

Work Session Agenda Bill

Date: September 14, 2022

To: Jules Walters, Mayor
Members, West Linn City Council

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: Council briefing on proposed amendments to West Linn Community Development Code Chapter 2: Definitions and Chapter 96: Street Improvements

Purpose:

To receive a briefing on the proposed amendments to the West Linn Community Development Code (CDC) Chapter 2: Definitions and Chapter 96: Street Improvements.

Question(s) for Council:

Does council need additional background information regarding proposed amendments?

Background & Discussion:

The intention of the Chapter 96 Code Amendment Project is to clarify which types of development require street improvements, at what point those improvements must happen, and whether the City should allow a fee-in-lieu of constructing street improvements and if yes, in what circumstances. The proposed changes relate only to single-lot development. The proposed changes do not include subdivisions, large commercial developments, conditional use permits, or industrial developments. The changes are specific to single-lot development, primarily residential properties that do not require Planning Commission approval.

The Chapter 96 Code Amendment project is a policy analysis aimed at determining which types of single-lot development require street improvements and the associated code clean up.

Chapter 96 of the Community Development Code (CDC) governs when street improvements are required for development. It is the intention of the Planning and Engineering Departments to clarify which types of development require street improvements, at what point those improvements must happen, and whether we should allow a fee-in-lieu of constructing street improvements. Clarifying these requirements will remove uncertainty for property owners and create clear and objective standards by which Planning and Engineering staff can evaluate development applications.

Council Options:

Receive briefing and ask questions

Staff Recommendation:

Receive briefing and ask questions

Attachments:

1. Staff Memo dated September 12, 2022
2. Community Development Code Chapter 96 Code Amendments as Recommended by Planning Commission
3. Planning Commission Recommendation Memo dated August 22, 2022
4. Staff Memo with Responses to DLCD Letter dated September 27, 2022
 - a. DLCD Letter dated September 22, 2022



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Date: September 12, 2022
To: Jules Walters, Mayor
Members, West Linn City Council
From: Chris Myers, Associate Planner
Subject: Chapter 96 Code Amendments

The Chapter 96 Code Amendment project is a policy analysis aimed at determining which types of single-lot development require street improvements and the associated code clean up.

Chapter 96 of the Community Development Code (CDC) governs when street improvements are required for development. It is the intention of the Planning and Engineering Departments to clarify which types of development require street improvements, at what point those improvements must happen, and whether we should allow a fee-in-lieu of constructing street improvements. Clarifying these requirements will remove uncertainty for property owners and create clear and objective standards by which Planning and Engineering staff can evaluate development applications.

Types of Development Included: The Chapter 96 Code Amendment proposal is specific in scope. The proposed changes relate only to single-lot development. The proposed changes do not include subdivisions, large commercial developments, conditional use permits, or industrial developments. These proposed changes are specific to single-lot development, primarily residential properties that do not require Planning Commission approval. The purview and approval authority of the Planning Commission will not change based upon the proposed code amendments.

The Process: As the first step in the process staff presented information and had discussions regarding street improvements and single-lot development with the 2022 CDC Amendment Working Group on May 25, 2022. At that meeting, staff presented two tables to the working group. The first table showed the current Chapter 96 requirements for **commercial** single-lot development and the proposed changes (page 15 of the Working Group meeting packet, link below). The second table showed the same for single-lot **residential** development (page 16 of the Working Group meeting packet, link below). After discussion, staff asked three questions of Working Group members:

1. Which types of development shall require half-street improvements?
2. Do we allow a fee-in-lieu of constructing half-street improvements?
3. If we allow a fee-in-lieu, do we designate areas within the City where a fee-in-lieu is allowed? Or do we utilize a set of criteria, which if met, would allow fee-in-lieu?

Click the link below for the Working Group meeting packet:

[2022 CDC Working Group Meeting 5 Packet](#)

The next step in the process was a second meeting with the 2022 CDC Amendment Working Group held on June 22, 2022. At the request of the Working Group, staff wrote two versions of proposed new code

language. Those two options were part of the 2022 CDC Working Group meeting 6 packet. Option 1 (page 14 of the meeting packet, link below) lists a set of proposed criteria for the street improvement waiver and fee-in-lieu option. Option 2 (page 15 of the meeting packet, link below) proposes a City adopted street improvement fee-in-lieu map.

