

Work Session Agenda Bill

Date: October 25, 2024

To: Rory Bialostosky, Mayor
Members, West Linn City Council

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: Code Process Amendment Package Work Session

Purpose:

Receive overview of recommended Code Process Amendment Package and briefing on legislative process.

Question(s) for Council:

Does the Council have questions regarding the code amendments and legislative process, or need additional information before the December 9, 2024 public hearing?

Background & Discussion:

The Code Process Concepts 2024 project stems from development review-related hearings and processes the City Council (CC) and Planning Commission (PC) had been involved in recently. Based on the discussion during these items, there were areas for improvement in the West Linn Community Development Code (CDC) to make the processes more effective in serving community needs. The four code process concepts are:

1. Extensions of Approval
2. Appeals of Development Permits
3. Home Occupations
4. Expedited Land Division & Middle Housing Land Divisions

The CC was originally presented with the code process concepts at its [October 16, 2023](#) meeting; and later held a joint work session along with the Planning Commission (PC) on [March 18, 2024](#). At the joint work session, the CC directed the PC to work with staff to develop revised code language for the four code process concepts and to bring an amendment package to the CC for adoption.

The PC held five work sessions from April 2024 to August 2024 to discuss the code process concepts and develop revised code language. The PC found consensus on August 21st and directed staff to bring the code amendment package into the legislative adoption process. The proposed amendments to CDC Chapters 2, 37, 85, and 99 are intended to better serve the community needs, make the code language clear and objective, and ensure continued compliance with state statutes and administrative rules.

The PC legislative public hearing was held on October 16, 2024. After a brief discussion, the PC made a unanimous recommendation (see Attachment 2) for the City Council to adopt the proposed code amendments found in Ordinance 1755 (see Attachment 3).

At the November 4th work session, Council will be able to ask clarifying questions and/or request more information about the recommended Code Amendment Package. A memo detailing the PC work sessions and discussions is found as Attachment 1. Staff has reserved additional time on the Council's November 18th work session if the CC needs additional time to discuss the proposed amendments.

The Council will then hold its public hearing on December 9th to make a decision on the recommended Code Amendment Package with or without further adjustments.

Council Options:

1. Receive briefing and hold public hearing on December 9th for a final decision.
2. Receive briefing and direct staff to provide any additional needed information at the November 18th work session before holding the public hearing on December 9th for a final decision.

Staff Recommendation:

Request any additional needed information and make a final decision at the public hearing scheduled for December 9, 2024.

Attachments:

1. Staff Memorandum – Code Process Concepts Implementation Process
2. West Linn Planning Commission Recommendation Memorandum
3. ORD 1755 – Planning Commission Recommended Code Process Code Amendment Package

Attachment 1: Code Process Concepts Memo

Memorandum

Date: October 25, 2024

To: Rory Bialostosky, Mayor
Members, West Linn City Council

From: Aaron Gudelj, Associate Planner

Subject: Code Process Concepts 2024 – City Council Work Session #1

The Code Process Concepts 2024 project stems from development review-related hearings and processes the City Council (CC) and Planning Commission (PC) had been involved in recently. Based on the discussion during these items, there were areas for improvement in the West Linn Community Development Code (CDC) to make the processes more effective in serving community needs. The four code process concepts are:

1. Extensions of Approval
2. Appeals of Development Permits
3. Home Occupations
4. Expedited Land Division & Middle Housing Land Divisions

The CC was originally presented with the code process concepts at its [October 16, 2023](#) meeting; and later held a joint work session along with the Planning Commission (PC) on [March 18, 2024](#). At the joint work session, the CC directed the PC to work with Staff to develop revised code language for the four code process concepts and to bring an amendment package to the CC for adoption.

The PC held five work sessions from June 2024 to September 2024 to discuss the code process concepts, develop revised code language, and bring forward an amendment package for adoption.

1. [PC Work Session April 3, 2024](#)
 - a. All four topics discussed
2. [PC Work Session June 5, 2024](#)
 - a. Appeal Process discussed
 - b. Extensions of Approval discussed
3. [PC Work Session July 17, 2024](#)
 - a. Appeal Process discussed
 - b. Home Occupations discussed
 - c. Extensions of Approval discussed
4. [PC Work Session August 7, 2024](#)
 - a. Home Occupations discussed
 - b. Expedited & Middle Housing Land Divisions discussed
5. [PC Work Session August 21, 2024](#)
 - a. All four topics discussed

Below are recaps of the Planning Commission Work Sessions by topic, and links to the Staff Reports, archival video of the PC meeting, and the meeting minutes.

Topic #1 Extensions of Approval (CDC Chapter 99)

The code language for extensions of approval is ambiguous and can lead to various interpretations of the code depending on the individual applying the code. A few of the issues sought to be resolved through this Code Process Concept discussion are the expiration date of an approval specifics, the number of extensions allowed, and the approval authority for the various types of extension applications.

[CDC 99.325 Extensions of Approval](#) currently outlines many of the procedure and criteria for an Extension of Approval application. In particular CDC 99.325 does not specify if an extension must be applied for or approved by the approval authority prior to expiration of the original approval. Legal guidance by the City Attorney in 2020 recommended that an extension of approval application deemed complete prior to the expiration date of the original approval had a right to a decision, even if the extension of approval application would be decided after the expiration date of the original approval.

Another issue that came up was the circular language of [CDC 99.325\(A\)](#) and if an extension of an extension is allowed. Clear code language would benefit applicants, residents, and the City and most jurisdictions clearly state the number of extensions of approval that are allowed.

