



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

May 27, 2008

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of West Linn Plan Amendment  
DLCD File Number 006-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 9, 2008**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Jennifer Donnelly, DLCD Regional Representative  
Gordon Howard, City of West Linn

<paa> ya

**2** Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: West Linn Local file number: CDC 07-01

Date of Adoption: 5/12/2008 Date Mailed: 5/19/2008

Date original Notice of Proposed Amendment was mailed to DLCD: 10/26/2007

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

**Amendments to the procedures for quasi-judicial decision-making for land use applications in the City of West Linn. The Amendments are intended to ensure compliance with State law and provide an efficient and effective process.**

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

**The final amendments reflect changes made by the City Council in proposed procedures, particularly in the areas of neighborhood pre-application meetings, noticing, and neighborhood association appeal rights. The Council also did not change the structure of quasi-judicial decision-making, leaving the Planning Commission as the primary decision-maker.**

Plan Map Changed from: n/a to: n/a

Zone Map Changed from: n/a to: n/a

Location: City-wide Acres Involved: n/a

Specify Density: Previous: n/a New: n/a

Applicable Statewide Planning Goals: 1 - Citizen Involvement

Was and Exception Adopted?  YES  NO

DLCD File No.: 006-07 (16497)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing?  Yes  No

If no, do the statewide planning goals apply?  Yes  No

If no, did Emergency Circumstances require immediate adoption?  Yes  No

Affected State or Federal Agencies, Local Governments or Special Districts:

**None**

Local Contact: **Gordon Howard** Phone: **(503) 722-3423** Extension: \_\_\_\_\_

Address: **22500 Salamo Road** City: **West Linn OR**

Zip Code + 4: **97068-** Email Address: **ghoward@ci.west-linn.or.us**

## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO (2) Copies** of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. 1568  
WEST LINN, OREGON**

**AN ORDINANCE AMENDING CHAPTER 99 OF THE WEST LINN  
COMMUNITY DEVELOPMENT CODE**

**WHEREAS**, the City of West Linn has undertaken a comprehensive review of its procedures for quasi-judicial decision making, embodied in Chapter 99 of the West Linn Community Development Code (CDC); and,

**WHEREAS**, there are several sections within CDC Chapter 99 which must or should be modified to conform to provisions of the Oregon Revised Statutes; and,

**WHEREAS**, other portions of CDC Chapter 99 should be modified to eliminate internal inconsistencies; and,

**WHEREAS**, some of the procedures contained within CDC Chapter 99 are confusing and can result in needless procedural delays in the review and processing of quasi-judicial development review applications; and,

**WHEREAS**, the procedures within CDC Chapter 99 relating to citizen involvement in the land use process can be refined and modified to ensure that West Linn's citizens have an effective voice in the review of quasi-judicial development review applications; and

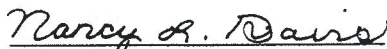
**WHEREAS**, on March 6, 2008, the West Linn Planning Commission reviewed the proposed amendments, and after making some modifications, forwarded them to the West Linn City Council with a recommendation to approve them;

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AMENDMENTS TO THE WEST LINN COMMUNITY DEVELOPMENT CODE AS FOLLOWS IN ATTACHMENT "A".**

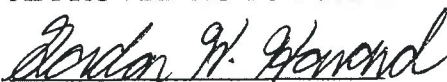
PASSED AND APPROVED THIS 12th DAY OF MAY 2008.

  
\_\_\_\_\_  
NORMAN B. KING, MAYOR

ATTEST:

  
\_\_\_\_\_  
Witness

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTACHMENT "A" – ORDINANCE NO. 1568

99.010 PURPOSE

The purpose of this chapter is to establish procedures applicable to the Community Development Code for the consideration of development applications, for the consideration of quasi-judicial Comprehensive Plan amendments, and for the consideration of appeals or petitions for review of decisions.

99.030 THE APPLICATION PROCESS: WHO MAY APPLY, THE PRE-APPLICATION CONFERENCE, THE REQUIREMENTS, REFUSAL OF THE APPLICATION, FEES

A. Who may apply.

1. Applications for approval required under this chapter may be initiated by:
  - a. The owner of the property that is the subject of the application or ~~his~~ the owner's duly authorized representative;
  - b. The purchaser of such property who submits a duly executed written contract or copy thereof, which has been recorded with the Clackamas County ~~Director of Records~~ Clerk;
  - c. A lessee in possession of such property who submits written consent of the owner to make such application; or,
  - d. Motion by the Planning Commission or City Council.
2. Any person authorized by this chapter to submit an application for approval may be represented by an agent who is authorized in writing by such a person to make the application.

B. Pre-application conference required.

1. The applicant shall be required to meet with the Planning Director, or designee of the Director, or any other governmental agency representative deemed appropriate by the Director, for a pre-application conference, unless the requirement for a pre-application conference is specifically waived by another section of this code.
2. At such conference, the Planning Director or designee shall:
  - a. Cite the applicable federal and state laws and rules and the Comprehensive Plan policies and map designation;
  - b. Cite the applicable substantive and procedural ordinance provisions;
  - c. Provide technical data and assistance, which will aid the applicant;
  - d. Identify other policies and regulations that relate to the application; and,
  - e. Identify other pertinent factors that relate to the application.
  - f. Provide the applicant with a written description of all rights for appeal and provide access to all administrative procedures.

3. The failure of the Director to provide any of the information required by this section shall not constitute a waiver of the standards, criteria, or requirements to the application.
4. At least 10 days prior to the scheduled date of the conference, the City shall make the pre-application conference schedule available to the public. Within 10 days following the conference, the City shall make staff-prepared written notes summarizing the contents of the meeting available to the public. To facilitate greater public participation and knowledge about the planning process, the City shall make reasonable efforts to post the pre-application conference schedule at a prominent location in the City Hall and also on the City's website at least 10 days prior to the scheduled date of the conference. Failure to comply with this section due to technical or administrative problems ~~with the website~~ is not a procedural defect entitling any party to a delay in the hearing process.
5. The Planning Director shall prepare administrative procedures designed to allow authorized representatives from recognized Neighborhood Associations to attend and participate in pre-application conferences for applications within the Neighborhood Association boundaries. To facilitate greater public participation and knowledge about the planning process, the City shall make reasonable efforts to post the staff-prepared written notes summarizing the contents of the meeting at a prominent location in the City Hall and also on the City's website within 10 days of the conference. Failure of a Neighborhood Association to participate in the pre-application conference despite being invited to attend ~~to comply with this section due to technical problems with the website~~ is not a procedural defect entitling any party to a delay in the hearing process.
6. If the applicant is not the owner of the subject property, the applicant shall provide written evidence that the owner has consented to the pre-application conference prior to it being scheduled.

~~C. Applications for conditional use or any type of developmental approval may be submitted only for development on lots or parcels that legally exist at the time the application is submitted or that will be created by an application submitted with or before the application for development approval. If the application is only for a portion of an existing lot or parcel, or covers more than one existing lot or parcel, an application for a subdivision, partition, lot line adjustment, lot consolidation, or replat must be submitted with or before the application for a development approval. However, an application for development that covers multiple lots is not subject to this provision if no reconfiguration of the lots is required to approve the application consistent with all development and land division regulations.~~

DC. The requirements for making an application:

1. The application shall be made on forms provided by the Director as provided by Section 99.040(A)(1) of this Code;
2. The application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval

criteria in sufficient detail for review and action, and shall be accompanied by the deposit or fee required by Section 99.033. No application will be accepted if not accompanied by the required fee or deposit. In the event an additional deposit is required by Section 99.033 and not provided within the time required, the application shall be rejected without further processing or deliberation and all application materials shall be returned to the applicant, notwithstanding any determination of completeness.

### **99.033 FEES**

The Council shall adopt a schedule of fees reasonably calculated to defray the expenses of the administrative process. The Council may establish either a set fee or a deposit system in which the applicant pays a deposit and the City determines the total administrative cost at the end of the process and refunds any unused amount of the deposit of the applicant. When a deposit rather than a set fee is required, the City shall periodically estimate the anticipated administrative cost for the application and determine whether the deposit is sufficient. If the deposit is insufficient, the City shall inform the applicant that an additional deposit is required and establish the amount to 110 percent of the City's anticipated costs that will not be covered by all previous deposits. The additional deposit shall be paid within 10 days of the demand for the additional deposit. No additional deposit shall be required for additional costs that are incurred because the matter is referred to or called up by a higher decision-making authority. The Council shall charge no fees for City-initiated land use applications or appeals filed by a recognized neighborhood association pursuant to the provisions of CDC Section 99.240. (ORD 1527)

### **99.035 ADDITIONAL INFORMATION REQUIRED, WAIVER OF REQUIREMENTS AND REPORT REQUIRED**

- A. The Planning Director may require information in addition to that required by a specific chapter in the Community Development Code provided that:
1. The chapter expressly authorizes that additional information may be required;
  2. The information is needed to properly evaluate the proposed site plan or proposal; and,
  3. The need can be justified on the basis of a special or unforeseen circumstance.
- B. The Planning Director may waive a specific requirement for information or a requirement to address a certain approval standard subject to the provisions of (C) below provided:
- ~~1. The chapter expressly authorizes that a requirement may be waived; and,~~
  21. The Planning Director finds that specific information is not necessary to properly evaluate the application; or,
  32. The Planning Director finds that a specific approval standard is not applicable to the application.
- C. Where a requirement is waived, the Planning Director shall cite in the staff report on the application, the specific requirement waived and the reasons for the waiver. The Decision of the Planning Director to waive the requirement is subject to review and denial by the approval authority or the appeal authority.

- ~~1. Prepare a memorandum to the record and to the applicant citing the grant of authority, and the specific requirements waived and the reasons;~~
- ~~2. Advise the applicant in writing that the waiver may be challenged at the hearing on the matter or on appeal and may be denied by the approval authority or the appeal authority;~~
- ~~3. Cite in the staff report on the application, the specific requirement waived, the reasons for the waiver, and the specific grant of authority.~~

#### 99.038 NEIGHBORHOOD CONTACT REQUIRED FOR CERTAIN APPLICATIONS

Prior to submittal of an application for any subdivision, conditional use permit, multi-family project, planned unit development, commercial, office, or industrial development of over 1,500 square feet, or a zone change that requires a Comprehensive Plan Amendment, the applicant shall contact and discuss the proposed development with any affected neighborhood as provided in this section. Although not required for other or smaller projects, contact with neighbors is highly recommended. The Planning Director may require neighborhood contact pursuant to this section prior to the filing of an application for any other development permit if the Director deems neighborhood contact to be beneficial.

- Purpose. The purpose of neighborhood contact is to identify potential issues or conflicts regarding a proposed application so that they may be addressed prior to filing. This contact is intended to result in a better application and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands, or denials. The City expects an applicant to take the reasonable concerns and recommendations of the neighborhood into consideration when preparing an application. The City expects the neighborhood association to work with the applicant to provide such input.
- The applicant shall contact by letter all recognized neighborhood associations whose boundaries contain all or part of the site of the proposed development and all property owners within 500 feet of the site.
- The letter shall be sent by certified mail, return receipt requested, to the Chair of the neighborhood association, and shall be sent by regular mail to the other officers of the association and the property owners within 500 feet. The letter shall briefly describe the nature and location of the proposed development, and invite the association and interested persons to a meeting to discuss the proposal in more detail. The meeting shall be scheduled at the association's regularly scheduled monthly meeting, or at the discretion of the association, and not less than 20 days from the date of mailing of the notice. If the neighborhood association does not want to meet within a reasonable amount of time, or if there is no neighborhood association, the applicant may hold a public meeting during the evening after 6 p.m., or on the weekend no less than 20 days from the date of mailing of the notice. All meetings shall be held at a location open to the public within the boundaries of the association or at a public facility within the City of West Linn. If the meeting is held at a private residence or business, it shall be posted at the time of the meeting as the meeting place and shall note that the meeting is open to the public and all interested persons may attend.



4. On the same date the letters described in subsection 1 through 3 of this section are mailed, the applicant shall provide and post notice on the property subject to the proposed application. The notice shall be posted at a location visible from the public right-of-way. If the site is not located adjacent to a through street, then an additional sign shall be posted on the nearest through street. The sign notice shall be at least 11" X 17" in size on durable material and in clear, legible writing. The notice shall state that the site may be subject to a proposed development (e.g., subdivision, variance, conditional use) and shall set forth the name of the applicant and a telephone number where the applicant can be reached for additional information. The site shall remain posted until the conclusion of the meeting.
5. An application shall not be accepted as complete unless and until the applicant demonstrates compliance with this section by including with the application:
  - a. A copy of the certified letter to the neighborhood association with a copy of return receipt.
  - b. A copy of the letter to officers of the association and to property owners within 500 feet, including an affidavit of mailing and a copy of the mailing list containing the names and addresses of such owners and residents.
  - c. A copy of the required posted notice, along with an affidavit of posting; and,
  - d. A copy of the minutes of the meetings, produced by the neighborhood association, which shall include a record of any verbal comments received, and copies of any written comments from property owners, residents, and neighborhood association members. If there are no minutes, the applicant may provide a summary of the meeting comments. The applicant shall also send a copy of the summary to the Chair of the neighborhood association. The Chair shall be allowed to supplement the summary with any additional comments regarding the content of the meeting, as long as such comments are filed before the record is closed.
  - e. An audiotape of the meeting.
  - f. In the event that it is discovered by staff that the aforementioned procedures of this section were not followed, or that a review of the audio tape and meeting minutes shows the applicant has made a material misrepresentation of the project at the neighborhood meeting, the application shall be deemed incomplete until the applicant demonstrates compliance with CDC Section 99.038.

#### **99.040 DUTIES OF THE DIRECTOR**

##### **A. The Director shall:**

1. Prepare application forms made pursuant to the standards contained in the applicable state law, Comprehensive Plan and implementing ordinance provisions;
2. Accept all development applications that comply with the provisions of Section 99.030 of this chapter;
3. After accepting an application pursuant to this chapter:

- a. Determine whether an application is complete, and comply with state statutes governing the completeness determination for applications. The determination of the Director is subject to review by the Approval Authority in its deliberations on the application.**
  - ab.** Give notice as provided by Sections 99.080 and 99.090;
  - bc.** Prepare a staff report which shall include findings as to whether or not the application meets the approval criteria of the applicable Community Development Code sections as presented in the application, and whether or not the criteria can be met with conditions.
  - ed.** Make the application, all documents or evidence relied upon by the applicant and applicable criteria available at least 20 days prior to the hearing or date of the Director's decision. Make the staff report available at least 10 days prior to the scheduled date of the public hearing(s).
  - de.** Act on the development application pursuant to Sections 99.060(A) and 99.160 of this chapter or cause a hearing to be held pursuant to Section 99.060(B) through (D) and Sections 99.170 to 99.230 of this chapter, unless the applicant has requested or consented to a delay;
4. Administer the hearings process pursuant to Sections 99.170 through 99.230 of this chapter.
  5. Maintain a register of all applications that have been filed for a decision. The register shall at all times identify at what stage the application is in the process. The register shall be posted on the City website unless technical problems prevent this. (ORD. 1474)
  6. File notice of the final decision in the records of the Planning Department and mail a copy of the notice of the final decision to the applicant and all parties with standing.  
  
The notice of the final decision shall contain the information set forth under Section 99.130(B).
  7. Maintain and preserve the file for each application. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given pursuant to Section 99.080 and the accompanying affidavits; the application and all supporting information; the staff report; the final decision including the findings, conclusions, and conditions, if any; all correspondence; the minutes of any meetings at which the application was considered; and any other exhibit(s), information, or documentation which was considered by the hearing body with respect to the application; and,
  8. Administer the appeals and review process pursuant to Sections 99.240 through 99.310.

## **99.060 APPROVAL AUTHORITY**

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

## PLANNING DIRECTOR AUTHORITY

- A. The Planning Director shall have the authority to:
1. Approve, deny, or approve with conditions, applications ~~pursuant to Section 99.110~~ for the following development applications ~~in accord with the provisions of Section 99.160 of this chapter~~:
    - a. A temporary use application for ~~60 days or less~~, a period of six months or less (ch. 35).
    - b. A home occupation, ~~Type I~~ application. (ch. 37)
    - c. ~~An accessway~~ Access restrictions (ch. 48).
    - d. A minor partition (ch. 85).
    - e. A final subdivision plat (ch. 89).
    - f. A final partition plat (ch. 89).
    - g. A lot line adjustment (ch. 85).
    - h. Enlargement or alteration of a non-conforming single-family residential structure containing a conforming use (ch. 66).
    - i. Decide applications for a determination of ~~an unlisted use or~~ unlisted parking requirements (ch. 46).
    - j. A minor alteration to a historic landmark or a structure in the Historic District (ch. 25, 26).
    - k. ~~Off-street parking application.~~ Parks Design Review, Class I (ch. 56)
    - l. Design Review, Class I (ch. 55).
    - m. A sign application (ch. 52).
    - n. ~~For an enlargement or alteration of a non-conforming structure containing a conforming use~~
    - o. Sidewalk use permit (ch. 53).
    - p. Flood management area permit (ch. 27).
    - q. Erosion and sediment control permit (ch. 31).
    - r. Tualatin River Protection permit (ch. 29).
    - s. Water Resource Area permit (ch. 32).
    - t. Class I Variance (ch. 75).
    - u. Willamette River Greenway permit (ch. 28).
  2. Approve a use permitted under prescribed conditions provided all of the conditions are satisfied.
  3. Make initial interpretations of the provisions of the Code.
  4. Make the initial determination regarding the status of the following:
    - a. Non-conforming use structure (ch. 66).

- b. Non-conforming structure involving a non-conforming use (ch. 65).
- c. Non-conforming use of land (ch. 67).
- d. Non-conforming lot status (ch. 68).**

**5. ~~Revocation or modification of approval—failure to fulfill conditions~~**

**PLANNING COMMISSION AUTHORITY**

B. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:
  - a. A quasi-judicial Comprehensive Plan Map amendment. ~~City Council shall decide on the application based on the record (ch. 105).~~
  - b. A quasi-judicial zone change involving a concurrent application for a quasi-judicial Plan Map amendment as provided by Section 99.030(A). ~~City Council shall decide on the application based on the record (ch. 105).~~
  - e. Zone changes which involve a concurrent application for a Comprehensive Plan Map amendment as provided by Section 99.030(A) shall receive a recommendation to approve, deny, or approve with conditions or modifications from the Planning Commission before being passed on to City Council for the final decision.**
2. Approve, deny, or approve with conditions:
  - a. A quasi-judicial zone change application (ch. 105)
  - b. A development application referred to the Planning Commission pursuant to Section 99.060(B)(2)(m). A temporary use or structure application for a period of greater than six months (ch. 35).**
  - e. A home occupation, Type II application as provided by Section 37.040(B)(1) and revocation of a permit as provided by Section 37.060(B)(2).**
  - d. A variance to the access provisions as provided by Section 48.070.**
  - ec. A eConditional use (ch. 60)/design review application as provided by Section 60.030(A), and extension of time application under the provisions of Section 60.040(A).**
  - fd. Enlargement or alteration of a non-conforming use as provided by Section 65.130(A). Enlargement of a non-conforming use or alteration of a structure containing a non-conforming use (ch. 65).**
  - ge. Enlargement or alteration of a non-single family residential non-conforming structure containing a conforming use (ch.66).Enlargement or alteration of a non-conforming structure, except a single family residence as provided by Section 66.070.**
  - hf. A Class II-variance (ch. 75), Class II application as provided by Section 75.030.**
  - ig. A sSubdivision (ch. 85).-application.**

- ~~jh. A planned unit development (ch. 24) application for approval of a tentative development plan under the provisions of Section 24.020(C) except those processed under the expedited review process of ORS 197.365.~~
- ~~ki. Design Review, Class II (Ch. 55).~~
- ~~j. Parks Design Review, Class II (ch. 56).~~
- ~~lk. Any other matter not specifically assigned to another approval authority the Director under the provisions of Section 99.060(A).~~
- ~~m. Any matter referred to the Commission by the Director as provided by Section 99.075.~~
- ~~n. A water resource area permit pursuant to Chapter 32.~~
- 3. Revoke or modify an approval as provided by Section 99.330 for any application approved by the Planning Commission or Planning Director.
- 4. Make the initial determination regarding the status of a non-conforming lot or lot of record. Make an unlisted use determination (ch. 80).
- 5. An appeal of a Planning Director's interpretation of the Code pursuant to Section 01.060.

#### CITY COUNCIL AUTHORITY

- C. The Council shall have the authority to:
  - 1. Approve, deny, or approve with conditions, applications pursuant to Section 99.110 for the following development applications ~~in accord with the procedures of Sections 99.170 through 99.230 and notice provisions of Section 99.080(A) of this chapter, unless otherwise specified.~~
    - a. A quasi-judicial Comprehensive Plan Map amendment. ~~The Council shall decide the application on the record as provided by Section 99.280(C) (ch. 105).~~
    - b. A quasi-judicial zone change involving a concurrent application for a quasi-judicial Plan Map amendment. ~~The Council shall decide the application as provided by Section 99.280(C) (ch. 105).~~
    - c. Boundary change proposals ~~as provided by Sections 81.010-81.060 (ch. 81).~~
    - d. Street name changes (ch. 97).
  - 2. Consider Aan appeal or review of a decision made by the Planning Director under the provisions of Sections 99.240(A) and 99.080(B).
  - 3. Review any Consider an appeal or a review of a decision made by the Planning Commission or Historic Review Board whether on the Council's own motion, or otherwise as provided by Section 99.240.
  - 4. Interpret the Comprehensive Plan and the provisions of the implementing ordinances and to dDecide an appeal of the Director's interpretation of zoning boundaries this Code as provided by Section 05.040.

5. Revoke or modify an approval as provided by Section 99.330 for any application approved by the City Council, including applications approved by the City Council on appeal from another city decision-making authority.
6. ~~An appeal of a Planning Director's interpretation of the Code pursuant to Section 01.060~~

#### **HISTORIC REVIEW BOARD AUTHORITY**

- D. The Historic Review Board shall have the authority to approve, deny, or approve with conditions, applications ~~pursuant to Section 99.110~~ for the following development applications ~~in accordance with the procedures of Sections 99.170 through 99.230 and notice provisions of Section 99.080 of this chapter.~~
1. New home construction in the Historic District.
  2. Creation of new historic districts.
  3. Major renovation or additions to historic landmarks, and major renovation or additions to structures in the Historic District.
  4. Construction of non-exempt accessory structures and garages to historic landmark properties and properties within a historic district.
  5. Demolition permits for the Historic District, to historic buildings in the Willamette Falls Drive Commercial Overlay Zone, and to Historic landmark structures.
  6. New construction, major renovation, and additions in the Willamette Falls Drive Commercial Overlay Zone.
  7. Revoke or modify an approval as provided by Section 99.330 for any application approved by the Historic Review Board.

#### **EXPEDITED LAND DIVISIONS**

- E. Expedited land divisions shall be processed by the Planning Commission without a public hearing pursuant to Oregon Revised Statutes (ORS) 197.360-197.380. 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) ~~Wetland and Natural Drainageway~~ 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 ORS 197.**

**99.070 CONSOLIDATION OF PROCEEDINGS**

Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding. In such cases, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 99.060, in the following order of preference: City Council, Planning Commission, or the Planning Director, except for expedited land division applications which shall be processed as described in ORS Chapter 197. For example, if a conditional use permit (CUP) and Class I design review application were submitted, ordinarily the CUP would be heard by the Planning Commission, and Class I design review by the Planning Director. This hierarchy dictates that the higher body, the Planning Commission, would hear the consolidated hearing.

**~~99.075 PUBLIC HEARING REFERRAL AUTHORITY~~**

~~The Planning Director shall have the authority to refer to the Planning Commission any Class I design review application, which, based on the criteria below, the Director determines the development may have significant impacts on the community. This shall not apply to consolidated expedited land division applications which shall be processed pursuant to ORS Chapter 197.~~

- ~~1. The application has significant policy implications.~~
- ~~2. The application would have significant off-site impacts.~~

**99.080 NOTICE**

~~Except for expedited land division applications, for which ORS Chapter 197 shall apply, n~~Notice shall be given in the following ways:

**A. Class A Notice.**

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

1. At least 20 days prior to the scheduled hearing date, ~~or at least 10 days before two or more evidentiary hearings are scheduled~~, notice shall be sent by mail to:
  - a. The applicant or ~~his~~ the applicant's agent, and the property owner of record on the most recent property tax assessment roll where such property is located;
  - b. All property owners of record on the most recent property tax assessment roll where such property is located within 500 feet of the site. ~~Notices for properties in the Tanner Basin, as defined by the Tanner Basin Master Plan, shall also extend to any properties within 500 feet that are outside of the Urban Growth Boundary;~~

- c. Any affected governmental agency which has entered into an intergovernmental agreement with the City which includes provision for such notice; plus, where applicable, Oregon Department of Transportation, Tri-Met, neighboring local jurisdictions, Clackamas County Department of Transportation and Development, and Metro, ~~where applicable~~;
  - d. The affected recognized neighborhood association or citizen advisory committee;
  - e. For a hearing on appeal or review, aAll parties and persons with standing described in Section 99.140 of this chapter to an appeal or petition for review. ~~The Director shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.~~
2. At least 10 days prior to the hearing or meeting date, notice shall be given in a newspaper of general circulation in the City. An affidavit of publication shall be made part of the administrative record.
  3. At least 10 days prior to the hearing or meeting date, the Planning Director shall cause a sign shall to be placed on the property, which is the subject of the decision or, if the property does not have frontage on a public street, adjacent to the nearest public street frontage, within 10 feet of the public right-of-way line and The sign shall be in plain view and ~~shall~~which states, "This property is the subject of a land use decision," with the type of use or request indicated.  
~~The Director or his designee shall place the sign on the property and sign an affidavit of posting.~~ If the application is not located adjacent to a through street, then an additional sign shall be posted on the nearest through street.
  4. At least 10 days, but no more than 40 days prior to hearing of a proposed zone change for manufactured home parks, notice shall be given to the respective manufactured home park residents.
  5. The City shall make reasonable efforts to post notice of the application on the City's website at least 10 days prior to the hearing, meeting, or decision date. Failure to comply with this section ~~due to technical problems with the website~~ is not a procedural defect entitling any party to a delay in the hearing process.
  6. The Director shall cause an affidavit of mailing of notice and posting of notice to be filed and made a part of the administrative record.
  7. At the conclusion of the land use action the signs shall be removed.

**B. Class B Notice.**

~~Notice of proposed action on a development application pursuant to Section 99.060 shall be given by the Director in the following manner:~~

1. ~~At least 20 days prior to the scheduled decision date, notice shall be sent by mail to:~~
  - a. ~~The applicant or his agent.~~
  - b. ~~All property owners of record within 500 feet of the site perimeter. Notices for properties in the Tanner Basin, as defined by the Tanner~~



~~Basin Master Plan, shall also extend to any properties within 500 feet that are outside of the Urban Growth Boundary.~~

- ~~e. Any affected governmental agency which has entered into an intergovernmental agreement with the City which includes provision for such notice, plus Oregon Department of Transportation, Tri-Met, and Metro where applicable.~~
- ~~d. The affected recognized neighborhood association or citizen advisory committee.~~
- ~~e. All parties described in Section 99.140 of this Chapter to an appeal or petition for review. The Director shall cause an affidavit of mailing of notice to be filed and made a part of the administrative record.~~
- ~~f. At least 10 days prior to the decision date, a sign shall be placed on the property which is the subject of the decision within 10 feet of the public right-of-way line and in plain view and which states, "This property is the subject of a land use decision," with the type of use or request indicated. The Director or his designee shall place the sign on the property and sign an affidavit of posting.~~
- ~~g. The City shall make reasonable efforts to post notice of the application on the City's website at least 10 days prior to the hearing, meeting, or decision date. Failure to comply with this section due to technical problems with the website is not a procedural defect entitling any party to a delay in the hearing process.~~

**CB.** Class **CB** Notice.

Notice of a proposed action on a development application pursuant to Section 99.060 shall be given by the Director in the following manner:

1. At least ~~10~~**14** days prior to the decision date, a notice shall be sent by mail to:
  - a. The applicant or his agent;
  - b. The affected recognized neighborhood association or citizen advisory committee; and,
  - c. All property owners of record within 100 feet of the site perimeter ~~or within 500 feet of the site perimeter if it is located in the Tanner Basin as defined by the Tanner Basin Master Plan. The 500-foot radius shall extend to affected properties not only in the Tanner Basin, but also any properties outside of the Urban Growth Boundary.~~
  - d. The City shall make reasonable efforts to post notice of the application on the City's website at least 10 days prior to the hearing, meeting, or decision date. Failure to comply with this section ~~due to technical problems with the website~~ is not a procedural defect entitling any party to a delay in the hearing process.

**C.** Notice for expedited land division applications shall comply with the requirements of ORS 197.

**D. Notice for boundary change applications shall comply with the requirements of ORS 222 and relevant Metro statutes.**

**DE.** Table of Notices. The following notice summary identifies the appropriate type of notice for the various land use applications of CDC Section 99.060~~(A)(B)(C)(D)~~ and ~~(E)~~.

Land Use Action	Type of Notice
Amendment or Modification of Application or Permit	<b>A</b> Same as original application
Appeal or Review of Decision	A
Boundary Change:	<b>C</b> Special
Code Interpretation	<b>Newspaper</b> Notice to parties requesting the interpretation
Comprehensive Plan: Map Amendment Plan/Code Text Amendment (Legislative Action)	A A***
Conditional Use	A
Design Review: Class I Class II	<b>CB</b> <b>BA</b>
Determination of Unlisted Use	No Notice
Enlarge or Alter Non-Conforming Use/Structure: Commercial or Industrial Single-Family Residential	A <b>CB</b>
Erosion and Sediment Control Permit	No Notice
<b>Expedited Land Division</b>	<b>per state statute requirements</b>
<b>Extension of Approval for Subdivision, PUD, etc.</b>	<b>C</b>
Flood Management Area	<b>CB**</b>
<b>Final Plat and Partition Plat</b>	No Notice
Historic District: Amendments Demolition New Home Construction Major Renovations or Additions Minor Renovations or Additions Construction of non-exempt accessory structures/ garages	A <b>BA</b> <b>CB</b> <b>CB</b> <b>CB</b> <b>CB</b>
Home Occupation: <b>Type I</b> <b>Type II</b>	No Notice <b>B</b>
Lot Line Adjustment	No Notice
Minor Partition	<b>BA</b>
Planned Unit Development	A
Revocation of Approval	A
Sidewalk Use Permit	No Notice
<b>Sign Permit</b>	<b>No Notice</b>
Subdivision	A
Temporary Use Permit: 60 days or less; 60-day extension Over 60 days, up to 1 year	No Notice <b>BA</b>
Tualatin River Setback: Uses permitted outright & not subject to design review Uses permitted outright & subject to design review Uses requiring conditional use permit & design review	No Notice <b>CB</b> A
Street Vacations	(per state statute requirements)
Variances: Class I (involves a small change with minor or no effect) Class II (involves a significant change from code requirements)	<b>CB</b> A
Water Resource Area Permit (NDW)	<b>BA**</b>
Willamette River Greenway: Development Permit Uses requiring conditional use permit & design review	<b>BA**</b> A**
Zone Change	A

\***Except no notice to newspaper**

\*\*Plus COE/DSL is notified

\*\*\***Newspaper notice plus DLCD notice only**

## 99.090 CONTENTS OF THE NOTICE

- A.** Notices mailed pursuant to this code shall comply with applicable provisions of the Oregon Revised Statutes (ORS). Except for expedited land division review, for which ORS Chapter 197 shall apply, notice given to persons entitled to mailed or published notice pursuant to Section 99.060 shall:
1. Explain the type of application and what proposed uses could be authorized.
  2. List the **applicable** criteria from the ordinance and plan **that apply to the application at issue.**
  3. Set forth street address **(if existing) and or property referenced other easily understood geographical reference to the subject property.**
  4. State **the date, time, and location of hearing or, for Planning Director decisions, the earliest date upon which the Director will make a decision.**
  45. State that failure to raise an issue in a hearing, in person, or by letter, or failure to provide **statements or evidence** sufficient **specificity** to afford the decision maker an opportunity to respond to the issue precludes appeal to **the State Land Use Board of Appeals (LUBA)** on that issue.
  56. Include the name of **a local** government **representative to** contact and **the** phone number **where additional information may be obtained.**
  67. State that the application, all documents or evidence **submitted by or on behalf of** ~~relied upon by~~ the applicant and applicable criteria are available for inspection at no cost, and copies **will be provided** at reasonable cost.
  78. State that a copy of the staff report will be available for inspection at no cost at least 10 days prior to the hearing, and copies at reasonable cost.
  89. A statement that public and written testimony is invited, and include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- B.** In addition to the ORS requirements, the notice shall identify the following:
1. The type of land use action proposed (e.g.) "4-lot subdivision."
  2. Planning Department file number.
  3. ~~Applicable approval criteria.~~

## 99.100 MECHANICS OF GIVING NOTICE AND FAILURE TO RECEIVE NOTICE

- A. The notification list used for giving notice required by this ordinance under Section 99.080 of this chapter shall be compiled from the most recent property tax assessment roll.
- B. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.
- C. Personal notice is deemed given when the notice is deposited with the United States Postal Service. Published notice is deemed given on the date it is published.

- D. In computing the length of time that notice was given, the first date notice is given shall be excluded and the day of the hearing or decision by the Director shall be included.

#### 99.110 THE DECISION-MAKING PROCESS OF THE APPROVAL AUTHORITY

- A. The decision shall be based on proof by the applicant that the application fully complies with:
- ~~1. The applicable West Linn Comprehensive Plan policies and map designation;~~
  - ~~2. The applicable standards of any provision of this Code or other applicable implementing ordinance.~~
- B. Consideration may also be given to:
1. A mistake or inconsistency in the Comprehensive Plan or Zoning Map as it relates to the property which is the subject of the development application; and,
  2. Factual oral testimony or written statements from the parties, neighborhood plans, other persons and other governmental agencies relevant to the existing conditions or factors in sub-sections (A) or (B)(1) above.
- C. In all cases, the decision shall include a statement in a form which includes findings as to whether or not the application meets the approval criteria of the applicable Community Development Code sections.
- D. The approval authority may:
1. Adopt the findings and conclusions contained in the staff report;
  2. Adopt the findings and conclusions of a lower approval authority;
  3. Adopt its own findings and conclusions;
  4. Adopt the findings and conclusions submitted by any party; or,
  5. Adopt the findings and conclusions from another source, either with or without modifications, having made a tentative decision and having directed the staff to prepare findings for review and to provide an opportunity for all parties to comment upon them.
- E. The decision may be for denial, approval, or approval with conditions, pursuant to Section 99.160 and 99.170, where such conditions are necessary to satisfy the applicable standards of any provision of this Code or other applicable implementing ordinance.
- ~~1. Carry out the West Linn Comprehensive Plan;~~
  - ~~2. Carry out the applicable implementing ordinances;~~
  - ~~3. Protect the public or surrounding property from possible deleterious effects of the proposed use; or,~~
  - ~~4. Assure that adequate public services are provided as a part of the development or to assure that other required improvements are made.~~
- F. The final decision shall be a decision which is in writing and which has been:

1. Formally adopted by the decision-making authority and filed with the Director within 14 working days of the formal adoption of the decision; or,
2. Signed by the Director in the case of a decision by the Director and filed as a final decision within 14 working days of the signed decision; or,
3. Formally adopted by the Council and signed by the Mayor or the president of the Council in the case of an appeal.

#### 99.120 AMENDMENTS

This section explains how amendments to ~~subdivisions, planned unit developments, and design review~~ projects subject to the quasi-judicial decision making process are processed.

**A. An amendment application shall be required if the Planning Director determines that the proposed revisions will change the project by a factor greater than ten percent in a quantifiable manner (e.g. number of proposed lots, square footage of proposed buildings, number of parking spaces, relocation of building footprints). Non-quantifiable changes shall also require an amendment if they result in significant differences between the approved project and the revised project, or if the changes call into question compliance with a relevant approval criterion.**

**AB.** Amendments shall be reviewed by the initial decision-making authority. For example, if the Planning Commission heard the application initially, then it would hear the amendment application.

**BC.** Rather than provide full submittal, the Planning Director shall identify the parameters of the submittal appropriate to the amendment and applicable approval criteria. For example, if the applicant only requests to re-design the architecture of a building, but not increase square footage or building mass, then the submittal of a site plan, architectural elevations, material/color board, and narrative specific to the architecture and relevant design review approval criteria would be appropriate. Conversely, no new landscaping, grading plans, etc. would be necessary since no changes are proposed for those items. The submittal should be comprehensive and sufficient to provide the decision-making authority with all necessary information while not being redundant and requiring information which is already part of the record of the original application.

**D. If the proposed revisions will change the project by a factor greater than 25 percent in a quantifiable manner, or if the land area upon which the project is proposed changes, then a new application shall be required.**

#### 99.125 STAGED OR PHASED DEVELOPMENT

An applicant may elect to develop a proposed project in phases. The timing of each development phase shall be set forth in the application and subject to approval by the appropriate approval authority. Each phase shall meet all applicable development standards individually (e.g., access, parking, landscaping, utilities, etc.) without having to rely upon subsequent phases. **Each phase shall also install all necessary improvements to serve the development within that phase.**

### 99.130 NOTICE OF THE FINAL DECISION

- A. The final decision by the Planning Director shall be filed in the records of the Department of Planning and Development ~~within five working days~~ after the decision is signed by the Planning Director, and notice thereof, shall be mailed to the applicant, all parties to the matter as established under Section 99.140, and those persons who requested copies of such notice.
- B. The final decision by the Planning Commission, Historic Review Board, or City Council shall be filed in the records of the Department of Planning and Development ~~within ten working days of the final decision~~, and notice thereof shall be mailed to the applicant, all parties to the matter as established under Section 99.140, and those people requesting copies of such notice.
- C. Notice of a final decision shall conform to applicable provisions of the Oregon Revised Statutes.
- D. The appeal period is as provided in Section 99.150.

### 99.140 ESTABLISH STANDING TO APPEAL OR REVIEW

- A. Any person or recognized neighborhood association with "standing" may pursue an appeal or seek review of any land development decision. Standing is established in the following way:
- B. The person or recognized neighborhood association appeared before an approval authority other than the Director, either orally or in writing, and provided their name and address; signed the sign-in sheet or testimony form provided at the hearing; or submitted comments to the Director, ~~either orally or~~ in writing, and provided their name and address to the Director regarding a decision. Neighborhood association standing can only be established by a person identifying, either in testimony or in writing, that they represent a specific neighborhood association.

### ~~99.150 COMPUTATION OF APPEAL PERIOD – PETITION FOR REVIEW TIME PERIOD~~

~~In computing the length of the appeal period or petition for review period, the day that notice of the final decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on any legal holiday or on a Saturday or Sunday, in which case the last day shall be the next business day. For example, the appeal period for a final decision mailed on May 1 would start on May 2 and end on May 16 (unless May 16 falls on a weekend or legal holiday, in which case it would be the next business day).~~

### 99.160 A DECISION BY THE DIRECTOR

- A. Pursuant to Section 99.060(A) of this chapter, the Director is authorized to make certain decisions, and no hearing shall be held except where the Director has an interest in the outcome of the decision, due to some past or present involvement with the applicant, other interested persons or in the property or surrounding property, and

cannot render an impartial decision. In such cases, the application shall be ~~treated as if it were filed under Section 99.060(B) of this chapter~~ subject to the jurisdiction of the Planning Commission.

- B. A decision made by the Director shall be made in accordance with the provisions of Section 99.110 of this chapter, and a record shall be made which shall include:
1. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;
  2. All correspondence relating to the application;
  3. All information considered by the Director in making the decision;
  4. The staff report of the Director prepared under Section 99.040(A)(3)(b);
  5. A list of the conditions, if any are attached to the approval of the application;
  6. A copy of the notice which was given pursuant to Section 99.080(A), and accompanying affidavits, and a list of all persons who were given mailed notice; and,
  7. A signed statement by the Director stating the nature of any past or present involvement with the applicant, other interested persons or the property if the Director makes a decision, and if there could reasonably be expected to be a challenge to the fairness of the decision.
- C. A decision made by the Director shall be final as provided by Section 99.230 unless:
1. A party to the action files a written appeal with the Director within 14 days of the final decision pursuant to Section 99.240.
  2. Not less than two members of the Commission or two members of the Council order a review within 14 days of the final decision pursuant to Section 99.240.;
  - or,
  3. ~~It is an expedited land division application for which the provisions of ORS Chapter 197 shall apply.~~
- ~~D. The Director may grant less than is requested in the application if such decision will not limit the development options on the parcels not approved as part of the application and notice is appropriately given as provided by Section 99.160(F).~~
- ~~ED.~~ No Director's decision may modify the request from that set out in the notice given under Section 99.080 and 99.090, unless new notice be given except that conditions may be attached to the approval.

#### 99.170 AN ADMINISTRATIVE ACTION - HEARING PROCEDURE

- A. Unless otherwise provided by the Rules of Procedure adopted by the Council, the ~~approval authority~~ Planning Commission, City Council, and Historic Review Board pursuant to Sections 99.060(B) and (C) of this chapter, shall ~~have the authority to~~ conduct a public hearing on all matters over which the board, commission, or council has original jurisdiction pursuant to Section 99.060 of this chapter; and:
1. Determine who qualifies as a party.



2. Regulate the course, sequence, and decorum of the hearing. The sequence of the hearing shall also include the right to establish procedures for continuances of hearings.
3. Dispose of procedural requirements or similar matters.
4. Rule on offers of proof and relevancy of evidence and testimony.
5. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross examination of witnesses and rebuttal testimony.
6. Take such other action appropriate for conduct commensurate with the nature of the hearing.
7. Approve or deny applications or approve with conditions pursuant to Section 99.12~~10~~10 of this ordinance.

**B. At the commencement of the hearing, a statement shall be made to those in attendance that:**

- 1. Lists the applicable substantive criteria (by chapter) that applies to the application before the hearing body.**
- 2. States that testimony, arguments and evidence must be directed toward the applicable substantive criteria which the person testifying believes to apply to the decision**
- 3. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the State Land Use Board of Appeals based on that issue.**

**BC.** Unless otherwise provided in Rules and Procedure adopted by the Council, the following rules shall apply to the general conduct of the hearing:

1. The approval authority may ask questions at any time prior to the final decision; however, the answers shall be limited to the substance of the question and if new evidence is admitted after the close of the hearing, upon request, rebuttal shall be allowed.
2. Parties or the Director must receive approval from the approving authority to submit directly questions to other parties or witnesses or the Director;
3. A reasonable amount of time shall be given to persons to respond to questions;
4. No person shall testify without first receiving recognition from the approval authority and stating a full name and address;
5. The approval authority may require that testimony be under oath or affirmation;
6. Audience demonstrations such as applause, cheering and display of signs or other conduct disruptive of the hearing shall not be permitted. Any such conduct may be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer; and,

7. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
- ED.** The Planning Commission **or Historic Review Board** may refer any matter for Council action on the record made before it.
- E.** **Prior to the conclusion of the initial evidentiary public hearing on the application, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The request shall be granted through one of the following means:**
- 1. Continuation of the public hearing to a date, time, and place certain at least seven days from the date of the initial evidentiary public hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.**
  - 2. Leaving the record open for at least seven days for the presentation of additional written evidence, arguments, or testimony. At the conclusion of this period, any participant may file a request for an opportunity to respond to any additional written evidence, arguments, or testimony. Such a request shall be granted with an additional seven days (at minimum) to file such a written response.**
- F.** **If requested, the applicant shall be granted an additional period of at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. Any such time period granted to the applicant shall not be subject to the time limit provisions of ORS 215 regarding local government decision-making on quasi-judicial applications.**
- G.** **A decision made by the Planning Commission or Historic Review Board shall be final as provided by Section 99.230 unless:**
- 1. A party to the action files a written appeal with the Director within 14 days of the final decision pursuant to Section 99.240.**
  - 2. Not less than two members of the Council order a review within 14 days of the final decision pursuant to Section 99.240; or,**
  - 3. It is an expedited land division application for which the provisions of ORS Chapter 197 shall apply.**

**99.180 EX PARTE CONTACTS, IMPARTIALITY, DISQUALIFICATION, AND ABSTENTION**

- A. *Ex Parte* Contacts. The general public has a right to have hearing body members free from pre-hearing or *ex parte* contacts on the matter to be heard. It is recognized that an equal public right is free access to public officials on any matter.

1. Therefore, hearing body members shall reveal any significant pre-hearing or *ex parte* contacts with regard to any matter at the commencement of the public hearing on the matter. *Ex parte* contacts are defined as meetings, conversations, or communication outside of the City hearing process between the decision-making authority (e.g., Planning Commission member) and any person concerning the substance of the application. Essentially, both sides of the issue are not fairly represented. An *ex parte* contact does not compel abstention, but if such contacts have impaired the members' impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting.
2. In addition, parties who had the communication with the member have the right to rebut the substance of the communication, on the subject to which the communication relates, with the member at the commencement of the public hearing on the matter.
3. All *ex parte* contacts shall be reported on the record.
4. This section shall not apply to Director decisions made under Section 99.060(A).
5. Members of the City Council, Planning Commission, and Historic Review Board shall be governed by the relevant provisions of ORS 227.180 and 244.135 and the provisions of this section. Where inconsistencies exist, the ORS shall prevail.

B. Challenges to Impartiality

1. An affected party or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state the facts relied upon by the challenger relating to a person's bias, pre-judgment, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner.
2. The challenged person shall have an opportunity to respond orally to the challenge. The challenge shall be incorporated into the record of the hearing.
3. Any challenge shall require that the hearing body vote on the challenge pursuant to subsection E below.

C. Disqualification. No member of a hearing body may participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

1. Any of the following have a direct or substantial financial interest in the proposal: the member or member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
2. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

D. Participation by Interested Officers or Employees. No officer or employee of the City who has a financial or other private interest in a proposal may participate in

discussion with, or give an official opinion to, the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

- E. Abstention or Disqualification. Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion but shall be allowed to participate in the deliberation of the hearing body on that motion.
- F. Rights of Abstaining or Disqualified Member of the Hearing Body
1. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only after making full disclosure for the record of the hearing, abstention from voting on the proposal, and vacating the seat on the hearing body.
  2. If all members of a hearing body abstain or are disqualified, **the consequences for the application shall be as follows: all members present after stating their reasons for abstention or disqualification shall be re-qualified and shall proceed to resolve the issues**
    - a. **Planning Commission disqualified – referred to City Council for hearing and decision.**
    - b. **Historic Review Board disqualified – referred to Planning Commission for hearing and decision.**
    - c. **City Council disqualified – referred to Planning Commission for hearing and decision.**
    - d. **City Council and Planning Commission both disqualified – referred to the Hearings Officer for hearing pursuant to Section 99.170 and decision.**
    - e. **City Council acting as appellate hearing authority – decision of the original hearing authority becomes the final City decision.**
  3. Council members who appear as a party in another hearing process on an application, such as testifying before the Planning Commission in a case that is then appealed to City Council, shall be disqualified from Council consideration of that application.
  4. ~~Council members~~ **Members of a hearing body** who participate in a meeting, such as a neighborhood association or a Chamber of Commerce meeting, etc., wherein they state their support or opposition to an application that appears before City Council, shall be disqualified from the ~~Council~~ **hearing body's** consideration of that application.
- G. **A member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.**

## 99.190 CONTINUATION OF THE HEARING - NOTICE

An approval authority may continue the hearing from time to time to gather additional evidence, to consider the application fully, **to comply with state statutes**, or to give notice to additional persons. Unless otherwise provided by the approval authority, no additional notice need be given of the continued hearing if the matter is continued to a date certain.

## 99.200 EVIDENCE

- A. All evidence offered and not objected to may be received unless excluded by the approval authority.
- B. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conducting of their every day affairs.
- C. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.
- D. Formal rules of evidence, as used in courts of law, shall not apply.

## 99.220 RECORD OF PROCEEDINGS

- A. A verbatim record of the proceeding shall be made by **video recording, or other available stenographic or mechanical** means. It shall not be necessary to transcribe testimony. The minutes and other evidence of the proceedings shall be part of the record and the basis for deciding a decision on review. **Inadvertent loss of a verbatim record due to technical or mechanical problems unforeseen by the City shall not be grounds for invalidating a public hearing or decision.**
- B. All exhibits received shall be marked so as to provide identification upon review and shall be part of the record.
- C. The official record shall include:
  - 1. All materials, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and recorded or considered by the hearings authority as evidence.
  - 2. All materials submitted by the Director to the approval authority with respect to the application;
  - 3. The verbatim record made by **video recording or other available stenographic or mechanical** means, the minutes of the hearing, and other evidence of the proceedings before the hearings body;
  - 4. The written findings, conclusions, decision and, if any, conditions of approval of the approval authority;
  - 5. **Argument by the parties or their legal representatives permitted pursuant to Section 99.280(B) at the time of review before the Council All visual displays, both in paper form and in electronic form, presented as part of the proceedings;**
  - 6. All correspondence relating to the application; and,
  - 7. A copy of the notice which was given as provided by Section 99.080 of this chapter, accompanying affidavits and list of persons who were sent mailed notice.

**D. The record of proceedings for a hearing on appeal or review by the City Council shall consist of all the above items and all similar items presented during the Council proceedings.**

**99.230 THE EFFECTIVE DATE OF THE DECISION - APPEAL OR REVIEW**

Any decision made under the provisions of this chapter shall become effective ~~on the 15th~~ **at 5:00 P.M. on the 14<sup>th</sup>** day from the date of mailing the notice of the final decision, ~~as provided in Section 99.150 of this chapter~~, unless an appeal or review is taken pursuant to Section 99.240 of this chapter. If the ~~145~~ **14<sup>th</sup>** day falls on any legal holiday or on a Saturday or Sunday, then the effective date **and time** shall be **at 5:00 P.M. on** the next business day. For example, if a final decision was mailed on July 1, the decision would be final **at 5:00 P.M. on July 15** ~~on July 16~~.

**99.240 AUTHORITY TO APPEAL OR SEEK REVIEW OF A DECISION - EXHAUSTION OF ADMINISTRATIVE REMEDIES**

The Oregon Revised Statutes require that prior to filing an appeal at the State Land Use Board of Appeals (LUBA), an appellant must first utilize the appeal opportunities provided by the City. A case cannot be brought before LUBA unless an appeal or petition for review is first filed with the appropriate city review body. It is the purpose of this section to provide parties information about possible remedies prior to litigation. To that end, the filing of an appeal or petition for review is a condition precedent for further administrative or judicial review.

A. Any decision made by the Planning Director pursuant to Section 99.160 or the Planning Commission or Historic Review Board (except for expedited land divisions) on a development application as provided by Section 99.170060(A), ~~or by the Historic Review Board as provided by Section 99.060(D)~~ may be appealed to the City Council pursuant to Section 99.160(C)(1) or Section 99.170(G)(1) or may be reviewed by the City Council pursuant to Section 99.160(C)(2) or Section 99.170(G)(2).

~~B. Any decision made by the Director on a development application as provided by Section 99.060(A), or by the Historic Review Board as provided by Section 99.060(D), may be reviewed by City Council pursuant to Section 99.160(C)(2).~~

~~C. Any decision made by the Commission under Section 99.060(B) may be reviewed by the Council by:~~

- ~~1. The filing of a Notice of Review by any party to the decision within 14 days of mailing the notice of the final decision as prescribed under Section 99.150; or,~~
- ~~2. A request by not less than two Council members within 14 days of mailing the notice of the final decision as prescribed under Section 99.150.~~

~~DB.~~ Any decision made by the Historic Review Board, or Planning Commission under Section 99.170060(B) may be reviewed by the Council if the matter is referred under Section 99.170(C) ~~by the Planning Commission~~ to the Council, upon closure

of the hearing, when the case presents a policy issue which requires Council deliberation and determination.

**EC.** Formally recognized neighborhood associations may appeal land use decisions to the appropriate bodies without cost if the Planning Director finds:

1. The Community Development Code appeal procedures, ~~Sections 99.140 and 99.240 through 99.300~~ are followed.
2. A member of the association must have established standing on behalf of the association. The member must have explicitly identified themselves, in writing or in testimony, as representing the association.
3. The association submits a copy of the meeting minutes and vote taken supporting the appeal.
4. The neighborhood association appeal is related to the property within the association's recognized boundaries, or an application outside the association's boundaries that shall have significant impacts upon the association's neighborhood.
5. The neighborhood association may appeal without cost on behalf of an individual or group with standing who is not represented by a recognized association if "a," "b," and "c" above are met and the neighborhood association finds the issue(s) are of City-wide concern related to the West Linn Comprehensive Plan or the West Linn CDC.

#### **99.250 APPLICATION FOR APPEAL OR REVIEW**

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

#### **99.260 PERSONS ENTITLED TO NOTICE ON APPEAL OR REVIEW - TYPE OF NOTICE**

Upon appeal or review, notice shall be given by the Director to all persons having standing as provided by Section 99.140 and notice as required by Section 99.080.

#### **99.270 CONTENTS OF NOTICE ON APPEAL OR REVIEW**

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

- A. Reference the application sought to be appealed or reviewed;
- B. List the date, time, and location of the hearing;

C. State the appellant or petitioner name(s);

**D. List the specific grounds of the appeal or review;**

**ED.** 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;

**FE.** State that the hearing on appeal shall be *de novo*.

**GF.** Include the name of government contact and phone number.

**HG.** State that the application and record are available for inspection at no cost, and copies at a reasonable cost.

#### **99.280 TYPE OF APPEAL OR REVIEW HEARING AND SCOPE OF REVIEW**

A. All appeals and reviews shall be *de novo*.

1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.
2. If any party requests a continuance of the appeal or review hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal or review.

**B. ~~The review of a recommendation by the Planning Commission on a Comprehensive Plan map amendment or map amendment and zone change shall be *de novo* and shall automatically be referred to the Council for action in the manner set forth in this chapter.~~**

#### **99.290 ACTION ON APPEAL OR REVIEW - TIME LIMIT AND AUTHORITY TO CHANGE THE DECISION**

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



**99.300 PARTICIPATION BY MEMBERS OF THE APPROVAL AUTHORITY  
CITY COUNCIL IN THE DECISION AND VOTING ON THE APPEAL  
OR REVIEW**

- A. The provisions of Section 99.~~210~~**180** of this chapter apply and, in addition,
- ~~1. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.~~
  1. A majority of the qualified voting members of the approval authority must vote affirmatively to affirm, affirm with conditions, or reverse or remand the decision. **If no majority is in favor of any motion, then the previous decision shall be considered affirmed.**
- B. Unless a decision be deferred, in the event of a tie, the decision which is the subject of appeal or review shall stand.

**99.320 DENIAL OF THE APPLICATION - RESUBMITTAL**

An application which has been denied and which, on appeal, has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission, or the courts, may not be re-submitted for the same or a substantially similar proposal, or for the same or substantially similar action for a period of at least 12 months from the date the final decision is made denying the application.

**99.330 REVOCATION OF APPROVALS - FAILURE TO FULFILL  
CONDITIONS**

- A. Conditions of approval shall be fulfilled within the time limit set forth in the decision; or, by specific provisions in this code; or, if no time limit is set forth, within ~~one~~ **three** years. Failure to fulfill any condition of approval within the time limitations provided will be grounds for revocation of approval after notice and an opportunity to be heard as an administrative action as provided in Section 99.330. Alternately, the Planning Director shall pursue compliance through Section 106.000.
- B. Substantial changes, alterations, or amendments to the substance of the conditions of approval shall be processed as a new administrative action per Section 99.120.
1. Substantial changes in an application made after approval, but without applicant seeking approval under Section 99.120 shall result in revocation of approval after notice and opportunity to appeal revocation order.
  2. Director determination of what does or does not constitute substantial changes, alterations, or amendments are appealable to the City Council by anyone having standing in the original land use decision.
- ~~C. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the approved development application, the owner and any contract purchasers of the property which is the subject of the approved application, shall sign and deliver to the Director their acknowledgment and consent to such conditions.~~
- ~~D.~~ The conditional approval may require the owner of the property to sign within a time certain or, if no time is designated, within a reasonable time, a contract with the City for enforcement of the conditions. The Council shall have the authority to execute

such contracts on behalf of the City. If a contract is required by a conditional approval, no building permit shall be issued for the use covered by the applications until the executed contract is recorded in the real property records of the County and filed in the County records. Such contracts shall be enforceable against the signing parties, their heirs, successors, and assigns by the City by appropriate action in law or suit in equity for the benefit of public health, safety, and welfare.

**ED.** A performance bond or other type of surety in a form acceptable to the Director, or upon appeal or review by the appropriate approval authority, or a cash deposit from the property owners or contract purchases in such an amount as will assure compliance with the conditions imposed pursuant to this section may be required. Such bond, surety, or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.

**FE.** The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted pursuant to this chapter, for any of the following reasons:

1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional; or,
2. A failure to comply with the terms and conditions of approval; **or**
3. A failure to use the premises in accordance with the terms of the approval; or,
4. A material misrepresentation or mistake of fact or policy by City in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional **by Council and available at City Hall.**

**GF.** In the event that a revocation hearing is deemed appropriate, per CDC 99.330(A), the hearing shall be conducted by the decision-making authority that granted the **original final city** approval. ~~In the event that the original decision was appealed and subsequently reviewed by a higher decision making body, it shall be the decision making authority that made the preliminary decision that holds the revocation hearing. The Planning Commission, Historic Review Board, and City Council may all convene revocation hearings.~~ The Planning Director or the approval authority with jurisdiction may initiate revocation proceedings ~~in the event that the Planning Director rendered the original decision. No hearing would be involved; instead, it would be processed as a Planning Director's decision with public notice pursuant to this chapter.~~ For Planning Director decisions made without a public hearing, the Planning Commission shall hold a public hearing on the proposed revocation.



U.S. POSTAGE  
01.85

METER 489986



Planning and Building  
22500 Salamo Road, #1000  
West Linn, OR, 97068

**TO:**

Dept. of Land Conservation and Development  
Attn: Plan Admendment Specialist  
635 Capitol St., NE, Ste 150  
Salem, OR 97301-2540

FIRST CLASS MAIL