



CITY OF West Linn

STAFF REPORT FOR THE PLANNING COMMISSION

FILE NUMBER: CDC-17-04

HEARING DATE: October 4, 2017

REQUEST: To consider a recommendation to City Council for adoption of proposed text amendment to West Linn Community Development Code Chapter 99.

APPROVAL CRITERIA: Community Development Code (CDC) Chapters 98 and 105

STAFF REPORT PREPARED BY: John Boyd, Planning Manager

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GENERAL INFORMATION

APPLICANT: City of West Linn

DESCRIPTION: A proposal for a text amendment to West Linn Community Development Code Section 99.250, 99.270 AND 99.280 to reinstate past provisions for the de novo review appeal process as an interim measure.

**APPROVAL
CRITERIA:**

Community Development Code (CDC) Chapter 98 provides administrative procedures for legislative amendments to the Community Development Code. Section 98.100 of the CDC lists the factors upon which a decision shall be based. These are briefly described below and addressed in greater detail in a separate Section of this report:

1. The Statewide Planning Goals and rules adopted under ORS Chapter 197 and other applicable state statutes;
2. Any federal or state statutes or rules found applicable;
3. Applicable plans and rules adopted by the Metropolitan Service District (Metro);
4. The applicable Comprehensive Plan policies and map; and,
5. The applicable provisions of implementing ordinances.

PUBLIC NOTICE: Legal notice was published in the West Linn Tidings on September 21, 2017 and will be posted on November 2, 2017 for the City Council hearing. Notice was also provided to required public agencies and persons who requested notice in writing on September 13, 2017.

120-DAY RULE: Not applicable to this legislative action.

EXECUTIVE SUMMARY

CDC-17-04 is a proposed amendment that reinstates in the Community Development Code (CDC) past provisions for (de novo) review of appeal process as an interim measure. This proposal removes existing provisions for on-the-record appeal review and returns an appeal review that is de novo. Additional clarifications note the title is de novo and the process allows for evidence submitted at the lower approval authority shall be made part of the record. The result is an appeal review process that recognizes the actions of the lower approval authority and provides additional flexibility for Council as the appeal review body to take testimony on other relevant issues.

Staff is seeking a recommendation from the Planning Commission regarding CDC-17-04. This staff report details the background and intention of the proposed amendment, addresses applicable criteria, and supports the proposed amendment.

Generally, this proposed amendment addresses City Council's direction to amend Community Development Code Sections:

99.250 Application for Appeal,

99.270 Contents of Notice of Appeal, and

99.280 Types of Appeal Hearing and Scope of Review

The proposed amendments allow for the reinstatement of past provisions for de novo review appeal process as an interim measure. The amendment was initiated by the City Council pursuant to CDC 98.030(B). The Council may take action to amend the docket and initiate a comprehensive review of Chapter 99 appeal process. This interim action will remain in effect until replaced by a future legislative action.

RECOMMENDATION

Staff recommends that the Planning Commission **RECOMMEND** approval of draft Ordinance 1663 to the City Council with any modification deemed appropriate by the Commission.

PROJECT BACKGROUND

Over the past two years, Council goals initiated actions on prioritizing citizen involvement and crafting focused plan and code updates. One aspect of that process was the appeal review process; citizens often referred to as “de novo rights.”

The Community Development Code (CDC) has treated the appeal review process differently over time. Staff completed a review of CDC sections 99.280 (type of appeal or review) and 99.290 (action on appeal or review) and found the following:

Acknowledgement in 1983 - review on appeal used “de novo” process based on the record of the proceedings of the lower review body and subject to the grounds relied upon in the notice of review. An option allowed, if both parties (appellant and opponent) agreed, for the appeal review to be conducted solely by written argument.

In 1989 & 1990, Council adopted Ordinance 1255 & 1271 - review on appeal used “de novo” process based on the record of the proceedings of the lower review body and subject to the grounds relied upon in the notice of review. The proposed changes allowed submittal of new evidence (subject to meeting criteria) and addressed petitions for review and appeal application for review. Those criteria for new evidence required that evidence be related to issues discussed at the proceedings and be related to at least one approval criteria for the matter that is subject to the appeal or review hearing.

In 2001, Ordinance 1474 removed most of CDC 99.280, the changes made optional to cite the grounds for appeal or review in the application for appeal or review. The process called “de novo” remained based on the record of the proceedings of the lower review body. All criteria for evidence to be related to issues or approval criteria were removed.