April 3, 2024 PC Work Session Summary (Extensions of Approval)

[PC Work Session April 3, 2024 Video](#)

[PC Work Session April 3, 2024 Meeting Notes](#)

[PC Work Session April 3, 2024 Staff Memorandum](#)

The PC discussed Extensions of Approval at its April 3, 2024 meeting. Staff provided a brief recap of the previous discussions and a staff report asking the following five questions relative to extensions of approval:

1. *Should the City require approval of an extension prior to expiration of the original approved application?*

PC Direction: Require approval of the extension prior to expiration of original approval.

2. *Should the expiration of an extension of approval (currently two years) be tied to the original expiration date (moot point if #1 above is implemented) or the date of approval under the current process/policy?*

PC Direction: No discussion – moot point given the feedback from question #1.

3. *Should the City limit the number of extensions permitted? If yes, what should be the maximum number allowed?*

PC Direction: No consensus. One and two extensions discussed; more PC discussion and direction needed.

4. *Should the length of the extension remain at two years or would an increase to three years make sense?*

PC Direction: An Approved extension should remain good for two years.

5. *Should the City process an extension application as a staff decision if there are no proposed modifications, regardless of the original decision-maker? This would potentially help avoid issues around timing of the extension were required to be approved prior to the expiration date (as discussed in #1 above).*

PC Direction: No clear direction; PC requested information on neighboring jurisdiction’s processes.

The PC requested staff to return with information on neighboring jurisdictions and their extensions of approval processes and standards.

June 5, 2024 PC Work Session Summary (Extensions of Approval)

[PC Work Session June 5, 2024 Video](#)

[PC Work Session June 5, 2024 Meeting Notes](#)

[PC Work Session June 5, 2024 Staff Memorandum](#)

Based on direction from the PC, staff returned to the PC for a work session on June 5, 2024 in order to re-visit questions #3 and #5 from the previous work session and provide the additional information on neighboring jurisdictions and their extensions of approval processes and standards to the PC.

3. *Should the City limit the number of extensions permitted? If yes, what should be the maximum number allowed?*

PC Direction: A consensus was reached to limit the number of extensions to one total, consistent with neighboring jurisdictions.

5. *Should the City process an application as a staff decision if there are no proposed modifications, regardless of the original decision-maker? This would potentially help avoid issues around timing of the extension were required to be approved prior to the expiration date.*

PC Direction: A consensus was reached to allow extensions with no modifications to be a staff level decision and if modifications are proposed the extension application would go to the original decision-maker, which is consistent with neighboring jurisdictions.

The PC also requested the Planning Director approval authority language in [CDC 99.060](#) to include the word ‘designee’ to clarify the city process when the Planning Director position is vacant, and for staff to return with draft code language for discussion.

July 17, 2024 PC Work Session (Extensions of Approval)

[PC Work Session July 17, 2024 Video](#)

[PC work Session July 17, 2024 Meeting Notes](#)

[PC Work Session July 17, 2024 Staff Memorandum](#)

Staff returned with draft language for CDC 99.060, 99.080, and 99.325 based in the feedback received from the PC at the previous work sessions. After continued discussion of the draft code the PC requested documentation of the Planning Manager authority to act as the Planning Director given that the Planning Director position is vacant.

August 7, 2024 PC Work Session (Extensions of Approval)

[PC Work Session August 7, 2024 Video](#)

[PC Work Session August 7, 2024 Meeting Notes](#)

[PC Work Session August 7, 2024 Staff Memorandum](#)

Staff provided a memo from the City Manager verifying the Planning manager as the designated approval authority in the case of a vacant Planning Director position.

August 21, 2024 PC Work Session (Extensions of Approval)

[PC Work Session August 21, 2024 Video](#)

[PC Work Session August 21, 2024 Meeting Notes](#)

[PC Work Session August 21, 2024 Staff Memorandum](#)

Staff provided draft code language for CDC 99.060, 99.080, and 99.325. No additional comments/edits were requested by the PC to the draft code language.

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

Meeting Minutes have not been prepared at the time of this report.

[October 16, 2024 Staff Report](#)

Staff provided a recap of the previous work sessions and brought the PC a complete amendment package with draft code language for . The PC requested the words ‘or designee’ be added to the proposed draft code CDC 99.060(A). No other edits of the extensions of approval draft code were mentioned.

Based on the direction from the PC at previous work sessions and the legislative hearing, the proposed amendments to CDC Chapter(s) 99.060, 99.080, and 99.325 are included in the amendment package.

Topic #2 Appeals of Development Approvals (CDC Chapter 99)

Currently, [CDC 99.250](#) does not require an appellant to identify the code criteria they feel has not been met or misapplied, or a procedural error that has occurred when filing an appeal application and only requires an appellant to reference the application to be appealed and evidence explaining how the appellant qualifies as a party of standing. The lack of specificity required by CDC 99.250 can create ambiguous appeal applications with no clear understanding of the appellant’s argument. The lack of clear understanding of an appellants argument can be unfair to the parties involved - the applicant, City Council, Staff, and the public – as it does not allow for reasonable preparation for the appeal hearing by all parties involved.

