

ORDINANCE NO. 1655

AN ORDINANCE RELATING TO EATING AND DRINKING ESTABLISHMENTS; TEMPORARY USES; CONDITIONAL USES; LEGISLATIVE PROCEDURES FOR DECISION MAKING; QUASI-JUDICIAL APPROVAL AUTHORITIES; AND AMENDING COMMUNITY DEVELOPMENT CODE CHAPTERS 2, 19, 21, 22, 35, 59, 60, 98 and 99.

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 above referenced grant of power has been broadly interpreted to allow local governments to decide upon the scope of their powers in their charter so that specific statutory authorization is not required for a city to exercise its powers, LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978);

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 a work session on November 2, 2016, and

WHEREAS, the Planning Commission held a public hearing on November 16, 2016, and closed the public hearing and deliberated to a final recommendation for the City Council on ____ __, 2016.

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

SECTION 1. Amendment. West Linn Community Development Code ("CDC") Section 2.030 is amended to read as follows:

...

Eating and drinking establishments. Establishments or places of business **that are not drive-through restaurants and** primarily ~~engage~~ **engaged** in the sale of prepared **or produced** food and beverages for on-premises consumption, **on-premises sale, or take out service.** **On-premises sales do not include sales to secondary retailers or wholesalers.** Typical uses include, **but are not limited to:** fast ~~order~~ food establishments, **restaurants, delicatessens, brew-pubs, coffee shops,** ~~with and without drive-up facilities and sit-down eating establishments~~, taverns, bars and lounges.

...

SECTION 2. Amendment. West Linn CDC Section 19.030 is amended to read as follows:

19.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Agricultural sales.
2. Agricultural services.
3. Animal sales and services, grooming.
4. Building maintenance services.
5. Business equipment sales and services.
6. Business support services.
7. Communications services.
8. Consumer repair services.
9. Convenience sales and personal services.
10. Eating and drinking establishments.

11. Drive-through restaurants.

- ~~11.~~ Family day care.
- ~~12.~~ Financial, insurance and real estate services.
- ~~13.~~ Food and beverage retail sales.
- ~~14.~~ General retail services.
- ~~15.~~ Hotel/motel, including those operating as extended hour businesses.
- ~~16.~~ Laundry services.
- ~~17.~~ Senior center.
- ~~18.~~ Medical and dental services.
- ~~19.~~ Parking facilities.
- ~~20.~~ Participant sports and recreation, indoor.
- ~~21.~~ Personal service facilities.
- ~~22.~~ Professional and administrative services.
- ~~23.~~ Research services.
- ~~24.~~ Utilities, minor.
- ~~25.~~ Cultural exhibits and library services.

~~26.~~ Extended-hour businesses that do not include the construction of a new building or expansion of an existing structure.

~~27.~~ Transportation facilities (Type I).

~~28.~~ Lodge, fraternal, community center, and civic assembly within the commercial districts along Highway 43, Salamo Road or Blankenship Road.

~~29.~~ Religious institutions within the commercial districts along Highway 43, Salamo Road, or Blankenship Road.

SECTION 3. Amendment. West Linn Community Development Code (“CDC”) Section 21.050 is amended to read 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.
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 that do not~~ 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. (Ord. 1226, 1988; Ord. 1408, 1998; Ord. 1442, 1999; Ord. 1565, 2008; Ord. 1647 § 2, 2016)~~

SECTION 4. Amendment. West Linn Community Development Code (“CDC”) Section 22.050 is amended to read as follows:

22.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

A. The following uses are allowed on a limited basis as part of the development of this district when developed concurrently with or after the primary uses, subject to the provisions of subsection B of this section:

1. Convenience sales and personal services.
2. Banks.

3. Medical and dental services.
4. **Eating and drinking establishments.** ~~Bars and cocktail lounges in conjunction with a restaurant.~~
5. **Drive through restaurants.**
- ~~6.5.~~ Drive through window service **for all uses allowed in this subsection** in conjunction with **uses the limitations** in subsection B of this section ~~and including restaurants may be allowed.~~

B. Limitations and conditions on the development of the uses in subsection A of this section shall be as follows:

1. The total combined floor area occupied by all the listed uses shall not exceed 10 percent of the total floor area occupied by the permitted use. Formula: 0.10 times permitted floor area equals listed use floor area.
2. All listed uses shall be located, arranged and integrated within the development to serve primarily the shopping and service needs of employees of the district.
3. No outdoor storage of materials associated with the listed use shall be allowed.
4. Uses shall not be of a type or intensity which produces odor, smoke, fumes, noise, glare, heat or vibrations which are incompatible with associated permitted uses in the area.
5. All listed uses shall comply with the dimensional and development standards under CDC 22.070 and 22.080.

