implementing land use plans and consideration of alternative solutions.*

*All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the Plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.*

**Staff Response:** The Public Hearing Draft contains the proposed amendments. The process of review in a public hearing process may require consideration of alternative solutions for dealing with the issues are proposed. Any modifications to the proposals by the Planning Commission will be provided to the City Council for consideration.

The City Council has adopted Council Goals for routine maintenance of the CDC. The intent of this update as stated is to complete an update to the CDC. This action meets the intent of Goal 2.

The City of West Linn has an acknowledged Comprehensive Plan and enabling ordinances. The substance of the Plan and enabling ordinances are not changed by these proposed amendments. They are simply changes in Council direction that set a minimum lot size for a planned unit development, modify requirements for exemptions, remove requirements for dedication and easements, and clarify requirements for commercial uses on the first floor of a mixed use development. The compliance with statewide planning goals and the acknowledgement status of our Comprehensive Plan and enabling ordinances should remain unaffected.

***2. Any federal or state statutes or rules found to be applicable;***

**Staff Response:** Staff is not aware of any applicable state or federal regulations that are impacted by the proposed draft ordinance. The acknowledged and implemented METRO Code, City of West Linn Comprehensive Plan or codes are not substantially changed by the proposed amendments addressed in this Addendum.

***3. METRO plans and rules found to be applicable***

**Staff Response:** The City of West Linn has an acknowledged Comprehensive Plan and enabling ordinances. The City is considering two changes that are not considered to impact METRO's Regional Functional Management Plan - Title 3 Section 6 "Water Quality, Flood Management and Fish and Wildlife Conservation or Title 13 Section 4 "Nature in Neighborhoods". The removal of a requirement for dedication or easements is not a requirement from METRO and is not considered inconsistent with the applicable METRO plans.

***4. Applicable Comprehensive Plan provisions;***

Goal 1 sub-goals:

4. *Provide clear, simple, user-friendly information about how the planning process works and how citizens can be involved in land use and other City policy decisions.*

*Policy*

5. *Communicate with citizens through a variety of print and broadcast media early in and throughout the decision-making process.*

**Staff response:** The proposed amendment process was communicated on the City's website, in a newspaper of local circulation and via an extensive Measure 56 notice process. These actions communicate with citizens through a variety of print and broadcast media throughout the decision making process.

Goal 2 Land Use Planning  
Policies

...

*2. Allow clustering of residential development on land with significant environmental constraints only if:*  
*a. Such clustering can be demonstrated to protect environmental resources, not only on the affected parcel, but on surrounding parcels; and,*  
*b. Such clustering is found to be compatible with and complementary to existing neighborhoods in the vicinity of the parcel to be developed.*

*3. Develop incentives to encourage superior design, preserve environmentally sensitive open space, and include recreational amenities.*

*4. Require open space to be provided in planned unit developments to allow for shared active and passive recreational opportunities and meeting areas for future residents.*

...

*6. Review current development code standards for subdivisions and create regulations that preserve environmentally sensitive open space, require recreational amenities, and promote design excellence.*

**Staff response:**

The proposed changes to the Planned Unit Development Section add a requirement for a minimum of a three acres lot size. No changes to the Planned Unit Development criteria are altered. As part of future considerations, the Council may be considering proposals for cluster development, zero lot line development and cottage housing.

The proposed changes to remove required easements or dedications do not remove existing environmental protections. Trees are protected in the city's Tree Code, wetlands and riverine areas are protected in the City's Water Resource area, habitat areas are protected using the City's Habitat Conservation Area protection and these resources are protected under Goal 5. The Willamette River Greenway has separate protection under Goal 15. The City's choice to no longer require easements or dedication is a policy choice that does not change the protection regulations required to meet Goal 5 and Goal 15.

The proposed changes to add an exemption will not impact Goal 5 regulatory setting. The City had existing protection in place prior to the adoption of METRO regulations in 2005. The exemption under consideration applies to dwellings approved prior to September 22, 2005 and constructed prior to January 1, 2006. The exemption would allow any use that did not require a permit. The City's Community Development Code including Chapter 32 for Natural Drainageway Protection required a permit for most uses. The 2003 CDC Chapter 32 section contained only limited exceptions.

<b>Item from 2003</b>	<b>2003 Chapter 32</b>	<b>2016 Chapter 32</b>
Definition of Development	As written	Unchanged from 2003
<b><i>Exceptions/Exemptions</i></b>		
"...restore existing utility service or to reopen a public thoroughfare..."	32.020.D.1	32.040.B.1 or 32.040.C.2
"...routine maintenance of any existing drainageway..."	32.020.D.2	32.040.A
"... maintenance of legally established structures or utilities and roads..."	32.020.D.3	32.040.B.1 (utilities, roads) 32.040.C.2 (non-conforming structures)
"...repair or replacement of structures, utilities or roads damaged by fire or other cause..."	32.020.D.4	32.040.B.1 or 32.040.C.2.b (roads or utilities) 32.040.C.3 (non-conforming burned down or otherwise damaged)
"Interior remodel of structure as long as the use is not changed."	32.020.D.4	32.040.C.2.a (interior remodel of non-conforming structures)
<b><i>Exemption allowed in 2016 - new construction allowed in WRA</i></b>		
<b>Items from 2016</b>	<b>2003 Chapter 32</b>	<b>2016 Chapter 32</b>
...eaves, balconies, decks, pop outs and similar additions may cantilever over outer boundary...	N/A	32.040.D.1
"...accessory structure, less than 120 sq.ft. and under 10 ft. tall within 50 feet of water resource or 10 feet beyond top of slope..."	N/A	32.040.D.2 Note limited to one accessory structure and does allow structures prior to 1/1/06 to remain
"...Water permeable patio or deck within 30 inches of original grade and construction of approved water permeable footpaths..."	N/A	32.040.D.3
"Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater."	N/A	32.040.D.4
"...establishment of unpaved trails..."	N/A	32.040.B.2 In generalized corridors in a parks or trails master plan provided criteria (a – c) are met. This includes foot bridges in (sub b.)

The items identified as exceptions in the 2003 version of Chapter 32 are retained in the 2016 version of Chapter 32. The 2016 Chapter 32 version has all exemptions (stated as exceptions in 2003) but is more flexible than the 2003 version. There are clarified uses (such as installation of utilities in existing rights of way) and new construction allowed as listed exemptions. The METRO exemption returns us to 2005-2006; this version of the code is more restrictive and inflexible. It seems prudent

to retain the 2016 version of the CDC and to remove the proposed code changes to Chapter 32 from this draft Ordinance. Based upon the approval of the modified draft ordinance, the changes should not have an impact on Goal 5. Due to the protections of the Willamette River Greenway, they would not be applicable in the Willamette River Greenway area.

***Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources***

***Goals***

- 1. Encourage and assist in the preservation of permanent natural areas for fish and wildlife habitat in suitable, scientific/ecological areas.*
- 2. Protect sensitive environmental features such as steep slopes, wetlands, and riparian lands, including their contributory watersheds.*

...

***Recommended Action Measures***

...

- 12. Utilize a professional to provide technical expertise and review statutory regulations with recommendations to the City Council on the various policy options related to providing additional protections for threatened wildlife areas identified on the City's Wildlife Habitat Areas Map. Recommendations shall address protection/preservation options and shall include, at a minimum, the following protections options: (1) relying on existing regulations, (2) implementing full protections, or (3) providing additional limited protections.*

**Staff response:**

The proposed changes to the Planned Unit Development Chapter require a minimum of a three acres to qualify for the use of this development option. No changes to the Planned Unit Development criteria are altered. The change to the PUD Chapter will not impact the Comprehensive Plan's Goal 5 protection.

The proposed changes to remove required easements or dedications do not remove existing environmental protections. Trees are protected in the city's Tree Code, wetlands and riverine areas are protected in the City's Water Resource area, habitat area are protected using the City's Habitat Conservation Area protection and these resources are protected under Goal 5. The City's choice to no longer require easements or dedication is a policy choice that does not change the protection regulations required to meet Goal 5.

The proposed changes to provide an exemption should not impact Goal 5 regulatory setting. The City had existing protection in place prior to the adoption of METRO regulations in 2005. The exemption under consideration applies to dwellings approved prior to September 22, 2005 and constructed prior to January 1, 2006. The exemption would allow any use that did not require a permit. The City's Community Development Code including Chapter 32 for Natural Drainageway Protection required a permit for most uses. Thus, the 2003 Chapter 32 contained only limited exceptions. Staff is recommending that the proposed changes to CDC Chapter 32 be removed from consideration. Based upon the approval of the modified draft ordinance, the proposed changes should not have an impact on Goal 5.

***Goal 10 Housing***

***Goals, Policies, And Recommended Action Measures Policies***

...

- 3. Encourage the development of affordable housing for West Linn residents of all income levels*

...

### **RECOMMENDED ACTION MEASURES**

1. Evaluate how West Linn can meet its share of the regional need for affordable housing.
2. Identify constitutionally justifiable measures to encourage provision of affordable housing.
3. Determine costs of providing or subsidizing affordable housing. Consider citizen referendum on whether the City should be subsidizing “affordable housing.” A referendum could be a non-binding advisory vote.