Click the link below for the Working Group meeting packet:

[2022 CDC Amendment Working Group Meeting 6 Packet](#)

Working Group Recommendation: At the conclusion of the 2022 CDC Working Group meeting on June 22 members recommended to the Planning Commission:

1. Utilize a specific set of criteria to determine whether a waiver of street improvements for a fee-in-lieu is allowed. Working Group members felt that a map would be too difficult, costly, and time consuming to create and maintain.
2. Accessory Dwelling Units should not require construction of street improvements or a fee-in-lieu
3. Working group members confirmed the City Council decision in 2018 that replacing a single-family home with a new single-family home does not require street improvement construction.

On July 14, 2022 the Planning Commission (PC) held it's first of two scheduled work sessions to discuss the 2022 CDC Working Group recommendation of proposed text amendments to Chapter 96. At the July 14 meeting PC members asked staff to add two definitions to the code amendment package. The first was a definition for **Street Improvements** and the second was for the term **Through Street**. PC members also asked for further clarification within the proposed fee-in-lieu criteria that the working group recommended. The clarifications PC members wanted consisted of adding language about curb/gutter and sidewalk on a cul-de-sac and more specific language regarding nearest street improvements. The specific edits can be viewed in the PC Meeting Packet for August 3, 2022 meeting packet at the links below.

Click the links below for the Planning Commission meeting packet and video:

[Planning Commission Meeting Packet July 20, 2022](#)

[Planning Commission Meeting Packet July 20, 2022 Video](#)

At the August 3, 2022 PC work session, per the outcome of the first PC work session, staff brought forward two new definitions requested by the PC as well as edited code criteria language for the fee-in-lieu option. Staff discussed the changes made based upon PC input at the first work session as well as addressed several other clarifying questions requested by the PC. The questions and staff answers can be viewed in the August 3, 2022 PC work session packet at the link below.

Click the links below for the Planning Commission meeting packet and video:

[Planning Commission Meeting Packet August 3, 2022](#)

[Planning Commission Meeting August 3, 2022 Video](#)

Planning Commission Recommendation: At the conclusion of the Planning Commission public hearing on August 17, 2022 Commission members approved the proposed code amendment language as presented (See link for specific language):

<https://westlinnoregon.gov/planning/community-development-code-chapter-96-street-improvement-construction-amendments>

Chapter 96 Amendment Schedule:

CDC Code Amendment Working Group meeting 1 May 25, 2022

CDC Code Amendment Working Group meeting 2 June 22, 2022

Planning Commission work session 1 July 20, 2022

Planning Commission work session 2 (if needed) August 3, 2022

Planning Commission public hearing August 17, 2022

City Council work session October 3, 2022

City Council public hearing October 10, 2022

Summary of Outcomes: Approval of the proposed Chapter 96 Code Amendment language will accomplish four outcomes:

1. Codify the 2018 City Council decision regarding replacement of a single-family home with a new single-family home
2. Exempt Accessory Dwelling Units from required street improvements
3. Implement a fee-in-lieu of street improvement construction (under certain conditions)
4. Create and implement a set of clear and objective criteria for fee-in-lieu

Questions for City Council: Below are questions staff are asking of City Council members:

1. Do you agree with the Planning Commission recommendation?
2. If not, what changes should be made?
3. Is there further information Council would like from Staff?

Below is additional information intended to clarify terms utilized in the Chapter 96 code amendment discussion and proposed code language.

Street improvements: Also known as, half-street improvements are commonly required during single-lot development. The City requires a property owner to build a curb, gutter, sidewalk, planter strip, drainage, and pavement improvements as needed. The required improvements extend to the mid-point of the right-of-way. Half-street improvement requirements are how streets and sidewalks are connected and completed when previous development was not part of a subdivision or planned unit development (PUD).

Fee-in-lieu: In the past, the City of West Linn has allowed some development to forgo building half-street improvements and instead pay the estimated cost of the half-street improvements called a fee-in-lieu. This process has been loosely defined in the CDC. There are several challenges to a fee-in-lieu program. First, the estimates for half-street improvements are typically much lower than the actual cost. Construction companies giving the estimate realize they are not going to be hired and thus submit an inaccurate and typically very low estimate. Second, construction costs fluctuate depending on labor, product costs, permitting fees, etc... Lastly, it has been difficult, without clear and objective standards, to figure out which developments allow a fee-in-lieu.

Accessory Dwelling Units (ADU): Accessory Dwelling Units are small secondary structures typically found in a backyard or as an attached but separate unit of a single-family home. Current CDC standards

require the construction of half-street improvements when an ADU is built. ADUs must meet all zoning requirements including setbacks, lot coverage, and Floor to Area Ratio. The Planning and Engineering Departments feel the requirement of half-street improvements for the construction of an ADU is a barrier to entry for property owners and isn't proportional to the size and impact of such projects. Accessory Dwelling Units can be helpful to community members for numerous reasons such as aging in place, caregiver living quarters, multigenerational living space, downsizing, additional monthly income, and many more.

