

Proposed code language from  
Attorney Michael Robinson

**DRAFT EXTENSION ORDINANCE**  
**AMENDMENT TO WEST LINN**  
**COMMUNITY DEVELOPMENT CODE CHAPTER 99**

**99.XXX, Extension Requests.**

**A. Extension Requests for Applications listed in 99.060.A.**

For those applications listed in 99.060.A, the Planning Director may grant an extension from the effective date of approval of up to two (2) years if the Planning Director finds good cause for the extension. The Planning Director shall provide notice of the request for extension pursuant to 99.080.B. The extension application may be submitted only after neighborhood contact under 99.038 and a pre-application meeting under 99.030.B. Notice of the decision shall be issued pursuant to 99.160.C and the decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to 99.160.C.2.

**B. Extension Requests for Applications listed in 99.060.B.**

For those applications listed in 99.060.B, the Planning Commission may grant an extension from the effective date of approval of up to two (2) years. The extension application may be submitted only after neighborhood contact under 99.038 and a pre-application meeting under 99.030.B. The Planning Commission may grant the extension if it finds good cause for the extension and that the circumstances in CDC 99.330.E.1 and E.4 are not found to be present in the original approval. Notice of the decision shall be issued pursuant to 99.130.B and the decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to 99.170.G.

**C. Extension Applications limited to those approvals issued prior to the effective date of this section.**

Only those applications with an approval date prior to the effective date of this section shall be eligible to submit an extension application under this section.



Michael C. Robinson  
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1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
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December 17, 2009

**VIA E-MAIL**

Mr. John Sonnen  
Planning Director  
City of West Linn  
22500 Salamo Road, #100  
West Linn, OR 97068

---

**Re: My Client, Jeff Smith; Proposed Extension Ordinance**

Dear Mr. Sonnen:

I am writing to confirm the action that the City Council took on Monday, December 14, 2009 regarding the proposed extension ordinance (File No. CDC-09-04). On a motion by City Councilor Jody Carson, and seconded by City Councilor John Kovash, the City Council directed that the proposed ordinance be brought back to a City Council work session scheduled on December 21, 2009 and to a public hearing on January 11, 2010 with the record remaining open during the interim. The City Council further requested that City Councilor comments on the proposed ordinance be provided to staff no later than Wednesday, December 16, 2009 in order to be considered at the work session.

37891-0014/LEGAL17445248.1

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Perkins Coie LLP and Affiliates

(29)

Mr. John Sonnen  
December 17, 2009  
Page 2

Please place this letter in the official Planning Department file for this matter and before the City Council at the continued public hearing on January 11, 2010.

Very truly yours,



Michael C. Robinson

MCR:cfr

cc: Mr. Chris Jordan (via email)  
Mr. Peter Spir (via email)  
Mr. Tim Ramis (via email)  
Mr. Jeff Smith (via email)  
Mr. Ernie Platt (via email)  
Mr. Tony Marnella (via email)  
Mr. Jeff Parker (via email)  
Mr. Rhys Konrad (via email)

**Spir, Peter**

**From:** Vogel, Stephanie (Perkins Coie) [SVogel@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]  
**Sent:** Thursday, December 17, 2009 9:32 AM  
**To:** Sonnen, John  
**Cc:** Spir, Peter; Jordan, Chris; tim.ramis@jordanschradler.com; Robinson, Michael C. (Perkins Coie)  
**Subject:** Extension Ordinance Proposal

Dear Mr. Sonnen,

Pursuant to the City Council's discussion on Monday night, I submit for your review a draft extension ordinance. Please provide this e-mail and the attached ordinance to the City Council prior to the December 21 work session. The attached ordinance has the following virtues:

1. It is simple and the language is easy to apply by staff and the public.
2. It divides extension applications between those applications decided by the Planning Director (applications considered to be less significant) and those applications decided by the Planning Commission (applications considered to be more significant).
3. Each extension application is required to have a neighborhood contact meeting pursuant to CDC 99.038 and a pre-application meeting pursuant to CDC 99.030 prior to submittal. The purpose of these requirements is to ensure that the public is aware of an extension application.
4. The approval criteria are also simple. "Good cause" is sufficient enough to grant broad discretion to the decision maker; in the case of those applications described in CDC 99.060.A, the Planning Director, and in the case of those applications described in CDC 99.060.B, the Planning Commission, makes the decision. Each decision may be appealed or called up by the City Council as currently provided in CDC Chapter 99. Additionally, those applications described in CDC 99.060.B must meet a second criterion, which is that none of the circumstances in CDC 99.330.E.1 and E.4 must be found to be present in the original application.