#### **Staff response:**

The proposed changes to the Planned Unit Development Chapter require a minimum of a three acres to qualify for the use of this development option. No changes to the Planned Unit Development criteria are altered. The change to the PUD Chapter will not impact the Comprehensive Plan’s Goal 10 protection. The intent of the three acre minimum is to provide time for the City to reconsider a review of Planned Unit Development, zero lot line, cluster development and infill options.

### ***Goal 15 Willamette River Greenway***

#### ***Goals, Policies, And Recommended Action Measures Policies***

1. *Maintain a Willamette River Greenway zone as defined by the LCDC adopted Willamette River Greenway boundary to include the water area and islands, and adhere to the setback line designated within the zone.*
2. *Inform the public through appropriate means that the state of Oregon and the City of West Linn Greenway program does not authorize the public use of private property within the Greenway boundary.*

...

#### **Staff response:**

The proposed changes to the Planned Unit Development Section require a minimum of a three acres to qualify for the use of this development option. No changes to the Planned Unit Development criteria are altered.

The proposed changes to remove required easements or dedications do not remove existing environmental protections. The Willamette River Greenway has separate protection under Goal 15. This goal is implemented locally in the CDC Chapter 28 Willamette and Tualatin River Protection. Chapter 28 provides protection via:

- 28.040.C for Scenic easements and their maintenance;
- 28.040.BB Construction of a public pathway by dedication or easement accepted by the City as an Exemption/Uses permitted outright;
- 28.110.G.1 provides incentives for the dedication or establishment of access easements to allow public access to and along the river (for the listed zones).

The City’s choice to no longer require conservations easements or dedication is a policy choice that does not change the protection regulations in Chapter 28 that are required to meet Goal 15.

Due to the protections of the Willamette Greenway, the proposed exemptions to the Water Resource Area (Chapter 32) would not be applicable in the Willamette Greenway area.

## **5. *Portions of implementing ordinances relevant to the proposal***

### **Staff response:**

The proposed changes related to setting a minimum lot size for planned unit development, for removal of requirements for dedication and easements in specified sections, and clarifying commercial uses on the first floor of a mixed use do not require additional clarification. The changes are provided on the draft ordinance attached to this report.

When considering the METRO exemption for Water Resource areas, the 2005 to 2006 period must be considered. The 2003 Community Development Code was the version in effect for Chapter 32 and that Chapter was unchanged until 2006. The 2003 CDC Chapter 32 was used to consider the METRO exemption.

This code defined “Development” as “Any man-made change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing and grubbing in amounts greater than 10 cubic yards on any lot or excavation.”

Chapter 32 Natural Drainageway Protection is applied to areas as containing “wetland or creeks plus an adjacent property of different ownership that includes the transition area or setback area.” A similar area is protected by the current (2016) Water Resource Area. The purpose statement notes the area includes “maintain[ing] drainageways as natural resource and habitat areas;” A similar area protected by the Habitat Conservation Area overlay.

“This zone applies to all zones and uses within city limits. No person unless excepted by Section 32.020(C) may clear, fill, build in, or alter existing natural drainage ways without having obtained a permit from the Planning Commission.”

This requirement had five exemptions in 2003: 1) restoration of utility service, 2) maintenance of existing drainage ways, 3) repair and maintenance of legally established structures, 4) repair or replacement of structures, utilities or roads damaged by fire or other cause or 5) interior remodeling of a structure.

Clearly, most uses required a permit in 2003. Therefore, the METRO exemption has limited applicability. The Planning Commission should consider removing the proposed exemptions from the draft ordinance and recognize the exemptions provided in the 2016 Ordinance provide more options and flexibility for citizens than those exceptions that meet the requirements of the METRO exemption.

Excerpts of the 2003 Community Development Code including the definition of development and the entirety of 2003 Chapter 32 Natural Drainage way Protection are attached to this staff report.

**COMMUNITY DEVELOPMENT CODE  
CITY OF WEST LINN, OREGON**

**ADOPTED DECEMBER 14, 1983  
ORDINANCE NO. 1129**

**AMFEMnA/TEMTS:-**

<b>MAY 9, 1984</b>	<b>(ORD. 1137)</b>
<b>NOVEMBER 14, 1984</b>	<b>(ORD. 1150)</b>
<b>JANUARY 23, 1985</b>	<b>(ORD. 1152)</b>
<b>JUNE 11, 1986</b>	<b>(ORD. 1180)</b>
<b>FEBRUARY 11, 1987</b>	<b>(ORD. 1192)</b>
<b>MAY 27, 1987</b>	<b>(ORD. 1200)</b>
<b>JULY 27, 1987</b>	<b>(ORD. 1201)</b>
<b>SEPTEMBER 9, 1987</b>	<b>(ORD. 1211)</b>
<b>FEBRUARY 8, 1988</b>	<b>(ORD. 1226)</b>
<b>OCTOBER 13, 1988</b>	<b>(ORD. 1242)</b>
<b>FEBRUARY 8, 1989</b>	<b>(ORDS. 1248/1249)</b>
<b>APRIL 13, 1989</b>	<b>(ORD. 1252)</b>
<b>MAY 25, 1989</b>	<b>(ORD. 1255)</b>
<b>JANUARY 1, 1990</b>	<b>(ORD. 1276)</b>
<b>JUNE 1990</b>	<b>(ORD. 1287)</b>
<b>NOVEMBER 1990</b>	<b>(ORD. 1291)</b>
<b>APRIL 1991</b>	<b>(ORD. 1298)</b>
<b>NOVEMBER 1991</b>	<b>(ORD. 1308)</b>
<b>JANUARY 1992</b>	<b>(ORD. 1314)</b>
<b>JUNE 1992</b>	<b>(ORD. 1321)</b>
<b>FEBRUARY 1993</b>	<b>(ORD. 1339)</b>
<b>JUNE 1993</b>	<b>(ORD. 1346)</b>
<b>NOVEMBER 1993</b>	<b>(ORD. 1350)</b>
<b>FEBRUARY 1994</b>	<b>(ORD. 1354)</b>
<b>MARCH 1994</b>	<b>(ORD. 1356)</b>
<b>DECEMBER 1994</b>	<b>(ORD. 1369)</b>
<b>FEBRUARY 1995</b>	<b>(ORD. 1370)</b>
<b>SEPTEMBER 1995</b>	<b>(ORDS. 1377/1378)</b>

**AMENDMENTS (m\TT.)**

<b>NOVEMBER 1995</b>	<b>(ORD. 1382)</b>
<b>FEBRUARY 1996</b>	<b>(ORD. 1385)</b>
<b>JULY 1996</b>	<b>(ORD. 1391)</b>
<b>AUGUST 1996</b>	<b>(ORDS. 1394/1396)</b>
<b>MAY 1997</b>	<b>(ORDS. 1401/1402/1403)</b>
<b>FEBRUARY 1998</b>	<b>(ORDS. 1408/1410)</b>
<b>JUNE 1998</b>	<b>(ORD. 1411)</b>
<b>NOVEMBER 1998</b>	<b>(ORD. 1425)</b>
<b>MAY 1999</b>	<b>(ORD. 1434)</b>
<b>OCTOBER 1999</b>	<b>(ORD. 1442)</b>
<b>OCTOBER 2000</b>	<b>(ORD. 1463)</b>
<b>OCTOBER 2001</b>	<b>(ORD. 1474)</b>
<b>MAY 2002</b>	<b>(ORD. 1484)</b>
<b>DECEMBER 2003</b>	<b>(ORDS. 1499/1500)</b>

**The preparation of this Code was financed in part through a Comprehensive Planning Grant from the State of Oregon, Department of Land Conservation and Development.**

**Cul-de-sac.** A street or streets having one end open to traffic and the other end or ends terminating in a vehicle turnaround. (ORD. 1463)

**Cut or excavation.** Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced, or relocated. (ORD. 1463)

**Dedication.** The legal conveyance of land, typically from a private property owner to the City. Dedication is typically required of developers where it can be shown that additional land for right-of-way is needed for adjacent street improvements or public facilities such as foot paths or utility corridors. Dedication is also appropriate for the purpose of protecting a resource area such as a wetland or forested area, from development or disturbance. Dedication is preferred over establishing a conservation easement since the original property owner no longer has any right to the property and is, therefore, less likely to impact or disturb a resource area. (ORD. 1463)

**Design flood elevation.** The elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies. (ORD. 1463)

**Developer.** The owner of land proposed to be developed or partitioned, or representative. Consent shall be required from the legal owner of the premises for any proposed development or division of land as provided in this ordinance. (ORD. 1175)

**Development.** Any man-made change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than 10 cubic yards on any lot or excavation. (ORD. 1463)

**Director.** The Planning Director of West Linn, Oregon, or authorized agent.

**Division of land.** The process of dividing a tract, lot or parcel into two or more lots or parcels by subdividing or partitioning. A division of land shall be deemed to have occurred at the time when the final approved plat is recorded with the County Recorder's office. (ORD. 1463)