The PC held four work sessions to discuss Appeals of Development Approvals – a summary of each work session is below:

April 3, 2024 PC Work Session (Appeals of Development Approvals)

[PC Work Session April 3, 2024 Video](#)

[PC Work Session April 3, 2024 Meeting Notes](#)

[PC Work Session April 3, 2024 Staff Memorandum](#)

At the April 3, 2024 work session staff provided a report to the PC and presented two questions relative to appeals of development permits:

1. *How much specificity should be required regarding the appeal criteria on an appeal application? Should the general statement as to why the specific code sections are believed to be non-*

compliant, or should an appellant be required to identify evidence in the record to support their appeal application?

PC Direction: Appellants should state at least one code criteria not being met or being misapplied.

2. Should the appeal hearing only be applicable to the appellants specified concerns and their concerns only?

PC Direction: Appellants should specify their issue/concern. “De-novo with focus” was mentioned but ultimately the existing de-novo style hearing should be retained.

The PC requested Staff to bring information on neighboring jurisdictions appeals process for discussion at the next work session.

June 5, 2024 PC Work Session (Appeals of Development Approvals)

[PC Work Session June 5, 2024 Video](#)

[PC Work Session June 5, 2024 Meeting Notes](#)

[PC Work Session June 5, 2024 Staff Memorandum](#)

At the June 5, 2024 work session staff provided the PC with information on neighboring jurisdictions and their appeal process (Page 2 & 3, Staff Memorandum) per the PC’s request. Draft code language for CDC 99.250 – 99.280 was also introduced for discussion.

At the PC meeting, President of Marylhurst Neighborhood Association Karie Oakes spoke in favor of de-novo appeal hearings stating that de novo helps the city make better decisions, does not think appellants have enough time to find applicable criteria for the appeal application, and appellants issue is on the record from the previous hearings.

The PC directed staff to draft code language requiring an appellant to provide specificity of the issue(s)/concern in an appeal application and the desire for the de-novo style hearing to be maintained as-is.

July 17, 2024 PC Work Session (Appeals of Development Approvals)

[July 17, 2024 PC Work Session Video](#)

[July 17, 2024 PC Work Session Meeting Notes](#)

[July 17, 2024 PC Work Session Staff Memorandum](#)

Staff provided draft code language for [CDC 99.250 - 99.280](#) based on previous direction from the PC. At the meeting the PC requested the removal of the word ‘detailed’ from proposed code amendments CDC 99.250(A)(3) as it is too subjective.

August 21, 2024 PC Work Session (Appeals of Development Approvals)

[PC Work Session August 21, 2024 Video](#)

[PC Work Session August 21, 2024 Meeting Notes](#)

[PC Work Session August 21, 2024 Staff Memorandum](#)

Staff provided draft code language for [CDC 99.250 – 280](#) based on the feedback from the previous work sessions. The draft code language also provided revised code language for [CDC 99.060\(E\)](#) stating that a ‘Land Use Referee’ would be the appropriate approval authority for appeals of Expedited Land Divisions and Middle Housing Land Divisions in order to comply with state statutes ([ORS 197.375](#)). The PC requested staff include a definition of “Land Use Referee” as part of the amendment package.

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

Meeting Minutes have not been prepared at the time of this report.

[October 16, 2024 Staff Report](#)

The PC was presented with a recap of the previous work sessions and draft code language based on the feedback staff received. The PC requested a scrivener's edit to capitalize the letter 'R' of the word 'referee' in the draft definition of 'Referee'. No other edits were directed of staff.

Based on the direction from the PC at previous work sessions and the legislative hearing, the proposed amendments to CDC Chapter(S) 2.030, 99.250 – 99.280 are included in the amendment package.

Topic #3 Home Occupations (CDC Chapter 37)

The current code language for Home Occupations could be more clear and objective since approval of Home Occupations is intended to be non-discretionary. Recent incidents in the City have brought to the forefront the debate as to whether outdoor space can be used for a Home Occupation, the allowable vehicle trips for Home Occupations, and the effectiveness of the current application/review process.

The PC held four work sessions on Home Occupations to discuss these issues – a summary of the work sessions is below:

April 3, 2024 PC Work Session (Home Occupations)

[PC Work Session April 3, 2024 Video](#)

[PC Work Session April 3, 2024 Meeting Notes](#)

[PC Work Session April 3, 2024 Staff Memorandum](#)

Staff provided the PC with three questions relative to Home Occupations based on the early work sessions feedback:

1. *Should the City return to processing Home Occupations as a land-use review i.e. Type I and Type II review?*

PC Direction: The PC consensus was the current review process should remain as-is. There was no support for changing to a Type I and Type II review process.

2. *Should the existing uses currently exempt from vehicle trips – 'dance, music, or language classes... with pupils or students,' – continue to be exempt from vehicle trips?*

PC Direction: No consensus was reached. The PC requested information to compare other jurisdictions' code language on vehicle trips.

3. *Does the PC believe that HOP businesses should not be allowed to conduct any of their business outside, including storage of materials or equipment?*

PC Direction: The PC consensus was that interpretation of the Home Occupation code should not allow Home Occupations to conduct business and/or store materials/equipment associated with the business outside.

The PC requested a comparison of surrounding jurisdictions code language relative to Home Occupations as well as their review process for future discussion of Home Occupations.

July 17, 2024 PC Work Session (Home Occupations)

[July 17, 2024 PC Work Session Video](#)

[July 17, 2024 PC Work Session Meeting Notes](#)

[July 17, 2024 PC Work Session Staff Memorandum](#)

Staff provided the PC with a comparison of neighboring jurisdiction code/processes (Page 3 of Staff Memorandum) and draft code language for [CDC 37.010 – 37.080](#). The PC also revisited the unanswered question regarding vehicle trip exemptions.