The virtue of using this language is that it is already found in the CDC and allows the hearings authority to modify or revoke any approval criterion granted pursuant to this chapter for a material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intention or unintentional, or a material misrepresentation of a mistake of fact or policy by the City in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional. This language gives ample authority to the hearing authority (ultimately, the

City Council) to "re-review" the original approval. While I completely disagree with those who allege that numerous applications were granted improperly (if that were the case, the decisions should have been successfully appealed), this criteria nevertheless provides an opportunity to re-evaluate the original decision.

5. The universe of applications that may take advantage of an extension application is limited. The proposed ordinance limits extension applications to those applications with an approval date prior to the effective date of the ordinance enacting the extension provision. The rationale is that for those applications made some time ago, the applicants proceeded in good faith and without foresight that the current economic crisis would occur. For those applications receiving approval after the effective date of this ordinance, the applicants have proceeded in the face of knowledge of the current economic environment.

6. The City Council should consider putting the extension ordinance in one location in Chapter 99. That section contains all of the quasi-judicial provisions and it is efficient to amend the code in this way. The current draft simply adds pages to the code without any increase in efficiency, or ease of use.

I hope this simplified ordinance is helpful. An ordinance cannot satisfy every person but if the City Council's goal is to consider a simplified ordinance providing a distinction between less significant and more significant applications and one that allows a review of potential mistakes for more significant applications, this proposal achieves that purpose.

Mike

<<Draft Extension Ordinance.pdf>>

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\* \* \* \* \*

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**Spir, Peter**

**From:** Sonnen, John  
**Sent:** Friday, December 18, 2009 8:57 AM  
**To:** Spir, Peter  
**Subject:** FW: Extension Ordinance Proposal

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@perkinscoie.com]  
**Sent:** Thursday, December 17, 2009 1:05 PM  
**To:** bill.monahan@jordanschrader.com; Sonnen, John  
**Cc:** tim.ramis@jordanschrader.com; Jenny.DeGregorio@jordanschrader.com  
**Subject:** Re: Extension Ordinance Proposal

Thanks, Bill. John, I would be happy to answer any questions that you and Peter might have. Mike

-----Original Message-----

From: Bill Monahan <Bill.Monahan@jordanschrader.com>  
To: Sonnen, John <jsonnen@westlinnoregon.gov>  
CC: Tim Ramis <Tim.Ramis@jordanschrader.com>; Jenny De Gregorio <Jenny.DeGregorio@jordanschrader.com>  
Sent: Thu Dec 17 11:55:25 2009  
Subject: FW: Extension Ordinance Proposal

John,

Tim is out of town until Monday. He will be at the Council meeting Monday night as well as the meeting when the Council acts on the extension request.

Tim asked me to look at the proposal by Mike Robinson to determine if it has merit. I reviewed Mike's simplified approach and believe that it would work, if the Council wants to consider an alternative to the staff and planning commission approach.

I assume that you will ask Peter Spir to compare the language to the code to make sure that it covers all approvals that would be governed by the extension request process.

The draft ordinance should have an emergency clause and retroactive provision added. These can be taken from the staff prepared approach.

I think you can send Mike's option on to the Council with a note that it is the opinion of our office that this alternative change would accomplish the same purpose as the staff alternative that would make revisions throughout the code.

Bill

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-----Original Message-----

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@perkinscoie.com]  
Sent: Thursday, December 17, 2009 9:48 AM  
To: Bill Monahan  
Subject: FW: Extension Ordinance Proposal

Bill, Tim asked me to forward this extension ordinance to you. Mike

Michael C. Robinson | Perkins Coie LLP  
PHONE: 503.727.2264

---

From: Vogel, Stephanie (Perkins Coie) On Behalf Of Robinson, Michael C. (Perkins Coie)  
Sent: Thursday, December 17, 2009 9:32 AM  
To: 'jsonnen@westlinnoregon.gov'  
Cc: 'pspir@westlinnoregon.gov'; 'cjordan@westlinnoregon.gov'; 'tim.ramis@jordanschrader.com'; Robinson, Michael C. (Perkins Coie)

Subject: Extension Ordinance Proposal

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Mike

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\* \* \* \* \*

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**Spir, Peter**

---

**From:** Burgess, Scott  
**Sent:** Thursday, December 17, 2009 8:44 PM  
**To:** Spir, Peter  
**Subject:** RE: extensions

1) I heard Mike Robinson say, "the hearing body can decide whether to grant one or two years." I understand your issue, how does one decide? I guess I am okay with two years. Can you think of criteria to apply to a choice?