In 2008, Ordinance 1568 removed a provision to appeal a recommendation of the Planning Commission on a proposed map or text amendment. The process called “de novo” remained based on the record of the proceedings of the lower review body.

In 2014, Ordinance 1622, replaced CDC 99.280, returned provisions that existed prior to 2001 and added a new section to reopen the record based upon specific criteria. The term “de novo” process was removed and replaced with an “on the record” review. The review on appeal process was termed “on the record”. The process remained based on the proceedings of the lower review body. The appeal was subject to the grounds relied upon in the notice of review, The Council was allowed to re-open the record on a limited basis after confirming compliance with two issues: procedural error or factual error. The review on appeal did not allow for reconsideration of items not subject to issues on appeal.

The proposed amendment was introduced as part of a docket of amendments at the March and May 2017 workshops. It was also discussed at a special meeting of City Council on August 7, 2017 where Council directed the Planning Commission to begin work on an interim reinstatement of “de novo” review appeals.

PUBLIC COMMENTS

At the time this Staff Report was prepared, the City had received no written comment on the proposed CDC amendment.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
October 4, 2017

APPLICABLE CRITERIA AND COMMISSION FINDINGS

West Linn Community Development Code

Chapter 98 - Procedures for Decision Making: Legislative

CDC 98.035 Citizen Engagement in Legislative Changes

B. 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...

Findings: The City Council found that a working group was not necessary and directed staff to prepare a proposed amendment and bring it through the legislative process, with the Planning Commission making a recommendation to Council.

CDC 98.040 Duties of Director

A. The Director shall:

- 1. If appropriate, or if directed by the City Council or Planning Commission in their motion, consolidate several legislative proposals into a single file for consideration;*
- 2. Upon the initiation of a legislative change, pursuant to this chapter:*
 - a. Give notice of the Planning Commission hearing as provided by CDC [98.070](#) and [98.080](#);*

Findings: The Planning Commission public hearing will be held on October 4, 2017, with the City Council public hearing scheduled for November 13, 2017. Legislative notice was provided as required and documentation can be found in Exhibit PC-1.

b. Prepare a staff report that shall include:

- 1) The facts found relevant to the proposal and found by the Director to be true;*
- 2) The Statewide planning goals and rules adopted under Chapter 197 ORS found to be applicable and the reasons why any other goal or rule is not applicable to the proposal except that goals 16 through 19 which are not applicable to the City of West Linn need not be addressed;*
- 3) Any federal or State statutes or rules the Director found applicable;*
- 4) Metro plans and rules the Director found to be applicable;*
- 5) Those portions of the Comprehensive Plan found to be applicable, and if any portion of the plan appears to be reasonably related to the proposals and is not applied, the Director shall explain the reasons why such portions are not applicable;*
- 6) Those portions of the implementing ordinances relevant to the proposal, and if the provisions are not considered, the Director shall explain the reasons why such portions of the ordinances were not considered; and*

7) *An analysis relating the facts found to be true by the Director to the applicable criteria and a statement of the alternatives; a recommendation for approval, denial, or approval with modifications; and at the Director's option, an alternative recommendation;*

Findings: Relevant facts and associated analysis for applicable Statewide Planning Goals, federal and state statutes and rules, Metro plans and rules, West Linn Comprehensive Plan goals and policies, and West Linn Community Development Code criteria are found in the sections of the Staff Report below. The title page of the Community Development Code and applicable portion for de novo review as it existed in 2013 can be found in Exhibit PC-4.

c. *Make the staff report and all case file materials available 10 days prior to the scheduled date of the public hearing under CDC [98.070](#);*

Findings: The staff report, proposed amendment, and all other associated project materials were made available on September 22, 2017, thirteen days prior to the hearing.

d. *Cause a public hearing to be held pursuant to CDC [98.070](#);*

Findings: The West Linn Planning Commission is scheduled to hold the first evidentiary public hearing on October 4, 2017, with the West Linn City Council scheduled to hold its public hearing and make a final decision on November 13, 2017.