## **32.000 NATURAL DRAINAGEWAY PROTECTION**

### **32.010 PURPOSE AND INTENT**

The purpose and intent of this chapter is to maintain existing natural drainageways, as designated by the Storm Drainage Master Plan, as open channels to preserve existing vegetation; to maintain drainageways as natural resource and habitat areas; to maintain the slope stability of the drainageway while at the same time, acknowledging that drainageways represent important utility corridors and, as such, may be required to accommodate utilities, reasonable enhancement and maintenance of the storm drainageways, development of roads, and other improvements based upon the criteria of this chapter and Chapter 85. (ORD. 1401)

### **32.020 APPLICABILITY**

- A. For the purpose of this section, the subject property is defined as the land on which the natural drainageway and/or associated transition and setback area, is located. For example, the subject property may be defined as one property that contains a wetland or creek plus an adjacent property of different ownership that includes the transition area or setback area. (ORD. 1408)
- B. The provisions of this chapter apply to all zones and uses within the City limits. No person, unless excepted by Section 32.020(C), may clear, fill, build in, or alter existing natural drainageways without having obtained a permit from the Planning Commission. (ORD. 1474)
- C. The provisions of this chapter shall apply to development proposals that have natural drainageways, and/or associated transition and setback areas, within their project boundary. Therefore, the actual creek, open channel, or stream does not have to be on the subject property under review. These natural drainageways, for the purpose of this chapter, are identified by the Storm Drainage Master Plan (1996) maps as open channels. City Engineer shall conduct field assessment to verify if drainageway is an open channel or enclosed storm drain, and its exact location. This chapter shall not

apply to designated storm drains that appear in the Storm Drainage Master Plan. The provisions shall also not apply to small man-made open roadside drainage swales in residential areas such as those identified in the Willamette area along 13th and 14th Streets. (ORD. 1408)

- D. Exceptions. The following actions are excepted from the provisions of this chapter:
1. The action of any City officer or employee of any public utility to remove or alleviate from immediate danger to life or property, to restore existing utility service or to reopen a public thoroughfare to traffic.
  2. The routine maintenance of any existing drainageway such as removing dead or dying vegetation, trash, eroded material, etc.
  3. Routine repair and maintenance of legally established structures, utilities, and roads that do not alter the location or footprint of the structure, utility, or road.
  4. Repair or replacement of structures, utilities, or roads damaged by fire or other cause outside the control of the owner, provided that application for building permits are filed within one year of the damage or destruction and provided that the new structure, utility, or road is within the footprint of the damaged or destroyed structure, utility, or road.
  5. Interior remodeling of a structure so long as the use of the structure is not changed.

(ORD. 1463)

### **32.030 PERMIT REQUIRED**

No person shall be permitted to fill, strip, install pipe, undertake construction, or in any way alter an existing drainageway without first obtaining a permit to do so from the Planning Commission, paying the requisite fee, and otherwise, complying with all applicable provisions of this ordinance. (ORD. 1474)

32.040

#### THE APPLICATION

- A. An application for altering a natural drainageway shall be initiated by the property owner, or the owner's authorized agent, and shall be accompanied by the appropriate fee.
- B. A pre-application conference shall be a prerequisite to the filing of the application.
- C. The application shall include a map of the parcel indicating the nature of the proposed alteration and its relationship to property zones, structures, trees, and any other pertinent features of the parcel.
- D. The City Engineer may, at his discretion, require the map to be prepared by a registered land surveyor to insure accuracy. The site plan map shall be accompanied by a written narrative explaining the reason why the owner wishes to alter the natural drainageway.
- E. All proposed improvements to the drainageway channel or creek which might impact the storm load carrying ability of the drainageway shall be designed by a registered civil engineer.
- F. Applicant shall present evidence in the form of adopted utility master plans or transportation master plans, or findings from a licensed engineer to demonstrate that the development or improvements are consistent with accepted engineering practices. (ORD. 1401)

32.050

#### APPROVAL CRITERIA

The Planning Commission shall make a written finding with respect to the following criteria when approving, approving with conditions, or denying an application for altering a natural drainageway, or for development projects that have natural drainageways within their project boundaries. (ORD. 1474)

- 1. Proposed development submittals shall identify all natural drainageways on the project site. Drainageways that may flow intermittently and may be dry.. during the summer months, shall be so noted. The Storm Drainage Master Plan (1996) shall be used as the basis for determining existence of

drainageways. The exact location of drainageways identified in the Storm Drainage Master Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer.

2. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the Storm Drainage Master Plan (1996) calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.
3. Development should be conducted in a manner that will minimize adverse impact on natural drainageways.
4. Natural drainageways and transition areas should be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because natural drainageways and transition areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Natural vegetation, habitat areas, water quality, storm carrying capacity, hillside stability, typically suffer when these areas are privately held or protected only by easement. (ORD. 1442)

The protected area shall include the drainage channel, creek, or wetlands, and the transition zone. The transition zone shall extend a minimum of 30 feet from the edge of the creek, drainage channel, or wetland in those cases where the land sloping away does so at less than 10 percent. A 25-foot transition shall apply when the drainage channel is determined to be a man-made drainage ditch identified on the Storm Drainage Master Plan,

\$y:

*30' transition*

but not if it is a residential drainage swale as described in Section 32.020(C). When the slope is 10-25 percent, then the transition zone shall extend either: (a) 50 feet or, (b) to the point where the slope tapers off to less than 10 percent for more than 30 feet, whichever is less. If (b) applies, the transition shall be at a minimum of 30 feet.

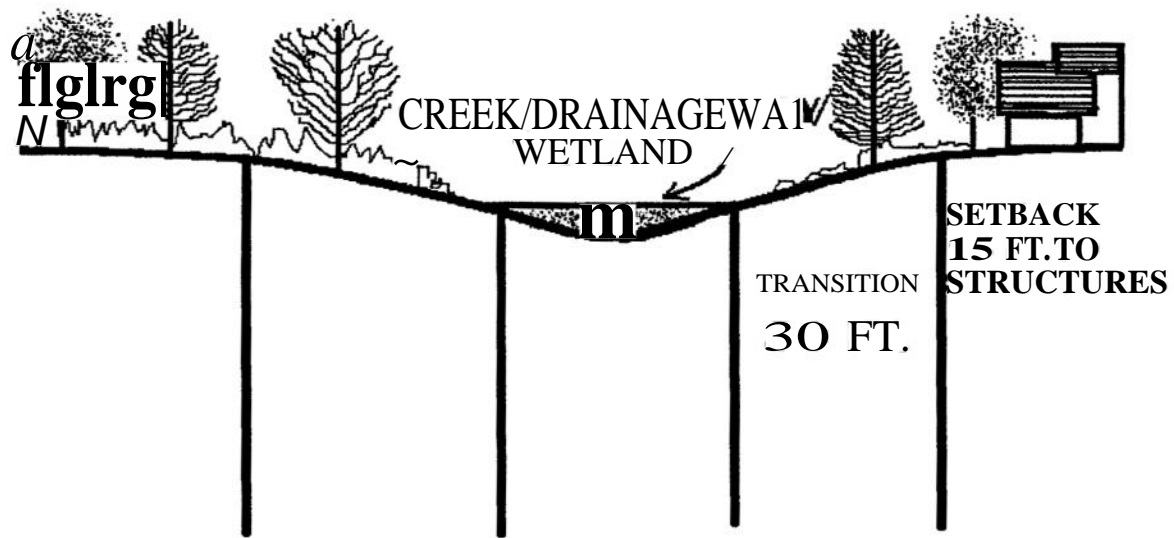
When the slope is over 25 percent and it is determined to be a ravine with clearly delineated edges, then the top of the ravine shall mark the transition area boundary. When the slope is over 25 percent and the drainageway boundary is ill-defined due to variations of grades, slumps, fill areas, etc., the transition boundary shall be either: (a) the point where the slope tapers off to less than 10 percent for more than 50 feet (the minimum transition shall be 30 feet, or (b) when the drainageway does not taper off, then the transition shall be 150 feet. The percentage of grade is determined by the average grade of the first 50 feet from the edge of the wetland or body of water. Alternately, the City Engineer may determine which type of drainageway category applies by site visit in those cases where there are significant variations in grade that defy classification using the above methodology. Distances are measured in plan view (i.e., as shown on the site plan).