2) We can try 12/31/2012. Is 12/31/2011 too short? We can always elect to extend it.

Thanks,

Scott

Councilor Scott Burgess  
mailto:sburgess@westlinnoregon.gov  
West Linn City Councilor  
22500 Salamo Road  
West Linn, Oregon, 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: <http://westlinnoregon.gov>

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**From:** Spir, Peter  
**Sent:** Thu 12/17/2009 8:24 AM  
**To:** Burgess, Scott  
**Subject:** extensions

Scott

(1) Yes I can put in "up to two years" or "one or two years".

But if the decision making authority is to exercise discretion in deciding how long the extension should be for: one year or two years or some other amount of time-then we need some guidelines or criterion to serve as the basis for those decisions. With "up to two years" language, an applicant may be left wondering: "Will the Planning Commission just grant me six months?" Allowing a fixed "two year extension" would simplify the code and would remove uncertainties.

(2) There is retroactive language in the ordinance. The City Attorney added an emergency clause but that can be removed. I can add sunset language. Did you have a date in mind? December 31, 2012?

Peter

Peter Spir, Associate Planner  
Planning and Building, #1539

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Peter Spir, Associate Planner  
Planning and Building, #1539

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-----Original Message-----

From: Burgess, Scott

Sent: Wednesday, December 16, 2009 8:20 PM

To: Spir, Peter

Subject: RE: amendments per your e-mail regarding extensions (CDC-09-04)

I think you captured it except:

1) I think it should say "up to two years" or "one or two years" beyond three year approval

2) I assume the sunset language would be in the ordinance along with the retroactivity language...

I can't remember what I finally wrote but in thinking about it I guess an emergency clause is not necessary if we do the retroactivity - it may give the applicant 30 more days to apply or before they have to complete substantial completion.

Thanks,

Scott

**Spir, Peter**

---

**From:** Spir, Peter  
**Sent:** Friday, December 18, 2009 7:04 AM  
**To:** Burgess, Scott  
**Subject:** RE: extensions

Scott

In an email I got from Mike Robinson, he proposed language of his own and emphasized the advantage of simplicity: reduced confusion. How indeed do you decide if one or two years is fair? I do not know. It seems rather arbitrary to me. I think offering a flat two years simplifies things and relieves everyone from having to go through the process for a second extension hearing (year 2).

Just when a flurry of economists say things are getting better, another group say that while we may have bottomed out, getting out of this mess by encouraging more indebtedness and spending could mean a long recovery or even a relapse so the 2012 date seems logical to me.

Peter

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**To:** Spir, Peter  
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Thanks,

Scott

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mailto:sburgess@westlinnoregon.gov  
West Linn City Councilor  
22500 Salamo Road  
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Planning and Building, #1539

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Peter Spir, Associate Planner

Planning and Building, #1539

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Subject: RE: amendments per your e-mail regarding extensions (CDC-09-04)

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Thanks,

Scott

Spir, Peter

---

From: Sonnen, John  
Sent: Wednesday, December 16, 2009 8:26 AM  
To: Spir, Peter  
Cc: Jordan, Chris  
Subject: FW: Extension Ordinance

John Sonnen, Planning Director  
Planning and Building, #1524

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-----Original Message-----

From: Burgess, Scott  
Sent: Tuesday, December 15, 2009 9:12 PM  
To: Sonnen, John  
Subject: Extension Ordinance

John:

First, please use my city email for city business (not work). Thanks.

Here are my comments/concerns RE extension ordinance.

I will focus on Version "C" - De Novo for Errors and Omissions.

- ✓ 1. I think extensions of up to an additional 2 years should be allowed.
- ✓ 2. I don't think an extension request, assuming no code changes or mistakes in the original should have to go through the whole review process. Citizens or the applicant may have disagreed with the hearing bodies original approval but again unless a law was broken or a mistake made I don't want to hear the same issues over again.
- ✓ 3. I can support a sunset given this is due to unusual and short term situation (hopefully).
- ✓ 4. On page (24), 85.095 A. (3) I would delete "but only in the following: "...shall be de novo but only for errors, omissions or where facts..." I think we can get caught up in that "but only" language; the rest of the sentence speaks for itself. This is true for where ever this wording occurs in other parts of the ordinance.
- ✓ 5. I think we might consider that the original hearing body hearing the extension can grant up to a two year extension. This would allow for another one year extension if the hearing body only grants a one year extension. For example, I don't know why we would want to re-hear or not give the City's park plan approval a two year extension; we can always decide to change it and re-apply. Also, a minor partition on a single-family lot - this can be only a personal finance issue and not a big impact (beyond the possible objection of the neighbor originally).
6. I DO NOT agree with the idea of having a (expanded) pre-application conference with citizens. A the pre-ap, paid for by the applicant, the applicant deserves an objective professional review by staff based on the code not subjective citizen viewpoints. The applicant already went through the meeting with the neighborhood association and public hearing at original approval and will have to go through a public hearing again. Again, we are not re-hearing the project all over - only what has changed or was missed.
7. I don't know why we have to have two types of reviews - big projects and small projects. The size and complexity will take care of itself in the application, staff review, deposit and hearing.
8. Page (24) 85.095 B. (1), I don't like the long complicated language, e.g. new engineering, environmental and other regulations in the CDC" Why not just say "must