Walk Shed/Ped Shed: Within the proposed code amendment language is a list of criteria which if met would allow a property owner to pay a fee-in-lieu rather than build street improvements. The criteria list includes references to 1320 feet or one-quarter mile. This is a commonly used distance in transportation planning, engineering, and urban design. A Walk Shed also known as a **Ped Shed** will take the average person approximately five minutes to walk and is roughly the length a person is willing to walk to reach a destination. Below is a link with a description and examples of what a Walk Shed is and why they are important.

Click the link below for more information and details on pedestrian walking sheds:

[Walk Shed/Ped Shed Description](#)

Current Code Language

**Chapter 96
STREET IMPROVEMENT CONSTRUCTION**

Sections:

96.010 — CONSTRUCTION REQUIRED

96.020 — STANDARDS

96.010 CONSTRUCTION REQUIRED

A. New construction.

1. ~~Building permits shall not be issued for the construction of any new building or structure, or for the remodeling of any existing building or structure, which results in an increase in size or includes a change in use, including building permits for single family dwellings but excepting building permits for alteration or addition to an existing single family dwelling, unless the applicant for said building permit agrees to construct street improvements as required by the land use decision authorizing the construction activity. The placement of new curbs and the drainage facilities required shall be determined by the City Manager or the Manager's designee.~~

2. ~~If the building permit did not require a prior land use decision, the applicant shall construct street improvements which shall include curbs, sidewalks, drainage facilities, and pavement widening to meet new curbs, along all City streets which abut the property described in the building permits.~~

3. ~~An applicant for a building permit may apply for a waiver of street improvements and the option to make a payment in lieu of construction. The option is available if the City Manager or the Manager's designee determines the transportation system plan does not include the street improvement for which the waiver is requested.~~

4. ~~When an applicant applies for and is granted a waiver of street improvements under subsection (A)(3) of this section, the applicant shall pay an in-lieu fee equal to the estimated cost, accepted by the City Engineer, of the otherwise required street improvements. As a basis for this determination, the City Engineer shall consider the cost of similar improvements in recent development projects and may require up to three estimates from the applicant. The in-lieu fee shall be used for in kind or related improvements.~~

B. Remodeling of an existing building.

1. ~~Building permits shall not be issued for the remodeling and conversion of any existing building or structure which results in an increase in size or includes a change of use excepting building permits for the alteration or addition to an existing single family dwelling, unless:~~

a. ~~The applicant for said building permit agrees to construct street improvements; and~~

b. ~~The City Manager or the Manager's designee determines that the remodeling of a structure or change of use is sufficient to cause construction of street improvements.~~

2. — The determination of whether the remodeling of an existing building or structure is sufficient to cause the property owner to construct street improvements, shall be made by the City Manager or the Manager's designee. This determination shall be based upon finding that the increase in building size or change of use results in either:

a. — An increase in floor area which creates the need for additional on-site parking in accordance with the Community Development Code; or

b. — A change in use that results in a need for additional on-site parking; or

c. — An increase in the dwelling unit density on the site; or

d. — A change in the type, number, or location of accessways where off-site traffic will be affected.

3. — An applicant for a remodeling of an existing building or structure change may apply for a waiver of street improvements and the option to make a payment in lieu of construction utilizing the process described in subsection (A)(3) of this section.

C. — Replacement of an existing building.

1. — Building permits shall not be issued for the replacement of any existing building or structure which results in an increase in size unless:

a. — The applicant for said building permit agrees to construct street improvements; and

b. — The City Manager or the Manager's designee determines the replacement is sufficiently increased in size to cause construction of street improvements.

D. — Notwithstanding any other provisions of this chapter, in cases where the issuance of the building permit pertains to the construction or reconstruction of a building or structure within a large development owned by the same owner or owners, the City Council may, in its sole discretion, authorize the installation of street improvements of equivalent cost on another portion of the total development area. (Ord. 1314, 1992; Ord. 1442, 1999; Ord. 1544, 2007; Ord. 1547, 2007; Ord. 1590 § 1, 2009; Ord. 1613 § 21, 2013)

96.020 STANDARDS

Street improvements shall be installed according to the City standards and shall be completed prior to the issuance of any occupancy permit for the new or remodeled structure or building. In unimproved areas of the City, the City Engineer may grant a time extension of the provisions of this section; provided, that the applicant provides sufficient security in amount and quantity satisfactory to the City Attorney to assure payment of such improvement costs.