CDC 98.100 Standards for Decision

A. *The recommendation of the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:*

1. *The Statewide planning goals and rules adopted under Chapter 197 ORS and other applicable State statutes;*

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for the adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

Findings: The City has a citizen involvement program which has been acknowledged by the State. This legislative process to review the proposed amendment will require two public hearings (one before the Planning Commission on October 4th and one before City Council on November 13th) pursuant to CDC Chapter 98.

The Planning Commission held a publicly noticed work session to discuss this proposal on September 20, 2017. In addition, information was distributed and available throughout the process via the City's website. The Committee for Citizen Involvement held a series of training sessions on the quasi-judicial process from April to August 2017 including a discussion on the two types of appeal review: on-the-record and de novo. Citizen outreach, education and opportunity for feedback and citizen input met or exceeded requirements.

As part of the legislative process, public notice requirements for both the Planning Commission and City Council public hearings were met (see Exhibit PC-1). The notice was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published in the September 21, 2017 issue of the West Linn Tidings for the Planning Commission meeting. A second public notice will

be published in the November 2, 2017 issue of the West Linn Tidings for the City Council meeting. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the draft of the proposed amendment can be viewed.

Statewide Planning Goal 2 – Land Use Planning:

This goal outlines the land use planning process and policy framework. The Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals.

Findings: The City of West Linn has an acknowledged Comprehensive Plan and enabling ordinances. The amendment to the West Linn Community Development Code is being undertaken to reinstate past provisions for the de novo review appeal process as an interim measure and update the City's acknowledged land use planning program in a manner consistent with current conditions and citizen values. The amendment is being processed in accordance with the City's adopted procedures, which requires any applicable statewide planning goals, federal or state statutes or regulations, Metro regulations or plans, comprehensive plan policies, and the City's implementing ordinances be addressed as part of the decision-making process. The amendment is being processed as a post-acknowledgement plan amendment (PAPA) and noticing requirements have been met. All applicable review criteria have been addressed within this staff report; therefore, the requirements of Goal 2 have been met.

Statewide Planning Goal 5 – Natural Resources:

This goal requires the inventory and protection of natural resources, open spaces, historic sites and areas.

Findings: The City is currently in compliance with the State's Goal 5 program and Metro's Title 13: Nature in Neighborhoods program, which implements Goal 5. The amendment does not impact or alter the City's acknowledged Goal 5 inventories or associated land use programs. No changes will occur to current natural resource protections. As a result, the amendment remains in compliance with Goal 5 process requirements.

Statewide Planning Goal 6 – Air, Water, and Land Resource Quality:

To maintain and improve the quality of air, water, and land resources of the state.

Findings: The City is currently in compliance with Metro's Title 3: Water Quality and Flood Management program, which implements Goal 6. The amendment does not impact or alter the City's acknowledged land use programs regarding water quality and flood management protections. As a result, the amendment remains in compliance with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Hazards:

To protect people and property from natural hazards.

Findings: The City is currently in compliance with Goal 7 and Metro's Title 3: Water Quality and Flood Management program. The amendment does not impact or alter the City's acknowledged Goal 7 land use programs. No changes will occur to current natural hazard protections. As a result, the amendment remains in compliance with Goal 7.

Statewide Planning Goal 8 – Recreational Needs:

This goal requires the satisfaction of the recreational needs of the citizens of the state and visitors.

Findings: The proposed amendment does not impact or alter any City recreational programs or land use requirements related to parks and recreation. The amendment remains in compliance with Goal 8.

Statewide Planning Goal 9 – Economic Development:

To provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

Findings: The City is currently in compliance with Goal 9 and Metro’s Title 1: Requirements for Housing and Employment Accommodation and Title 4: Industrial and Other Employment Areas. The amendment does not impact or alter the City’s compliance with Goal 9. The amendment remains in compliance with Goal 9.

Statewide Planning Goal 10 – Housing:

To provide adequate housing for the needs of the community, region and state.

Findings: The City is currently in compliance with Goal 10 and the Metropolitan Housing Rule (OAR 660-007/Division 7), and Metro’s Title 1: Requirements for Housing and Employment Accommodation. The proposed amendment does not impact the City’s amount of buildable land. The amendment does not impact or alter the City’s compliance with Goal 10. The amendment remains in compliance with Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services:

To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as framework for urban and rural development.