2. *Should the existing uses currently exempt from vehicle trips – ‘dance, music, language classes...with pupils or students,’- continue to be exempt from vehicle trips?*

PC Direction: The PC agreed to remove the exemption because of potential neighborhood impacts and to allow Home Occupations with ‘pupils and students’ to have 12 total vehicle trips per day while maintaining the existing eight total vehicle trips per day for all other Home Occupations.

The PC directed Staff to return with draft code language removing the vehicle trip exemption for Home Occupations with pupils and students and replacing the exemption with a maximum of 12 vehicle trips.

August 7, 2024 PC Work session (Home Occupations)

[August 7, 2024 PC Work Session Video](#)

[August 7, 2024 PC Work Session Meeting Notes](#)

[August 7, 2024 PC Work Session Staff Memorandum](#)

Staff presented a recap of the previous work sessions and draft code language for [CDC 37.010 – 37.080](#) based on the direction of form the PC. No further edits were requested by the PC on the proposed code language.

August 21, 2024 PC Work Session (Home Occupations)

[PC Work Session August 21, 2024 Video](#)

[PC Work Session August 21, 2024 Meeting Notes](#)

[PC Work Session August 21, 2024 Staff Memorandum](#)

Staff presented the PC with draft code language for CDC 37.010 – 37.080 based on previous feedback and direction form the PC. The PC requested the language for vehicle trips to be more clear that one vehicle trip is equal to the ‘pick-up and drop-off of a pupil or student.’

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

Meeting Minutes have not been prepared at the time of this report.

[October 16, 2024 Staff Report](#)

The PC was presented with a recap of the previous work sessions and draft code language based on the feedback staff received. No edits were requested.

Based on the direction from the PC at previous work sessions and the legislative hearing, the proposed amendments to CDC Chapter 37.010 – 37.080 are included in the amendment package.

Topic #4 Expedited Land Divisions (ELD) and Middle Housing Land Divisions (MHL) (CDC Chapter 85)

Currently, the West Linn CDC requires an Expedited Land Division and/or Middle Housing Land Division to be “processed by the Planning Commission without a public hearing” ([CDC Chapter 99.060\(E\)](#)). [Oregon State Statute \(ORS\)197.365\(4\)\(b\)\(A\)](#) and [ORS 92.031\(4\)\(a\)](#) states that a local government “Shall not hold a hearing on the application,” in regards to Expedited Land Divisions (ELD) and Middle Housing Land Divisions (MHL). Based on legal guidance from the City Attorney the City has been processing ELD’s and MHL’s as staff level decisions but has not revised the CDC to reflect state requirements. In addition to restricting local jurisdictions from holding a public hearing on an ELD and/or MHL application, [ORS 197.375\(2\)](#) requires an appeal of an ELD and/or MHL to be heard and decided by an independent referee as opposed to the City Council for almost all other appeal applications. The primary intent of the Expedited Land Divisions (ELD’s) and Middle Housing Land Divisions (MHL’s) discussion and inclusion in the four Code Process Concepts topics is to bring the West Linn CDC into compliance with state statutes in regards to processing of applications for ELD’s and MHL’s.

The PC held three work sessions on ELD’s and MHL’s and below is a summary of those work sessions:

April 3, 2024 PC Work Session (ELD & MHL)

[PC Work Session April 3, 2024 Video](#)

[PC Work Session April 3, 2024 Meeting Notes](#)

[PC Work Session April 3, 2024 Staff Memorandum](#)

The PC was presented with information on state statutes and the ELD process for a regular partition/subdivision and a MHL. This included a discussion on the referee appeal process mandated by statute.

The PC expressed concern regarding an appeal being processed and decided by an independent referee from outside the community but acknowledged the need for the City to comply with State Statute. The PC directed Staff to return with preliminary code language for review and discussion.

August 7, 2024 PC Work session (ELD & MHL)

[August 7, 2024 PC Work Session Video](#)

[August 7, 2024 PC Work Session Meeting Notes](#)

[August 7, 2024 PC Work Session Staff Memorandum](#)

The PC was presented with draft code language for CDC 85.220 – 85.230, and new definitions for Expedited Land Division and Middle Housing Land Division in CDC 2.030. The draft code language aims to clarify the submittal requirements and approval criteria for ELD’s and MHL’s. The PC did not request any edits on the draft code language.

August 21, 2024 PC Work Session (ELD & MHL)

[PC Work Session August 21, 2024 Video](#)

[PC Work Session August 21, 2024 Meeting Notes](#)

PC Work Session August 21, 2024 Staff Memorandum

Based on previous feedback and direction the PC was presented with draft code amendments. The PC discussed adding a definition of “referee” in the CDC for clarification.

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

Meeting Minutes have not been prepared at the time of this report.

[October 16, 2024 Staff Report](#)

The PC was presented with a recap of the previous work sessions and draft code language based on the feedback staff received. No edits were requested.

Based on the feedback and direction from the PC at the previous work sessions and legislative hearing the proposed amendments to West Linn CDC Chapter(s) 2.030, 85.070, 85.220, 85.230, and 99.060 are included in the amendment package.

Below is a synopsis of the proposed code language changes to the CDC Amendment Package.

CDC Chapter 2: Definitions

- Added definition for Expedited Land Division
- Added definition for Middle Housing Land Division
- Added to definition for Referee.