Proposed Code Language
Chapter 96
STREET IMPROVEMENT CONSTRUCTION

Sections:

96.010 Construction Required

96.020 Fee-in-Lieu

96.030 Standards

96.010 CONSTRUCTION REQUIRED

- A. **Street improvements for residential construction are required when:**
 - 1. **Construction of a new single-family attached or detached structure (Replacement of an existing structure is exempt); or**
 - 2. **Construction of a new multi-family structure; or**
 - 3. **Increase in dwelling unit density on-site (Accessory Dwelling Units are exempt).**

- B. **Street improvements for commercial construction are required when:**
 - 1. **Construction of a new commercial structure; or**
 - 2. **Remodel of an existing commercial structure with an increase in floor area that requires additional parking; or**
 - 3. **Change in use that requires additional parking; or**
 - 4. **Construction that increases the dwelling unit density on-site; or**
 - 5. **Construction which requires a change in type, number, or location of accessways; or**
 - 6. **Replacement of an existing structure that requires additional parking.**

96.020 FEE-IN-LIEU

- A. **An applicant may apply for a waiver of street improvements and the option to pay a fee-in-lieu (in accordance with the city's adopted fee structure) of constructing street improvements if one of the following are met:**
 - 1. **Located on a cul-de-sac with no existing ~~curb and/or no existing sidewalk street improvements (curb, gutter, sidewalk)~~; or**
 - 2. **Located on a street less than 1,320 linear feet in length and not planned as a through street; or**
 - 3. **Located more than 1,320 linear feet from nearest street improvements ~~(curb, gutter, sidewalk)~~ on the same street or connecting street.**

96.030 STANDARDS

Street improvements shall be installed according to the City standards and shall be completed prior to the issuance of any occupancy permit for the new or remodeled structure or building. In unimproved areas of the City, the City Engineer may grant a time extension of the provisions of

this section; provided, that the applicant provides sufficient security in amount and quantity satisfactory to the City Attorney to assure payment of such improvement costs.

Proposed Code Language

Chapter 02 DEFINITIONS

Sections:

02.010 INTERPRETATION

02.030 SPECIFIC WORDS AND TERMS

Street improvements. Typically includes sidewalk, planter strip, curb, gutter, drainage, and pavement improvements in the public right-of-way when conditioned as part of property development.

Through street. A street that connects two or more adjacent streets to one another.

Memorandum

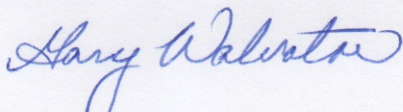
Date: August 22, 2022
To: West Linn City Council
From: West Linn Planning Commission
Subject: CDC-22-03 Recommendation

The Planning Commission held a public hearing on August 17, 2022, for the purpose of making a recommendation to the City Council on adoption of the proposed West Linn Community Development Code Amendments to Chapters 2 and 96 found in Land Use File CDC-22-03. The proposal before the Planning Commission was forwarded by the Council-appointed 2022 CDC Code Amendment Working Group after its discussion at two meetings. The proposal was discussed at Planning Commission work sessions on July 20 and August 3, 2022.

The Planning Commission considered public testimony during its legislative hearing on the proposed Chapter 96 Code Amendment Package. One community member provided oral testimony, at the public hearing, not in support of the proposed code amendment package, but rather supported a broader proposal with Neighborhood Association involvement.

After conducting the public hearing, the Commission discussed the fee-in-lieu of construction option, how fee-in-lieu funds would be spent, and how the Chapter 96 code amendments work with the middle housing bill. The Commission deliberated and voted four (Walvatne, Erwin, Carr, Metlen) to two (Mathews and Pellett) to recommend City Council adopt the proposal as presented.

Respectfully,



Gary Walvatne
Chair, West Linn Planning Commission



CITY OF West Linn

Memorandum

Date: September 27, 2022

To: Jules Walters, Mayor
Members, West Linn City Council

From: Chris Myers, Associate Planner

Subject: Oregon Department of Land Conservation and Development (DLCD) Letter

On September 22, 2022, West Linn Planning Staff received a comment letter from DLCD regarding proposed Chapter 96 Code Amendments. In the letter, DLCD Community Services Director, Gordon Howard, offered input on the proposal, including confirming the proposed changes comply with state statute and administrative rules, but also addressing concerns about potential impacts on housing outcomes in the community. Mr. Howard offered three comments related to the proposed code amendments.