Findings: The City is currently in compliance with Goal 11 through its acknowledged Comprehensive Plan. This includes an adopted Public Facility Plan as required by Oregon Revised Statute 197.712 and Oregon Administrative Rule 660-011. The amendment does not impact or alter the City’s compliance with Goal 11. The amendment remains in compliance with Goal 11.

Statewide Planning Goal 12 – Transportation:

To provide and encourage a safe, convenient, and economic transportation system.

Findings: The City is currently in compliance with Goal 12 and Metro’s Regional Transportation Plan through its acknowledged Comprehensive Plan and TSP as required by Oregon Administrative Rule 660-012 (Transportation Planning Rule). The amendment does not impact or alter the City’s compliance with Goal 12. The amendment remains in compliance with Goal 12.

Statewide Planning Goal 13 – Energy Conservation:

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based on sound economic principles.

Findings: The City is currently in compliance with Goal 13 through its acknowledged Comprehensive Plan. The amendment does not impact or alter the City’s compliance with Goal 13 and is consistent with this goal.

Statewide Planning Goal 14 – Urbanization:

To provide for orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Findings: The City is currently in compliance with Goal 14 and Metro’s Title 11: Planning for New Urban Areas through its acknowledged Comprehensive Plan and land use regulations. The City also has a signed Urban Growth Management Agreement with Clackamas County as required by ORS 195.065. The amendment does not impact or alter the City’s compliance with Goal 14. The amendment remains in compliance with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway:

To provide for keeping the land green along the banks of the river and providing for recreation access.

Findings: The City is currently in compliance with Goal 15 through its acknowledged Comprehensive Plan and land use regulations. The amendment does not impact or alter the City’s compliance with Goal 15. The amendment remains in compliance with Goal 15.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable Statewide Planning Goals.

2. *Any federal or State statutes or rules found applicable;*

Findings: Staff is not aware of any applicable state or federal regulations that are impacted by the proposed draft ordinance. The City has an acknowledged Comprehensive Plan and associated land use regulations that comply with applicable state statutes and administrative rules. The Oregon Department of Land Conservation and Development and the Oregon Department of Transportation were sent notice of the proposed amendment and provided the opportunity to comment. The amendment reinstates a previously adopted appeal process. This amendment does not impact or alter the City’s compliance with any state or federal statutes or rules.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable federal or state statutes or rules.

3. *Applicable plans and rules adopted by the Metropolitan Service District;*

The Metro Urban Growth Management Functional Plan

Findings: The City of West Linn is currently in compliance with the Metro Urban Growth Management Functional Plan (UGMFP). Metro staff was sent notice of the proposed amendment and provided the opportunity to comment. The proposed change will not impact or alter compliance with requirements found in the UGMFP.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable plans and rules adopted by Metro.

4. *The applicable Comprehensive Plan policies and map;*

Goal 1: Citizen Involvement

Policy 4. Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.

Findings: As part of the legislative process, public notice of the Planning Commission and City Council public hearings was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published twice in the September 21, 2017 and November 2, 2017 issues of the West Linn Tidings. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the entire draft of the proposed amendment could be viewed.

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

Findings: Information was distributed throughout the process via the City website. The Committee for Citizen Involvement held a series of training sessions on the quasi-judicial process from April to August 2017 including a discussion on the two types of appeal review: on-the-record and de novo.

The Planning Commission held a work session on September 20, 2017 to discuss the proposal. As part of the legislative process, public notice of the Planning Commission and City Council public hearings was sent to persons who requested notice, affected government agencies, neighborhood associations, and was published in the September 21, 2017 and November 2, 2017 issues of the West Linn Tidings. The notice invited public input and included the phone number of a contact person to answer questions. The notice also included the address of the City's webpage where the entire draft of the proposed amendment could be viewed. Opportunity for gathering feedback and comments were provided at each public outreach.

Citizen outreach, education and opportunity for feedback and citizen input met or exceeded requirements.

Goal 2: Land Use Planning

Finding: None of the goals or policies regarding Residential, Neighborhood Commercial, Mixed Use/Commercial Development under Goals 2 apply to this application.

Section 5: Intergovernmental Coordination

Policy 1. Maintain effective coordination with other local governments, special districts, state and federal agencies, Metro, the West Linn-Wilsonville School District, and other governmental and quasi-public organizations.

Policy 4. Coordinate with Metro planning activities on all areas in which Metro has jurisdiction and as specified in Goal 14 of this Plan.