CDC Chapter 37: Home Occupations

- Establish a Home Occupation as an incidental and accessory use of the residential property.
- Revise code language to clearly prohibit all outdoor operation; storage of goods; displays of merchandise, materials, or equipment.
- Revise vehicle idling hours to be consistent with the City’s construction operation hours (Municipal Code 5.487(4)(D)).
- Limit Home Occupations with ‘pupils or students’ to generate 12 vehicle trips a day.
- Define a ‘vehicle trip’.

CDC Chapter 85: Land Divisions – General Provisions

- Clarify approval authority for ELD’s and MHLD’s
- Submittal requirements and approval criteria for ELD’s and MHLD’s

CDC Chapter 99: Procedures for Decision Making: Quasi-Judicial

- Insert words ‘or designee’ after Planning Director in CDC 99.060(A).
- Clarify the Planning Director approval authority of extensions of approval applications with no modifications and extensions of approval applications when the Planning Director was the initial decision-making authority.
- Add ELD and MHLD under the Planning Director approval authority.
- Clarify the PC approval authority for extensions of approval applications with proposed modifications when the PC acted as the initial decision-making authority.
- Clarify the CC approval authority for extensions of approval applications when the Historic Review Board acted as the initial decision-making authority.
- Eliminate Expedited Land Divisions section and replace with the Land Use referee.
- Noticing requirements for ELD’s and MHLD’s and Extensions of approval

- Language requiring an appeal application to state a specific code criteria or development standard being overlooked or misapplied.
- Code language explicitly allowing one extension.
- Clarify approval date, expiration date language

If you have questions about the meeting or materials, please feel free to email or call me at agudelj@westlinnoregon.gov or 503-742-6057.

Attachment 2: PC Recommendation Memo

Memorandum

Date: October 24, 2024
To: West Linn City Council
From: West Linn Planning Commission
Subject: CDC-24-02 Recommendation –Code Process Concepts Amendment Package

The Planning Commission held a legislative public hearing on October 16, 2024, for the purpose of making a recommendation to the City Council on adoption of a proposed Code Process Concepts Amendment Package.

In March 2024, the City Council directed the Planning Commission to analyze and discuss code language in relation to Home Occupations, Appeals of Approvals, Extensions of Approval, Expedited Land Divisions, and Middle Housing Land Divisions, and then recommend code amendments to create clearer language rules. The Planning Commission met five times from March 2024 to September 2024 to evaluate the policy questions and proposed code amendments.

After conducting the public hearing, the Commission deliberated and voted seven (7) to zero (0) to recommend City Council adopt the proposal as presented with two minor changes:

1. Capitalize “Referee” in the second sentence of the new CDC Chapter 2 Definition of Referee.
2. Include “or designee” in CDC Chapter 99.060(A) to read as follows:
 - A. Planning Director authority. The Planning Director, or designee, shall have the authority to:

The inclusion of “or designee” is to address situations when there is a Planning Manager or other titled position and not a Planning Director. No written or oral testimony was submitted for the public hearing.

Respectfully,



John Carr
Chair, West Linn Planning Commission

Attachment 3: PC Recommended CDC Amendments

ORDINANCE NO. 1755

AN ORDINANCE ADOPTING TEXT AMENDMENTS TO THE WEST LINN COMMUNITY DEVELOPMENT CODE CHAPTERS 2, 37, 85, AND 99 IN ORDER TO UPDATE LANGUAGE FOR HOME OCCUPATIONS, EXTENSIONS OF APPROVAL, APPEALS OF DEVELOPMENT PERMITS, EXPIDITED LAND DIVISIONS, AND MIDDLE HOUSING LAND DIVISIONS

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~lined through~~ and additions are underlined in **red font**.

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, in 2023 City staff and the City Attorney's office identified five code processes in need of improvement to be clear and objective, comply with state regulations, and better serve community interests; and

WHEREAS, the City Council appointed the West Linn Planning Commission (PC) on March 18, 2024 to act as the working group and work with staff to improve four code processes by recommending a proposed code amendment package; and

WHEREAS, the PC held five work sessions from April 2024 to August 2024; and

WHEREAS, the PC held a public hearing, which was noticed in accordance with City standards, on October 16, 2024, and recommended approval of the proposed Code Process Concepts Code Amendment Package; and

WHEREAS, the West Linn City Council held a public hearing, which was noticed in accordance with City standards, on December 9, 2024, to consider the Planning Commission recommendation, receive public testimony, and evaluate the decision-making criteria; and

WHEREAS, the Council's decision is based on the findings contained in these Whereas Clauses, together with findings, conclusions, and substantial evidence found in the associated land use record file CDC-24-02, which is incorporated by this reference.

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

SECTION 1. Amendments. The West Linn Community Development Code Chapters 2, 37, 85, and 99 are amended to include new text and rescind existing text as shown in Exhibit A.

SECTION 2. 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 3. 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 4. 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 2-4) need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 9. 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 _____, 2024, and duly PASSED and ADOPTED this ____ day of _____, 2024.

RORY BIALOSTOSKY, MAYOR

ATTEST:

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

WEST LINN COMMUNITY DEVELOPMENT CODE

Chapter 2 DEFINITIONS

02.010 INTERPRETATION

For the purpose of this code, certain terms or words used herein shall be interpreted as follows:

- A. The word “shall” is mandatory, the word “may” is permissive.
- B. The word “used” or “occupied” shall include the words “intended, designed, or arranged to be used or occupied.”

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02.030 SPECIFIC WORDS AND TERMS

For the purpose of these regulations, the following terms or words are defined as follows:

Accessory dwelling unit (ADU). Attached or detached dwelling unit which is secondary to the primary dwelling unit. The unit includes its own independent living facilities with provisions for living, sleeping, eating, cooking, and sanitation, and is designed for residential occupancy independent of the primary dwelling unit.