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

1. Sign, subject to the provisions of Chapter 52 CDC.
2. Temporary use, subject to the provisions of Chapter 35 CDC.
3. Water dependent uses, subject to the provisions of Chapters 28 and 34 CDC.
4. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.

SECTION 5. Amendment. West Linn Community Development Code ("CDC") Section 35.050 is amended to read as follows:

35.050 DURATION OF TEMPORARY USES

Temporary uses may be allowed for ~~up to 60 days~~ **no more than one year**, with one additional renewal for no greater duration than the original approval, except as follows:

A. Construction trailers and associated parking and staging areas beyond the site approved for the associated development may be allowed for the duration of active construction projects.

B. Drop boxes, structures serving a similar function, and trailers authorized under CDC 35.030(A) will be allowed indefinitely, but they will be revoked if they are unused or abandoned for a period of 60 days or if material is not contained by the drop box or trailer and allowed to accumulate outside of the drop box, structure, or trailer.

Upon revocation of the approval, the applicant shall be responsible for removing the drop box, structure, or trailer unless it is abandoned; in that case, removal shall be the responsibility of the property owner.

~~C. Temporary uses approved by the City Council pursuant to CDC 99.060(C)(1)(d) shall be for up to one year with one possible renewal of up to one year, for a maximum of two years.~~

SECTION 6. Amendment. West Linn CDC Section 59.060 is amended to read as follows:

59.060 CONDITIONAL USES

Only the following conditional uses are allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Uses:

1. Children's day care center.
2. Community center for civic or cultural events.
3. Small appliance repair services.
4. Governmental offices.
5. Religious institution.
6. Senior or community center.
7. Public support and public safety facilities, including public parking lots.
8. Nursery.
9. Parks and open space.
10. Boutiques.
11. Small business equipment sales and service.
12. Craft shops.
13. Cultural exhibits and library services.

14. Eating and drinking establishments ~~except no drive-through service.~~
15. Retail sales and service, except no drive-through service.
16. Professional and administrative services.
17. Medical or dental offices or clinics.
18. Financial, insurance, and real estate services, except no drive-through service.

SECTION 7. Amendment. West Linn CDC Section 60.070 is amended to read as follows:

60.070 APPROVAL STANDARDS AND CONDITIONS

A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide:
 - a. Adequate area for the needs of the proposed use; and
 - b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will ~~provide for~~ produce a facility that ~~provides is consistent with the an~~ overall benefit to needs of the City community.
4. Adequate public facilities will be available to provide service to the property at the time of occupancy.
5. The applicable requirements of the zone are met, except as modified by this chapter.
6. The supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are met.
7. The use will comply with the applicable policies of the Comprehensive Plan.

...

SECTION 8. New Section. West Linn CDC Section 98.035 is added to read as follows:

98.035 CITIZEN ENGAGEMENT IN LEGISLATIVE CHANGES

- A. **Purpose.** The purpose of a legislative working group is to provide a forum to discuss different points of view on a proposed land use legislative change.
- B. **Creation of working group.** New and modified land use legislative changes to this code will be developed by a representative working group of citizens and assisted by planning staff, unless the City Council determines that a working group is not necessary.
1. **After receiving direction from the City Council, the Committee for Citizen Involvement shall recommend a purpose, goals, and a list of appointees for each proposed working group to the City Council for approval.**
 2. **The working group will contain interested stakeholders, a member of the Planning Commission, and a staff representative.**
 3. **The working group shall comply with WLMC 2.060 regarding the selection of officers and the other generally applicable citizen advisory group provisions.**
- C. **Conduct of working group meetings.**
1. **Staff will prepare a suggested draft of the proposed changes. This draft will provide a starting point for discussion and education.**
 2. **The working group will use the draft as a starting point for discussion, but then reconcile the implications of the draft with the goals established by the Council for the working group.**
 3. **After each working group meeting staff will incorporate approved changes and prepare an updated working draft.**
 4. **All working group meetings will be public meetings with an opportunity for anyone in attendance to provide public comment. The meetings and minutes will be conducted in accordance with the Council Rules, West Linn Municipal Code, City Charter, and State law.**
 5. **In the event a consensus cannot be reached on an issue, the working group will prepare alternatives. Each alternative and its rationale will be presented to the Planning Commission.**
 6. **Prior to submission to the Planning Commission, proposed code changes will be submitted to the city attorney for review. The review should be limited to the**