Finding: Notice was sent to West Linn-Wilsonville School District, Metro, Clackamas County, TriMet, ODOT, and all West Linn Neighborhood Associations. They were provided the opportunity to review and comment on the amendment proposed for adoption.

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

Goal 6: Air, Water & Land Resources Quality

Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 8: Parks and Recreation

Goal 9: Economic Development

Goal 10: Housing

Goal 11: Public Facilities and Services

Goal 12: Transportation

Goal 13: Energy Conservation

Goal 14: Urbanizations

Goal 15: Willamette River Greenway

Finding: None of the goals or policies under Goals 5 through 15 apply to this application.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable West Linn Comprehensive Plan policies and map.

5. The applicable provisions of the implementing ordinance.

Finding: The proposed amendment reinstates in the Community Development Code (CDC) past provisions for (de novo) review of appeal process as an interim measure. This proposal removes existing provisions for on-the-record appeal review and returns an appeal review that is de novo. The result is an appeal review process that recognizes the actions of the lower approval authority by incorporating the evidence submitted at the lower approval authority as part of the record. The interim amendment provides additional flexibility for Council as the appeal review body to take testimony on other relevant issues. The reinstatement of these prior appeal review procedures in the proposed ordinance have been reviewed and acknowledged in the past by the Department of Land Use Conservation and Development.

Conclusion: Based on the analysis above, the Commission finds the proposed amendment is consistent with applicable provisions of the implementing ordinance.

EXHIBIT PC-1 – AFFIDAVIT OF NOTICE AND MAILING PACKET

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. CDC-17-04 Applicant's Name City of West Linn

Development Name _____

Scheduled Meeting/Decision Date PC - 10/4/17 CC - 11/13/17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 9-13-17 (signed) S. Shroyer
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) 9-13-17 (signed) S. Shroyer
- E. Affected neighborhood assns. (date) 9-13-17 (All) (signed) S. Shroyer
- F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 9-21-17 and 11-2-17 (signed) S. Shroyer
 City's website (posted date) 9-13-17 (signed) S. Shroyer

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.

Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) 9-22-17 (signed) S. Shroyer

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN
PUBLIC HEARING CDC-17-04**

**TO ADOPT TEXT AMENDMENTS TO COMMUNITY DEVELOPMENT CODE
CHAPTER 99**

The West Linn Planning Commission will hold a public hearing on **Wednesday, October 4, 2017, at 6:30 p.m.** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider adoption of Ordinance Number 1663 "An Ordinance relating to the amendment of West Linn Community Development Code Sections 99.250, 99.270 And 99.280 to reinstate past provisions for the denovo review appeal process as an interim measure". Following the hearing, the Planning Commission will make a recommendation to the City Council. The Council will make a final decision regarding the Planning Commission recommendation following its own public hearing on **Monday, November 13, 2017 at 6:30 p.m.**, in the Council Chambers of City Hall, 22500 Salamo Road, West Linn.

The hearing will be conducted in accordance with the rules of CDC Chapter 98 and Chapter 105. Anyone wishing to present written testimony on this proposed action may do so prior to, or at the public hearings. Oral testimony may be presented at the public hearings. At the public hearing(s), the Planning Commission and City Council will receive a staff presentation, and invite both oral and written testimony. The Commission or Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed amendments as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

At least 10 days prior to the hearing, a copy of Ordinance 1663 and associated staff report will be available for inspection or purchase at a cost of \$0.25 a page after the first five pages at the Planning Department, 22500 Salamo Road. The information is also available on the West Linn website at <http://westlinnoregon.gov/planning/community-development-code-text-amendment-reinstate-denovo>

For further information, please contact John Boyd, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 742-6058, or via e-mail at jboyd@westlinnoregon.gov.