Vacant legal residential lots of record established prior to this ordinance which would be restricted from development by these provisions shall be allowed to construct one dwelling unit consistent with the underlying zoning, but must still keep the greatest reasonable distance from the creek or wetland with a minimum distance of 30 feet. Non-residential lots of record may be built upon only after successful application for a Class II variance with minimum 30-foot setback. (ORD. 1463)

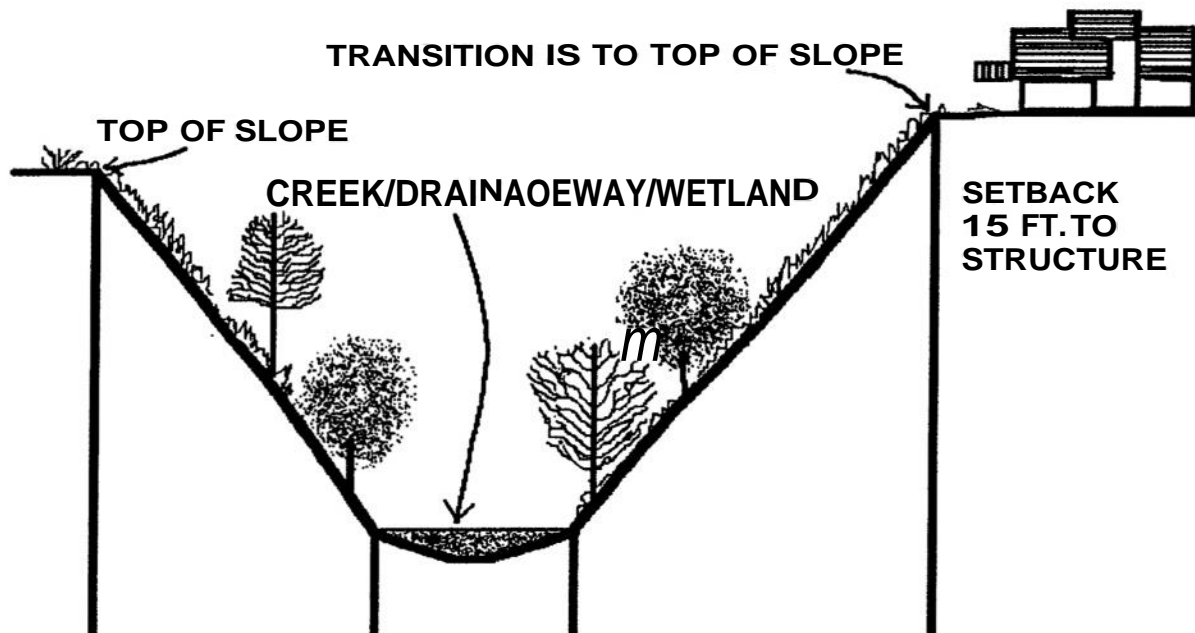
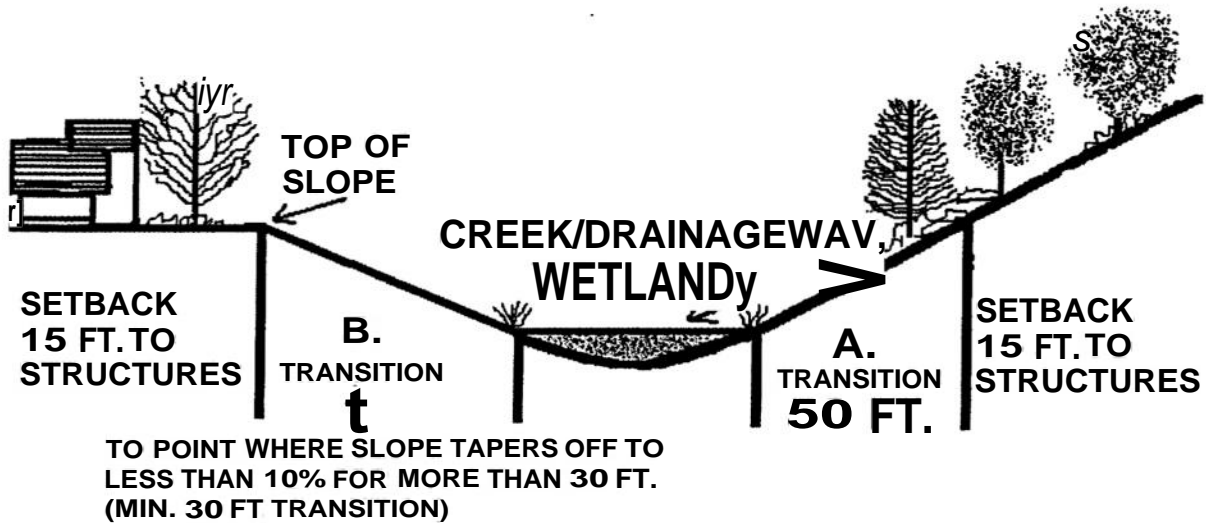
Roads, driveways, utilities, or passive use recreation facilities may be built in the transition zone and across drainageways when no other practical alternative exists. For utility purposes, the determination of what is practical shall be based upon prudent engineering practices so long as it has no

significant negative impact on transition zone and wetlands. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is encouraged. Variances to reduce road widths are encouraged as a way to minimize impacts. Full mitigation and revegetation is required. Seasonal or intermittent streams are those streams, or portions of streams, that flow only in direct response to precipitation. They receive little or no water from springs. They carry no measurable flow for three months of the year. The transition area from the edge of these seasonal streams shall be 15 feet.

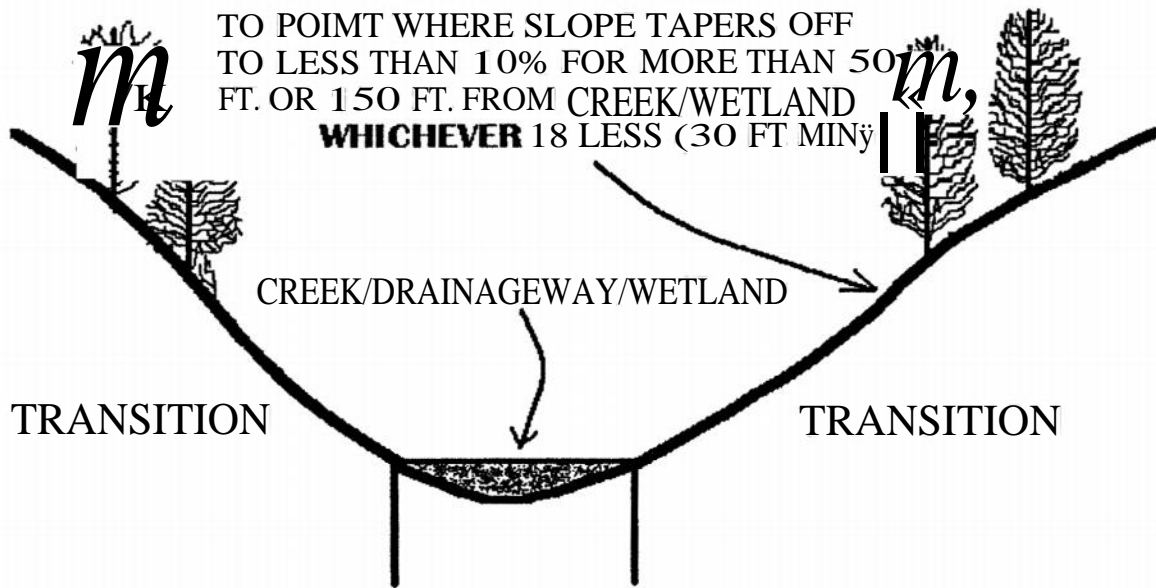
## SLOPE IS UNDER 10%



**DRAINAGEWAY SLOPE IS 10-25%  
TRANSITION A OR B (SEE BELOW)  
SHALL APPLY, WHICHEVER IS LESS**



**WELL DEFINED RAVINE. SLOPES OVER 25%. DISTINCT EDGE**



### ILL-DEFINED DRAINAGEWAY WITH NO DISTINCT EDGE SLOPE IS OVER 25%

5. The transition area (an area that is to be protected) shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals which clearly delineate the extent of the protected area.
6. Consideration should be given to development of passive recreational opportunities on major drainageways.
7. Sound engineering principles in regards to downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin are used. Storm drainage should not be diverted from its natural water course. Interbasin transfers of storm drainage shall not be permitted.
8. A construction fence and/or appropriate erosion control measures, as necessary, shall be established through all phases of construction along the perimeter of the transition area as described in Chapter 30 of this Code.

9. Vegetative improvements to areas within the natural drainageway area may be required if the site is found to be in an unhealthy or disturbed state. "Unhealthy or disturbed" includes those sites that are heavily populated by exotic or non-indigenous species, areas overgrown with invasive plants, or areas that lack the proper balance of canopy trees, understory plants, and soil stabilizing groundcovers. Disturbed areas also include areas which have fill, debris, garbage, old tires, etc., which must be removed. "Vegetative improvements" consist of submitting a plan which calls for removal of non-indigenous, exotic, or invasive species which will be replaced by plant species in a manner to be approved by the City Parks Director and consistent with the purposes of Chapter 30. Once approved, the applicant is responsible for implementing the plan prior to final inspection or the City's acceptance of dedication of the property.
10. Setback area: development projects shall keep all foundation walls and footings at least 15 feet from the edge of the transition area. Decks and structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to three feet are permitted in the setback.  
(ORD. 1401)

#### **32.060 APPEAL**

Any decision by the Planning Commission on a natural drainageway application may be appealed to the City Council as described by Section 99.240(A).  
(ORD. 1474)

#### **32.070 PENALTIES**

Violation of any provision or requirement of this chapter or conditions of approval is a Class A infraction. Each day of violation constitutes a separate offense. In addition, the City retains the authority to require any natural drainageway, which has been altered illegally, to be re-established to its natural condition, including replanting trees, shrubs, etc. and reseeding open areas at the owner's expense. In

addition, the City Attorney may institute any necessary legal proceedings to enforce the provisions of this chapter, or cure any problems resulting from violations of this chapter.

