

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

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 24.060 is amended as follows:

**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. 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.

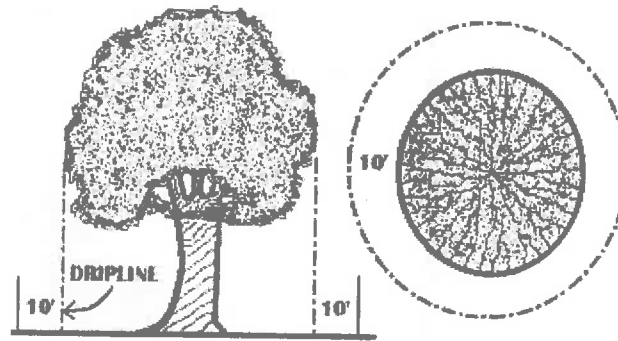
9. Chapter 54 CDC, Landscaping.

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.

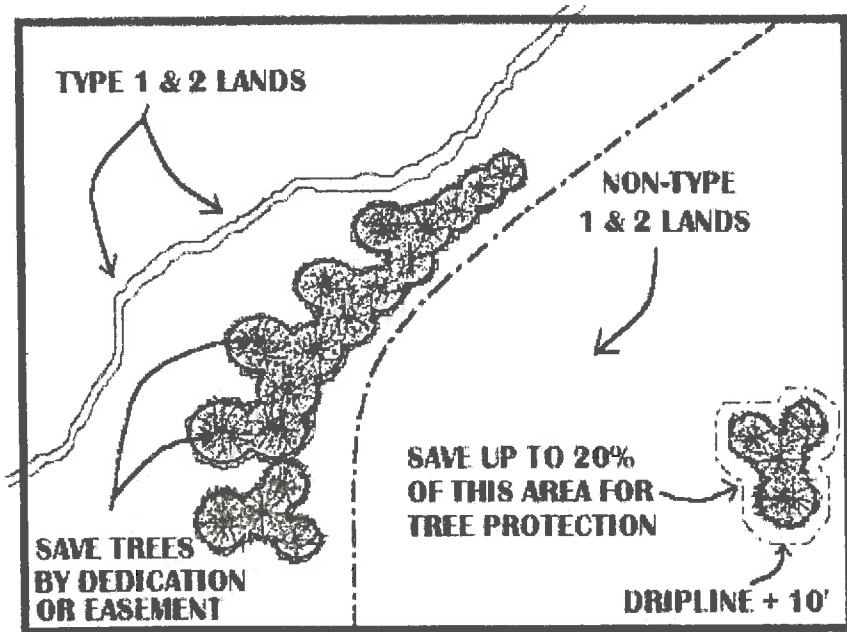
2. All heritage trees, as defined in the municipal code, all trees and clusters of trees ("cluster" is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in 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.

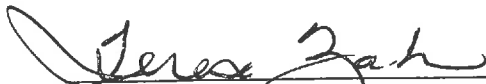
**SECTION 10. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions 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.

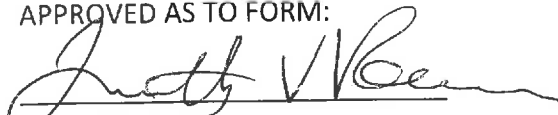
**SECTION 12. Effective Date.** This ordinance shall take effect on the 30<sup>th</sup> day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 8 day of August, 2016, and duly PASSED and ADOPTED this 8 day of August, 2016.

  
RUSSELL B. AXELROD, MAYOR

  
KATHY MOLLUSKY, CITY RECORDER  
TERESA ZAK, Deputy City Recorder

APPROVED AS TO FORM:

  
CITY ATTORNEY