Publish: West Linn Tidings, September 21, 2017 and November 2, 2017



CITY OF West Linn

**CITY OF WEST LINN
NOTICE OF UPCOMING
PLANNING COMMISSION MEETING
AND
CITY COUNCIL MEETING**

**PROJECT # CDC-17-04
MAIL: 9/13/17 TIDINGS: 9/21/17 & 11/2/17**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

EXHIBIT PC-2 – PROPOSED AMENDMENT (ORD 1663)

ORDINANCE NO. 1663

AN ORDINANCE RELATING TO THE AMENDMENT OF WEST LINN COMMUNITY DEVELOPMENT CODE SECTIONS 99.250, 99.270 AND 99.280 TO REINSTATE PAST PROVISIONS FOR THE DENOVO REVIEW APPEAL PROCESS AS AN INTERIM MEASURE

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 on June 2, 2014 passed Ordinance 1622 that in part amended Community Development Code (CDC) sections 99.250, 99.270, and 99.280;

WHEREAS, the City Council on August 7, 2017 moved to initiated steps for the restoration of DeNovo review appeal process as an interim measure; and

WHEREAS, amending the Community Development Code Sections 99.250, 99.270, and 99.280 implements the City's Council's direction that the DeNovo process as previously existing to Ordinance No. 1622 be reinstated;

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

SECTION 1. Amendment. West Linn Community Development Code Section 99.250, APPLICATION FOR APPEAL, is amended to read as follows:

99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of appeal shall contain:

1. A reference to the application sought to be appealed;
2. A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140; and
- ~~3. A statement clearly and distinctly identifying the grounds for which the decision should be reversed or modified. The appeal shall identify:~~

ORD #

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- ~~a. Applicable approval criteria that were misapplied, or~~
- ~~b. Procedural irregularity, and~~
- ~~c. If petitioner is requesting that the Council re-open the record to allow submission of additional written testimony and evidence as part of the appeal, petitioner must show that:

 - ~~i. The Planning Commission committed a procedural error, through no fault of the petitioner, that prejudiced the petitioner's substantial rights, and that reopening the record before the Council is the only means of correcting the error, or~~
 - ~~ii. A factual error occurred before the Planning Commission, through no fault of the petitioner, which is relevant to an approval criterion and material to the decision.~~~~

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

C. The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record. ~~limited to the provisions of CDC 99.280.~~ (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

D. The appeal or review application may state grounds for appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

SECTION 2. Amendment. West Linn Community Development Code Section 99.270, CONTENTS OF NOTICE OF APPEAL, is amended to read as follows:

99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List ~~the~~ any grounds for appeal or review stated in the application for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;
- E. State that the hearing on appeal shall be de novo ~~the grounds on which new argument or testimony may be presented, if any;~~

F. Include the name of government contact and phone number; and

G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008; Ord. 1622 § 5, 2014)

SECTION 3. Amendment. West Linn Community Development Code Section 99.280, TYPE OF APPEAL HEARING AND SCOPE OF REVIEW, is amended to read as follows:

A. ~~All~~ appeals and reviews shall be de novo ~~of a decision made by the Planning Director shall be heard on the record.~~

1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.

2. If any party requests a continuance of the appeal hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal.

~~B. Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:~~

~~1. Those issues set forth in the request to appeal; and~~

~~2. The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;~~

~~C. The Council may reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that:~~

~~1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or~~

~~2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.~~

~~D. Except when limited reopening of the record is granted, pursuant to this section, the Council shall not re-examine issues of fact and shall limit its review to determine whether there is substantive evidence in the record to support the findings by the lower decision-making body, or to determine if errors in law were committed by the City. Review shall be limited to the issues clearly identified in the notice of appeal. No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1622 § 5, 2014)~~

SECTION 4. 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 5. 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 6. 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 4-6) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 7. 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 _____ day of _____, 2017, and duly PASSED and ADOPTED this _____ day of _____, 2017.

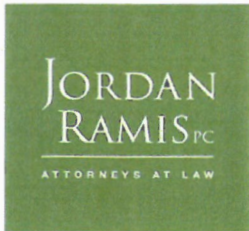
RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

**EXHIBIT PC-3 – LEGAL MEMORANDUM – RESTORATION OF PREVIOUS APPEAL
PROCESS**



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LEGAL MEMORANDUM

TO: West Linn City Council
West Linn Planning Commission

FROM: Timothy Ramis, City Attorney

DATE: August 28, 2017

RE: **Restoration of Previous Appeal Process**
File No. 50015-36839

In concert with Planning Department staff we have prepared for your consideration development code amendments which restore the former procedure for land use appeals to the City Council. It is my understanding that these changes are being considered as a possible interim change, to be replaced in the future by an alternative which the Planning Commission will consider later this year.