(AMENDED PER ORD. 1474; 9/01)

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## ORDINANCE NO. 1647

### AN ORDINANCE RELATING TO [INSERT ORDINANCE DESCRIPTION HERE - SHOULD BE CAPITALIZED, CALIBRI 12, BOLD]

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are bold underlined.

**WHEREAS**, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

**WHEREAS**, xxx;

**WHEREAS**, xxx; and

**WHEREAS**, xxx

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

#### SECTION 1.

##### 2.030 SPECIFIC WORDS AND TERMS

...

**Conservation easement.** ~~An easement established by the property owner that limits, but does not prohibit, use of the area within the conservation easement. For example, limitations may include tree protection, or protection of a wetland or creek. The property owner owns the land within easement boundaries.~~

...

**Dedication.** The legal conveyance of land, typically from a private property owner to the City. ~~Dedication is typically required of developers where it can be shown that additional land for right of way is needed for adjacent street improvements or public facilities such as foot paths or utility corridors. Dedication is also appropriate for the purpose of protecting a resource area, such as a wetland or forested area, from development or disturbance. Dedication is preferred over establishing a conservation easement since the original property owner no longer has any right to the property and is, therefore, less likely to impact or disturb a resource area.~~

#### SECTION 2.

##### 21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units **only above the first floor of the structure**, as a mixed use in conjunction with commercial development **that utilizes the entire first floor**, ~~only above the first floor of the structure.~~
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.
6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments, subject to the following limitations:
  - a. The use shall constitute no more than 20 percent of the total floor area of the building in which it is located.
  - b. The use shall not include any drive-through facilities.

### SECTION 3.

#### 24.060 AREA OF APPLICATION

A.—Planned unit developments (PUDs) **can be utilized** ~~may be established~~ in all residential, commercial, and industrial districts on lots or parcels of land ~~which are suitable for and of sufficient size~~ **that are a minimum of three acres in size.** ~~to be planned and developed in a manner consistent with the purposes of this section.~~

B.— ~~All qualifying non-residential, all mixed use developments, and all qualifying residential developments of five or more lots shall be developed as PUDs with the Hearings Officer as the decision-making body, while all qualifying residential developments of four or fewer lots shall be developed as a PUD with the Planning Director as the decision-making body, whenever one of the following qualifying criteria apply:~~

- 1.— ~~Any development site composed of more than 25 percent of Type I or Type II lands, as defined by CDC 24.060(C), shall be developed as a PUD.~~
- 2.— ~~More than 20 percent of the dwelling units are to be attached on common wall except in the R-3 and R-2.1 zones. A PUD is not required in R-3 and R-2.1 zones where common wall/multi-family projects are proposed. However, other criteria (such as density transfer, mixed uses, etc.) may trigger a PUD.~~
- 3.— ~~A large area is specifically identified by the Planning Director or Planning Commission as needing greater design flexibility, increased open space, or a wider variety of housing types.~~

## SECTION 4.

### 32.XXX METRO CODE CHAPTER 3.07 URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN - Exempt Uses and Conditioned Activities

Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.

## SECTION 5.

### 32.060 APPROVAL CRITERIA (STANDARD PROCESS)

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

#### A. WRA protection/minimizing impacts.

1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

#### B. Storm water and storm water facilities.

1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:
  - a. The surface water management plan calls for alternate configurations (culverts, piping, etc.); or
  - b. Under CDC 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not clearly channelized.

Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.

2. Public and private storm water detention, storm water treatment facilities and storm water outfall or energy dissipaters (e.g., rip rap) may encroach into the WRA if:
  - a. Accepted engineering practice requires it;

- b. Encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City's Tree Technical Manual and mitigated per CDC 32.090;
- c. There shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and
- d. There are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

3. Roadside storm water conveyance swales and ditches may be extended within rights-of-way located in a WRA. When possible, they shall be located along the side of the road furthest from the water resource. If the conveyance facility must be located along the side of the road closest to the water resource, it shall be located as close to the road/sidewalk as possible and include habitat friendly design features (treatment train, rain gardens, etc.).

4. Storm water detention and/or treatment facilities in the WRA shall be designed without permanent perimeter fencing and shall be landscaped with native vegetation.

5. Access to public storm water detention and/or treatment facilities shall be provided for maintenance purposes. Maintenance driveways shall be constructed to minimum width and use water permeable paving materials. Significant trees, including roots, shall not be disturbed to the degree possible. The encroachment and any tree loss shall be mitigated per CDC 32.090. There shall also be no adverse impacts upon the hydrologic conditions of the site.

~~C. Dedications and easements. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement. Nothing in this section shall prohibit the City from condemning property if:~~

~~1. The property is necessary to serve an important public purpose; and~~

~~2. Alternative means of obtaining the property are unsuccessful.~~

~~...~~

## SECTION 6.

### 55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW

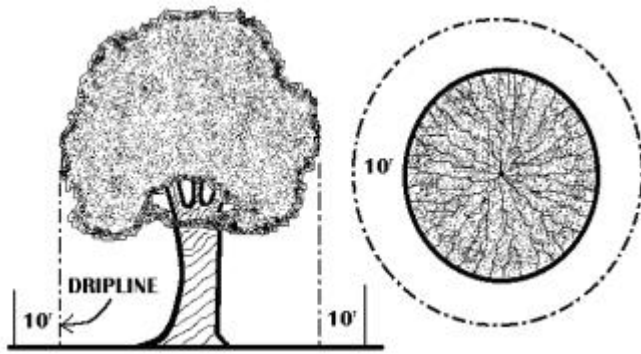
The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application.

A. The provisions of the following chapters shall be met:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
3. Chapter 40 CDC, Building Height Limitations, Exceptions.
4. Chapter 42 CDC, Clear Vision Areas.
5. Chapter 44 CDC, Fences.
6. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
7. Chapter 48 CDC, Access, Egress and Circulation.
8. Chapter 52 CDC, Signs.
9. Chapter 54 CDC, Landscaping.

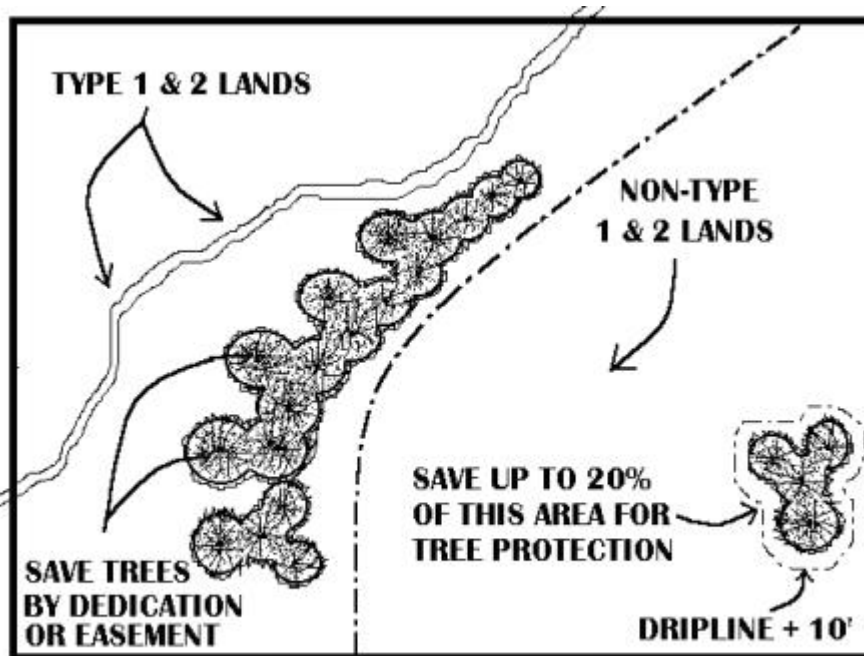
B. Relationship to the natural and physical environment.

1. The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the municipal code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction.
2. All heritage trees, as defined in the municipal code, all trees and clusters of trees ("cluster" is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of subsections (B)(2)(a) through (f) of this section. In cases where there is a difference of opinion on the significance of a tree or tree cluster, the City Arborist's findings shall prevail. It is important to acknowledge that all trees are not significant and, further, that this code section will not necessarily protect all trees deemed significant.
  - a. Non-residential and residential projects on Type I and II lands shall protect all heritage trees and all significant trees and tree clusters by **limiting development in the Protected Area. The Protected Area includes the protected tree, its dripline, and an additional ten (10) feet beyond the dripline, as depicted in the figure below.** ~~either the dedication of these areas or establishing tree conservation easements.~~ Development of Type I and II lands shall require the careful layout of streets, driveways, building pads, lots, and utilities to avoid heritage trees and significant trees and tree clusters, and other natural resources pursuant to this code. The method for delineating the protected trees or tree clusters ("dripline + 10 feet") is explained in subsection (B)(2)(b) of this section. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply.



**PROTECTED AREA = DRIPLINE + 10 FEET**

b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the ~~area~~ **Protected Areas to protect for significant trees and tree clusters that are determined to be significant**, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, ~~either by dedication or easement~~ **by limiting development in the Protected Areas**. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.