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Medical and dental services. Establishments primarily engaged in the provision of personal health services ranging from prevention, diagnosis and treatment (including outpatient surgery), or rehabilitation services provided by physicians, dentists, nurses, and other health personnel as well as the provision of medical testing and analysis services, but excludes those classified as any civic use or group residential use types. Typical uses include: medical offices, eye care offices, dental offices and laboratories, or health maintenance organizations.

Middle Housing. A type of housing that includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters as defined in Oregon Revised Statute 197A.420.

Middle Housing Land Division. The division of a lot or parcel of land that contains middle housing under the rules established in Oregon Revised Statute 92.031.

Minor modification. A change in the approved design that is equal to or less than a 10 percent increase in the length, width or height of the facility. A change of location by under 20 feet laterally for any part of the structure, ramp, dock, etc., also constitutes a minor modification.

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Recycling collection center (commercial). A facility where glass, cans, and papers, or similar recyclable materials are collected for the purpose of being transferred to a paper salvage or recycling facility.

Referee. An individual or group appointed by the City to decide the appeal of an Expedited Land Division and/or a Middle Housing Land Division. A Referee may not be an employee or City Official.

Religious institutions. A building constructed or utilized primarily for worship, together with its accessory uses, and buildings where persons regularly assemble for religious worship and which is controlled by a religious body organized to sustain worship.

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Chapter 37 HOME OCCUPATIONS

37.010 PURPOSE

The purpose of this chapter is to provide for home occupations in residential zones as a means of providing convenient employment opportunities and decreasing the dependence on the auto. The standards contained in this chapter are intended to assure that home occupations will be compatible and consistent with the residential uses and will not have a detrimental effect on neighboring properties.

37.020 GENERAL STANDARDS

A. A home occupation shall comply with all the following operating standards:

1. The home occupation shall be **incidental and accessory** ~~a secondary use to the residential use of the property~~ ~~primary use of the house as a residence.~~
2. **The home occupation must be operated entirely within the dwelling unit or a fully enclosed accessory structure that meets building code requirements.** ~~In no way shall the appearance of the residential structure or yard be altered to accommodate the Home Occupation, or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character by the use of colors, materials, construction, lighting, show windows, signs, or advertising visible outside the premises to attract customers or clients, other than a sign as permitted per subsection (A)(9) of this section.~~
3. **No part of the home occupation shall be operated outdoors, including the display or storage of merchandise, materials, or equipment on the premises or any adjacent right-of-way.** ~~There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.~~
4. **There shall be no outward appearance of the business activity other than a sign permitted per CDC Chapter 52.** ~~An accessory building which meets the provisions of Chapter 34 CDC may be used for the home occupation.~~

- ~~5. Any parking generated by patrons shall be accommodated on site.~~
- ~~6. Off street parking areas with three or more spaces shall be screened by a fence constructed per Chapter 44 CDC specifications, topography, vegetation, or a combination of these methods. Screening vegetation must be in place by the time the applicant submits a home occupation application. or be reasonably expected to provide effective screening within one and one-half years of approval of said application.~~
- ~~5. 7. No equipment or process shall be used in a home occupation which creates noise, odor, smoke, fumes, fallout, vibration, heat, glare, or electrical interference resulting detectable to the normal senses off the lot.~~
- ~~6. 8. No more than three employees, other than the residents, shall be engaged in service on the premises at any given time.~~
- ~~9. The use of signs shall meet the requirements of Chapter 52 CDC unless modified by this chapter.~~
- ~~7. 10. Occupied or unoccupied vehicles associated with the home occupation shall not have engines idling at any time. except during the immediate loading or unloading of cargo, mail, packages or passengers. Vehicles associated with the home occupation shall not be loaded or unloaded between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of ~~6~~5:00 p.m. to 9:00 a.m. on Saturday and Sunday and **Federal Holidays**. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.~~
- ~~8. 11. The owner of the business must reside in the **dwelling unit** primary structure on the premises.~~
- ~~9. 12. Only ~~one~~ **One commercial vehicle, as defined by the Oregon Vehicle Code**, no larger than a three-quarter-ton **gross vehicle weight** truck may be **parked outside of a structure**. used by the occupant, directly or indirectly, in connection with a home occupation. An off street parking space shall be provided for this vehicle.~~
- ~~10. 13. The **home occupation** use creates no more than eight total vehicle trips per day including employees, all deliveries, and customers. One trip is equal to one vehicle entering the site and exiting the site. Home occupations with pupils or students, such as, but not limited to, dance, music or language classes, **can create no more than twelve total vehicle trips per day including employees, all deliveries, and customers**. are exempt from the vehicle trip limitation. **Pick-up and drop-off of a pupil or student is equal to one vehicle trip.**~~

37.030 SPECIFIC HOME OCCUPATION USES PROHIBITED

- A. *Repealed by Ord. 1635.*

- B. Any home occupation involving the on-site sale, ~~or~~ resale, repair, or restoration of automobiles, trucks, boats, trailers, or other motorized vehicles.

37.040 THE APPLICATION

- A. A home occupation application shall be initiated by the occupant. If the occupant is not the owner of the premises, the signature of the owner is required on the application.
- B. The applicant shall pay the requisite fee.