In restoring the former procedure, it is important to note that the amendments which created the current process for land use appeals changed two key aspects of the former appeal process. The first difference relates to the evidence that can be introduced and considered by the City Council. The current code, with few exceptions, limits an appeal case to the evidence introduced in the prior proceeding. For example, if a Planning Commission denial of a subdivision is appealed, the Council may only consider the evidence introduced during the Planning Commission hearing. The proposed amendments change this procedure, allowing the introduction of new evidence during the City Council appeal. The legal term for this type of appeal is "de novo."

The second difference involves the use of the appeal document to limit the issues that may be raised during a City Council appeal. Under existing Code provisions, only objections specifically described in the appeal document can be considered by the City Council. Under the prior procedure, the Council and the parties were free to consider any issue relating to the applicable approval criteria. The proposed amendments restore this aspect of the prior procedure.

If these amendments are adopted, the appeal process will be de novo with respect to both issues and evidence. Under this appeal system there is opportunity to raise and resolve all relevant issues at the City Council level. It will mean changes to the conduct of our appeal hearings. There may be greater need for continuances because introduction of new issues and evidence may require extra time to develop responses. The Council may also have to determine whether an application, amended in several respects after a Planning Commission proceeding, has been so substantially changed that a new application should be filed. For example, substantial changes might render obsolete supporting engineering, environmental or traffic analysis, thus necessitating a new application. It is also possible that substantial changes might alter the nature of a project to the extent that the public would be misled, unless a new application was filed.

Our office and City staff are available to answer questions about this proposal.

53271-74795 2774342_2\DRF/8/28/2017

EXHIBIT PC-4 – EXCERPT OF COMMUNITY DEVELOPMENT CODE – 2013 VERSION

COMMUNITY DEVELOPMENT CODE

CITY OF WEST LINN

**A Codification of the Community Development Ordinances
of the City of West Linn, Oregon**

Reprinted 2010

Updated through Ordinance 1614, July 15, 2013

**CODE PUBLISHING COMPANY
Seattle, Washington**



(Revised 8/13)

COMMUNITY DEVELOPMENT CODE
CITY OF WEST LINN, OREGON

ADOPTED DECEMBER 14, 1983
ORDINANCE NO. 1129

AMENDMENTS:

MAY 9, 1984	(Ord. 1137)
NOVEMBER 14, 1984	(Ord. 1150)
JANUARY 23, 1985	(Ord. 1152)
JUNE 11, 1986	(Ord. 1180)
FEBRUARY 11, 1987	(Ord. 1192)
MAY 27, 1987	(Ord. 1200)
JULY 27, 1987	(Ord. 1201)
SEPTEMBER 9, 1987	(Ord. 1211)
FEBRUARY 8, 1988	(Ord. 1226)
OCTOBER 13, 1988	(Ord. 1242)
FEBRUARY 8, 1989	(Ords. 1248/1249)
APRIL 13, 1989	(Ord. 1252)
MAY 25, 1989	(Ord. 1255)
JANUARY 1, 1990	(Ord. 1276)
JUNE 1990	(Ord. 1287)
NOVEMBER 1990	(Ord. 1291)
APRIL 1991	(Ord. 1298)
NOVEMBER 1991	(Ord. 1308)
JANUARY 1992	(Ord. 1314)
JUNE 1992	(Ord. 1321)
FEBRUARY 1993	(Ord. 1339)
JUNE 1993	(Ord. 1346)
NOVEMBER 1993	(Ord. 1350)
FEBRUARY 1994	(Ord. 1354)
MARCH 1994	(Ord. 1356)
DECEMBER 1994	(Ord. 1369)
FEBRUARY 1995	(Ord. 1370)
SEPTEMBER 1995	(Ords. 1377/1378)
NOVEMBER 1995	(Ord. 1382)
FEBRUARY 1996	(Ord. 1385)

AMENDMENTS: (Continued)