### METHOD OF PERCENTAGE CALCULATION

E.G., DRIPLINE + 10 FT. AREA = 2,500 SQ. FT. OR 18% OF TOTAL NON-TYPE I AND II LAND DENSITY CALCULATIONS FOR THIS PARCEL WILL BE BASED ON REMAINING NET SQ. FOOTAGE OF SITE (EXCLUDING THE 2,500 SQ. FT.)

## SECTION 7.

### 85.010 PURPOSE

A. The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources.

B. The purpose is further defined as follows:

1. To improve our sense of neighborhood and community and increase opportunities for socialization.
2. To comply with the State's Transportation Planning Rule (TPR), which seeks to encourage alternate forms of transportation and reduce reliance upon the private automobile and vehicle miles traveled by increasing accessibility within and between subdivisions and neighborhoods. This may be accomplished by designing an easily understood, interconnected pattern of streets, bicycle and foot paths, and accommodation of transit facilities. Cul-de-sacs are to be discouraged unless site conditions dictate otherwise.
3. To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists.

4. To protect natural resource areas such as drainageways, Willamette and Tualatin River greenways, creeks, habitat areas, and wooded areas as required by other provisions of this Code ~~by dedication of those lands to the City, by protective easement, or by the sensitive layout of streets and graded areas so as to minimize their disturbance.~~
5. To protect the natural features and topography by minimizing grading and site disturbance and by requiring proper erosion control techniques.
6. To arrange the lots and streets so as to minimize nuisance conditions such as glare, noise, and vibration.
7. To maximize passive solar heating benefits by orienting the streets on an east-to-west axis which increases exposure to the sun.
8. To arrange for the efficient layout of utilities and infrastructure as well as their extension to adjacent properties in a manner consistent with either adopted utility plans or sound engineering practices.
9. To arrange lots and roads to create reasonably buildable lots and acceptable driveway grades.
10. To encourage the arrangement of increased densities and smaller lots in proximity to needed services and schools as well as transportation corridors so as to reduce vehicle miles traveled and to encourage alternate modes of travel.
11. To encourage design experimentation and creativity.
12. To arrange for the mitigation of impacts generated by new development. These impacts include increased automobile, foot, and bicycle traffic. These impacts are to be mitigated at the developer's cost, by the provision of streets, sidewalks, bicycle and foot paths, and traffic control devices within, contiguous to, and nearby the development site. Similarly, increased demand on local infrastructure such as water lines, sanitary sewer lines, and storm drainage and detention facilities, should be offset by improving existing facilities or providing new ones. ~~Protection of natural resource areas (wetlands, drainageways, greenways, etc.) from impacts associated with increased development shall be provided by dedication or easement as appropriate.~~

## SECTION 8.

85.200

...

### J. Supplemental provisions.

1. Wetland and natural drainageways. Wetlands and natural drainageways shall be protected as required by Chapter 32 CDC, Water Resource Area Protection. Utilities may be routed through the protected corridor as a last resort, but impact mitigation is required.
2. Willamette and Tualatin Greenways. ~~The approval authority may require the dedication to the City or setting aside of greenways which will be open or accessible to the public. Except for trails or paths, such greenways will usually be left in a natural~~

~~condition without improvements. Refer to Chapter 28 CDC for further information on~~  
~~‡The Willamette and Tualatin River Greenways~~ **shall be protected as required by**  
**Chapter 28, Willamette and Tualatin River Protection.**

3. Street trees. Street trees are required as identified in the appropriate section of the municipal code and Chapter 54 CDC.
4. Lighting. To reduce ambient light and glare, high or low pressure sodium light bulbs shall be required for all subdivision street or alley lights. The light shall be shielded so that the light is directed downwards rather than omni-directional.
5. Dedications and exactions. The City may require an applicant to dedicate land and/or construct a public improvement that provides a benefit to property or persons outside the property that is the subject of the application when the exaction is roughly proportional. No exaction shall be imposed unless supported by a determination that the exaction is roughly proportional to the impact of development.
6. Underground utilities. All utilities, such as electrical, telephone, and television cable, that may at times be above ground or overhead shall be buried underground in the case of new development. The exception would be in those cases where the area is substantially built out and adjacent properties have above-ground utilities and where the development site's frontage is under 200 feet and the site is less than one acre. High voltage transmission lines, as classified by Portland General Electric or electric service provider, would also be exempted. Where adjacent future development is expected or imminent, conduits may be required at the direction of the City Engineer. All services shall be underground with the exception of standard above-grade equipment such as some meters, etc.
7. Density requirement. Density shall occur at 70 percent or more of the maximum density allowed by the underlying zoning. These provisions would not apply when density is transferred from Type I and II lands as defined in CDC 02.030. Development of Type I or II lands are exempt from these provisions. Land divisions of three lots or less would also be exempt.
8. Mix requirement. The "mix" rule means that developers shall have no more than 15 percent of the R-2.1 and R-3 development as single-family residential. The intent is that the majority of the site shall be developed as medium high density multi-family housing.
9. Heritage trees/significant tree and tree cluster protection. All heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction. All non-heritage trees and clusters of trees (three or more trees with overlapping dripline; however, native oaks need not have an overlapping dripline) that are considered significant by virtue of their size, type, location, health, or numbers shall be saved pursuant to CDC 55.100(B)(2).

Trees are defined per the municipal code as having a trunk six inches in diameter or 19 inches in circumference at a point five feet above the mean ground level at the base of the trunk.

**SECTION X. Repeal.** West Linn Municipal Code Chapter/Section X.XX [Chapter/Section name] is hereby repealed in its entirety. Any municipal code provisions in conflict with the provisions contained herein are also hereby repealed.

**SECTION X. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION X. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION X. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections [X-Y]) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION X. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage. **OR** This ordinance shall take effect on Month day, year. **OR** Conditions in the City of West Linn are such that this Ordinance is necessary for the immediate preservation of the public health, peace, welfare and safety. An emergency is hereby declared to exist because **[statement of explanation regarding the basis for the declaration of emergency]**; therefore, this Ordinance shall be in full force and effect after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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RUSSELL B. AXELROD, MAYOR

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KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

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CITY ATTORNEY

**Spir, Peter**

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**From:** Lori Wente [REDACTED]  
**Sent:** Tuesday, May 17, 2016 1:56 PM  
**To:** Spir, Peter  
**Subject:** Proposed ordinance changes

Mr. Spir,

Will the proposed changes in conservation easements affect the setbacks and protections on Mr. Parkers property on Old River Rd.? Or are they simply cleaning up the legal terminology, and current tree and water resource protections will not change?

Neighbors are concerned that the changes will allow him to add homesites by building closer to the now protected areas. I would appreciate any clarifications you can give me.

Thank you,  
Lori Wente

Sent from my iPad

**Boyd, John**

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**From:** [REDACTED]  
**Sent:** Wednesday, May 18, 2016 1:48 PM  
**To:** Boyd, John  
**Subject:** public hearing notice, CDC-16-01

Mr. Boyd,

We received a notice about a public hearing on June 1st for the adoption of Ordinance Number 1647. I've read the notice and looked it up on the city website, but can't quite figure out if it addresses specific projects or is simply a list of proposed amendments. Can you clarify this for me? Thanks.

Jeff Kraus

**Boyd, John**

---

**From:** Jill Sherman [REDACTED]  
**Sent:** Saturday, May 14, 2016 9:06 PM  
**To:** Boyd, John  
**Subject:** Ordinance #1647

Hello,

I received a letter today, notifying me of possible impacts on my property from this ordinance. I am leaving town for a month and won't be at the meeting.

Could you please explain the possible impact for my property at [REDACTED]? I went online but nothing was very clear there.

Thanks for the help.

Jill Sherman

**Boyd, John**

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**From:** Brigham Baker <brigham.baker@cityofseaside.com>  
**Sent:** Saturday, May 14, 2016 5:34 PM  
**To:** Boyd, John  
**Subject:** Swiftshore and Willamette Falls Drive Notice

John-

I received a letter in the mail titled Public Hearing CDC-16-01 and I was wondering what it meant? I live at 25140 Swiftshore Dr which is right on the corner of Will. Falls Drive and Swiftshore and I read all of the literature with it and it looks like something is going to happen with trees in the area; I assume the ones that area at the top of our property line bordering Will Falls Drive. If this is not, I have no idea what it means. I know you guys probably have a great plan in place I was just curious what it was. Thank you for your help and time. If it is easier, feel free to call me at 503-412-9413

**Boyd, John**

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**From:** Lisa Clifton <[REDACTED]>  
**Sent:** Monday, May 16, 2016 8:56 PM  
**To:** Boyd, John  
**Subject:** Ordinance Number 1647

Hello John,

I just received the letter from the City of WL regarding Ordinance Number 1647. Can you please send me a direct link to the document/proposed changes to the CDC? I could not access it when I typed it in.