address code changes".

9. I don't really like words like "significantly" but at least they are defined but then I don't like some of the definitions, e.g. Page (28) 55.045C.(2)(c) "30% or 1,000 square feet, whichever is greater". I would say "whichever is less". A 1,000 square feet can be a significant change (on a 10,000 square foot building (if I understand the math).

10. Do we have a definition of "substantial construction" in 56.040 on Page (29)?

11. We need a retroactive and emergency clause to address the approvals caught by the Council's inactivity.

12. I do not support Tony Viella's of Tamarisk request - if the codes have changed and the project cannot meet them, he has to re-apply.

13. I still believe The Vineyard should have had to provide a pathway along its western boundary (except for Jeff Smith's house). This was dropped by the Parks and Planning Department, obviously the applicant and the Planning Commission. I don't know if it can be rectified but I think it would qualify for as an "error, omission or where facts were misrepresented".

That's all for now. Hope this helps.

Thanks,

Scott

Councilor Scott Burgess  
mailto:sburgess@westlinnoregon.gov  
West Linn City Councilor  
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West Linn, Oregon, 97068  
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Peter-

Can you please add this to the record regarding the proposed zoning code amendment? Can you also add me to your mailing list if any more information comes out or a decision is made?

Thanks,

Melynda

Dear Mayor King and Members of the West Linn City Council:

My name is Garrin Royer and I live at 3050 S. Roxbury Drive in West Linn. Three and one-half years ago, I purchased a 1.7 acre parcel of land at 4111 Elmran Drive in the Cedar Oak neighborhood. After extensive and costly work with the City's planners, engineers and arborist, I received preliminary plat approval for a six (6) lot subdivision called "Bella Flats" on May 7, 2007. My wish is to someday live in the subdivision along with my new neighbors. To date, I have incurred approximately \$120,000 in engineering, surveying, planning and application fees. I have now been informed that if my entire project is not completed with installation of all the public improvements by May 7, 2010, my land division approval will be void and the money that I spent on the approval will have been wasted.

In the current market, I cannot make these public improvements because I cannot sell the houses. The value of the land is now substantially less than what I paid for it. The City's required public improvements, while I could have afforded them in the prior market, at the current housing values now make this project infeasible.

I understand that the City is considering an amendment to its Code that would allow some extensions to current land use approvals. I urge you to approve this amendment so that my investment and the investments of other small business owners and West Linn residents are not lost. Were this an ordinary market, I would not be making this request. However, all of us can agree that this is an extraordinary time in Oregon's economy and we need to do everything we can to help West Linn businesses maintain their investments so that the City's economy and reputation for desirable housing remain strong.

I hope that this letter will persuade you that the approval of this amendment is important.

Respectfully yours,

Garrin W. Royer



**R E D S I D E   D E V E L O P M E N T**

**REDSIDE DEVELOPMENT**  
Office: 221 Molalla Avenue, Suite 220 Oregon City, Oregon 97045  
Mailing: PO Box 42310 Portland, Oregon 97242-2310  
T 503.239.2000 ext. 25 F 503.296.5707 C 503.701.5277  
[www.redsidedevelopment.com](http://www.redsidedevelopment.com)



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Michael C. Robinson  
PHONE (503) 727-2264  
FAX: (503) 346-2264  
EMAIL: MRobinson@perkinscoie.com

November 23, 2009

**VIA EMAIL**

Mayor Patti Galle  
City of West Linn  
22500 Salamo Road, #100  
West Linn, OR 97068

**Re: Extension Ordinance**

Dear Mayor Galle and Members of the City Council:

This office represents Jeff Smith. Please find enclosed a summary of action by the City of Eugene City Council approving an extension for land use applications. The ordinance provides for a three (3) year extension without any additional process. I have asked your staff to place this in the official Planning Department record for the legislative application and before you at your public hearing on December 14, 2009.