First, DLCD supports the exemption of street improvements for the construction of Accessory Dwelling Units (ADU). It is DLCD's belief that this action should encourage the construction of more ADUs and therefore expand the limited lower-cost housing options in West Linn.

Second, Mr. Howard expressed concern over the 2018 City Council policy decision to allow the replacement of a single-family home with a new single-family home without constructing half-street improvements. DLCD believes that this will incentivize "tear-downs" of existing older/smaller housing stock and encourage replacement with larger and more expensive new homes. Conversely, a property owner is not exempt if they convert an existing single-family home into a duplex thereby making it more expensive to build middle housing.

During the HB2001 process, the West Linn community was asked to comment on thirteen different policy questions, one of which was waiving street improvements for middle housing types. The community responded overwhelmingly (82 percent of survey respondents) that the City should not exempt middle housing from street improvements. Therefore, the proposed changes, which do not exempt middle housing from constructing street improvements, are consistent with prior feedback from the community.



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Lastly, DLCD expressed concern over the lack of a “rough proportionality” analysis for development in West Linn. Below is the definition of Rough Proportionality as stated in the Community Development Code:

Rough proportionality. The allowed relationship between an exaction imposed to comply with a City code standard and the impact of the proposed development that is alleviated through imposition of the exaction.

City staff is currently working with the City Attorney’s office to develop and implement a rough proportionality test for all new development. This test will be applied consistently and will also protect the City from legal challenges associated with exactions related to public improvements.

In summary, Mr. Howard confirmed that the proposed Chapter 96 Code Amendments are legally compliant with state statutes and administrative rules, but DLCD is urging West Linn to consider the policy decisions applied through the code and potential consequences and cost burdens of the new standards on the development of housing.



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Community Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

September 22, 2022

Darren Wyss
Planning Manager
City of West Linn
22500 Salamo Rd.
West Linn, OR 97068



Re: Proposed Amendment to West Linn Development Code Chapter 96

Dear Mr. Wyss,

Thank you for sending notice to the Department of Land Conservation and Development (DLCD) of the proposed amendments to Chapter 96 of West Linn's development code. DLCD has reviewed the proposed amendments and offers the following input to West Linn:

The proposed amendments will impact the cost of housing development in West Linn by requiring full improvements to street frontages, or fees-in-lieu of improvements. The exemption of ADUs from these standards is helpful in encouraging ADU development, and DLCD agrees that the city should make this distinction.

While the proposal is legally consistent with the state's new middle housing rules because it imposes the same standards on middle housing types as it does for single dwellings, DLCD has concerns about the consequences the proposed language will have in providing for good housing outcomes in the city.

By exempting replacement of single dwellings from providing street improvements, the city may be incentivizing "tear-downs" of existing older housing stock and replacement with large, more expensive homes. This dynamic has occurred already in our region as the housing market has become heated. Under the proposed code, a property owner could tear down a modestly-sized home and replace it with a much larger home without having to build any street improvements, while another owner who wants to convert a single dwelling into a duplex without adding more building area would be subject to costly street improvements.

In the first case, the city loses a more affordable house and gains a home likely only affordable to very high income individuals and does not gain any new housing overall. In the second case, the city would gain a new unit that is more affordable than a typical new house, while retaining existing housing. DLCD urges West Linn to consider the disparity in how different projects would be burdened (or not) with additional costs.

DLCD also has concerns about the lack of rough proportionality analysis in both the current findings and in the process for applying these standards. Based on recent conversations with city staff, we understand that the staff plan to analyze each individual proposal for rough proportionality at the time of building permit review. DLCD highly encourages the city to follow through on this intent, especially in situations such as corner lots, lots along major roadways that require more significant frontage improvements, or excessively long frontages, where improvements would be very costly. The city may also want to consider providing for a process for applicants to request exemptions or reductions to these standards to account for these situations.

In summary, DLCD does not dispute the consistency of the proposed amendments with state rules, but urges West Linn to consider the consequences and fairness of the standards on the development of housing.

Please don't hesitate to contact DLCD with any questions. Your Regional Representative, Kelly Reid, can be reached at kelly.reid@dlcd.oregon.gov or 971-345-1987.

Sincerely,

A handwritten signature in blue ink that reads "Gordon W. Howard". The signature is written in a cursive style and is positioned to the left of a vertical yellow line.

Gordon Howard
DLCD Community Services Director

cc. Kelly Reid, DLCD Regional Representative