identification of areas where the proposed language conflicts with other parts of this code, state law or federal law. As an alternative, legal counsel may attend and advise during the creation of the draft.

D. Presentation to the Planning Commission. When the working group reaches consensus that the code changes are ready, the proposed code changes will be presented by the Director to the Planning Commission pursuant to Section 98.040(A)(2). If the working group fails to reach a consensus on the code changes, all proposals will be presented to the Planning Commission. Pursuant to CDC 98.110(A), the Planning Commission shall recommend approval, denial, or approval with modifications to the Council.

SECTION 9. Amendment. West Linn CDC Section 99.060 is amended to read as follows:

99.060 APPROVAL AUTHORITY

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

A. Planning Director authority. The Planning Director shall have the authority to:

1. Approve, deny, or approve with conditions the following applications:
 - a. A temporary use or structure application for a period **no more than 120 days, including all extensions of up to one year** (Chapter 35 CDC), **and not associated with another land use approval not including uses allowed through another land use approval process.**
 - b. A home occupation application (Chapter 37 CDC).
 - c. Access restrictions (Chapter 48 CDC).
 - d. A minor partition (Chapter 85 CDC).
 - e. A final subdivision plat (Chapter 89 CDC).
 - f. A final partition plat (Chapter 89 CDC).
 - g. A lot line adjustment (Chapter 85 CDC).
 - h. Enlargement or alteration of a non-conforming single-family structure containing a conforming use (Chapter 66 CDC).
 - i. Decide applications for a determination of unlisted parking requirements (Chapter 46 CDC).

- j. A minor alteration to a historic landmark or a structure in the Historic District (Chapter 25 CDC).
 - k. Parks Design Review, Class I (Chapter 56 CDC).
 - l. Design Review, Class I (Chapter 55 CDC).
 - m. A sign application (Chapter 52 CDC).
 - n. Sidewalk use permit (Chapter 53 CDC).
 - o. Flood management area permit (Chapter 27 CDC).
 - p. *Repealed by Ord. 1622.*
 - q. Tualatin River protection permit (Chapter 28 CDC).
 - r. Water resource area permit (Chapter 32 CDC).
 - s. Class I variance (Chapter 75 CDC).
 - t. Willamette River Greenway permit (Chapter 28 CDC).
 - u. Extensions of approval when the Planning Director acted as the initial decision-making authority.
 - v. Class I historic design review (Chapter 25 CDC).
 - w. A demolition permit for a non-contributing or not in period primary structure or an accessory structure (Chapter 25 CDC).
2. Approve a use permitted under prescribed conditions provided all of the conditions are satisfied.
 3. Make initial interpretations of the provisions of the code.
 4. Make the initial determination regarding the status of the following:
 - a. Non-conforming structure (Chapter 66 CDC).
 - b. Non-conforming structure involving a non-conforming use (Chapter 65 CDC).
 - c. Non-conforming use of land (Chapter 67 CDC).