JULY 1996	(Ord. 1391)
AUGUST 1996	(Ords. 1394/1396)
MAY 1997	(Ords. 1401/1402/1403)
FEBRUARY 1998	(Ords. 1408/1410)
JUNE 1998	(Ord. 1411)
NOVEMBER 1998	(Ord. 1425)
MAY 1999	(Ord. 1434)
OCTOBER 1999	(Ord. 1442)
OCTOBER 2000	(Ord. 1463)
OCTOBER 2001	(Ord. 1474)
MAY 2002	(Ord. 1484)
DECEMBER 2003	(Ord. 1499/1500)
APRIL 2004	(Ords. 1501/1502)
AUGUST 2004	(Ord. 1506)
NOVEMBER 2004	(Ord. 1510)
FEBRUARY 2005	(Ords. 1513/1514/1515)
SEPTEMBER 2005	(Ords. 1522/1523)
OCTOBER 2005	(Ords. 1525/1526/1527)
NOVEMBER 2005	(Ord. 1528)
JUNE 2006	(Ord. 1538)
AUGUST 2006	(Ord. 1539)
JANUARY 2007	(Ord. 1544)
FEBRUARY 2007	(Ords. 1545/1547)
MAY 2007	(Ord. 1549)
JULY 2007	(Ord. 1550)
APRIL 2008	(Ord. 1565)
MAY 2008	(Ord. 1568)
SEPTEMBER 2008	(Ords. 1572/1576)
DECEMBER 2008	(Ord. 1584)
JANUARY 2010	(Ord. 1590)
APRIL 2010	(Ord. 1594)
OCTOBER 2010	(Ord. 1597)
MARCH 2011	(Ord. 1599)
OCTOBER 2011	(Ord. 1604)
AUGUST 2013	(Ords. 1613/1614)

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.

99.250 APPLICATION FOR APPEAL OR REVIEW

- A. The application letter of appeal or review shall contain:
1. A reference to the application sought to be appealed or reviewed;
 2. A statement as to how the petitioner qualifies as a party as provided by CDC 99.140.
- B. The appeal or review application shall be accompanied by the required fee.
- C. The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record.
- D. The appeal or review application may state grounds for appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

99.260 PERSONS ENTITLED TO NOTICE ON APPEAL OR REVIEW – TYPE OF NOTICE

Upon appeal or review, notice shall be given by the Director to all persons having standing as provided by CDC 99.140 to notice as required by CDC 99.080. (Ord. 1568, 2008)

99.270 CONTENTS OF NOTICE ON APPEAL OR REVIEW

Notice given to persons entitled to mailed notice under CDC 99.260 shall:

- A. Reference the application sought to be appealed or reviewed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List any grounds for appeal or review stated in the application for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;
- E. State that the hearing on appeal shall be de novo;
- F. Include the name of government contact and phone number;
- G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost. (Ord. 1382, 1995; Ord. 1474, 2001; Ord. 1547, 2007; Ord. 1568, 2008)

99.280 TYPE OF APPEAL OR REVIEW HEARING AND SCOPE OF REVIEW

- A. All appeals and reviews shall be de novo.
1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.

2. If any party requests a continuance of the appeal or review hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal or review. (Ord. 1474, 2001; Ord. 1568, 2008)

99.290 ACTION ON APPEAL OR REVIEW – TIME LIMIT AND AUTHORITY TO CHANGE DECISION

- A. The approval authority shall act upon the appeal or review within 120 days of the application being deemed complete, unless the applicant consents to an extension of time; and
- B. The approval authority may affirm, reverse, or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of CDC 99.110; or
- C. The approval authority may remand the matter if it is not satisfied that testimony or other evidence could not have been presented or was not available at the hearing. In deciding to remand the matter, the approval authority shall consider and make findings and conclusions regarding:
 1. The prejudice to parties;
 2. The convenience or availability of evidence at the time of the initial hearing;
 3. The surprise to opposing parties;
 4. The date notice was given to other parties as to an attempt to admit; or
 5. The competency, relevancy, and materiality of the proposed testimony or other evidence. (Ord. 1474, 2001; Ord. 1568, 2008)

99.300 PARTICIPATION BY MEMBERS OF APPROVAL AUTHORITY IN DECISION AND VOTING

- A. The provisions of CDC 99.180 apply and, in addition:
 1. A majority of the qualified voting members of the approval authority must vote affirmatively to affirm, affirm with conditions, or reverse or remand the decision. If no majority is in favor of any motion, then the previous decision shall be considered affirmed.
- B. Unless a decision be deferred, in the event of a tie, the decision which is the subject of appeal or review shall stand. (Ord. 1474, 2001; Ord. 1568, 2008)

99.320 DENIAL OF APPLICATION – RESUBMITTAL

An application which has been denied and, if appealed, has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission, or the courts, may not be resubmitted for the same or a substantially similar pro-