Thanks!  
Lisa Clifton  
3765 Ridgewood Way

**Boyd, John**

---

**From:** Beverly J Kile [REDACTED]  
**Sent:** Tuesday, May 17, 2016 12:31 PM  
**To:** Boyd, John  
**Subject:** [SPAM] Notice-Public Hearing CDC-16-01

**Importance:** Low

I received a notice in the mail concerning Public Hearing CDC-16-01 which indicates that the adoption of Ordinance 1647 may affect the permissible uses of my property.

I've reviewed the information available on the website, but simply don't have days available to determine how or if this proposal actually affects me or my residential property located at 2979 Mark Lane.

Please enlighten me.

Thank you.

Beverly J Kile  
TCL Technologies, LLC  
[beverly@tcltechnologies.com](mailto:beverly@tcltechnologies.com)  
503.656.2609



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**Boyd, John**

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**From:** Garth Engle [REDACTED]  
**Sent:** Tuesday, May 17, 2016 10:56 AM  
**To:** Boyd, John  
**Cc:** Mollie Plocher  
**Subject:** inquiry re: Ordinance Number 1647

Good morning John,

We received a public hearing notice re: Ordinance Number 1647. We own one of the older houses on Willamette Falls Drive (address below) and currently have our business here. I went online and read the information pertaining to the new amendment, but I still need clarification.

I am hoping you could specifically help me understand how the changes might affect our current situation. This might be specific to the proposed West Linn revitalization plans, and may provide guidance only if we were to make future changes to our property? I am hoping you can shed some light specific to our building.

If it would be more helpful to discuss in person, I can come into your offices. Thanks for your help.

Garth Engle

Garth Engle | 2Hemi.com | (503) 709-6131 mobile

4815 Willamette Falls Drive  
West Linn, OR 97068  
(503) 699-5838 office  
[www.2hemi.com](http://www.2hemi.com)



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Community Services Division

Portland Metro Regional Solutions Center

1600 SW Fourth Ave., Suite 109

Portland, Oregon 97201

503.725..2183

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

17 May 2016

John Boyd, Interim Community Development Director  
City of West Linn  
22500 Salamo Road  
West Linn, OR 97068



RE: West Linn PAPA 002-16; local file # CDC 16-01

sent via email

Dear Mr. Boyd,

We received the City's proposal to amend the Community Development Code that removes easements and dedication requirements for the Water Resource Areas, Greenways and tree protection areas, adds an exemption to the WRA zone as well as limiting Planned Unit Developments to 3 acres or more. The department has some concerns regarding the proposed changes and its effect on Goal 15: the Willamette Greenway. The department has not received information from Metro about how this proposal might affect the implementation of the city's Title 13 program. Since Title 13 serves as the standard for meeting Statewide Land Use Goal 5 for riparian areas and wildlife habitat, an amendment that conflicts with Title 13 may be inconsistent with Goal 5.

It appears that the City is eliminating all conservation easements and references to them by striking them out in the definitions sections and all further references to them in the development code. The City may want to reconsider eliminating the option of easements as a tool for protecting resource areas. In some cases easements provide a means for land owners to meet local protection standards in a way that works best for them. At a minimum the department recommends leaving the definition for instances where under a previous development review a conservation easement was part of the permit conditions.

By removing a protection tool, conservation easements, for access to the Willamette Greenway the City will need to make Goal 15 findings addressing 660-015-0005(F)(3) a-f showing how they meet goal 15 with this amendment.

Regarding the proposal to eliminate planned unit development options for parcels less than 3 acres in size, the department would note that, given the small size of most remaining parcels within the Metro Urban Growth Boundary that are within the city already or expected to annex in the future, this proposal would effectively eliminate any flexibility and creativity that would allow the city to provide for its share of "needed housing" as defined in ORS 197.303. The department would recommend, as an alternative to PUDs for smaller low-density zoned parcels, that the city incorporate an alternative method of allowing lot size flexibility in

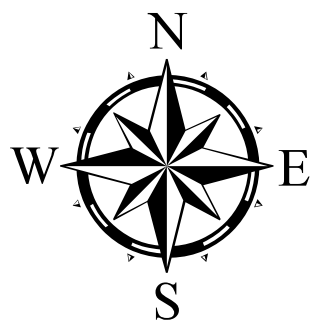
situations involving parcels less than 3 acres. For example, the city's R-10 zoning district could have an allowed density of one unit per 10,000 square feet but a minimum lot size of 7,000 square feet, so that a three lot minor partition on a 30,000 square foot lot could contain two 7,000 square foot lots and one 16,000 square foot lot, or two 9,000 square foot lots and one 12,000 square foot lot. This would allow some flexibility for creation of land divisions that better suit unique characteristics of a parcel and its surroundings. For higher density parcels (duplex densities and higher) the city should, as an alternative to PUDs, allow more flexibility in terms of minimum lot size and building type.

Please include this letter in the record. Let me know if you have any questions.

Regards,

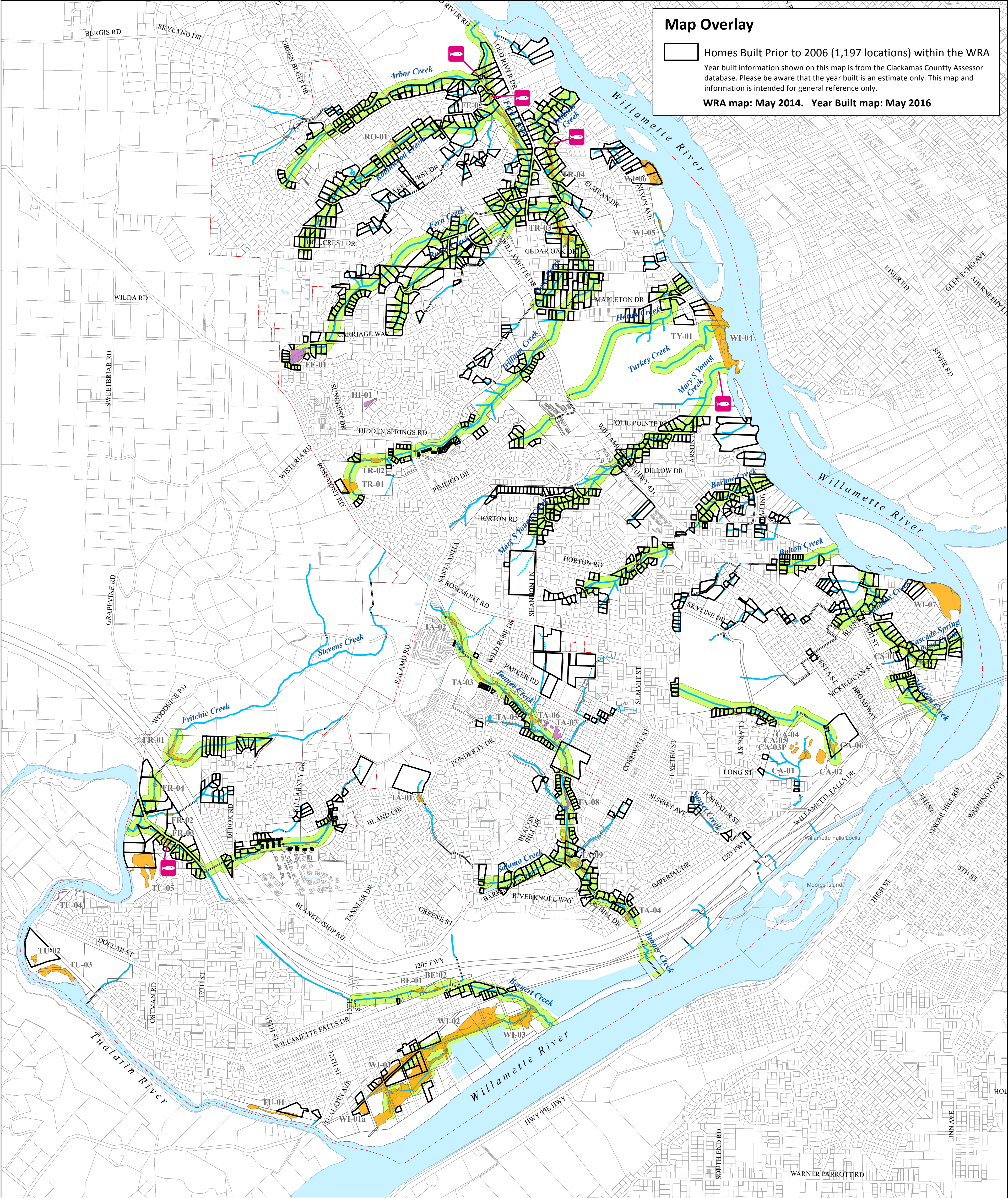
Jennifer Donnelly  
Regional Representative

cc: Amanda Punton, DLCD  
Gordon Howard, DLCD  
Tim O'Brien, Metro



# Water Resource Area (WRA) Map

## HIGHLIGHTING HOMES BUILT PRIOR TO 2006



Map Overlay

Homes Built Prior to 2006 (1,197 locations) within the WRA

Year built information shown on this map is from the Clackamas County Assessor database. Please be aware that the year built is an estimate only. This map and information is intended for general reference only.