Very truly yours,

Michael C. Robinson

MCR:crf

Enclosure

91004-0005/LEGAL17350174.1

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(47)

Perkins Coie LLP and Affiliates

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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Action: Adoption of an Ordinance Concerning Time Extensions for Approved Developments; and Providing an Effective Date (City File CA 09-5)

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Meeting Date: November 9, 2009  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 4  
Staff Contact: Gabe Flock  
Contact Telephone Number: 541/682-5697

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## ISSUE STATEMENT

The City Council is scheduled to take action on an ordinance that would provide a three-year extension to the expiration period for certain approved land use applications.

## BACKGROUND

Earlier this year, as part of the City's local economic stimulus efforts, the City Council initiated amendments that would provide time extensions for approved land use applications. Similar to the recent actions of several other jurisdictions in Oregon, this proposal will allow more time for the completion of development projects that have already undergone extensive public process and received City approval, but may be slowed down or stalled due to difficult economic conditions.

The proposed ordinance will provide a one-time, automatic three-year extension for all Type II (e.g. partitions and subdivisions) and Type III (e.g. conditional use permits and planned unit development) land use application approvals that have not yet expired. Some of these projects have been approved with multiple construction phases, involving a series of expiration dates. This ordinance would automatically adjust the timeline for these future phases by three years as well. As proposed, there would be no submittal requirements, fees or processing time associated with granting the time extensions, and applicants would be notified of the additional time granted by the City. This provides a cost-effective, simple, and targeted approach for extending existing approvals that are most likely affected by the current economic downturn, consistent with council direction. For reference, the draft ordinance is included as Attachment A.

The Planning Commission held a public hearing on the proposed ordinance on September 22, 2009, and took action the same night to unanimously recommend approval of the ordinance with a three-year time extension. The City Council held a public hearing on the proposed ordinance on October 19, 2009. Public testimony was received at both hearings in support of the proposed ordinance; no testimony has been received in opposition.

In response to questions raised by the council, it is noted that Portland recently passed a date-specific time extension of *more* than three years (from December 2008 to June 2012) for approved land use applications. Other jurisdictions, including Bend and Gresham, have either permanently extended the expiration periods for certain land use approvals, or created an entirely new process and criteria to

facilitate time extension requests in the future. Eugene's proposed ordinance is most similar to Portland's example, by providing a one-time extension of three years.

Based on council direction to focus this effort on existing approvals affected by the current economic situation, additional options that would expand the scope of this proposal are not included in the proposed ordinance. It is also noted that testimony at the Planning Commission recommended revisiting the need for additional time extensions in the event that a continuing economic recession may warrant it. The possibility of creating a new application process and criteria to allow expedited review and approval of future time extension requests, or expanding the scope of the ordinance to include new applications within the next year, could be revisited in the future based on council direction.

#### **RELATED CITY POLICIES**

Findings addressing consistency with Statewide Planning Goals and related City policies, including applicable adopted plans, are included as an exhibit to the ordinance (Exhibit A of Attachment A).

#### **COUNCIL OPTIONS**

The City Council may consider the following options:

1. Approve the ordinance.
2. Approve the ordinance with specific modifications as determined by the City Council.
3. Deny the ordinance.

#### **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends the City Council adopt the ordinance (Attachment A).

#### **SUGGESTED MOTION**

Move to adopt an ordinance concerning time extensions for approved developments; and providing an effective date.

#### **ATTACHMENTS**

- A. Proposed Ordinance and Findings

#### **FOR MORE INFORMATION**

Staff Contact: Gabe Flock  
Telephone: 541/682-5697  
Staff E-Mail: gabriel.flock@ci.eugene.or.us

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING TIME EXTENSIONS FOR APPROVED DEVELOPMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**The City Council of the City of Eugene finds that:**

A. To aid economic recovery in difficult economic conditions, the City Council wishes to be proactive and programmatic in granting a three-year extension to those unexpired development approvals that were granted by the city after a process that included a public notice and comment period.

B. For land use approvals that include an extended phasing plan, it is intended that the three-year extension be applied to the current phase of development and that the time periods for all phases be adjusted to accommodate the one-time extension granted by this Ordinance.

**NOW, THEREFORE, based on the above findings,**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

Section 1. The legislative findings attached as Exhibit A hereto are adopted in support of this Ordinance.