37.050 PERMITS

- A. A home occupation permit shall be required for a home occupation, subject to the provisions of this chapter, prior to issuance of a business license.
- B. A copy of each home occupation permit, including the permit number, shall be kept by the Planning and Building Department and on the premises of the business.
- C. A home occupation permit is non-transferable to any other person or any other property, and shall expire upon discontinuance of the home occupation by the person to whom it is issued.

37.060 ADMINISTRATION AND APPROVAL STANDARDS

- A. Home occupations.
 - 1. A home occupation is a decision made by the Planning Director in accordance with the provisions of CDC [99.060\(A\)](#), except that no notice shall be required.
 - 2. The Planning Director shall approve, approve with conditions, or deny an application for a home occupation in accordance with the standards set forth in CDC [37.020\(A\)](#) for home occupations.
 - 3. The Director’s decision may be appealed by the applicant to the City Council as provided in CDC [99.240\(A\)](#).

37.070 APPROVAL AND STRICT COMPLIANCE REQUISITE FOR BUSINESS LICENSE

No business license will be issued for a home occupation until the home occupation application is approved and the applicant certifies that the home occupation will be operated in strict compliance with the provisions of this chapter and the conditions of approval.

37.080 REVOCATION

The Director may revoke a home occupation permit if the criteria of CDC [37.020\(A\)](#), respectively, are violated.

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Chapter 85 LAND DIVISIONS – GENERAL PROVISIONS

85.070 Administration and Approval Process

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

B. Action on the application for a tentative plan shall be as provided by Chapter 99 CDC.

1. The Planning Director shall approve, deny, or approve with conditions an application for a partition subject to the provisions of CDC 85.200, 99.060(A), and 99.110. The Director’s decision may be appealed to the City Council as provided by CDC 99.240(A).

2. The Planning Commission shall approve, deny, or approve with conditions an application for a tentative plan for a subdivision subject to the provisions of CDC 85.200, 99.060(B), and 99.110. A petition for review of the Planning Commission’s decision may be filed as provided by CDC 99.240.

3. The Planning Director shall approve, deny, or approve with conditions an application for an expedited land division subject to the provisions of CDC 85.220, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

4. The Planning Director shall approve, deny, or approve with conditions an application for a middle housing land division subject to the provisions of CDC 85.230, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

~~3.~~ **5.** Action on the final plat shall be ministerial and taken by the Planning Director and City Engineer, and the Planning Director and City Engineer shall approve a final subdivision or partition plat upon the finding that the approval criteria set forth in CDC 89.050 have been satisfied. The Planning Director’s and City Engineer’s decision may be appealed to the Planning Commission by the applicant, and the Planning Commission shall make its decision based on testimony from the applicant and the Director.

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85.220 EXPEDITED LAND DIVISIONS

An expedited land division, as defined by ORS 197.360, is an alternative process for the review of preliminary partition or subdivision plats. An expedited land division compresses review timelines, provides for different noticing requirements, and mandates a specific appeal process.

A. Submittal Requirements.

1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.
2. Confirmation of participation in a pre-application conference per CDC 85.140.
3. Required neighborhood meeting materials per CDC 99.038 for subdivision proposals.
4. Materials identified in CDC 85.150 to CDC 85.190.

B. Approval Criteria.

1. Oregon Revised Statute 197.360 to 380.
2. West Linn Community Development Code Chapter 85.200

85.230 MIDDLE HOUSING LAND DIVISIONS

A middle housing land division, as defined by ORS 92.031, permits the division of property that contains middle housing. A middle housing land division is subject to limited review criteria and processed using the expedited land division rules of ORS 197.360 to 380.

A. Submittal Requirements.

1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.
2. Written responses to Oregon Revised Statute 92.031.
3. Tree plan that includes:
 - a. Site plan with existing trees identified.
 - b. Inventory by tree size, tree species, and proposed to retain or remove.
4. Site plan that includes:
 - a. Utility connections and locations.
 - b. Access locations.
 - c. Proposed easements for utilities, access, or common areas.
 - d. Proposed street improvement details and right-of-way dedications.
 - e. Footprint of middle housing structures and proposed property lines.
5. Approved Tualatin Valley Fire and Rescue service provider permit.

- 6. Preliminary plat that includes:**
 - a. Property lines and dimensions.**
 - b. Public and private utility easements.**
 - c. Required right-of-way dedication.**

B. Approval Criteria.

1. Oregon Revised Statute 92.031.

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Chapter 99 PROCEDURES FOR DECISION MAKING: QUASI JUDICIAL

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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, **or designee**, 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 (Chapter **35** CDC), and not associated with another land use approval.

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t. Willamette River Greenway Permit (Chapter 28 CDC).

u. Extensions of approval **without modifications**. ~~when the Planning Director acted as the initial decision-making authority.~~

v. Extension of approval with proposed modifications when the Planning Director acted as the initial decision-making authority.

w. ~~w.~~ Class I Historic Design Review (Chapter 25 CDC).

x. ~~w.~~ A demolition permit for a non-contributing or not in period primary structure or an accessory structure (Chapter 25 CDC).

y. Expedited Land Division

z. Middle Housing Land Division

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- 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:

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- 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, or an application associated with another land use approval

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- k. Extensions of approval **with proposed modifications** when the Planning Commission acted as the initial decision-making authority.

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

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- 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;

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- e. ~~An e~~Extension of an approval **with proposed modifications** when the Historic Review Board acted as the initial decision-making authority.

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- ~~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 reviewed pursuant to Chapter 197 ORS. (Ord. 1442, 1999; Ord. 1463, 2000; Ord. 1474, 2001; Ord. 1510, 2004; Ord. 1525, 2005; Ord. 1545, 2007; Ord. 1547, 2007; Ord. 1565, 2008; Ord. 1568, 2008; Ord. 1589 § 1 (Exh. A), 2010; Ord. 1597 §§ 17, 18, 2010; Ord. 1613 § 24, 2013; Ord. 1614 § 15, 2013; Ord. 1622 §§ 9, 28, 2014; Ord. 1635 § 38, 2014; Ord. 1638 § 3, 2015; Ord. 1655 § 9, 2016; Ord. 1735 § 5 (Exh. D), 2022; Ord. 1745 § 1 (Exh. A), 2023)~~

E. Referee

1. Approve, deny, or approve with conditions the following applications:

a. Appeal of an expedited land division per ORS 197.375.

b. Appeal of a middle housing land division per ORS 197.375.

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99.080 NOTICE

Notice shall be given in the following ways:

A. Class A Notice. Notice of proposed action or a development application pursuant to CDC 99.060 shall be given by the Director in the following manner:

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E. Table of notices. The following notice summary identifies the appropriate type of notice for the various land use applications of CDC 99.060.

Land Use Action	Type of Notice
Amendment or Modification of Application or Permit	Same as original application
Appeal or Review of Decision	A
<u>Appeal of Expedited Land Division or Middle Housing Land Division</u>	<u>Per State Statute requirements</u>

Boundary Change	Special
Code Interpretation	Notice to parties requesting the interpretation
.....
<u>Extension of Approval – No modification</u>	<u>B</u>
Extension of Approval – <u>Proposed modification</u>	Same notice as original application

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99.250 APPLICATION FOR APPEAL OR REVIEW

A. The notice of **An** appeal **application** shall contain **the following information**:

1. **Date and case file number of** A reference to the **decision being** application sought to be appealed, ~~and~~
2. **Documentation that the person filing the application** A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC 99.140.
3. **Statement describing the basis of the appeal, including:**
 - a. **The West Linn Municipal Code and/or Community Development Code approval criteria or development standard believed to have been overlooked or incorrectly interpreted or applied; and or**
 - b. **The aspect of the proposal believed to have been overlooked or incorrectly evaluated.**

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

C. If the appeal application and applicable fee are not submitted within the required appeal period, or if the appeal application does not contain the required items specified in West Linn CDC Section 99.250.A(1-3) above, the application shall not be accepted by the City.

~~C.~~ **D.** 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 and shall be considered and given equal weight as evidence presented on appeal.

99.260 PERSONS ENTITLED TO NOTICE ON APPEAL – TYPE OF NOTICE

Upon appeal, 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.

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 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; however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal;
- 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.

99.280 TYPE OF APPEAL 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 evidence in 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.

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99.325 EXTENSIONS OF APPROVAL

- ~~A. An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC 99.060(A), (B), (C), (D) or (E), as applicable, upon finding that:

 - ~~1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and~~~~

~~2.— There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or~~

~~3.— The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC.~~

~~B.— Repealed by Ord. 1675.~~

~~C.— Repealed by Ord. 1675.~~

~~D.— Repealed by Ord. 1635.~~

~~E.— Extension procedures.~~

~~1.— The application for extension of approval with modifications to the original approval may be submitted only after a pre-application meeting under CDC 99.030(B). If no modifications are made to the original approval, a pre-application conference is not required.~~

~~2.— The application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC 99.038 for those cases that require compliance with that section. If no modifications are made to the original approval, no neighborhood meeting is required.~~

~~3.— Applications for extensions must be submitted along with the appropriate deposit to the Community Development Department.~~

~~4.— Notice of the decision shall be issued consistent with CDC 99.080.~~

~~5.— The decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to this chapter.~~

A. Purpose.

The purpose of this chapter is to provide an appropriate and efficient review process for extending the time period during which land use approvals are valid and may be utilized.

B. Applicability

This chapter applies to all approved land use applications that are subject to expiration but have not yet expired.

C. General Provisions

1. An approved land use application is eligible for one extension.
2. An extension application must be approved by the decision-making authority prior to the expiration date of the original approval, including resolution of all appeal periods.
3. If an extension is approved, the expiration date for the original approval is extended an additional two years from the effective date of the original approval.

D. Approval Process

1. If the extension application does not propose modification to the original approval, the assigned approval authority is the Planning Director, as provided in Section 99.060(A). If no modifications are proposed to the original approval, no neighborhood meeting is required.
2. If the extension application proposes modifications of the original approval or any conditions of approval, the extension application shall comply with amendment procedures set forth in CDC Section 99.120, and CDC Section(s) 55.050 and CDC Section 85.085 when applicable.
3. An application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC 99.038, if a neighborhood meeting was required of the original application.
4. If the original approval included multiple applications and does not propose modifications, a single extension application may include all applications associated with the original approval.

E. Approval Criteria

The approval authority will approve an extension application when all of the following criteria are met:

1. The applicant has provided evidence that a good faith effort was made to utilize the approval within the specified time period or the need for the extension is the result of conditions or circumstances outside the control of the applicant or property owner; and
2. If the original application included a transportation impact study, a natural resources report, geotechnical report, and/or tree inventory report an updated report must be provided with the extension application that shows no significant changes on or near the development site have occurred that would affect the conclusions and recommendations of the existing report(s). A letter from a recognized professional satisfies this criterion if it states that conditions have not changed since the approval of the original application and no new analysis is warranted.