WRA map: May 2014. Year Built map: May 2016

Map Developed by West Linn Planning Department and GIS

MAP OVERLAYS:

\*Streams, Pipe Segments, Other Open Ditches, and Significant Riparian Corridors  
Map Source: "Significant Riparian Corridors West Linn Goal 5 Inventory, January 2007"  
Map publication date: 1/2/2007.  
Modified Streams and added Ephemeral Streams, April 2013, July 2013, September 2013

\*\*Locally Significant Wetlands and Other Wetlands  
Map Source: "Local Wetland Inventory, West Linn Goal 5 Inventory, January 2005"  
Map publication date: 6/5/2006.

\*\*\*Taxlot Base Map provided by Clackamas County GIS, 2013, updated with 2015 taxlots May 2016

WETLANDS/GOAL 5 DISCLAIMER (DSL STANDARD):  
Information shown on this map is for planning purposes only and wetland information is subject to change. There may be unmapped wetlands subject to regulation and all wetland boundary mapping is approximate. In all cases, actual field conditions determine wetland boundaries. You are advised to contact the Oregon Division of State Lands and the U.S. Army Corps of Engineers with any regulatory questions.

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

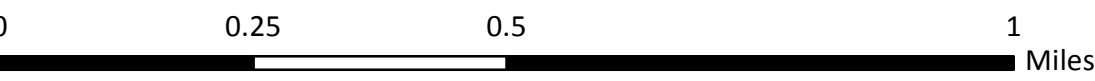
Goal 5 Significant Riparian Corridors\*

- Significant Riparian Corridors
- Streams
- Ephemeral Stream
- Piped Segments

Upper Stream Reach of Fish Inventory 2003/2004 Survey

Goal 5 Wetland Inventory\*\*

- Locally Significant Wetlands, DSL 2005
- Other Wetlands, DSL 2005
- Specific Wetland Identifier
- Rivers & Ponds
- West Linn City Limits
- Taxlot Base Map\*\*\*



Map Created: 5/31/2016

LOC: G:\PROJECTS\GIS\GOALS\_2006\SIGRIPARIAN\SIGRIPARIAN\_WETLANDS\_201406V6\_FINAL\_OVERLAYWITHHOMESBUILTPTORIO2006.MXD | KAHA  
ORIGINAL MAP WAS CREATED 6/6/2014 (VERSION 6), YEAR BUILT OVERLAY MAY 2016



Over the past 10 years as both a private citizen and as a planning commissioner, I have come across several areas in our code that are problematic. Either through oversight or unintended consequences, these areas have left the city and its citizens vulnerable

Each of the following changes are minor in implementation, but far reaching in their impact. In this document, I would like to describe each of the changes, discuss why they are important and look at the pros and cons. Quick action on these can prevent significant problems.

I want to discuss three areas. Trail Design Review, Water Resource Areas, and PUD's

### **Trail Design Review**

Attempts to build trails over the past 10 years have resulted in strong push back from the community. The first Master trails Plan hearing had 200 people testifying against vs. 1 in favor. NA meeting that discuss trails have had a similar turnout. While the idea of trails is usually supported, the people affected by the trail have strong concerns about security, loss of property values, maintenance, and loss of privacy.

Our current code allows the city to plan and construct trails through private property with only a Design Review by the Planning Director. The decision can be called up by the City Council, but current code would limit that review to "on the record" which could only address errors in the decision process.

A major trail could affect dozens of homes without requiring a public hearing. Requiring a Design Review II would place the hearing in front of the Planning Commission where at least citizens could plead their case in a public forum.

To accomplish this, modify 56.020.C.2 to

*New trails, if over 200 feet long (see CDC 56.025) that do not cross private property*

and add 56.020.D.6 as

*New trails that cross private property.*

### **Water Resource Area Exactions**

Chapter 32 establishes protection around streams and riparian areas. The chapter addresses our requirement to respond to Metro's Title 13 this addresses State Goal 5. The purpose of the goal and title is to protect our stream and natural areas. Chapter 28 has a similar purpose but only applies to the Willamette and Tualatin rivers.

WRA code balances property rights against the rights of the city to protect resources that belong to everyone. The "police power of the state" allows the city to set speed limits, create building codes and in general, impose restrictions to protect the public. In this case, the quality of the water flowing through private property is being protected by establishing setbacks to buffer riparian areas.

Our code does an excellent job of describing these setbacks, as well as providing a method for more sophisticated decisions based on the work of riparian experts.

Chapter 32, however goes further than it should, when it implies that the land protected by the setbacks should be placed in a conservation easement or deeded to the city. The stream is already protected, there is no justification for further confiscation.

Section 32.060.C of the code states that the city will request dedication of WRA's when it would serve a public purpose. It further implies that property might be condemned if it is not dedicated. This section is included solely to intimidate the applicant into giving away title to the land in order to get the permit. The city's right to condemn for public purpose exists independent of this code. There is no need to mention it here.

If people can be intimidated into offering the land, the city does not have to show nexus and proportionality as they would with an exaction.

Section 32.060.C should be removed in its entirety.

#### **Water Resource Area Compliance with Metro**

One purpose of Chapter 32 is to provide compliance with State Goal 5. Goal 5 is designed to protect natural resources, scenic and historic areas, and open spaces. Because we are part of Metro, we also must comply with Metro's requirements in this area. They are called Metro Title 13 — Nature in Neighborhoods. The state has detailed requirements for how cities conduct the creation of their plans for compliance. These are spelled out in Oregon Administrative Rules. We are concerned with OAR 660 Division 23.

A great deal of thought went into this process. When a city wants to pass code that protects the environment they are required to inventory all the potential land that will be protected and then do an Economic, Social, Environmental and Energy (ESEE) study. This study informs the next step which is a decision to Allow, Limit, or Prohibit (ALP) uses.

The ALP decision then becomes the basis for writing the code.

West Linn did not do an ESEE or ALP. Fortunately, the OAR provides a "safe harbor" clause OAR-023-090(8).

While we are technically in compliance, the extensive work done by Metro on their ESEE and ALP is worth a second look. Metro even created a model ordinance that cities in Metro could use that would put them into compliance. The essential difference between chapter 32 and the Metro model ordinance comes down to one element of the ALP.

*Metro modifies its limit decision slightly to the extent that it affects owners of existing, developed residential properties. The modification allows such owners to undertake in the future any activity that they can currently undertake without having to obtain a land use approval or a building, grading, or tree removal permit from their city or county. The environmental consequences of imposing new limits on such activities would be to prevent certain activities that might harm the ecological functions being provided by such*

*areas. However, the most harm done to habitat is due to significant property development, and the properties affected by this decision are already developed with residences. Thus, the environmental benefit of imposing new limits on such activities is relatively small. On the other hand, imposing any new limits on activities that homeowners can undertake today without having to seek permission could result in thousands of homeowners being confused regarding the new rules, resenting the new limits on their liberty to use their properties, and would thereby undermine Metro's efforts to encourage behavior that would benefit habitat areas in ways that regulations cannot. The Council therefore finds that imposing new limits on activities that homeowners can undertake today without having to obtain a permit would have significant detrimental social consequences that are not outweighed by the beneficial environmental consequences of imposing such new limits.*

Metro created a model ordinance for cities within Metro. The ALP was expressed in the model ordinance as:

*Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.*

This was included in our code when it passed the planning commission in 2013, but deleted by staff at the city council hearing. The city council did not request its deletion.

If we agree with the Metro ALP rationale, we should add the above language under Exemptions as 32.040.G

## **PUDs**

Planned Urban developments (PUD) provide an alternative that can allow a developer to use more creativity in designing a large development. Often, the creation of common amenities can create the same quality of life that we attempt to protect in our density requirements. In exchange for relaxed setbacks a higher density, the developer may create a park or open space that can be used by all citizens.

Unfortunately, the code can be used as a loophole to circumvent the CDC on smaller lots. By declaring a small parcel a PUD, the developer may qualify for higher density without providing a truly useable open space. The result of this is that the city gets infill development that does not fit the neighborhood and inherits the liability to maintain a useless parcel of isolated land.

One solution to this is to establish a minimum size for a PUD. many cities set the minimum at 3 acres.

To accomplish this, add 24.100.B.5. *The minimum overall size of a PUD must be 3 acres.*

For those who would like to read more about what I have discussed, I suggest the following links:

For OAR rules

[http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_660/660\\_023.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_023.html)

For the Metro Model Ordinance

[http://www.oregonmetro.gov/sites/default/files/title\\_13\\_model\\_ordinance.pdf](http://www.oregonmetro.gov/sites/default/files/title_13_model_ordinance.pdf)

For the entire ESEE and ALP that Metro developed

[https://westlinnoregon.gov/sites/default/files/fileattachments/planning/page/7321/metro\\_council\\_-\\_metro\\_legislation\\_-\\_orditthe\\_urban\\_growth\\_management\\_functional\\_plan\\_relating\\_to\\_nature\\_in\\_neighborhoods.pdf](https://westlinnoregon.gov/sites/default/files/fileattachments/planning/page/7321/metro_council_-_metro_legislation_-_orditthe_urban_growth_management_functional_plan_relating_to_nature_in_neighborhoods.pdf)