Section 2. The expiration dates for all Type II and III land use application approvals in effect on the date this Ordinance takes effect are hereby extended by three years. Further extensions for these land use approvals may be sought pursuant to Chapter 9 of the Eugene Code, 1971.

Section 3. For any Type II or III land use application approval with an executed performance agreement in effect on the date this Ordinance takes effect, each reference to a specific year within in the Time Schedule section of said performance agreement (referencing a commencement or a completion year) is hereby extended by three additional years.



**ATTACHMENT A**

**Section 4.** This Ordinance shall take effect pursuant to Section 32 of the Eugene Charter 2002, or on the date of its acknowledgement as provided in ORS 197.625, whichever is later.

Passed by the City Council this  
\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
AIC City Recorder

Approved by the Mayor this  
\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Mayor

## EXHIBIT A

### Findings

#### Land Use Application Timeline Extensions (CA 09-5)

Eugene Code Section 9.8065 requires that the proposed ordinance comply with the following approval criteria (in bold and *italics*):

- (1) ***The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

*Goal 1 - Citizen Involvement.* *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The proposed action only extends the effective date for land use applications that have already been approved. These approved land use applications have already undergone a codified process that involves citizens through public comment and/or hearings and appeal processes. This action does not amend the citizen involvement provisions included in these application processes. The process for adopting these amendments complies with Goal 1 because it is consistent with, and will not change the City's existing and acknowledged citizen involvement provisions.

The Planning Commission public hearing on the proposed ordinance was duly noticed to the City of Springfield, Lane County, and all neighborhood organizations, as well as community groups and individuals who have requested notice. In addition, notice of the public hearing was also published in the Register Guard. The City Council then held a duly noticed public hearing to consider approval, modification, or denial of the proposed ordinance. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the proposed ordinance is consistent with Statewide Planning Goal 1.

*Goal 2 - Land Use Planning.* *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The City's acknowledged land use code specifies the procedures and criteria to be used for decisions and actions related to land use applications. The proposed ordinance does not change the planning process, policy framework or information relied on in making decisions and actions related to land use applications. The ordinance extends the time that these decisions are effective once the process has been completed and the policy framework and facts of each application have been determined and decided.

The record also shows that there is an adequate factual basis for the proposed ordinance. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of these amendments with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to Lane County, Springfield and the Department of Land Conservation and Development.

There are no Goal 2 Exceptions required for the proposed ordinance. Therefore, it is consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. *To preserve agricultural lands.*

The proposed ordinance does not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. *To conserve forest lands.*

The does not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. *To conserve open space and protect natural and scenic resources.*

*OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The proposed ordinance does not create or amend the City=s adopted inventory of Goal 5 resources, and does not amend any code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The proposed ordinance does not allow new uses that could be conflicting uses with a significant Goal 5 resource site and does not amend the acknowledged UGB. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and Land Resource Quality. *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendments do not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. *To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The ordinance does not affect the City's existing restrictions and approval criteria regarding development in areas subject to natural disasters and hazards. The proposed action only extends the effective date for land use applications that have already been approved. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The proposed ordinance does not affect the City's provisions for recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Land Study (October 1992) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 9 and its Administrative Rule. The amendment does not affect the amount of land designated or zoned for commercial use and will have no direct impact on the existing supply of or any existing commercially designated land.

Goal 9 further requires cities take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, to include land use controls and ordinances. The proposed ordinance related to timeline extensions is specifically intended help applicants overcome economic hardships by extending the expiration period for already approved land use applications. Therefore, to the extent applicable, the amendment is consistent with Goal 9.

Goal 10 - Housing. *To provide for the housing needs of citizens of the state.*

Goal 10 requires that communities plan for and maintain an inventory of buildable residential land for needed housing units. The proposed ordinance does not impact the supply or availability of residential lands included in the City's documented supply of "buildable land" that is available for

residential development as inventoried in the acknowledged 1999 Residential Lands Study. Therefore, to the extent applicable, the amendments are consistent with Statewide Planning Goal 10.

Goal 11- Public Facilities and Services. *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The proposed ordinance does not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. *To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented through the Transportation Planning Rule (TPR, OAR 660-12). TransPlan provides the regional policy framework through which the TPR is enacted at the local level.

The proposed ordinance will not significantly affect any transportation facility. The level of development currently permitted through existing code and zoning regulations will remain the same. No change in the functional classification of streets will result from the proposed ordinance. In addition, no changes are proposed to the standards that implement the functional classification system. Therefore, the amendments are consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. *To conserve energy.*

The proposed ordinance does not affect any of the City's energy conservation measures or programs. Therefore, Statewide Planning Goal 13 does not apply.

Goal 14 - Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

The proposed ordinance does not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The proposed ordinance does not include any changes that affect the regulation of areas within the adopted Willamette River Greenway boundaries. Therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

The proposed ordinance does not include any changes related to coastal, ocean, estuarine, or beach and dune resources. Therefore, these goals are not relevant and the proposed ordinance will not affect compliance with Statewide Planning Goals 16 through 19.

***(2) The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***

The proposed ordinance granting timeline extensions for approved land use applications does not include any change in adopted land use designations or policy, nor does it change any requirements in the City's land use code concerning compliance with the Metro Plan and applicable refinement plans. There are no policies or other applicable provisions in the Metro Plan or adopted refinement plans that specifically serve as mandatory approval criteria in this instance or otherwise limit the expiration period for approved land use applications. Therefore, the proposed ordinance complies with the above criterion.

***(3) The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The proposed ordinance does not establish a special area zone. Therefore, this criterion does not apply.



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November 12, 2009

**VIA E-MAIL**

Mayor Patti Galle  
City of West Linn, Oregon  
22500 Salamo Road, #100  
West Linn, OR 97068

**Re: Extension Ordinance to be Considered by City Council on November 23, 2009**

Dear Mayor Galle and Members of the City Council:

This office represents Jeff Smith. I am writing to urge the City Council to approve the extension ordinance recommended to the City Council by the Planning Commission following its work session on October 7, 2009. As you know, on November 22, 2008, the City Council initiated the extension ordinance. The City Council's motion directed that the ordinance be returned within one (1) year to the City Council. The Planning Commission has now twice recommended approval of the extension ordinance. The extension ordinance will allow all land use applicants an opportunity (but not a guarantee of approval) to request an extension. An applicant must submit an application for the extension and be heard by the Planning Commission in a public hearing in order for an extension to be granted.

There are a number of reasons why the City Council should approve the extension ordinance, not the least of which is the fact that both the professional Planning staff and the Planning Commission, composed of citizens of West Linn, have recommended its approval. Some of the reasons are as follow:

- There is no dispute that the recent recession has taken a heavy toll on the homebuilding business in Oregon. The number of housing starts has declined significantly. The ability to obtain loans for the construction and development of land and construction of homes has also become more difficult, meaning that many approved applications must wait until market and lending conditions return

to normal. Thus, while applicants have approvals in place, they cannot act on them.

- The homebuilding business in West Linn, as it is in most of Oregon, is mainly composed of family businesses.
- Because of the severe recession, projects have been deferred. It is a terrible waste of resources, both public and private, to allow existing approvals to expire because of circumstances beyond the control of either the City or the businesses.
- West Linn has had one of the strictest positions on extensions: none. Moreover, West Linn has required final plats to be recorded (not just submitted for review) by the third anniversary of the tentative approval. This schedule, combined with the inability to bond for improvements, effectively means that the process for recording the final plat must be started about eighteen (18) months ahead of the three (3) year anniversary in order to complete the public improvements, have the public improvements accepted by the City, submit the final plat to the City for review and the County Surveyor for approval and have it recorded. Almost every other county and city in the metropolitan area allows not just extensions, but also allows public improvements to be bonded so the improvements do not have to be constructed before recording of the final plat. This extension ordinance simply does what most other cities have been doing for a long time.
- Many other communities have recognized the severity of the economic downturn and have extended land use approvals for a year.

The opponents of the extension ordinance have raised several issues that miss the mark.

First, Ms. Schwarz in an opinion letter to the West Linn Tidings, said that Jeff Smith cut down 40 trees on his property. First, as the City Council well knows, Mr. Smith's property was outside of the City when he did so and Clackamas County did not have, nor does it have, a tree-cutting ordinance. Mr. Smith removed the trees lawfully and in compliance with all applicable laws and did so to plant a vineyard – a farm use allowed outright in that zoning district – that is now located on the property. Ms. Schwarz's letter suggests that he should not have been allowed to follow the laws that existed. However, whatever the reason that Mr. Smith removed the trees, he did so lawfully and his action has no bearing on the current proposal before the City Council.

Second, as noted above, West Linn's regulations governing when a final plat must be recorded are, if not unique, certainly in the minority. Moreover, most other jurisdictions



Mayor Patti Galle  
November 12, 2009  
Page 3

allow public improvements to be secured rather than be constructed prior to recording of the final plat. Finally, most other jurisdictions allow extensions. All of these things allow homebuilders and other land use applicants to moderate the effects of the market by timing their improvements. West Linn's current system does not allow that.

Ms. Schwarz also argued that this proposal is analogous to an individual who has had his water service terminated. No one is asking for a "special extension." Just like the friend cited in her letter, applicants for an extension must pay a fee. The proposal initiated by the City Council, as recommended to you by the Planning Commission, requires a new fee and a new application for an extension and a hearing on the extension.

Further, Ms. Schwarz suggested that there is only an "alleged economic hardship"? It is clear to everyone that the country, state and city have been through a severe economic downturn that is not yet over.

Ms. Schwarz also wrote that the extension ordinance would give something that her friend, who had to pay to have his water turned back on, didn't get, in her words, a "deal." Not only is there no guarantee of an extension, but those who want an extension must make an application (with a fee) and have it approved by the Planning Commission. So, even if the water story is relevant, the people who might ask for an extension are on the same footing as Ms. Schwarz's friend.

Ms. Schwarz also suggested that the economic downturn is over and that the economy is "beginning to revive." What Ms. Schwarz fails to understand is that the delay caused by the economic downturn, even if she is right about the economic recovery, has caused a delay in land development. The extension ordinance simply gives all applicants (professional builders and homeowners alike) the opportunity to get back to where they were when their approvals were granted.

Finally, Ms. Schwarz lists several reasons that the City Council should vote no. First, she suggested that land use applicants should not have five (5) years. This is not an unreasonable amount of time (since the economic downturn has gone on for two (2) years and they had three (3) years to implement their approval) and nothing requires the Planning Commission to give a full two (2) year extension.

Second, it is not unfair because this is something that is provided for by almost every other county and city. Land development is heavily regulated and the current West Linn system imposes built-in timelines that make it virtually impossible to develop land within three (3) years because of the current economy.

Mayor Patti Galle  
November 12, 2009  
Page 4

Finally, whether or not the economic downturn has been reversed is a matter of debate and there is no consensus. However, even if it is true, lending for land development has not returned to its prior status and the delay over the last several years in lending on projects so that they can be approved merits an extension for this time, which is just about a two (2) year period. As we all know, the downturn began in late 2007 and it is now late 2009. That precisely matches the maximum extension that the Planning Commission has recommended that you consider in this ordinance.

No one can predict the future; all we can do is review what has happened in the past. There is no debate that the economic downturn has been the severest in at least the last quarter century and that it has been ongoing for about two (2) years. There is no debate that it has substantially affected all aspects of land development, but especially the homebuilding business. There is no dispute that most of the builders in West Linn are individuals and families who depend on this for their livelihood and others, in turn, depend on those builders for their livelihood. There is no dispute that this two (2) year period has caused a significant delay in homebuilding. All the extension ordinance does is recognize these facts, give any applicant a fair opportunity to make an application for an extension and avoid wasted resources, both public and private, for the unnecessary expiration of an approval. This is not about one individual; it is about a reasonable request initiated by the City Council, recommended to the Planning Commission by your professional Planning staff and recommended to you by your Planning Commission to address circumstances beyond the control of an applicant.

On behalf of Jeff and others, I urge the City Council to approve the ordinance that the Planning Commission has recommended to the City Council.

Very truly yours,



Michael C. Robinson

MCR:cfr

cc: Mr. Jeff Smith (via email)  
Mr. Chris Jordan (via email)  
Mr. John Sonnen (via email)  
Mr. Peter Spir (via email)  
Mr. Tim Ramis (via email)  
Mr. Ernie Platt (via email)



**Spir, Peter**

**From:** Sonnen, John  
**Sent:** Friday, December 18, 2009 3:04 PM  
**To:** Spir, Peter  
**Subject:** FW: 2 yr extensions

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Kovash, John  
**Sent:** Friday, December 18, 2009 12:59 PM  
**To:** City Council  
**Cc:** Jordan, Chris; Sonnen, John  
**Subject:** 2 yr extensions

Thanks Jody for working to get this negotiated. I met with Mike Robinson and he seems to be OK with what you and I talked about. He has some ideas to keep it simple and for a sunset provision. So he may be a helpful participant on Monday.

John Sonnen has posted my changes to exhibit D. I have four goals.

- Ensure the application is in "Compliance with all regulations, including regulations adopted since the project initially vested."
- "The applicant has the burden of proof to demonstrate compliance with CDC approval criteria."
- Compliance will be verified by the planning staff and by the PC.
- Applicant will pay all city expenses related to the extension application.

John

 Councilor John Kovash  
[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)  
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