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

1. Make a recommendation to approve, deny, or approve with conditions to the Council:
 - a. A quasi-judicial Comprehensive Plan Map amendment (Chapter 105 CDC).
 - b. A quasi-judicial zone change application pursuant to Chapter 105 CDC, excluding applications requesting the designation or removal of a designation for a historic resource.
2. Approve, deny, or approve with conditions the following applications:
 - a. A temporary use or structure application (Chapter 35 CDC) for a minimum of 121 days to no more than one year, not or an application associated with another land use approval including uses allowed through another land use approval process.
 - b. A conditional use (Chapter 60 CDC).
 - c. Enlargement of a non-conforming use or alteration for a structure containing a non-conforming use (Chapter 66 CDC).
 - d. Enlargement or alteration of a non-single-family residential non-conforming use (Chapter 66 CDC).
 - e. Class II variance or special waiver (Chapter 75 CDC).
 - f. Subdivision (Chapter 85 CDC).
 - g. Planned unit development (Chapter 24 CDC).
 - h. Design review, Class II (Chapter 55 CDC).
 - i. Parks design review, Class II (Chapter 56 CDC).
 - j. Any matter not specifically assigned to another approval authority.
 - k. Extensions of approval when the Planning Commission acted as the initial decision-making authority.
3. Revoke or modify an approval as provided by CDC 99.330 for any application approved by the Planning Commission or Planning Director.
4. Make an unlisted use determination.
5. An appeal of the Planning Director's interpretation of the code pursuant to CDC 01.060.

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

1. Approve, deny, or approve with conditions applications for the following development applications:
 - a. A quasi-judicial Comprehensive Plan Map amendment (Chapter 105 CDC).
 - b. A quasi-judicial zone change application pursuant to Chapter 105 CDC.
 - c. Boundary change proposals (Chapter 81 CDC).
 - ~~d. Temporary use or structure application (Chapter 35 CDC), including uses allowed through another land use approval process.~~
2. Consider an appeal or review of a decision made by the Planning Director under the provisions of CDC 99.240(A) and 99.080(B).
3. Consider an appeal or review of a decision made by the Planning Commission or Historic Review Board whether on the Council's own motion, or otherwise as provided by CDC 99.240.
4. Decide an appeal of the Director's interpretation of zoning boundaries as provided by CDC 05.040.
5. Revoke or modify an approval as provided by CDC 99.330 for any application approved by the City Council, including an application approved by the City Council on appeal from another City decision-making authority.

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

1. Approve, deny, or approve with conditions an application regarding the following:
 - a. Class II historic design review;
 - b. A demolition permit for a historic landmark or primary contributing structure within a historic district;
 - c. Relocation of a historic resource;
 - d. Revocation or modification of an approval as provided by CDC 99.330 for any application approved by the Historic Review Board; and
 - e. An extension of an approval when the Historic Review Board acted as the initial decision-making authority.

2. Make recommendations to the approval authority specified in this section regarding the following:

- a. Designation of a historic resource;
- b. Removal of historic resource designation;
- c. Class I or Class II design review on a property within the Willamette Falls Drive Commercial Design District that is not a historic landmark or within the Willamette Historic District;
- d. New construction within the Willamette Falls Drive Commercial Design District that is not a historic landmark or within the Willamette Historic District;
- e. A partition or subdivision of property containing a historic resource;
- f. Conditional use of property containing a historic resource.

E. Expedited land divisions. Expedited land divisions shall be processed by the Planning Commission without a public hearing pursuant to Oregon Revised Statutes (ORS) 197.360 through 197.380. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:

1. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:

- a. Planned unit development.
- b. Willamette River Greenway.
- c. Flood management area.
- d. Tualatin River.
- e. Water resource area.
- f. Design review.

2. The Planning Commission shall make their decision based solely upon the record and staff recommendation.

3. Appeals of the Planning Commission decision on an expedited land division shall be review pursuant to Chapter 197 ORS.

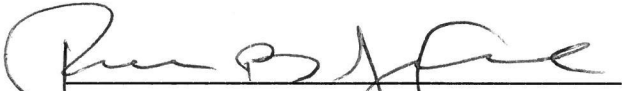
SECTION 10. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.


SECTION 11. 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 of the ordinance 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.

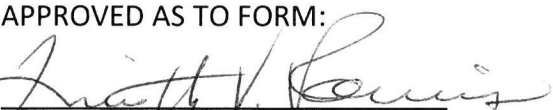
SECTION 12. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections [10-13]) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 13. Effective Date. This ordinance shall take effect on the 30th 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 12th day of December 2016, and duly PASSED and ADOPTED this 12th day of December, 2016.


RUSSELL B. AXELROD, MAYOR


KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY