



22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

CITY COUNCIL AGENDA

Monday, November 18, 2024

6:00 p.m. – Work Session – Council Chambers & Virtual*

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|-----------------------|------------------|
| 1. Call to Order | [6:00 pm/5 min] |
| 2. Approval of Agenda | [6:05 pm/5 min] |
| 3. Public Comment | [6:10 pm/10 min] |

The purpose of Public Comment is to allow the community to present information or raise an issue regarding items that do not include a public hearing. All remarks should be addressed to the Council as a body. This is a time for Council to listen, they will not typically engage in discussion on topics not on the agenda. Time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

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|---|------------------|
| 4. Joint meeting with the Planning Commission | [6:20 pm/60 min] |
| a. Housing Production Strategies | |
| 5. Code Process Amendments | [7:20 pm/40 min] |
| 6. Wildlife Ordinance Discussion | [8:00 pm/15 min] |
| 7. City Manager Report | [8:15 pm/5 min] |
| 8. Adjourn | [8:20 pm] |

**City Council meetings will be conducted in a hybrid format with some Councilors, staff, presenters, and members of the public attending virtually and others attending in person. The public can watch all meetings online via <https://westlinnoregon.gov/meetings> or on Cable Channel 30.*

Submit written comments by email to City Council at citycouncil@westlinnoregon.gov. We ask that written comments be provided before noon on the day of the meeting to allow City Council members time to review your comments.

If you cannot attend the meeting in person and would like to speak live at a public meeting by videoconferencing software or by phone, please complete the form located at: <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> by 4:00 pm the day of the meeting to be input into our system. Instructions on how to access the virtual meeting will then be provided to you by email prior to the meeting. If you miss the deadline and would like to speak at the meeting, please fill out the form and staff will send you a link as time allows.

The City abides by Public Meetings law. If you believe a violation has occurred, please [click here](#) to inform the staff of your concern.

To request an interpreter or other communication aid, please contact Kathy Mollusky at 503-742-6013 or kmollusky@westlinnoregon.gov.

When needed, the Council will meet in Executive Session pursuant to ORS 192.660(2).

Work Session Agenda Bill

Date: November 18, 2024

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

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: Housing Production Strategy Project Update

Purpose:

Hold a joint work session with the Planning Commission to get an update on the City's Housing Production Strategy project and review a list of draft recommended strategies.

Question(s) for Council:

Does the Council have any clarifying questions about the project/process?

Does the Council have comments or questions about the draft recommended strategies?

Background & Discussion:

HB2003, passed by the Oregon Legislature in 2019 in response to the state's housing crisis, requires jurisdictions to update their [Housing Capacity Analysis \(HCA\)](#) and develop an associated [Housing Production Strategy \(HPS\)](#). The aim is to help communities meet the housing needs of Oregonians.

The City completed its HCA and after a series of work sessions with the Planning Commission (PC) in Spring/Summer 2023, the PC recommended adoption of the HCA at a public hearing in August 2023. City Council (CC) [adopted the HCA in October 2023](#) to comply with state statutes and administrative rules.

The City now needs to develop and adopt the HPS by June 30, 2025. The HPS must outline the specific tools, actions, and policies the City plans to implement to address the housing needs identified in the HCA, as well as the City's plan and timeline for implementing each strategy.

The City received grant funds from the Department of Land Conservation and Development (DLCD) for consultant assistance in developing the HPS. A consultant team from MIG, who worked with the City on the HCA process, is under contract. and has completed the required [Contextualized Housing Needs Assessment \(CHNA\)](#), which builds upon the HCA, and a [Stakeholder Interview Summary](#). Both documents were reviewed at a joint work session with the Planning Commission on June 17, 2024.

The Council also appointed a Project Working Group to provide feedback and make a recommendation on proposed strategies. The working group held its [first meeting on June 10, 2024](#) and reviewed the same two documents (CHNA and Stakeholder Interview Summary). The working group held its [second meeting on October 8, 2024](#) to review draft recommended strategies and to review and provide feedback on a list of strategies to consider. The draft recommended strategies and strategies to consider were distilled from the HB2003 [Housing Strategies Report](#) compiled by MIG during the HCA process that focused on options

for West Linn and the DLCD [HPS Guidance Document](#) with possible strategy options for communities to evaluate.

Based on the feedback from the Working Group, MIG narrowed the draft recommended strategies down to 11 via combining some strategies together and moving several to the “not recommended” category. The list and details required to be included in the adopted HPS are found in the attached Evaluation and Refinement of Selected Strategies memorandum from MIG. The Working Group will be reviewing this memo at its November 13th meeting. Staff and the consultant team will provide a summary of their feedback at the CC/PC joint work session.

The goal of the joint work session is to get feedback from CC/PC members on the draft recommended strategies and provide guidance on any that should not be moved forward to the next phase of community engagement.

The City will need to show progress on strategies adopted into the HPS over the six-year implementation cycle established by the legislature. You will see a recommended time frame for implementation associated with each draft recommended strategy. The legislature has dedicated funding for help with HPS implementation, but the City needs to ensure staff capacity to address all adopted strategies.

Time Frame **Implementation:** When does the City expect the action to be adopted and implemented over the 6 year planning period? For this draft, strategies are identified as Near Term (1-3 years), Medium Term (within 3-5 years), and Longer Term (>5 years) actions. The final HPS will include a more detailed timeline that includes more targeted timeframes for adoption (if applicable) and implementation for each strategy.
Impact: Over what time period will the impact occur?

Once the community engagement phase is complete, the final HPS document will be produced for review by the Working Group in February 2025 and final review by the CC/PC at a third joint work session in March 2025. The goal is for Council to adopt the HPS in Spring 2025 to meet the state mandated deadline of June 30, 2025.

Council Options:

Receive a briefing from the City’s project consultant, ask clarifying questions, request additional information, and provide guidance on the draft recommended strategies.

Staff Recommendation:

Receive a briefing from the City’s project consultant, ask clarifying questions, request additional information, and provide guidance on the draft recommended strategies.

Attachments:

1. Evaluation and Refinement of Selected Strategies Memo dated November 4, 2024

Evaluation and Refinement of Selected Strategies

City of West Linn Housing Production Strategy

Date November 4, 2024

To City of West Linn

From Matt Hastie and Brandon Crawford, MIG

CC Brendan Buckley, Johnson Economics

INTRODUCTION

This memo provides an evaluation and initial recommendations for the housing strategies that the City of West Linn may consider as part of its Housing Production Strategy (HPS). These are potential strategies that the City and its partners can employ to address West Linn's current and future housing needs, as identified in the recently-completed Housing Capacity Analysis (2023 HCA).¹ This memo builds on previous HPS tasks, including the Contextualized Housing Needs Analysis (CHNA), stakeholder interviews, Project Work Group (PWG) input, and a memo summarizing "Existing Measures, Previously Identified Strategies, and Additional Strategies." For more information and background on the project, visit the [HPS page on the City's website](#).

Memo Organization

This memo is organized into two sections:

- 1. Recommended Strategies**

The project team's initial recommendation is to include these strategies in the HPS. These strategies were recommended in the City's previous Housing Capacity Analysis (HCA); are being considered for implementation as part of other city planning processes; have a relatively low barrier to implementation; and/or are expected to have a moderate to high impact on housing production. These strategies also generally were rated as higher priorities identified by Project Working Group members, City staff and the consulting team. Note that many of the recommended strategies rely on one another in order to be successfully implemented.

- 2. Not Recommended**

These strategies were either addressed in the HCA or were previously considered as a part of this HPS project. The project team does not recommend these strategies for inclusion in the HPS because they were identified as lower priority by the project team and the Project Work Group.

¹ HB 2003 Housing Capacity Analysis. <https://westlinnoregon.gov/planning/hb-2003-housing-capacity-analysis>

The City has limited resources to implement every strategy that has been considered within the HPS planning and implementation timeline (6 years).

Strategy Evaluation

This report provides additional background information for each of the housing strategies included in the “Existing Measures, Previously Identified Strategies, and Additional Strategies” memo and takes a closer look at the potential impacts to housing supply/affordability, benefits and burdens on priority populations, feasibility, and actions needed for implementation.

The summary of each housing strategy includes the following information:

Description	What is the strategy? How can the strategy work to address identified housing needs in West Linn? What are potential outcomes?
Considerations	What potential options, funding needs, challenges, etc. are applicable to the strategy? Are there potential trade-offs or negative externalities to consider? How feasible is this strategy, given other considerations?
Anticipated Impact	<p>What is the anticipated impact of the strategy? The following types of impacts are considered:</p> <ul style="list-style-type: none"> • Housing need addressed – Housing need identified in the HCA that is addressed by the strategy • Populations served by the strategy • Income levels addressed by the strategy • Benefits and burdens that priority populations may receive from the strategy. Priority populations include low-income households, people of color, people with disabilities, seniors, and other state or federal protected classes. • Housing tenure (either owner or renter) • Magnitude of the action for producing new housing: <ul style="list-style-type: none"> ○ Low impact: The strategy is unlikely to meet the relevant housing need. A low impact strategy does not mean an action is unimportant. Some actions are necessary but not sufficient to produce new housing. ○ Moderate impact: The strategy either may have a moderate impact on meeting the relevant housing need or be designed to target that need. ○ High impact: The strategy may directly benefit a certain housing need and is likely to be most effective at meeting that need relative to other strategies.
Time Frame	<p>Implementation: When does the City expect the action to be adopted and implemented over the 6 year planning period? For this draft, strategies are identified as Near Term (1-3 years), Medium Term (within 3-5 years), and Longer Term (>5 years) actions. The final HPS will include a more detailed timeline that includes more targeted timeframes for adoption (if applicable) and implementation for each strategy.</p> <p>Impact: Over what time period will the impact occur?</p>
Implementation Actions	What actions will the City and other stakeholders need to take to implement the strategy?

Lead & Partners Who will be responsible for implementing the strategy? What partnerships might be necessary or beneficial to the strategy?

Recommendation Identifies specific actions recommended for implementation. (Not applicable to all strategies).

Summary of Housing Strategies

1. Recommended Strategies

1.1	Rezone Land (A02)	A. Zoning and Code Changes	Medium Term
1.2	Use Tax Increment Financing (TIF) to support affordable housing development (D10)	D. Financial Resources	Medium Term
1.3	Update SDCs (C01 – C03)	C. Financial Incentives	Longer Term
1.4	Surplus Land, Land Acquisition, and Land Banking Affordable Housing (F01, F12 & F18)	F. Land, Acquisition, Lease, and Partnerships	Medium Term
1.5	Fair Housing Education, Referral, and Other Services (F20)	F. Land, Acquisition, Lease, and Partnerships	Medium Term
1.6	Small Dwelling Unit Development (A17)	F. Zoning and Code Changes	Near Term
1.7	Public-Private Partnership (PPP) for Affordable Housing (F04)	F. Land, Acquisition, Lease, and Partnerships	Medium Term
1.8	Low Income Rental Housing Tax Exemption (E01 and/or E02)	E. Tax Exemption and Abatement	Near Term
1.9	Multiple Unit Property Tax Exemption (MUPTE) (E04)	D. Tax Exemption and Abatement	TBD
1.10	Homebuyer Opportunity Limited Tax Exemption Program (HOLTE) (E06)	E. Tax Exemption and Abatement	Near Term
1.11	Zoning Incentives for Workforce and Affordable Housing (A03)	A. Zoning and Code Changes	TBD
1.12	Construction Excise Tax (CET) (D09)	D. Financial Resources	TBD

2. Not Recommended

2.1	UGB Amendments and Planning	N/A	N/A
2.2	Promote ADUs (A05)	A. Zoning and Code Changes	N/A
2.3	Accessible Design (A23)	A. Zoning and Code Changes	
2.4	Financial Assistance and Homebuyer Education Programs	N/A	N/A
2.5	Expedited Development Review (B03 & B06)	B. Reduce Regulatory Impediments	N/A

*DLCD Category refers to the type of action each strategy entails, according to DLCD's [Housing Production Strategy Guidance Document](#)²:

- A. Zoning and Code Changes
- B. Reduce Regulatory Impediments
- C. Financial Incentives
- D. Financial Resources
- E. Tax Exemption and Abatement
- F. Land, Acquisition, Lease, and Partnerships
- Z. Custom Options

² For each strategy, the corresponding strategy number from DLCD's List of HPS Tools, Actions, and Policies is indicated in (parentheses).

1) Recommended Strategies

The following strategies are recommended for inclusion in the HPS. These strategies were either identified as “High Priority” in the Housing Strategies Report³; are being considered for implementation as part of other city planning processes; have a relatively low-barrier to implementation; were prioritized by the Project Working Group (PWG); and/or are expected to have a moderate to high impact on housing production.

1.1 Rezone Land (Z02)

Description This strategy involves rezoning commercial, mixed-use, or other non-residentially zoned properties for residential uses, especially multi-family housing. It could also involve rezoning lower-density areas to allow higher-density housing or increasing allowed density in certain zones.

- Considerations**
- The HCA identified a need for additional capacity in high density residential or multifamily zones. Although the City recently rezoned multiple properties from lower density to higher density designations, further rezoning would expand capacity and help boost overall housing production.
 - If nonresidential land is considered for rezoning, it would be important to ensure there is still adequate land available for employment and commercial/industrial needs in the city. West Linn’s Economic Opportunities Assessment identifies the city’s future employment land needs.
 - In considering the most appropriate locations for City-initiated rezoning of land, the following criteria or factors should be considered:
 - Proximity to existing residential and higher-density areas.
 - Proximity to services (e.g., transit, schools, parks, etc.).
 - Size and ownership – larger properties will be more attractive for development.
 - There may be neighborhood resistance to rezoning, especially “upzoning” single-family residential areas. This strategy would need significant community engagement.
 - The City also may rezone areas within the Waterfront area and Highway 43 corridor from commercial to mixed use designations as part of current Vision43 and Waterfront projects. This also will expand opportunities for development of higher density housing in these areas.
 - Certain areas of the City have zoning designations that do not align with residential Comprehensive Plan designations that may be rezoned to residential for consistency with the Comprehensive Plan.

³ West Linn Housing Strategies Report.

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/page/55328/west_linn_housing_strategies_final.pdf

Anticipated Impact

- **Housing need addressed:** Rezoning would expand the city's supply of land that is available for housing production overall by increasing the future housing capacity of those properties. The strategy also would increase the amount of land available for potentially lower cost forms of housing. Despite the recent rezoning of multiple properties to high density, the city has a very narrow surplus of housing capacity.
- **Population served:** Low to higher income households
- **Income level:** All income levels
- **Benefits and Burdens:** Rezoning can increase the availability of land zoned for residential development. Additional capacity for more housing development can include opportunities for multi-family housing that is generally more affordable to low- and moderate-income households.
A potential burden from this strategy is the possibility of lower-income households being displaced if rezoning leads to increased development pressures or increased property values. Rezoning commercial areas, or impacts of increased property values, can also lead to commercial displacement of small businesses. Rising commercial rents or pressures to redevelop for residential uses may have a larger impact on small-scale entrepreneurs and immigrant or minority-owned businesses. The characteristics of areas being considered for rezoning should be carefully considered as part of implementation to avoid displacement impacts.
- **Housing tenure:** For rent or sale
- **Magnitude:** Moderate to High – The impact of rezoning might be relatively high given the limited supply and high demand for buildable residential land in the community. The effectiveness of rezoning will depend on the physical and infrastructure characteristics of the rezoned land for residential use. The density of housing under the new zone will also depend on the physical constraints (e.g., steep slopes) that might limit the buildable portion of a site.

Time Frame

Implementation: Near to Medium Term

Impact: Land inside city limits will become available for development immediately after rezoning. Land outside city limits can also be developed, but will need to overcome the additional hurdle of annexation. The impact on housing development is expected to be long-term.

Implementation Actions

- Use the criteria listed above to identify potential areas for rezoning. Prioritize sites with the best potential for housing production and access to services.
- Further assess and potentially implement this strategy as part of the Vision43 and Waterfront planning processes.
- Consider the demographic characteristics of potential rezoning areas to avoid potential displacement impacts.
- Engage with property owners as well as the broader community in targeted areas.

- Work with West Linn’s Planning Commission and City Council to adopt Zoning and Comprehensive Plan Map amendments.
- City Council action: Legislative Zoning Map and Comprehensive Plan Map amendment.

Lead & Partners **Lead:** West Linn Community Development

Partners: Property owners

Recommendation Prioritize rezoning in areas with the greatest potential for housing development or redevelopment, particularly for higher density multifamily or mixed-use development. Specifically, rezoning should be targeted for areas along the Highway 43 Corridor and the Waterfront area. The Vision43 and Waterfront projects will likely include adoption of new mixed-use zones that will likely allow higher density multifamily as a component of mixed-use development.

1.2 Tax Increment Financing (TIF) to support affordable housing development (D10)

Description This strategy involves using TIF funds to support affordable housing development. This could involve creating one or more new TIF districts and incorporating affordable housing into new TIF district plans. For example, the City could create a TIF set-aside for affordable housing development programs within the district.

TIF is a funding mechanism in which future tax revenues in targeted development or redevelopment areas (TIF districts / urban renewal areas) are diverted to finance infrastructure improvements and/or development.

At the time of adoption, the tax revenue flowing to each taxing jurisdiction from the TIF district is frozen at its current level. Any growth in tax revenues in future years, due to annual tax increase plus new development, is the “tax increment” that goes to the district itself to fund projects in that area. TIF is a good tool to use in areas where new development or redevelopment is anticipated.

While many different types of projects are eligible for TIF funds, for the most part, TIF funds are used to pay for physical improvements in the district itself. These projects can include participating in public/private partnerships with developers—including for affordable, workforce, or market-rate housing—or can be used to complete off-site public improvements that benefit and encourage new development in the area, or to acquire key sites. TIF funds also can be used to purchase land.

TIF can be a direct source of funding for projects that meet public goals such as providing affordable housing, increased density, or mixed-use buildings that might not otherwise be feasible. In return for some public funding through TIF, private sector or non-profit developers agree to provide these benefits. Urban Renewal can also be used to purchase and reserve a key building site in the district to ensure that the development that takes place there meets public goals. The site can be offered to a development partner at reduced cost to provide the incentive.

Considerations

- The City recently adopted a TIF district in its waterfront area and will evaluate the feasibility of a TIF district in the Highway 43 corridor as part of implementation of plans being prepared for those areas. The total amount of the City that can be included TIF districts is limited to 25% of land area, and 25% of assessed value.
- TIF results in forgone tax revenue for the City and any other overlapping taxing districts for several decades, although it can (and should) grow the tax base in the long-term by supporting development that would not otherwise have occurred.
- If a new TIF district were established, it would likely be several years before there would be sufficient revenue in the district to make significant investment in housing.
- Coordination and agreement with other taxing districts is also important, as they will forgo some revenue with the TIF district in place.
- This strategy may be integrated with the Land Acquisition and Banking strategy to the extent that TIF money is used to acquire land for future housing.
- There are many examples of the use of TIF revenue for housing-related projects in Oregon.
 - In the Downtown Tigard TIF district, projects include the Atwell Off-Main project, which includes 165 market rate apartments, along with commercial space; and the current mixed-use development underway on Main Street near Fanno Creek, which will include a coffee roaster, office space, and 22 new apartments.
 - The City of Portland has participated in many housing projects in its districts over decades. For instance, over the last decade Prosper Portland agency has contributed to the creation of hundreds of mostly affordable and workforce housing units in multiple buildings in the Lents Town Center. TIF also contributed to many of the early projects in the Pearl District.
 - The City of Beaverton Urban Renewal Agency's (BURA) budget allocates \$300,000 to \$3.3M per year in tax increment set aside for joint investment in affordable housing. This amounts to approximately 10% of the City's 5-year URA budget.⁴

Anticipated Impact

- **Housing Need Addressed:** Government-subsidized affordable housing.
- **Population served:** Low-income households
- **Income level:** 0-80% AMI
- **Benefits and Burdens:** This strategy would primarily benefit low-income households by increasing the City's capacity to support production of subsidized affordable housing.

An intended outcome of urban renewal is increased property values and redevelopment within the district. If not balanced by adequate investment

⁴ Beaverton BURA Annual Report and Five-Year Action Plan, 2020. <https://www.beavertonoregon.gov/1017/The-Beaverton-Urban-Redevelopment-Agency>

in housing production, urban renewal can lead to displacement of existing residents facing increased property taxes and development pressures. This can be a burden on existing low-income residents and should be considered carefully when designating new TIF districts.

- **Housing tenure:** For rent or sale
- **Magnitude:** High – New TIF districts and programs focused on housing have the potential to have a large impact on specific new projects. The impact of a TIF program on housing production will depend on the revenue-generating potential of the district in question and the prioritization of housing projects among the broader range of projects eligible for urban renewal funding (e.g., general infrastructure projects, beautification, economic development, etc.). If housing is prioritized for funding, and development opportunities are available within the district, it can directly support housing production. TIF is one of the few sources of city-controlled funding to apply directly to affordable housing, as opposed to regulatory approaches or cost incentives.

Time Frame	Implementation: Medium Term Impact: Analysis and planning for a new TIF district can take several years. Once a TIF district is established, it is expected to take several more years before adequate revenues are accrued to begin spending the urban renewal funds. The impact on housing production is expected over the medium or longer term.
Implementation Actions	<ul style="list-style-type: none"> • Evaluate the potential for creation of one or more new TIF districts. • Incorporate land acquisition, funding support for affordable housing projects, infrastructure funding, and/or other housing-supportive projects into new district plans. • Integrate this strategy with other HPS strategies where appropriate (e.g., Land Acquisition and Banking, Rezoning, etc.). • City Council to adopt URA boundaries and plan via ordinance.
Lead & Partners	Lead: West Linn Community Development Partners: Development stakeholders
Recommendation	Incorporate affordable housing into the TIF planning for the Highway 43 Corridor. The City must include affordable housing as an approved “project” in the TIF district in order for it to be eligible for TIF funding.

1.3 Update SDCs (C01 – C03)

Description	SDCs are one-time charges assessed on new development to pay for the costs of expanding public facilities to serve the new households or businesses the development will house. The City of West Linn charges SDCs for water, sewer, surface water management, parks, and transportation. This strategy involves a combination of modifying the City’s SDC schedule for certain housing types and also exempting or deferring SDCs for affordable housing or ADUs.
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Modify SDC Schedule (C02)

This strategy involves updating the City's SDC fee schedule so it is tied more directly to dwelling size. Currently, the City charges the same rates for all single-family homes regardless of size. Each unit of a townhouse is also charged the same single-family fee. Multi-family and middle housing is charged a lesser fee per unit for parks and sewer SDCs.⁵

Scaling SDC fees to dwelling size would better match a development's charges to its actual cost or impact on the system. Smaller housing units, including some middle housing types, typically have less impact on water, sewer, or transportation facilities, given the reduced average size and occupancy of these units. This is not fully reflected in West Linn's current SDC schedule, although the current schedule does include lower fees for multi-family and middle housing units.

The City could consider charging fees on a per-square-foot basis, rather than per-unit.

SDC Exemptions or Deferrals

This strategy may include reducing, deferring, or waiving (exempting) SDC fees for subsidized affordable housing or ADUs. The City currently does not provide any SDC-related incentives for affordable housing. Reduction, exemption, or deferral of SDC would assist affordable housing developers by reducing their development costs when building affordable housing. For ADUs, this strategy would significantly reduce development costs for individual property owners interested in constructing an ADU on their property. Affordable housing developers benefit from this strategy levied by the City only when their projects meet assistance program requirements.

SDC deferrals typically allow a development to delay payment of the fees for a specified period of time or until the certificate of occupancy is issued, rather than at the time the building permit is issued. SDC deferral can be combined with SDC financing so that payments begin after one year and continue for a certain number of years. The City could offer a lower interest rate (e.g., 0.25% above the Oregon Prime rate) and/or allow the lien to be in second position for affordable housing developments. The City could work with other service providers to such an SDC deferral and financing program for certain types of housing developments.

With deferral or financing for SDCs, the fiscal impacts to the City and its partners is significantly reduced since charges are eventually paid. The period of repayment should not be a detriment to public agencies that operate on indefinite timelines. A financing program can be more beneficial to the property owner because SDCs are paid gradually, rather than in a lump sum soon after the completion of the project.

Considerations

- This strategy would reduce barriers to construction of more affordable, smaller-scale homes, including small single-family homes, ADUs, and middle housing.

⁵ City of West Linn Fee Schedule. <https://westlinnoregon.gov/finance/current-fee-schedule>

- The City may also consider modifying SDC schedule based on housing type or affordability level. The City has expressed interest in modifying SDC calculations for ADUs, middle housing, and affordable housing.
- The City sets its SDC fee schedule based on projected needs for system construction and improvements. Modifying the SDC methodology might involve increased fees for larger homes to make up for the reduced fees for smaller units.
- West Linn has higher SDCs than neighboring jurisdictions and other larger Metro cities (see Figure 1).
- Exempting or deferring SDCs for affordable housing and ADUs would reduce barriers to construction of more affordable housing and/or ADUs.
- Exemptions for ADUs should be coupled with restrictions on use of those ADUs for short-term rental housing.

Anticipated Impact

- **Housing need addressed:** Modifying SDCs based on unit size will facilitate development of smaller, more attainable housing units that may be affordable to moderate-income and smaller households. The HCA indicates that 15% of new needed housing units over the next 20 years will be needed by those earning 80-120% AMI. Reducing or waiving SDCs for affordable housing may help incentivize affordable housing development in West Linn. In addition, approximately 18% of new needed housing units will be needed by those who earn less than 50% AMI, which is typically the target demographic for subsidized affordable housing. Applying this strategy to ADUs will help meet workforce and renter housing needs.
- **Population served:** Low to higher income households; first-time homebuyers; single or two-person households; seniors
- **Income level:** > 80% AMI and above for SDC modification; < 80% AMI for SDC waivers or reductions; 80%-120% for ADUs
- **Benefits and Burdens:** SDC modifications based on unit size can increase production of smaller and lower-cost units which may benefit lower-income households, but is more likely to benefit moderate- or higher-income households. Smaller unit sizes may be of particular benefit to seniors due to lower maintenance and lower housing costs.

SDC modification will not burden priority populations. However, reducing SDCs for smaller units would likely need to be offset by increased SDCs for larger units, the cost of which would be passed onto homebuyers. It is anticipated that homebuyers that can afford larger units likely can also afford the increased cost.

SDC waivers/reductions for affordable housing will directly benefit priority populations by improving opportunities for housing production that is affordable to low- and very-low income households. SDC waivers or deferrals for ADUs will primarily benefit renters, workforce, and property owners interested in developing ADUs. This strategy will not burden any other demographic.

- **Housing tenure:** For rent or sale

- **Magnitude:** Moderate to High – Modifying SDC schedules may have a moderate impact in incentivizing additional smaller housing units incentivizing some projects to produce a greater number of marginally smaller units, thus increasing density and unit production somewhat. As most affordable housing is multi-family housing, SDCs charged per unit can amount to a large total cost to the project, reducing feasibility. SDC waivers or deferrals may have a moderate impact on incentivizing ADUs, but a high impact on affordable housing production. It may encourage affordable housing development by reducing overall costs as well as signaling to regional housing partners that West Linn is offering incentives for affordable housing. It would also decrease development costs for ADUs, thereby improving opportunities for ADU development for individual property owners.

Time Frame **Implementation:** Medium to Longer Term

Impact: The process of modifying a city’s SDC methodology can be lengthy, as it is necessary to analyze projected needs for system construction and improvements and ensure that SDC revenues will be adequate to meet projected needs. Once a new SDC schedule is implemented, the impact to housing development is expected to be longer-term. Waivers for specific types of housing units could be put into effect more quickly (e.g., in the medium term) although implementation of that aspect of the strategy also will take further analysis and community discussion.

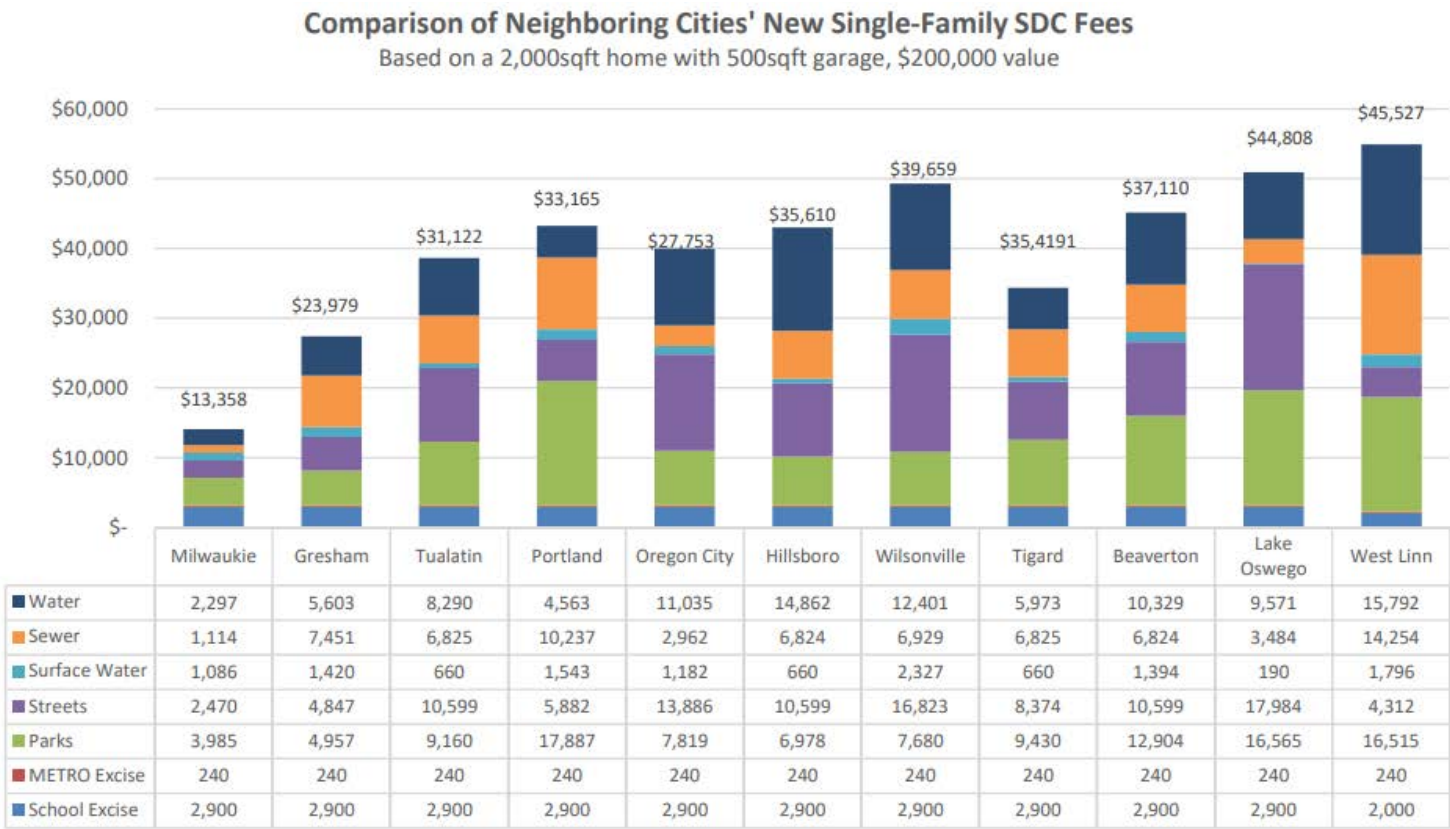
**Implementation
Actions**

- Work with City Council, other departments (Public Works, Finance, Parks, etc.), and development stakeholders on policy discussions around modifying the SDC schedule and/or exempting or deferring SDCs for affordable housing and ADUs.
- Potentially work with a consultant to develop an updated SDC methodology.
- City Council action: Adopt modified SDC schedule by resolution or ordinance that scales SDCs by housing type and waives or defers SDCs for affordable housing and ADUs.

Lead & Partners

Lead: West Linn Public Works
Partners: Development stakeholders

Figure 1. West Linn SDC Comparison*



**This chart is outdated by a few years, however SDCs in West Linn have increased since the chart was published, and the city continues to have some of the highest SDCs in the region, with SDCs in West Linn currently close to \$60,000 per single family home.*

1.4 Surplus Land, Land Acquisition, and Banking for Affordable Housing (F01, F12 & F18)

Description Surplus Land for Affordable Housing

Over the past few decades, faith institutions across the country have been declining. This has prompted conversations within different faith communities about how to refocus their mission of social change. The housing affordability crisis in many cities around the country has brought these institutions into the work of creating affordable housing in their communities. This strategy would:

- 1) Identify faith and community-based organizations that are interested in offering their available land for development of affordable housing
- 2) Provide design and finance consultation for three organizations to prepare them for future affordable housing development projects
- 3) Determine barriers to development and how those can be addressed and/or streamlined.

The City may also consider utilizing public property for affordable housing development to the extent such properties are available and suited to residential use. This would involve selling City-owned (or potentially county or state-owned) property at below-market costs to developers of affordable housing.

Land Banking and Acquisition

Land acquisition is a tool to secure sites for prioritized housing types such as affordable housing or mixed-use housing. Public agencies can identify locations where prices are going up and acquire land before the market becomes too competitive, with the intention to use the land for affordable housing. The ability to identify promising sites within these locations and act quickly and efficiently in acquiring them can tip the scales to make an affordable housing development financially feasible. Planning ahead ensures that there will be housing opportunities in neighborhoods where the rest of the properties may appreciate quickly. Access to a ready funding source such as TIF funding is important to take advantage of these opportunities, and this approach is perhaps most often seen to acquire key sites in TIF districts.

Land banking is the acquisition and holding of properties for extended periods without immediate plans for development, but with the intent that properties eventually be developed for affordable housing. Land banks are often quasi-governmental entities created by municipalities to effectively manage and repurpose an inventory of underused, abandoned, or foreclosed property. Public agencies or larger nonprofits may be better equipped than small community development corporations to do both land acquisition and banking. **Both land banking and acquisition would need to be directly tied to CET or TIF, as the City currently faces budget constraints that would be a barrier to implementing this strategy.**

Considerations

- Surplus land for affordable housing should be considered in tandem with land acquisition and banking. The City may consider any surplus public or state-owned land for land banking.
- The City has a significant need for land that is available for affordable housing.
- The City has expressed interest in building relationships with regional affordable housing providers.
- This strategy may help facilitate partnerships between the City, faith-based organizations, and affordable housing providers while also identifying opportunity sites for affordable housing development.
- SB 8 (2021 session, encoded as ORS 197A.445) requires cities to allow affordable housing on property that is publicly owned, as defined by ORS 174.109, and on any property that is owned by a religious non-profit.⁶ Cities are also required to allow affordable housing on any property that is zoned to allow religious assembly or zoned for public use.

⁶ Senate Bill 8, 2021. <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB8/Enrolled>

- Land banking can be used as an anti-displacement strategy. Land banks can acquire land in high-opportunity areas where prices are going up and develop affordable housing before the market becomes too competitive.
- Key challenges for **land acquisition** includes reliably identifying future areas where land value will climb before prices go up, developing the resources necessary to purchase the land, creating mechanisms for easy land transfer and removing the liability associated with holding land.
- **Land banking** requires significant up-front investment to acquire land, which typically requires a City funding source or grants and funding partnerships.
- Land acquisition or banking will only be possible if it is coupled with other strategies that are intended to raise revenue for affordable housing, such as TIF or CET. The City does not have the finances to fund these types of programs without a supplemental source of revenue.
- Most land banks rely on property tax-related revenue streams, although some have relied on private foundation or federal grants. Tax Exemptions can be applied to land held for the purpose of developing low-income housing. Therefore, tax exemptions can help make land banking more financially feasible as an affordable housing strategy.
- The City could manage its own land bank or acquisition strategy, or work in concert with a non-profit or non-governmental entity at a larger, regional scale that manages a portfolio of properties to support affordable housing development over many years. Ideally, the land bank would be set up to manage financial and administrative resources, including strategic property disposal, for the explicit purpose of supporting affordable housing development. The City can consider contributing funds or land to an existing non-profit land bank or participating in the formation of a new non-profit land bank if one does not exist with sufficient capacity to serve West Linn.
- The land bank would purchase vacant, or “surplus” land in high-opportunity areas, schools, and other important amenities and require that the land be used for the development of affordable housing.
- In most cases, land banking programs have focused on properties in tax foreclosure, but West Linn’s program could explore voluntary donation or purchase on the open market.
- Land banking requires political commitment over time and across market cycles. Purchasing new land requires agencies to find and secure the property and fund land acquisition and due diligence. Administering a land bank can be costly. The City should evaluate use of existing GIS tools to inventory publicly and privately owned properties in areas well suited for a land bank purpose.

Anticipated Impact

- **Housing Need Addressed:** Government-subsidized affordable housing for low-income households. The HCA indicates that 33% of future needed housing units by 2040 will be needed by low-, very low-, or extremely low-income households, and also identified a current gap in supply of affordable units.

- **Population served:** Low income households and all other priority populations.
- **Income level:** 0-80% AMI
- **Benefits and Burdens:** This strategy would benefit low-income households by increasing the feasibility of affordable developments, thereby enabling more of these projects to be built and potentially enabling more units to be included within each project.
No burdens on priority populations are anticipated.
- **Housing tenure:** For rent
- **Magnitude:** Moderate to High – These strategies would lead to an increase in the number of units that are possible for affordable housing developments. This incentive or initiate new affordable housing projects that were not previously under consideration. While the developer and property manager must demonstrate compliance, the administrative burden should be kept to a minimum to reduce added time and cost, both for the applicant and the City. Partnerships with affordable housing developers or non-profit housing agencies are very often a key component of a City contributing to new housing production. Few City governments directly build housing. A parcel of land is a high-value incentive that can be granted or sold at a discount to these partners, who undertake the projects often with a development agreement to ensure the public goals are met.

Time Frame **Implementation:** Medium Term or Long Term

Impact: The action can begin to have an impact after it is implemented in the CDC. For “Surplus Land,” statutory bonuses under SB 8 (ORS 197A.445) are already available. The impact on supply of affordable housing is expected to be longer-term.

For land banking/acquisition, timing of impact depends on the nature of the partnerships. Given availability of funds, impact to housing production would be expected to occur over the longer term.

**Implementation
Actions**

- Partner with local religious institutions and regional affordable housing providers to understand their needs, development opportunities, and potential barriers.
- Identify/inventory public land that may be suitable for affordable housing development.
- Incorporate publicly owned land into a bank or acquire new land to incorporate.
- One way the City could support a land bank is to assist with creating an inventory of suitable sites for housing development, based on infrastructure conditions, location, and other factors.
- Use funds generated from TIF and/or CET to implement a land banking or acquisition strategy.

Lead & Partners **Lead:** West Linn Community Development

Partners: Local religious institutions and regional affordable housing providers; other public agency landowners with potential surplus property in West Linn

1.5 Fair Housing Education, Referral, and Other Services (F20)

Description This strategy involves the City actively promoting fair housing policies and programs. Fair Housing laws protect individuals in “protected classes” from housing discrimination. Protected classes in Oregon include race, color, national origin, religion, disability, sex (includes pregnancy), sexual orientation, gender identity, age, and marital status. The City could add additional protected classes, such as ancestry, ethnicity, or occupation.

The City could also pursue the following types of actions to affirmatively further fair housing and work to reverse discrimination, exclusion, and concentrations of wealth in West Linn:

- Create an Analysis of Impediments to Fair Housing.
- Conduct fair housing training for Council, Planning Commission, and other relevant policymakers.
- Provide residents, property owners, property managers, realtors, lenders, and others involved with real estate transactions with access to fair housing information and referrals.
- Ensure that City staff know how to identify potential fair housing violations and make referrals to the Fair Housing Council of Oregon and state and local enforcement agencies.
- Partner with and fund Fair Housing Council of Oregon to provide periodic Fair Housing Audit Testing, customized outreach and education and other specialized services.

In addition, other strategies identified in this list can also generally serve the purpose of affirmatively furthering fair housing to the extent they expand housing opportunities or choices for people in protected classes.

Considerations

- This strategy would not necessarily contribute to housing production except when it is implemented through other strategies described in this document that result in housing production. However, in all cases it would demonstrate the City’s commitment to working towards fair housing outcomes.
- Training and education would require staff time and resources to implement.
- The City recently adopted a Comprehensive Plan policy to “Employ strategies that support the Fair Housing Act and affirmatively further fair housing.”
- This strategy will help the City build partnerships with regional housing stakeholders and help ensure that community members are protected from Fair Housing violations. It will benefit a variety of people and groups who have been historically underserved or disadvantaged by the housing market in West Linn.

Anticipated Impact

- **Housing Need Addressed:** This strategy would not directly address identified housing needs in most cases, but it would help prevent housing discrimination against protected classes.
- **Population served:** Protected classes

- **Income level:** All income levels
- **Benefits and Burdens:** This strategy is intended to benefit priority populations by formalizing the City’s commitment to fair housing goals, better understanding fair housing issues in the community, and by educating City staff, housing stakeholders, and community members about fair housing laws and residents’ rights.
No burdens on priority populations are anticipated.
- **Housing tenure:** For sale or rent
- **Magnitude:** Low – Fair housing policy and education will not directly contribute to housing production, but it could provide additional protections against housing discrimination. It could also bolster the City’s focus on prioritizing housing equity and affordability in its housing programs and investments.

Time Frame	Implementation: Medium Term Impact: Impact on community understanding of fair housing can be in the short term. Impact on fair housing outcomes is expected to be longer term.
Implementation Actions	<ul style="list-style-type: none"> • Partner with organizations such as the Fair Housing Council of Oregon on training. • Develop informational materials. • Provide training to current staff and new hires.
Lead & Partners	Lead: West Linn Community Development Partners: Fair Housing Council of Oregon

1.6 Small Dwelling Unit Development (A17)

Description This strategy would involve zoning/subdivision provisions that encourage or enable development of small single-family dwellings. This strategy would likely include minimum lot size reductions or exceptions along with other development standards that ensure development of single-family homes, such as maximum footprint or floor-area-ratio (FAR) standards. The City would calculate density differently for the dwelling units due to their limited size. Density example:

- Dwelling units 600 square feet or smaller: 0.25 of a dwelling unit.
- Dwelling units 601 to 1,200 square feet: 0.50 of a dwelling unit.

Local and regional stakeholders have indicated a lack of housing that meets the price points for first time homebuyers in West Linn. This strategy may help with production of starter level homes.

Considerations • The City allows detached duplexes, triplexes, and quadplexes. Local developers have utilized this allowance along with the City’s Middle Housing

	<p>Land Division (MHDL) process to effectively develop single-family homes on lots that are below minimum lot size requirements. Given the relatively large lot sizes in the City, these MHDs for detached plexes have not produced small single-family homes that are affordable to first time homebuyers or middle-income residents. The City may consider specific standards that will help ensure detached plexes help meet West Linn’s needs for starter homes.</p> <ul style="list-style-type: none"> • The City may consider reviewing existing maximum floor area or floor area ratio (FAR) to help ensure houses on smaller lots remain relatively small. • The City may consider lot size reductions below the existing minimum lot size, provided the proposed development meets max floor area or FAR requirements set specifically for “small lot development.”
Anticipated Impact	<ul style="list-style-type: none"> • Housing Need Addressed: Homeownership options for moderate-income households. The HCA indicates a need for 679 new ownership units (68% of new needed housing) over the 20-year period. The HCA also indicates that 15% of all new needed units will need to be affordable for moderate-income households (80-120% AMI). • Population served: Moderate-income households • Income level: 80-120% AMI • Benefits and Burdens: This strategy would be expected to benefit moderate-income households by increasing affordable homeownership opportunities. This would especially benefit first-time homebuyers that would otherwise be challenged to purchase a home in West Linn, and potentially seniors looking to purchase a downsized home. This strategy also has the potential to benefit communities that have historically faced structural barriers to homeownership – particularly people of color and other marginalized communities. <p>No burdens on priority populations are anticipated.</p> <ul style="list-style-type: none"> • Housing tenure: For sale • Magnitude: Moderate – This strategy would improve feasibility and/or opportunities for smaller single-family developments. Given the demand for starter homes that meet the price points for moderate income households, this strategy could help the City meet one of West Linn’s key housing needs.
Time Frame	<p>Implementation: Near term</p> <p>Impact: This strategy will immediately improve development opportunities for small single family homes. The impact on housing development is expected to be long-term.</p>
Implementation Actions	<ul style="list-style-type: none"> • Determine which code amendments will remove barriers and improve opportunities for small single-family homes. • City Council action: Adopt code amendments.
Lead & Partners	<p>Lead: West Linn Community Development</p> <p>Partners: Development stakeholders</p>

Recommendation Prepare and adopt amendments to the Development Code that are intended to facilitate small lot, single unit development. Draft amendments that also ensure the unit size is relatively small.

1.7 Public-Private Partnerships (PPP) for Affordable Housing (F04)

Description Public-private partnerships (PPPs) are arrangements between public and private entities to develop housing, especially affordable housing. PPPs have the capacity to bring resources to the table that would otherwise not be available if each institution were to provide housing on its own.

The City could partner with organizations to support their affordable housing efforts in a variety of ways:

- Acquire land and/or donate city-owned land;
- Provide grants or low-interest loans for specific development or rehabilitation projects;
- Provide direct funding; and/or
- Leverage federal, state, and regional resources.

Additionally, the City can pursue specific types of PPPs such as:

- **Partnering to convert underutilized non-residential properties into housing.** The City could work with landowners to evaluate opportunities for adapting vacant/underused buildings for new housing or mixed-use development. Implementing this strategy may depend, in part, on use of tools such as TIF funding (Strategy 1.2) to address infrastructure deficiencies or support development of affordable housing.
- **Utilizing surplus land owned by faith-based organizations for affordable housing.** The City could work with faith organizations to utilize their excess land for affordable housing (Strategy 1.4). The City could assist such organizations with favorable zoning, permitting, and financial incentives.
- **Community Land Trust (CLT).** CLT (DLCD Strategy F03) is a model wherein a community organization owns land and provides long-term ground leases to low-income households to purchase homes on the land, agreeing to purchase prices, resale prices, equity capture, and other terms. This model allows low-income households to become homeowners and capture some equity as the home appreciates but ensures that the home remains affordable for future homebuyers. Cottage clusters or condo developments are a common development type for CLT as it allows for the sponsoring organization to maintain ownership of the land.

NOTE: PPP is an “umbrella” strategy that overlaps significantly with other strategies in this document (funding support for affordable housing, tax incentives, community land trusts, etc.). Implementing a PPP strategy could take many forms. In the final HPS, it will be important for the City to be clear about

the specific actions it will take to pursue and support PPPs for affordable housing.

Considerations

- PPPs are often opportunity-driven and may be spearheaded by the City or by private developers or partner agencies.
- Cities are often asked to provide land, financial assistance, and or technical assistance, with potentially moderate costs. **More significant financial assistance would depend on a new funding source, such as construction excise tax.**
- Proud Ground is an example of a CLT working in the region. Proud Ground partners with other organizations to build the homes, then manages the sales, ground leases, and other programs. Habitat for Humanity uses a similar approach to CLT to maintain the affordability of the homes it builds—largely through volunteer labor and limiting resale prices, while allowing owners to accrue home equity. Portland Region Habitat for Humanity is the local affiliate organization.
- Cities can support CLT and other models for affordable homeownership by providing land, grants/loans, direct funding, or leveraging state/regional resources.

Anticipated Impact

- **Housing Need Addressed:** Government-subsidized affordable housing for low-income households.
- **Population served:** Low-income households
- **Income level:** 0-80% AMI
- **Benefits and Burdens:** This strategy is intended to benefit low-income households by increasing the City's involvement in development of affordable housing.
No burdens on priority populations are anticipated for this strategy.
- **Housing tenure:** For rent or sale
- **Magnitude:** High – Partnerships with private developers or non-profit housing agencies are very often a key component of a City contributing to new housing production. Few City governments directly build housing. The incentives and funding offered are aimed at these partners, who undertake the projects often with a development agreement to ensure the public goals are met. The magnitude of impact is high, and in a sense these partnerships are necessary for most successful City-based housing initiatives.

Time Frame

Implementation: Near Term

Impact: Timing of impact depends on the nature of the public/private partnership. Given availability of funds, impact to housing production would be expected to occur over the longer term.

Implementation Actions

- More clearly define the relationship to other HPS strategies and which types of actions would be proactively undertaken by the City vs more opportunistic actions based on proposals from potential partners.
- Work with nonprofit, faith-based, or other organizations to discuss opportunities in West Linn.

- Potentially provide on-going financial support through development/rehabilitation grants, homeownership grants/loans, donation of City-owned land, and/or an annual funding set-aside.
- Take action on partnership models and programs that best benefit the organization and the City's financial and/or administrative capacity.
- Partnership activities depend on the project, organization, and available resources.

Lead & Partners

Lead: West Linn Community Development

Partners: Possibilities include landowners and organizations with excess land, as well as nonprofit affordable housing providers.

Recommendation

The following specific partnership actions are recommended for implementation:

- Consider donating surplus city-owned land for affordable housing as it becomes available (Strategy 4).
- Leverage federal, state, and regional resources – such as the Metro Affordable Housing Bond – to fund affordable housing in West Linn.
- Work with faith organizations to utilize excess or underutilized land for affordable housing. Assist with favorable zoning, permitting, and financial incentives (strategy 4).
- If a new TIF district is established (Strategy 2), use TIF funds to support affordable housing partnerships. This could include addressing infrastructure deficiencies or contributing funding to affordable housing more directly.
- Provide tax abatements or incentives to housing partner projects through the abatement strategies described in this memo (i.e., Non-Profit and Low-Income Rental exemption, MUPTe and HOLTE strategies).

1.8 Low Income Rental Housing Tax Exemptions (E01 and/or E02)

Description

Low-Income Rental Housing is a 20-year tax exemption for any entity that provides income-restricted rental housing, including nonprofits and for-profit developers. Eligible properties must be offered for rent to low-income persons (at or below 60% AMI) or held for the purpose of developing low-income rental housing. Jurisdictions may adopt additional eligibility criteria for the exemption, provided they don't conflict with state statutes.

(Authorized by ORS 307.515-537)

Nonprofit Low-Income Rental Housing can provide a simplified way for affordable housing owned and operated by a nonprofit (as well as land held by a nonprofit for future affordable housing development) or Community Land Trusts (at least in land value) to qualify for a property tax exemption. Work should be done to make it easier for projects/land to qualify; minimizing the number of taxing authorities needed to grant an approval.

While these two exemption programs appear similar, they do have some key distinctions.

	Nonprofit Low-Income Housing	Low-Income Rental Housing
Eligible Developers	Nonprofits only	Nonprofit or for-profit
Income Levels	Up to 60% AMI	Up to 60% AMI
Tenure	For rent or for sale	For rent only
New vs. Acquired Housing	New construction or acquisition of existing housing	New construction only
Annual Renewal Required?	Yes	No
Time Limit	No limit	20 years

NOTE: The project team does not see any issues with adopting both exemption programs. Each program has different opportunities and challenges, and it may be beneficial for housing developers to be able to choose which program best suits their project needs.

Considerations

- Key advantages of this abatement are that it is available to more than just non-profits and it does not require annual renewal. This can significantly reduce an organization's administrative burden in implementing the exemption.
- However, this abatement has less flexibility compared to the Nonprofit Exemption because it is not available for ownership housing, cannot be used for acquisition of existing housing, and is limited to 20 years.
- West Linn has a very small supply of subsidized affordable housing. As identified in the HCA, West Linn will continue to have a need for housing that is affordable to low income residents over the next 20-years. The HCA also identified a continued need for rental housing. This strategy may help incentivize production of low-income rental housing.

Anticipated Impact

- **Housing need addressed:** Government-subsidized affordable housing for low-income households.
- **Population served:** Low-income households
- **Income level:** 0-60% AMI (for residents' initial year of tenancy; after the first year, up to 80% AMI)
- **Benefits and Burdens:** This strategy would primarily benefit low-income households by increasing the City's capacity to support production of subsidized affordable housing.
No burdens on priority populations are anticipated.
- **Housing tenure:** For rent
- **Magnitude:** High – Like the Nonprofit Exemption, this abatement can have a large impact on new affordable housing production. As noted above, an abatement of property taxes is a strong incentive and improves feasibility considerably. This abatement is available to for-profit developers and therefore may generate more new housing than the Non-Profit Exemption.

While not open-ended, a 20-year exemption matches the period in which a property would otherwise undergo significant depreciation. However, at the end of the 20-year period, this housing often reverts to market-rate status. When used, a tax abatement can make a large difference in a subsidized affordable housing project operating cost, and in some cases may facilitate some affordable housing that wouldn't otherwise be feasible.

Time Frame	Implementation: Near Term Impact: The tax exemption can be used once it is adopted, and for as long as the City offers the exemption. The impact on supply of affordable housing is expected to be longer-term.
Implementation Actions	<ul style="list-style-type: none"> • Work with other taxing jurisdictions to gain approval. • Develop application standards and guidelines. • City Council action: Adopt tax exemption policy by resolution or ordinance.
Lead & Partners	Lead: West Linn Community Development Partners: West Linn Finance Department; overlapping taxing jurisdictions
Recommendation	Adopt exemption programs by resolution or ordinance and work with housing providers to implement the program through completion of specific qualifying housing projects. Also, consider supplementing the Multiple Unit Property Tax Exemption (MUPTE) described below to offer more options and flexibility for projects that would not be eligible for the Non-Profit and Low-Income Rental exemption programs.

1.9 Multiple Unit Property Tax Exemption (MUPTE) (E04)

Description	<p>This exemption can be used to encourage multi-family or middle housing with particular features or at particular price points by offering qualifying developments a partial property tax exemption over the course of several years. It can be offered to new development or existing housing that is converted to meet the eligibility criteria.</p> <p>MUPTE is a flexible tax abatement that can be used in various ways to encourage needed housing. The City has broad discretion as to how to structure the program. Eligibility criteria could include requirements for affordability, accessibility/universal design, unit size, or other desirable features.</p> <p>The City must designate specific areas where the MUPTE applies, unless including affordability as a criterion, in which case the whole city could be eligible.</p> <p>(Authorized by ORS 307.600-637)</p>
Considerations	<ul style="list-style-type: none"> • Could incentivize multi-family developers to incorporate desirable features in their projects, such as accessible units or family-size units. Affordability to lower-income households could also be an eligibility criterion, if desired. • As noted below, this strategy could outcompete affordable housing tax incentives with for-profit developers who would rather build market-rate housing in some cases.

Anticipated Impact

- **Housing Need Addressed:** As identified in the HCA, West Linn has a very low supply of land that is available for multi-family housing. This strategy has the potential to increase development of multi-family housing in targeted areas of the city. Depending on how it is structured, this program could also encourage apartments with family-sized units (2-3 bedrooms) and accessible housing options for seniors.
- **Population served:** Depends on how the program is structured; could be targeted to benefit low-income households, people with disabilities, larger families, etc.
- **Income level:** Depends on how the program is structured.
- **Benefits and Burdens:** This strategy has the potential to benefit various priority populations by encouraging housing needed by those communities (accessible units, family units, affordable units, etc.). The City could also target a MUPTE program to specific geographies to target housing development in neighborhoods where it is most needed, or best supported by transit or services. A challenge for the City will be to determine how best to balance those various needs to determine what housing types or features are most appropriate to include as criteria for the MUPTE abatement. This should be considered in the broader context of the HPS to ensure that the City's actions benefit all priority populations in equitable ways.
No burdens on priority populations are anticipated for this strategy, provided it is implemented in the ways described above.
- **Housing tenure:** Typically for-rent.
- **Magnitude:** Moderate – This strategy could encourage production of more multi-family units that meet housing needs not currently being met by the private market. However this program does not necessarily require the provision of affordable housing; therefore, it may outcompete affordable housing tax incentives with for-profit developers who would rather build market-rate housing. This program should be carefully considered as possibly competitive with the low-income tax exemptions. However, the MUPTE can also be designed to require affordable units as well.

Time Frame

Implementation: To be determined based on further discussion

Impact: The MUPTE can be used once it is adopted, and for as long as the City offers the exemption. The impact on housing supply is expected to be longer-term.

Implementation Actions

- Further evaluate the various options for structuring the MUPTE program to determine whether—and how—it should be implemented.
- Consult with developers and housing providers to determine their level of interest.
- Determine desired eligibility criteria (e.g., affordability, accessibility, etc.).
- Seek input from overlapping taxing districts on their willingness to support the exemption.
- City Council Action: Adopt tax exemption program by resolution or ordinance.

Lead & Partners **Lead:** West Linn Community Development
Partners: West Linn Finance Department; overlapping taxing jurisdictions

Recommendation Determine how to most effectively structure the MUPTE to complement other abatement programs and address potentially unmet housing needs prior to adopting and implementing a MUPTE program.

1.10 Homebuyer Opportunity Limited Tax Exemption Program (HOLTE) (E06)

Description The purpose of this program is to encourage homeownership among first time homebuyers and low- and moderate-income households and to stimulate the purchase, rehabilitation, and construction of residences in certain areas as a form of infill development.

The program allows a limited 10-year property tax exemption to owner-occupied single-unit housing that has a market value upon completion of no more than 120% of median sales price of dwelling units located within the city (or a lesser value adopted by the jurisdiction). The tax exemption can be granted for up to 10 successive years, and only applies to the value associated with property improvements, not the land value.

While not required by statute, local governments can establish income criteria for eligible homebuyers. For example, the City of Portland limits eligible homebuyers to those earning no more than 100% of the area median income.⁷

Single-family housing units, townhomes, multi-family homeownership units (i.e., condos), and manufactured housing are eligible for the exemption. Eligible units can be new construction or rehabilitated existing homes. The housing must be in an area defined and designated by the City. The City also would create criteria and establish required design elements or public benefits that would be applied to properties using the exemption.

(Authorized by ORS 307.651-687)

- Considerations**
- Strategy to facilitate homeownership among moderate-income households. HPS stakeholders have indicated that homeownership opportunities for moderate-income households and first-time homebuyers is one of the city's key housing challenges.
 - Effectiveness depends on the local housing market and land costs. The recent median sale price in West Linn is approximately \$790,000, so this program could in theory apply to home values of \$948,000 (120% of median). An income of about \$200k is needed to afford the median home with a 20% down payment. With less of a down payment, even higher incomes would be needed. The HCA found that the number of homes selling at the lower end (less than \$500k for instance) was only 17% of the overall inventory.

⁷ City of Portland, HOLTE Program. <https://www.portland.gov/phb/holte/sale-requirements>

	<ul style="list-style-type: none"> The City could consider lower sales price limits (below 120% of median sales price), but this may be less enticing to developers given the profit potential of market-rate development in West Linn. The tax incentive ultimately is to the benefit of the homebuyer, rather than the builder. For this reason, the HOLTE is often used by the clients of nonprofit agencies that specialize in providing affordable ownership housing (e.g. Habitat for Humanity, or community land trusts).
Anticipated Impact	<ul style="list-style-type: none"> Housing Need Addressed: Homeownership options for moderate-income households. The HCA indicates a need for 679 new ownership units (68% of new needed housing) over the 20-year period. The HCA also indicates that 15% of all new needed units will need to be affordable for moderate-income households (80-120% AMI). Population served: Moderate-income households Income level: 80-120% AMI Benefits and Burdens: This strategy would be expected to benefit moderate-income households by increasing affordable homeownership opportunities. This would especially benefit first-time homebuyers that would otherwise be challenged to purchase a home in West Linn, and potentially seniors looking to purchase a downsized home. This strategy also has the potential to benefit communities that have historically faced structural barriers to homeownership – particularly people of color and other marginalized communities. No burdens on priority populations are anticipated. Housing tenure: For sale Magnitude: Low – This program is expected to have low impact due to the land and housing costs that prevail in West Linn. Unfortunately, there will be few opportunities for appropriate homes for lower-income first-time homebuyers. While this exemption would certainly help with homebuyer finances, it would not apply to land cost, and there are few homes or neighborhoods in the community that are low-cost candidates for rehabilitation. At the same time, this mechanism could have a significant impact on the relative feasibility of individual development projects, including those carried out by non-profit developers.
Time Frame	<p>Implementation: Near Term</p> <p>Impact: The HOLTE can be used once it is adopted, and for as long as the City offers the exemption. The impact on housing supply is expected to be longer-term.</p>
Implementation Actions	<ul style="list-style-type: none"> Define eligibility and design criteria. Work with other taxing jurisdictions to gain approval. City Council action: Adopt tax exemption program by resolution or ordinance.
Lead & Partners	<p>Lead: West Linn Community Development</p> <p>Partners: West Linn Finance Department; overlapping taxing jurisdictions</p>

Recommendation Adopt a program by resolution or ordinance and work with housing providers to implement the program through completion of specific qualifying housing projects. Through implementation and discussions with housing providers, determine how best to integrate this program with other tax abatement or exemption programs adopted as part of the HPS.

1.11 Zoning Incentives for Workforce and Affordable Housing (A03)

Description This strategy involves allowing additional height, density, bonus floor area ratio (FAR), or relaxing other zoning standards for affordable housing. The City currently does not have any zoning incentives for workforce or affordable housing.

- Considerations**
- Zoning incentives likely would not incentivize private developers to include affordable units in their projects. These types of bonuses typically don't lead to mixed-income development on their own unless the base entitlements are very low and there's a lot of demand for more density.
 - Incentives would more likely be a way to allow affordable developers to make more efficient use of land and potentially better compete for land with market-rate developers. Non-profit housing providers have indicated that such bonuses can be very effective in improving the financial feasibility of their developments.
 - Senate Bill 8 (2021 session, encoded as ORS 197A.445) requires cities to allow affordable housing that meets specific criteria on a wide range of sites and provides height and density bonuses. If the height/density bonus exceeds local bonuses for affordable housing, the SB 8 bonus will apply directly. Potential bonus provisions in West Linn could be crafted to be consistent with or go above and beyond SB 8 requirements.

- Anticipated Impact**
- **Housing need addressed:** Government-subsidized affordable housing for low-income households. The HCA indicates that 33% of future needed housing units by 2040 will be needed by low-, very low-, or extremely low-income households, and also identified a current gap in supply of affordable units.
 - **Population served:** Low-income households and all other priority populations.
 - **Income level:** 0-80% AMI
 - **Benefits and Burdens:** This strategy would benefit low-income households by increasing the feasibility of affordable developments, thereby enabling more of these projects to be built and potentially enabling more units to be included within each project.
No burdens on priority populations are anticipated.
 - **Housing tenure:** For rent or sale
 - **Magnitude:** Low to Moderate – This strategy might lead to a small percent increase in the number of units that are possible for affordable housing developments. This incentive may help increase affordable production in

projects that are already being pursued but is unlikely to initiate new projects on its own. While the developer and property manager must demonstrate compliance, the administrative burden should be kept to a minimum to reduce added time and cost, both for the applicant and the City.

Time Frame	Implementation: To be determined based on further discussion Impact: The action can begin to have impact after it is implemented in the CDC. The statutory bonuses under SB 8 (ORS 197A.445) are already available. The impact on supply of affordable housing is expected to be longer-term.
Implementation Actions	<ul style="list-style-type: none"> • Consult with affordable housing providers to determine what type(s) of incentives would be most beneficial in supporting their work. • Evaluate SB 8 to determine how the statutory bonuses compare to the potential new bonuses. • Determine how to best integrate with other potential amendments to the CDC. • City Council Action: Implement through CDC updates.
Lead & Partners	Lead: West Linn Community Development Partners: Affordable housing providers

2.9 Construction Excise Tax (CET) (D09)

- Description** CET is a one-time tax on construction projects and is a potential funding source for affordable housing. Cities and counties may levy a CET on **residential** construction for up to 1% of the project's permit value; or on **commercial and industrial** construction with no cap on the rate of the CET. The CET may be applied to development that results in a new structure of increased square footage in an existing structure.
- The allowed uses for CET funding are defined by state statute⁸ and can include support for a variety of housing-related projects and programs.
- **Residential CET** revenues must be allocated as follows:
 - Up to 4% can be used to cover administrative expenses incurred from implementation of the CET.
 - 50% must be spent on developer incentives (e.g., permit fee and SDC reductions, tax abatements, or finance-based incentives).
 - 35% may be used flexibly for affordable housing programs.
 - 15% flows to Oregon Housing and Community Services (OHCS) for homeownership programs. OHCS's policy is to spend the revenue in communities where it's collected.
 - **Commercial/industrial CET** has fewer restrictions on how revenues are spent:

⁸ Oregon Revised Statutes 320.192-195.

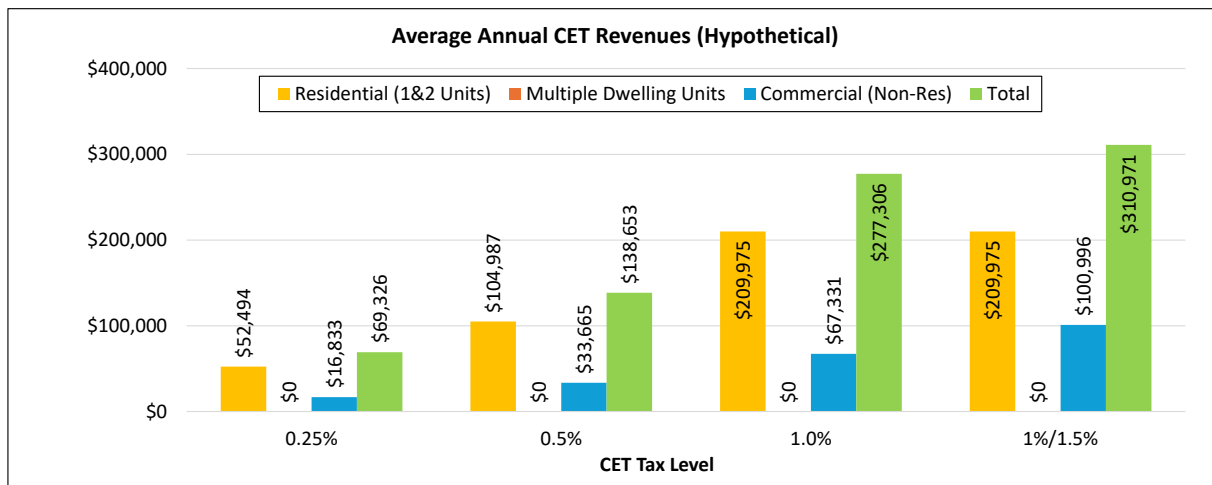
- 50% must go towards housing-related programs (not necessarily limited to affordable housing).
- 50% is unrestricted and can be used as the City sees fit.

Some cities have used CET to pay for gap financing of new affordable development, backfilling SDC waivers, acquisition of properties for affordable housing preservation, and down payment assistance for first-time homebuyers.

As an example, the City of Eugene adopted a CET in 2019, and has used \$2.2 million in revenues to leverage \$45 million to fund the construction of 178 new affordable homes.⁹

An analysis of permit valuations in West Linn over the prior five years indicates that a hypothetical CET could build significant funds to assist in affordable housing projects. The following figure uses the average annual value of residential and commercial permits over the last five years to estimate what hypothetical CET revenue generation would have been annually. The CET rates tested range from 0.25% for both residential and commercial development to 1% for residential and 1.5% for commercial.

Examples from other Oregon cities indicate that to be most effective, a CET fund needs a few years to grow. The funds should be used as one contribution to a project that helps leverage funding from larger sources, such as state programs.



Considerations

- CET is one of the few available sources of a locally-controlled funding stream for affordable housing.
- Several other strategies under consideration for the HPS would depend on adoption of a new funding source. Without a new funding stream, the City could not participate meaningfully in those strategies.
- CET is a tax on development, meaning that it raises costs for construction of commercial, industrial, and/or market-rate residential housing. The statute exempts regulated affordable housing, public buildings, hospitals, and certain other types of facilities.

⁹ City of Eugene, Affordable Housing Trust Fund. <https://www.eugene-or.gov/4232/Affordable-Housing-Trust-Fund>

The City can also choose to exempt other types of development (e.g., multi-family housing, accessible housing, or small housing units) or exclude residential development altogether. For example, the City of Tigard exempts ADUs of 1,000 sq ft or less and projects valued at less than \$50,000; and allows cottage clusters, courtyard units, and quadplexes to be exempted from 75% of the CET.¹⁰

- Alternatively, by structuring a policy with offsetting incentives or tools for housing to reduce development barriers, the City could potentially limit the impact on feasibility for certain housing projects. This strategy can be paired with other complementary strategies to increase its effectiveness.
- Because CET revenue is development-derived, it will fluctuate with market cycles.
- Funds generated from a CET may have an immediate impact if they are used to pay down reduced permit fees, SDC exemptions or reductions, or public improvement costs and help support land acquisition or banking over a longer timeframe.

Anticipated Impact

- **Housing need addressed:** Government-subsidized affordable housing for low-income households. CET implementation can be tailored to prioritize certain income levels or other housing needs, such as extremely low-income households (earning below 30% AMI) or residents needing housing with wrap-around support services.
- **Population served:** Low-income households
- **Income level:** 0-80% AMI
- **Benefits and Burdens:** This strategy would primarily benefit low-income households by increasing the City's capacity to support production of subsidized affordable housing and other housing programs. Because CET funds offer flexibility for the local government to choose which projects and programs to support, the City has opportunities to direct funding toward projects that benefit priority populations that need additional support.
A CET has the potential to inhibit some development, including housing development (if a residential CET is pursued). However, the City has options to avoid impacts to the types of housing most needed by priority populations, thereby limiting burdens on these communities. Affordable housing already must be exempt. As noted above, the City could also exempt multi-family housing, small units, ADUs, housing that meets Universal Design criteria, and other types. This is a way to address or mitigate potential burdens.
- **Housing tenure:** For rent or sale
- **Magnitude:** High – The revenue potential of a CET in West Linn is potentially quite high. As cited in other cities (e.g., Eugene), CET programs have generated substantial revenue, which was in turn dedicated to affordable housing development. CET can be a valuable source of funding for a City

¹⁰ Tigard Municipal Code, Chapter 3.90 Construction Excise Tax.
https://library.qcode.us/lib/tigard_or/pub/municipal_code/item/title_3-chapter_3_90

contribution to a project that can be leveraged to access greater amounts of funding from state or federal sources. It may be more useful as a multiplier rather than directly paying for housing development.

The CET is a tax on new development activity, and thus has the impact of raising costs on developers. However, other Oregon cities that have adopted a CET do not report a noticeable impact on development once adopted.

Time Frame	<p>Implementation: To be determined based on further discussion</p> <p>Impact: This strategy may take several years for funds to accumulate to an amount that could be used to support development of housing. However, cities that have adopted a CET have seen real results in terms of housing production within 4 to 5 years. See above for the City of Eugene example.</p>
Implementation Actions	<ul style="list-style-type: none"> • Evaluate a potential approach. Include projections of potential revenue and determine what programmatic goals could be accomplished with revenue. Consider both residential and commercial/industrial options. • Analyze potential impacts to development. • Engage with the development community—including both housing providers that could benefit from CET funds, and developers that might be impacted by the tax. • City Council could impose the CET by adoption of an ordinance or resolution that conforms to the requirements of ORS 320.192–ORS 320.195. • If directed, create a plan for the use of CET funds, in collaboration with housing providers, low-income communities, and other historically marginalized communities.
Lead & Partners	<p>Lead: City of West Linn Community Development</p> <p>Partners: Finance Department; local developers; non-profit housing partners could implement funded programs</p>
Recommendation	<p>Further evaluate and define the approach to this strategy and if warranted and supported by city decision-makers, move forward to adopt and implement a CET.</p>

2) Not Recommended

The following strategies were either addressed in the Housing Strategies Report for the HCA or were previously considered as apart of this HPS project. The project team does not recommend these strategies for inclusion in the HPS because they were identified as lower priority by the project team and the Project Work Group. The City has limited resources to implement every strategy that has been considered within the HPS planning and implementation timeline (6 years), and therefore the City should focus on strategies that were identified as higher priority for the HPS.

UGB Amendments and Planning

Description * *This strategy is not recommended for inclusion in the HPS because the HCA did not demonstrate an overall deficit of residential land and because future UGB planning will occur through the regional UGB planning process led by Metro.*

Adjust the city's UGB to make up for a deficit of land within the boundary, if needed. Metro manages this process in coordination with local jurisdictions in the Portland Metro region.

This strategy typically needs to be undertaken if a City's HCA indicates a deficit of land to meet future housing needs. The findings of the HCA do not indicate the need for a UGB expansion to accommodate the projected housing need in West Linn. There is a total forecasted need for roughly 1,005 units over the next 20 years based on the forecasted growth rate. This is below the estimated total capacity of 1,205 units. To the extent this strategy is considered in the future, the City would need to show that more land is needed to meet housing needs to justify an expansion of the City's UGB. The City also would first have to consider and evaluate strategies for using land within the existing boundary more efficiently. Because the City is unlikely to be able to justify the need for a UGB expansion within the implementation period of the HPS, it is likely not appropriate to include this as an HPS strategy. Given these findings, it is not appropriate to commit the City to expanding its UGB within the six-year HPS implementation period at this time.

- Considerations**
- The administrative and cost burdens associated with implementing this strategy are relatively high. It would be a long and expensive undertaking by the City (or consultants) to prepare the applications and supporting documents and work through the hearing process. Community support for adjusting the land in the UGB may be mixed.
 - While the HCA does not indicate the need for an expansion of the UGB at this time, the City may need to explore that option in the future as development consumes the current supply of land, particularly if the pace of development accelerates. In anticipation of those future activities, the City will need to ensure that it has identified appropriate future expansion areas. The adjacent Stafford Triangle has long been identified as a potential future UGB expansion area and likely will continue to be considered as such. This work would be done as part of the UGB coordination process with Metro and would fall outside of implementation of the HPS.

- Anticipated Impact**
- **Population served:** All populations
 - **Income level:** 0 to 120%+ AMI
 - **Benefits and Burdens:** N/A
 - **Housing tenure:** For rent or sale
 - **Magnitude:** Large – A UGB expansion or amendment would substantially increase the supply of residential land that is available to the City.

Time Frame **Implementation:** Long Term

	Impact: Long Term
Implementation Actions	<p>To the extent that the City identifies the need for a UGB expansion in the future, in partnership with Metro, the City would first need to complete the following steps:</p> <ul style="list-style-type: none"> • Further analyze and update its findings of where there is an insufficient supply of buildable land inside the UGB. • Consider and adopt efficiency measures to ensure that land inside the UGB is being used efficiently. Many of the code update recommendations identified below are efficiency measures. • Work with Metro to identify potential expansion areas within West Linn's portion of the UGB, including through re-classification or establishment of additional urban reserve areas and prioritization of potential expansion areas adjacent to West Linn.
Lead & Partners	<p>Lead: West Linn Community Development</p> <p>Partners: Property owners, Metro, Clackamas County, Oregon Department of Land Conservation and Development (DLCD)</p>

Promote ADUs (A05)

Description **The project team does not recommend this strategy at this time. Based on PWG input, promoting ADUs is a lower priority than other proposed strategies. In addition, some of the other recommended strategies will help reduce barriers to ADUs, such as SDC updates for ADUs.*

ADUs are smaller, ancillary dwelling units located on the same lot as a primary residence. They are typically complete dwellings with their own kitchen, bathroom and sleeping area.

ADUs are a viable housing option with several benefits:

- ADUs offer flexibility for homeowners to either rent the unit or to host a family member.
- Building and renting an ADU can raise income for a homeowner and help offset the homeowner's mortgage and housing costs.
- ADUs can add to the local supply of rental units and can provide a relatively affordable rental option for a person or household that prefers living in a small detached unit rather than an apartment or other attached housing.

This strategy involves adjusting standards for accessory dwelling units to allow more flexibility for their siting on single-family lots. In addition, the City also can encourage ADU development through reduced fees, exemptions from selected planning requirements, use of pre-approved site or building plans, or other measures.

Given that ADUs are usually built by individual homeowners with limited

experience or financial resources, code provisions can have a significant influence on the feasibility of their development and enable more widespread production (i.e., easing occupancy requirements, allowing more ADUs on a lot, and expanding maximum size requirements).

More flexibility in siting, design, construction, and lower fees are also needed to achieve feasibility in many cases.

The City already allows ADUs in all of its residential zones. Standards for the size and siting of ADUs are generally consistent with state requirements and guidelines. Some additional development code amendments could provide additional flexibility to build ADUs, including the following:

- Allow more than one ADU on a lot if the second ADU is internal or attached to the primary dwelling.
- Allow ADUs with other housing types, such as middle housing.
- Reduce allowed rear yard setbacks for ADUs that are below a specific height.
- Reduce front yard setbacks for ADUs.
- Increase the allowed lot coverage for a lot with an ADU.

Considerations

- The City allows detached duplexes, triplexes, and quadplexes. Detached plexes are functionally the same as single-family detached houses, especially on larger lots. Therefore, the City should consider allowing ADUs on lots with these housing types.
- The City recently passed an Ordinance exempting ADUs from half-street improvements, which was identified as a primary barrier to their development.
- The City is considering other strategies that may help promote ADUs, including modifying SDC schedule and SDC exemptions or deferrals.
- The City may also consider other ADU strategies from the DLCD HPS List, including “Reduce or Exempt SDCs for ADUs” (C03) or “Pre-Approved Plan Sets for ADUs” (A21).

Anticipated Impact

- **Housing Need Addressed:** Rental and workforce housing.
- **Population served:** Low- to Moderate-income households, seniors, students, people of color, people with disabilities
- **Income level:** 80-120% AMI
- **Benefits and Burdens:** This strategy would be expected to primarily benefit low and moderate-income households, renters, and the local workforce by increasing the supply of smaller units that are available for rent. This may also benefit seniors who are looking to downsize or live near family. This strategy also benefits homeowners who are seeking a secondary source of income.
No burdens on priority populations are anticipated.
- **Housing tenure:** For rent

- **Magnitude:** Moderate – This strategy could significantly improve opportunities and flexibility for ADU development. However, implementation of this strategy is unlikely to result in a significant increase in housing production, as ADU development typically represents a small portion of overall housing production, regardless of how flexible or permissive land use regulations are.

Time Frame	N/A
Implementation Actions	<ul style="list-style-type: none"> • Determine which code amendments will remove barriers and improve opportunities for ADU development. • City Council action: Adopt code amendments.
Lead & Partners	<p>Lead: West Linn Community Development</p> <p>Partners: West Linn Planning Commission and City Council; Property owners</p>

Accessible Design (A23)

Description **The project team does not recommend this strategy at this time. Although an important issue, financial incentives for affordable housing and production of needed housing is a higher priority for the City at this time. In addition, accessible design is often a requirement for a certain percentage of units for development that is receiving federal or state subsidies for affordable housing.*

This strategy involves evaluating incentives or mandates to increase development of housing that is accessible for seniors and people with disabilities or mobility challenges.

Potential **incentives** could include:

- Bonuses for height, density, lot size, or floor area ratio (similar to Strategy 2.1).
- Tax abatements, e.g., MUPTE (see Strategy 2.4).

Potential **mandates** could include:

- **Requiring visitability in middle housing development—this would ensure that anyone using a wheelchair can visit the subject homes.** Visitability is most relevant for buildings with fewer than four units, townhouses, and detached homes that aren't subject to ADA requirements.
- **Requiring housing that receives public funding to provide more accessible units or more universal design features than required under federal standards.** This could mean applying the standards to a higher percentage of units than would otherwise be required (above 5%) and/or requiring units to meet higher Universal Design or Lifelong Housing Certification standards.

- **Requiring elevators in some or all multi-story buildings.**¹¹ Requiring elevators in one or more multi-family buildings would provide access to all levels of that building. It would also make all units “covered” units under the Fair Housing Act, meaning all units would need to have baseline accessibility features.

Accessibility Standards. Eligible units (for either incentives or mandates) could be required to meet certain standards – which would go beyond minimum federal requirements or could target housing not subject to these requirements (e.g., single-family homes and middle housing).¹² Options include:

- **Universal Design** is a building concept that incorporates design layouts and characteristics into residences to make them usable by the greatest number of people and respond to the changing needs of the resident. Universal Design incorporates standards for features such as hallways, doorways, bathrooms, and kitchens that make these features usable for people with disabilities or adaptable for that purpose.¹³
- **Lifelong Housing Certification** is a program developed by the Rogue Valley Council of Governments (RVCOG) in partnership with AARP Oregon as a voluntary certification process for evaluating the accessibility and/or adaptability of homes. Residences can be certified at three levels based on the extent of their accessibility: (1) Visitable (basic accessibility for visitors); (2) Fully Accessible (accessible for a person in a wheelchair on the main floor); and (3) Enhanced Accessibility (customized for specific accessibility needs).¹⁴
- **Visitability** is a design approach for new housing that allows anyone who uses a wheelchair or other mobility device to visit the home. A visitable home typically includes:
 - A zero-step entrance;
 - Wide interior doors; and
 - An accessible half bathroom on the main floor.

Considerations

- This strategy would help address housing disparities for people with disabilities and provide more options for aging in place.
- Strategies to promote accessible housing received support from the Middle Housing Code Advisory Committee as part of the House Bill 2001 code updates.

¹¹ Oregon Structural Special Code Section 1104.4 requires at least one accessible route for multi-story buildings with over 3 levels, and Section 1104.5 includes elevator requirements.

<https://codes.iccsafe.org/content/ORSSC2022P2/chapter-11-accessibility>

¹² Multi-family developments are subject to the Fair Housing Act; for buildings with an elevator, all units must be accessible; for those without an elevator, all ground floor units must be accessible. Housing projects receiving public funding are subject to federal laws (Section 504 of the Rehabilitation Act of 1973 and/or Title II of the ADA), which require 5% of units to be mobility-accessible. Source: Disability Law Handbook, Southwest ADA Center.

<http://www.southwestada.org/html/publications/dlh/housing.html>

¹³ Universal Design Standards, West Virginia Housing Development Fund. <https://tinyurl.com/yx63b792>

¹⁴ Lifelong Housing Program, RVCOG. <https://rvkog.org/home/sds-2/lifelong-housing-program/>

	<ul style="list-style-type: none"> • Accessibility features can add to the cost of construction for a development, which can make affordable housing projects less financially feasible. Elevators, in particular, add significant cost to a project. • While <u>mandates</u> may provide more accessible units, they could prevent some affordable housing projects from being developed. • <u>Incentives</u> must be calibrated effectively to be attractive to both a nonprofit and for-profit developer. The benefit of using the incentive should outweigh the costs associated with implementing accessible design features.
Anticipated Impact	<ul style="list-style-type: none"> • Housing Need Addressed: Housing for people with physical disabilities and mobility challenges. The HCA indicates that an estimated 8.4% of the population of West Linn, or 2,268 people, report having some form of disability. However, the number of people that would benefit from physical accessibility in housing – especially amongst the senior population – likely exceeds these numbers. Seniors make up about 18.4% of West Linn’s population. • Population served: Seniors; people with disabilities • Income level: All income levels • Benefits and Burdens: This strategy is anticipated to benefit seniors and people with disabilities by increasing the stock of accessible housing units in the city. However, a potential trade-off of <i>mandating</i> accessibility features—especially for subsidized housing—is that it would reduce the total number of units that could be provided in a building (because bathrooms and other areas would need to be larger). While this may provide more accessible units, it could make some affordable housing projects less feasible. This could be a potential burden on low-income households by limiting the opportunity for production of housing they can afford. Incentive-based strategies would not carry the same burden. This will be an important consideration for implementation. • Housing tenure: For rent or sale • Magnitude: Moderate – Depending on how the strategy is structured, it could lead to production of a significant number of new units with accessibility features. However, the strategy could also have the effect of deterring housing production if requirements are too onerous. To improve feasibility, requirements may be applied to some but not all of the units in new multi-family development. New elevator requirements may significantly deter new development, due to high cost.
Time Frame	N/A
Implementation Actions	<ul style="list-style-type: none"> • Code bonus. <ul style="list-style-type: none"> ○ Evaluate a potential new height/FAR bonus with input from housing stakeholders. ○ Consider whether a bonus should apply in all zones or only certain zones. ○ A potential accessibility bonus should be carefully considered in conjunction with any other potential bonus provisions (see Strategy 2.5). ○ Implement via CDC updates.

- **Code requirement.**
 - Evaluate potential new accessibility requirements, working closely with non-profit and market-rate housing developers to understand how their projects might be impacted.
 - Conduct a pro forma analysis to evaluate potential impacts to project costs.
 - Implement via CDC updates.
- **Financial incentive.**
 - Evaluate an incentive program (e.g., MUPTE, Strategy 2.2) to increase the number of dwelling units designed accessibly.
 - Work with developers to gather feedback on program parameters and interest.
 - Implement incentive program through Council action.

Lead & Partners **Lead:** West Linn Community Development
Partners: Home Building Association of Greater Portland; Fair Housing Council of Oregon; AARP; Rogue Valley COG; non-profit and for-profit housing developers.

Financial Assistance and Homebuyer Education Programs

Description **The project team does not recommend this strategy at this time. This strategy may be addressed by non-profits who operate locally and regionally and it may also be partially accomplished through implementation of the “Fair Housing Education, Referral, and other Programs” strategy.*

Rental assistance program can help eligible low-income households with their past due rent and protect them from eviction risk. On the other hand, city can promote stable homeownership opportunities with a range of tools such as foreclosure prevention guidance, down payment assistance loans, Homebuyer Opportunity Limited Tax Exemption, etc. City can also provide services to help homeowners or fund community organizations to help homeowners repair and retain their homes.

A homebuyer education program helps homebuyers have a better understanding of what’s involved in the home-buying process, what is needed from the borrower to be approved for a mortgage loan, the benefits / challenges of homeownership, and mortgage and lending terms, etc.

- Considerations**
- These types of programs require relatively significant administrative time and resource to efficiently reach out to potential homebuyers and tenants in the area and to administer the programs themselves.
 - The City currently has a low-income utility assistance program, but very few other financial assistance programs for housing is available to residents. Additional financial assistance programs or strategies would likely be necessary to maintain or create more affordable housing opportunities. And while the City of West Linn may have limited capacity to implement some

	additional programs on their own, the City could support other regional or local organizations that implement these measures.
Anticipated Impact	<ul style="list-style-type: none"> • Population served: Low- and Moderate-income levels • Income level: 30% to 120% AMI • Benefits and Burdens: Low-income households, People Experiencing Homelessness, Seniors, Students, People of Color, People with Disabilities No burdens on priority populations are anticipated. • Housing tenure: For rent or sale • Magnitude: Low – while this strategy may help residents retain or secure housing, it will have little to no impact on housing production. However, helping residents maintain current housing prevents emergencies such as homelessness and evictions which can exacerbate housing conditions in the community.
Time Frame	N/A
Implementation Actions	<ul style="list-style-type: none"> • Explore which programs are most appropriate for the City to promote. • Study/analyze financial feasibility for the City to create a financial assistance program. • Establish and maintain relationships with regional organizations that offer housing assistance and education programming. • Potentially provide on-going financial support through rental assistance, homeownership grants/loans, and/or an annual funding set-aside.
Lead & Partners	<p>Lead: West Linn Community Development</p> <p>Partners: Portland Housing Center, Oregon Housing and Community Services, Fair Housing Council of Oregon, Clackamas County</p>

Expedited Development Review (B03 & B06)

Description	<p><i>The project team does not recommend this strategy at this time. Development review timelines and processes were not identified as a major barrier to affordable housing developers who work in the region and implementation of this strategy therefore is a lower priority. In addition, certain aspects of this strategy are already being implemented via state statute (Middle Housing Land Divisions and Expedited Land Divisions).</i></p> <p>Reduce review and processing times for affordable housing development by formally adopting shortened review timelines for applications or giving priority in scheduling hearings and meetings with staff. <i>(Strategy already partially implemented via SB 458 implementation)</i></p> <p>Expedited permitting will help to reduce costs of development of needed housing as identified. The City may consider projects with direct or indirect funding from local government as essential and projects with long term affordability covenants through tax abatement or inclusionary requirements as</p>
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high priority and/or only expedite housing according to the identified needed housing types. The City might also consider assigning a staff person to shepherd projects through the land use and/or building permitting processes in order to expedite the permitting process. However, given the limited size of the City's staff, this may not be a practical approach.

Considerations

- Creating an expedited review process for affordable and high need housing development has Low legal risk and relatively low cost burden. The administrative burden would be moderate, due in part to the need for focused resources to quickly review applications as they come in. Other entities involved in permitting (i.e., building, utilities, roads) either by jurisdiction or contract would need to agree and have capability of expedited review. Community support for this strategy may be high as permitting often is seen as a barrier to development.
- Several stakeholders and developers have indicated the City's development review process is unclear. Lack of clarity in the development review process will likely increase review times, increase overall development costs, and may ultimately deter housing production under certain circumstances.
- Stakeholders indicated that communities that are successful in attracting affordable housing development often have staff and resources that are dedicated to shepherding affordable housing projects from beginning to end.

Anticipated Impact

- **Housing need addressed:** Multifamily housing, middle housing, affordable and workforce housing.
- **Population served:** Low-income households, People Experiencing Homelessness, Seniors, Students, People of Color, People with Disabilities
- **Income level:** 0 to 120+% AMI
- **Benefits and Burdens:** Expedited development review for affordable housing will directly benefit priority populations by improving opportunities for housing production that is affordable to low- and very-low income households. Expedited development review for other needed housing types, such as ADUs, middle housing, or multifamily housing, will primarily benefit renters, workforce, and individual property owners. This strategy will not burden any other demographic.
- **Housing tenure:** For sale or rent
- **Magnitude:** Moderate – This strategy may be low- to moderate-impact in incentivizing housing production. It may encourage affordable housing development by reducing overall costs as well as signaling to regional housing partners that West Linn is offering incentives for affordable housing. It would also decrease development costs for other types of housing.

Time Frame

Implementation: Medium Term

Impact: Long term

Implementation Actions

- Work with Planning Commission, City Council, and other review agencies to determine appropriate review timelines for needed housing types.

- City Council action: adopt code amendments that set new criteria for submittal requirements and review/approval timelines for affordable housing and other needed housing types.

Lead & Partners

Lead: West Linn Community Development

Partners: Other City Departments

West Linn Housing Production Strategy

PLANNING COMMISSION-CITY COUNCIL WORK SESSION
NOVEMBER 18, 2024

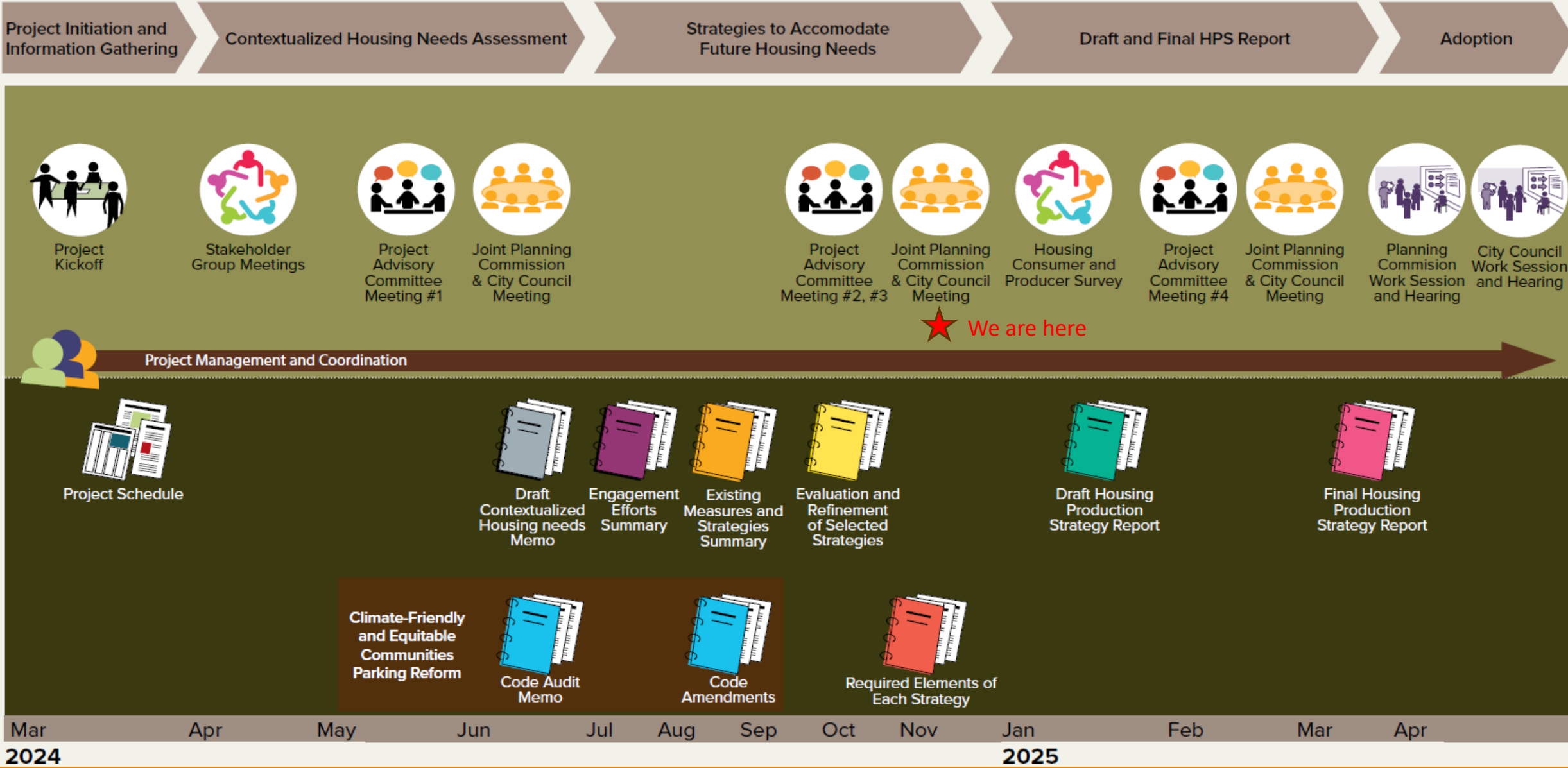
Agenda

1. Project Status and Timeline
2. Summary of Strategy Updates
3. Strategy evaluation and discussion
4. Next Steps

West Linn Housing Production Strategy Process and Schedule

MEETINGS & ENGAGEMENT

ANALYSIS, PLANNING, DESIGN & DELIVERABLES



HPS Status and Strategies Overview

- Finalized Contextualized Housing Needs Analysis (CHNA)
- Identified initial strategies
- Evaluated and refined strategies
 - Prioritized HPS recommendations based on Project Work Group input (2 meetings)
- **Recommended Strategies**
 - ✓ Identified as “High Priority” from the HCA Report and PWG input
 - ✓ Currently being considered by City as part of a separate process
 - ✓ Low barrier to implementation
 - ✓ Expected to have moderate- to high-impact on housing production
 - ✓ Expected to help meet housing needs identified in CHNA

Not Recommended Strategies

- Limited resources to accomplish every strategy that was considered in 6 years
- Generally lower priority from PWG input

Strategy	Rationale
<i>UGB Amendments and Planning</i>	<ul style="list-style-type: none"> • No deficit of residential land from HCA • UGB planning process led by Metro
<i>Promote ADUs</i>	<ul style="list-style-type: none"> • May be accomplished with other strategies – e.g., SDC updates
<i>Accessible Design</i>	<ul style="list-style-type: none"> • May already be required for federally or state subsidized affordable housing • Level of effort exceeds likely available staff resources
<i>Expedited Development Review</i>	<ul style="list-style-type: none"> • Not a major barrier to affordable housing • Already partially implemented (middle housing land divisions and expedited land divisions)
<i>Financial Assistance and Homebuyer Education Programs</i>	<ul style="list-style-type: none"> • May be addressed by local or regional non-profits • May be partially accomplished through “Fair Housing, Education, Referral” strategy

Zoning/Regulatory Incentives

Strategy	Description and Recommendation	Housing Need Addressed	Partners	Implementation Timeline
Rezone Land	<ul style="list-style-type: none"> • High priority from HCA • Rezone areas to multi-family residential or mixed-use • Waterfront and Highway 43 areas • Prioritize areas with development or redevelopment potential 	Rental and Workforce Housing	Property owners	Near to medium term
Small Dwelling Development	<ul style="list-style-type: none"> • City goal to improve homeownership opportunities for moderate income households • Adopt code amendments that enable small lot single family development 	Moderate income households	Development stakeholders	Near term
Zoning Incentives for Workforce & Affordable Housing	<ul style="list-style-type: none"> • High priority from PWG • Adopt code amendment that enable development bonuses for affordable housing <ul style="list-style-type: none"> • Height or density bonus • Allow greater floor area • Relax other zoning standards (e.g., design) 	Government-subsidized low- or moderate-income housing	Affordable housing providers	Near to medium term

✓ **Unanimous support from the PWG**

Strategy	Description and Recommendation	Housing Need Addressed	Partners	Implementation Timeline
SDC Updates	<ul style="list-style-type: none"> High priority from PWG City considering SDC study in near term Eliminate or defer SDCs for affordable housing and/or ADUs Modify SDC schedule to scale SDCs to unit size and/or type 	Moderate income households; Government-subsidized low-income housing and workforce housing	Public Works and development stakeholders	Near term for exemption, medium term for deferral and SDC modification
Fair Housing Education, Referral, and Other Services	<ul style="list-style-type: none"> High priority from HCA Promote fair housing policies and programs <ul style="list-style-type: none"> Fair housing training for elected officials and city staff Provide educational materials to residents Conduct Analysis of Impediments to Fair Housing 	Protected classes and renters	Fair Housing Council of Oregon	Medium Term

✓ Strong support from the PWG

- Caution/concern that updated schedule may increase SDCs for larger, more expensive housing types
- Consider SDC updates to incentivize accessible features/design
- Unanimous support for Fair Housing strategy

Strategy	Description and Recommendation	Housing Need Addressed	Partners	Implementation Timeline
Tax Increment Financing (TIF)	<ul style="list-style-type: none"> High priority from HCA Adopted TIF district for Waterfront and exploring TIF for Hwy 43 Corridor Incorporate affordable housing into the TIF planning for the Highway 43 Corridor. 	Government-subsidized low-income housing and workforce housing	Development stakeholders	Medium term
Construction Excise Tax (CET)	<ul style="list-style-type: none"> High priority from HCA One-time tax on construction projects (1% residential, no cap for commercial) Potential funding source for affordable housing May allow City to reduce permit fees by offsetting costs Evaluate and define approach, adopt and implement CET 	Government-subsidized low-income housing	Finance Department; local developers; non-profit housing providers	Medium Term

✓ Strong support from the PWG

- One member opposed to CET – increases construction costs; two other members share this concern
- The rest of the PWG supports CET
 - Comments that CET revenue is invested back into the community for affordable housing

Strategy	Description and Recommendation	Housing Need Addressed	Partners	Implementation Timeline
Surplus Land, Acquisition, and Banking	<ul style="list-style-type: none">• High priority from PWG• Identify, secure, and hold sites for affordable housing development• Pair with a funding strategy (CET or TIF) to finance land acquisition	Government-subsidized low-income housing	<ul style="list-style-type: none">• Local religious institutions• Affordable housing providers• Public agency land owners	Medium to long term
Public Private Partnerships (PPP)	<ul style="list-style-type: none">• High priority from HCA• Partner with regional organizations to develop affordable housing<ul style="list-style-type: none">• Convert underutilized properties to housing• Surplus land for affordable housing• Community Land Trust (CLT)• Leverage funding resources (e.g., Metro Bond)• Use other strategies to support partnerships – e.g., TIF, tax abatement or incentives	Government-subsidized low-income housing	<ul style="list-style-type: none">• Property owners• organizations with excess land• Affordable housing providers	Near term

✓ **Unanimous support from the PWG**

Strategy	Description and Recommendation	Housing Need Addressed	Partners	Implementation Timeline
Low Income Rental Housing Tax Exemptions	<ul style="list-style-type: none"> High priority from PWG Low-Income Rental and/or <i>Nonprofit</i> Low-Income Rental exemption - may adopt one or both Adopt programs by resolution or ordinance Consider supplementing with MUPTE 	Government-subsidized low-income housing	<ul style="list-style-type: none"> Finance department Overlapping taxing jurisdictions 	Near term
Multiple Unit Property Tax Exemption (MUPTE)	<ul style="list-style-type: none"> High priority from PWG May be paired with other tax abatements or exemptions to promote affordable housing Structure MUPTE to complement other strategies and to address unmet housing needs prior to adoption 	Multi-family, renters, government-subsidized low-income housing	<ul style="list-style-type: none"> Finance department Overlapping taxing jurisdictions 	Near term
Homebuyer Opportunity Limited Tax Exemption (HOLTE)	<ul style="list-style-type: none"> High priority from PWG Encourage homeownership for first time homebuyers and low/moderate-income households Adopt program by resolution or ordinance Work with housing providers to implement program for qualifying projects Integrate with other abatement/exemption strategies 	Moderate-income households	<ul style="list-style-type: none"> Finance department Overlapping taxing jurisdictions 	Near term

✓ **Unanimous support from the PWG**

Considerations

- Synergy with the Vision43 Corridor and Waterfront projects
 - TIF funding
 - Re-zoning
 - Opportunities for affordable housing
- HPS implementation commitments
 - Must implement the strategy over 6-year planning period to receive “credit” from DLCD
 - Strategies must meet specific housing need identified in CHNA
 - If a strategy is not implemented, City needs to find a way to fill that gap
 - Mid-point progress check-in – may reconsider strategies and make adjustments to meet specific housing needs

Next Steps

- Draft HPS (*November 2024 – January 2025*)
- PWG Meeting #4 – January/February 2025
- Final HPS (*Jan 2025 – March 2025*)
- Adoption (*March 2025 – May 2025*)



Work Session Agenda Bill

Date: October 25, 2024

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

Through: John Williams, City Manager *JRW*

From: Darren Wyss, Planning Manager *DSW*

Subject: Code Process Amendment Package Work Session

Purpose:

Review additional information requested at the November 4, 2024 work session on the Planning Commission recommended Code Process Amendment Package.

Question(s) for Council:

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

Background & Discussion:

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

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

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

The PC held five work sessions from April 2024 to August 2024 (see Attachment 4 for more detail) to discuss the code process concepts and develop revised code language. The PC found consensus on August 21st and directed staff to bring the code amendment package into the legislative adoption process. The proposed amendments to CDC Chapters 2, 37, 85, and 99 are intended to better serve the community needs, make the code language clear and objective, and ensure continued compliance with state statutes and administrative rules.

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

The City Council held a work session on November 4, 2024 to discuss the proposed code amendments, ask clarifying questions, and make any requests for more information. Council directed staff to bring back additional information on the following topics:

1. Review proposed amendments to CDC 99.250.A.(3) with City Attorney to ensure it clearly requires submittal of code criteria believed to have been overlooked or incorrectly interpreted or applied.
2. Potential impacts to existing home occupations with “pupils/student” by removing the unlimited trips allowance and setting a maximum of 12 vehicle trips per day.
3. Pros/cons of de novo versus on-the-record appeal hearings and a comparison of the appeal processes of other jurisdictions in the Metro region.
4. Potential role of a Hearings Officer in the appeal process.

Staff has compiled information about the four topics in Attachment 1 and will continue gathering data/information and provide to Council prior to the meeting.

The Council public hearing is scheduled for December 9th to make a decision on the recommended Code Amendment Package. Staff will be seeking guidance from Council at the end of the work session on whether to hold the hearing as scheduled or delay the hearing if additional changes are requested after the discussion.

Council Options:

1. Receive briefing and hold public hearing on December 9th for a final decision.
2. Receive briefing and direct staff to develop alternative options for the recommended code amendment package and set a new public hearing date for a final decision.

Staff Recommendation:

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

Attachments:

1. Staff Memorandum – November 4, 2024 Information Requests
2. ORD 1755 – Planning Commission Recommended Code Process Code Amendment Package
3. West Linn Planning Commission Recommendation Memorandum
4. Staff Memorandum – Code Process Concepts Implementation Process

Attachment 1: Staff Memo - CC Information Requests

Memorandum

Date: November 11, 2024

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

From: Darren Wyss, Planning Manager

Subject: Code Process Amendments

The City Council held a work session on November 4, 2024 to discuss the proposed Code Process Amendments Package as recommended by the Planning Commission. The Council asked clarifying questions and directed staff to bring back additional information on the following topics:

1. Review proposed amendments to CDC 99.250.A.(3) with City Attorney to ensure it clearly requires submittal of code criteria believed to have been overlooked or incorrectly interpreted or applied.
2. Potential impacts to existing home occupations with “pupils/student” by removing the unlimited trips allowance and setting a maximum of 12 vehicle trips per day.
3. Pros/cons of de novo versus on-the-record appeal hearings and a comparison of the appeal processes of other jurisdictions in the Metro region.
4. Potential role of a Hearings Officer in the appeal process.

Information Request #1

Staff is working with the City Attorney for final review of the code language. Recommended language changes will be sent via another memorandum prior to the November 18th work session.

Information Request #2

Staff is working with the Finance Department to glean data on Home Occupations with “pupils/students” from the City’s business license software. Once that data is available it will be sent via another memorandum prior to the November 18th work session.

Information Request #3

Attached to this memo is a comparison of the appeals process for nine jurisdictions in the Metro region. There are a variety of approaches to the appeal authority, but larger jurisdictions typically restrict an appeal to the City Council to a few discretionary review application types and appoint the Planning Commission or a Hearings Officer to hear an appeal of non-discretionary applications that are typically processed as staff level decisions.

There are also a variety of approaches to the type of appeal hearing. Several jurisdictions have provisions in their codes to allow the appeal authority to have discretion on whether the hearing will be limited to the record or opened as a de novo hearing. Below are a few pros/cons for the two types of appeal hearing processes.

On-the-Record Appeal Hearing

Pros

- More efficient decision-making
- Limits continuances b/c of new evidence
- Can shorten appeal hearing process
- Less pressure on 120-day clock
- More certainty to the applicant
- More certainty to the community
- Less impact on City budget

Cons

- Compresses public's time to review proposal
- May require appellant to secure a Land Use Attorney

De Novo Appeal Hearing

Pros

- Introduce evidence that was overlooked
- Extends public's time to review proposal
- Allows public to submit new evidence
- Allows applicant to submit new evidence

Cons

- Lessens importance of original decision
- Can lengthen appeal hearing process b/c new evidence
- Increase costs to applicant and City
- Increases potential for 120-day clock violation

Information Request #4

Currently, only the City of Tigard uses a Hearings Officer for appeals. Some jurisdictions use appointed Boards or Commissions for appeals of staff level decisions. Using a Hearings Officer eliminates the potential political influence from the decision, but will also have the greatest impact to City costs in processing the appeal unless the appeal fee was significantly increased.

If you have questions about the meeting or materials, please feel free to email or call me at dwyss@westlinnoregon.gov or 503-742-6064.

Appeal Processes for Metro Area Cities

	Appeal Body	Scope of Appeal	Additional Information
City of Oregon City			
			Muni Code Chapter 17.50.190
Type I	Not Appealable	n/a	
Type II	City Commission	On-the-Record	Limited to Issues Listed in Notice to Appeal
Type III	City Commission	On-the-Record	Limited to Issues Listed in Notice to Appeal
City of Lake Oswego			
			Muni Code Chapter 50.07
Ministerial (Type I)	Not Appealable	n/a	
Other Decisions (II/III)	City Council	On-the-Record	De Novo Exception in Code (50.07.003(7))
City of Wilsonville			
			Chapter 4 - Planning and Land Development
Planning Dir. (Class I/II)	Design Review Board (DRB)	De Novo, but Discretion to Limit to On-the-Record	DRB Decision Appealable to City Council (4.022)
DRB (Class II)	City Council	On-the-Record	Discretion to allow new evidence or Full De Novo
City of Tualatin			
			Chapter 32: Development Review Procedures
Type I	Not Appealable		
Type II	City Council	De Novo	Architectural Review to Architectural Review Board First
Type III	City Council	De Novo	
City of Gladstone			
			Chapter 17.92
Staff Decision	Planning Commission (PC)	Submitted Application	PC Decision Appealable to City Council (17.92.010)
PC Decision	City Council	PC Decision	

	Appeal Body	Scope of Appeal	Additional Information
City of Milwaukie			Chapter 19.1000 Review Procedures
Type I	Planning Commission	Unrestricted De Novo	Allows new evidence by any Party
Type II	Planning Commission	Unrestricted De Novo	Allows new evidence by any Party
Type III	City Council	On-the-Record De Novo	No new evidence, Testimony limited to record, Scope limited to issues raised on appeal
City of Tigard			Title 18.710.100
Type I	Hearings Officer	De Novo	
Type II	Hearings Officer	De Novo	
Type III	City Council	De Novo	Limited to 5 Discretionary Application Types
City of Beaverton			Development Code Chapter 50 - Procedures
Type I	Planning Commission	De Novo	
Type II	Planning Commission	De Novo	
Type III	City Council	De Novo	Can request On-the-Record
City of Hillsboro			Chapter 12.70.180
Type I	Planning Commission	De Novo	
Type II	Planning Commission	De Novo	
Type III	City Council	On-the-Record	Code contains specific provisions on granting request for De Novo proceedings

Type I and II Decisions are staff level

Type III Decisions are by an appointed Board or Commission, or Hearings Officer

Attachment 2: Ordinance 1755

ORDINANCE NO. 1755

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

Annotated to show deletions and <u>additions</u> to the code sections being modified. Deletions are lined through and additions are <u>underlined</u> in red font .
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WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides: Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

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

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

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

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

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

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

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

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

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 9. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the _____ day of _____, 2024, and duly PASSED and ADOPTED this _____ day of _____, 2024.

RORY BIALOSTOSKY, MAYOR

ATTEST:

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

WEST LINN COMMUNITY DEVELOPMENT CODE

Chapter 2 DEFINITIONS

02.010 INTERPRETATION

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

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

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02.030 SPECIFIC WORDS AND TERMS

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

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

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

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

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

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

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

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

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

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Chapter 37 HOME OCCUPATIONS

37.010 PURPOSE

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

37.020 GENERAL STANDARDS

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

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

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

37.030 SPECIFIC HOME OCCUPATION USES PROHIBITED

- A. *Repealed by Ord. 1635.*

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

37.040 THE APPLICATION

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

37.050 PERMITS

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

37.060 ADMINISTRATION AND APPROVAL STANDARDS

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

37.070 APPROVAL AND STRICT COMPLIANCE REQUISITE FOR BUSINESS LICENSE

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

37.080 REVOCATION

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

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Chapter 85 LAND DIVISIONS – GENERAL PROVISIONS

85.070 Administration and Approval Process

- A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.
- B. Action on the application for a tentative plan shall be as provided by Chapter 99 CDC.
1. The Planning Director shall approve, deny, or approve with conditions an application for a partition subject to the provisions of CDC 85.200, 99.060(A), and 99.110. The Director's decision may be appealed to the City Council as provided by CDC 99.240(A).
 2. The Planning Commission shall approve, deny, or approve with conditions an application for a tentative plan for a subdivision subject to the provisions of CDC 85.200, 99.060(B), and 99.110. A petition for review of the Planning Commission's decision may be filed as provided by CDC 99.240.
 - 3. The Planning Director shall approve, deny, or approve with conditions an application for an expedited land division subject to the provisions of CDC 85.220, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).**
 - 4. The Planning Director shall approve, deny, or approve with conditions an application for a middle housing land division subject to the provisions of CDC 85.230, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).**
 - ~~3.~~ **5.** Action on the final plat shall be ministerial and taken by the Planning Director and City Engineer, and the Planning Director and City Engineer shall approve a final subdivision or partition plat upon the finding that the approval criteria set forth in CDC 89.050 have been satisfied. The Planning Director's and City Engineer's decision may be appealed to the Planning Commission by the applicant, and the Planning Commission shall make its decision based on testimony from the applicant and the Director.

85.220 EXPEDITED LAND DIVISIONS

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

A. Submittal Requirements.

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

B. Approval Criteria.

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

85.230 MIDDLE HOUSING LAND DIVISIONS

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

A. Submittal Requirements.

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

6. Preliminary plat that includes:

- a. Property lines and dimensions.**
- b. Public and private utility easements.**
- c. Required right-of-way dedication.**

B. Approval Criteria.**1. Oregon Revised Statute 92.031.**

.....

Chapter 99 PROCEDURES FOR DECISION MAKING: QUASI JUDICIAL

.....

99.060 APPROVAL AUTHORITY

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

A. Planning Director authority. The Planning Director, **or designee**, shall have the authority to:

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

- a. A temporary use or structure application for a period no more than 120 days, including all extensions (Chapter 35 CDC), and not associated with another land use approval.

.....

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

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

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

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

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

y. Expedited Land Division

z. Middle Housing Land Division

.....

B. Planning Commission authority. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:

.....

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

- a. A temporary use or structure application (Chapter 35 CDC) for a minimum of 121 days to no more than one year, or an application associated with another land use approval

.....

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

.....

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

.....

D. Historic Review Board authority. The Historic Review Board shall review an application for compliance with Chapters 25 and 58 CDC, as applicable. The Historic Review Board shall have the authority to:

1. Approve, deny, or approve with conditions an application regarding the following:

- a. Class II Historic Design Review;

.....

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

.....

~~E. Expedited land divisions. Expedited land divisions shall be processed by the Planning Commission without a public hearing pursuant to Oregon Revised Statutes (ORS) 197.360 through 197.380. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:~~

- ~~1. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:~~

- ~~a. Planned unit development.~~

- ~~b. Willamette River Greenway~~

- ~~c. Flood Management area.~~

d. ~~Tualatin River.~~

e. ~~Water Resource Area.~~

f. ~~Design Review.~~

2. ~~The Planning Commission shall make their decision based solely upon the record and staff recommendation.~~

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

E. Referee

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

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

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

99.080 NOTICE

Notice shall be given in the following ways:

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

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

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

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

.....

99.250 APPLICATION FOR APPEAL OR REVIEW

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

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

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

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

~~C.~~ D. The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal.

99.260 PERSONS ENTITLED TO NOTICE ON APPEAL – TYPE OF NOTICE

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

99.270 CONTENTS OF PUBLIC NOTICE OF APPEAL HEARING

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

- A. Reference the application sought to be appealed;
- B. List the date, time, and location of the hearing;
- C. State the appellant or petitioner name(s);
- D. List any grounds for appeal or review stated in the application for appeal or review, but state that the appeal or review is not limited to the stated grounds for appeal or review and that all relevant issues may be considered;
- E. State that the hearing on appeal shall be de novo; however, evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal;
- F. Include the name of government contact and phone number; and
- G. State that the application and record are available for inspection at no cost, and copies at a reasonable cost.

99.280 TYPE OF APPEAL HEARING AND SCOPE OF REVIEW

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

.....

99.325 EXTENSIONS OF APPROVAL

- ~~A. An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC 99.060(A), (B), (C), (D) or (E), as applicable, upon finding that:~~
 - ~~1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and~~

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

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

~~B. Repealed by Ord. 1675.~~

~~C. Repealed by Ord. 1675.~~

~~D. Repealed by Ord. 1635.~~

~~E. Extension procedures.~~

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

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

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

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

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

A. Purpose.

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

B. Applicability

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

C. General Provisions

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

D. Approval Process

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

E. Approval Criteria

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

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

Attachment 3: PC Recommendation Memo



Memorandum

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

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

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

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

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

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

Respectfully,



John Carr
Chair, West Linn Planning Commission

Attachment 4: Code Concepts Implementation Process

Memorandum

Date: October 25, 2024

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

From: Aaron Gudelj, Associate Planner

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

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

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

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

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

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

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

Topic #1 Extensions of Approval (CDC Chapter 99)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

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

[October 16, 2024 Staff Report](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

October 16, 2024 Legislative Public Hearing

October 16, 2024 PC Video

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

October 16, 2024 Staff Report

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

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

Topic #3 Home Occupations (CDC Chapter 37)

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

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

April 3, 2024 PC Work Session (Home Occupations)

PC Work Session April 3, 2024 Video

PC Work Session April 3, 2024 Meeting Notes

PC Work Session April 3, 2024 Staff Memorandum

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

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

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

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

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

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

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

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

July 17, 2024 PC Work Session (Home Occupations)

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

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

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

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

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

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

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

August 7, 2024 PC Work session (Home Occupations)

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

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

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

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

August 21, 2024 PC Work Session (Home Occupations)

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

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

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

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

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

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

[October 16, 2024 Staff Report](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PC Work Session August 21, 2024 Staff Memorandum

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

October 16, 2024 Legislative Public Hearing

[October 16, 2024 PC Video](#)

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

[October 16, 2024 Staff Report](#)

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

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

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

CDC Chapter 2: Definitions

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

CDC Chapter 37: Home Occupations

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

CDC Chapter 85: Land Divisions – General Provisions

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

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

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

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

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

Memorandum

Date: November 14, 2024

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

From: Darren Wyss, Planning Manager

Subject: Code Process Amendments

The City Council held a [work session on November 4, 2024](#), to discuss the proposed Code Process Amendments Package as recommended by the Planning Commission. The Council asked clarifying questions and directed staff to bring back additional information on the following topics:

1. Review proposed amendments to CDC 99.250.A.(3) with City Attorney to ensure it clearly requires submittal of code criteria believed to have been overlooked or incorrectly interpreted or applied.
2. Potential impacts to existing home occupations with “pupils/student” by removing the unlimited trips allowance and setting a maximum of 12 vehicle trips per day.
3. Pros/cons of de novo versus on-the-record appeal hearings and a comparison of the appeal processes of other jurisdictions in the Metro region.
4. Potential role of a Hearings Officer in the appeal process.

Staff provided information on [Request #3 and Request #4 in a memorandum dated November 11, 2024](#). That memorandum is found as Attachment 1 to the November 18, 2024, City Council Agenda Bill. Information on the remaining requests is found below.

Information Request #1

Staff worked with the City Attorney for final review of the code language related to submittal requirements for an appeal application. Staff recommends the Council, at the public hearing, considers amending the Planning Commission Recommendation to the following language:

99.250 APPLICATION FOR APPEAL OR REVIEW

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

1. **Date and case file number of** ~~A reference to the~~ **decision being** ~~application sought to be appealed, and~~
2. **Documentation that the appellant** ~~A statement explaining how the petitioner qualifies as a party of standing, as provided by CDC~~ **99.140**.

3. A statement describing the basis of the appeal that includes a citation to the West Linn Municipal Code and/or Community Development Code approval criteria or development standard(s) that is not met in the application, or that the appellant claims have been incorrectly interpreted or applied.

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

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

~~C.~~ **D.** The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal.

~~D. The appeal or review application may state grounds for appeal or review.~~

Information Request #2

There are currently 313 approved Home Occupation Permits (HOP) in the City of West Linn. The City's business license software allows the business license holder to self-select from a set of categories as to which category best represents the business type. The following are categories that would be most likely to have "pupils/students", along with total numbers and percentage of all HOPs.

Category	Total Number of HOPs	Percent of Total HOPs
Educational Services/Tutoring	4	1.3%
Instructor	3	1.0%
Music	1	0.3%

Information Request #3

In addition to the information provided in Attachment 1 to the Agenda Bill, conducting an appeal hearing as de novo provides the opportunity for Council to correct any deficiencies in the record and potentially help avoid it being appealed to LUBA.

If you have questions about the meeting or materials, please feel free to email or call me at dwys@westlinnoregon.gov or 503-742-6064.



CITY OF
**West
Linn**

City Council

CDC-24-02 Work Session

Proposed Code Process Concepts Amendment Package

November 18, 2024

CC Work Session Materials




Agenda Bill

- Background Information
- Planning Commission Process
 - Discussion Topics
 - Draft Code Review
- Four Items for further discussion from 11/4 WS

Attachments

- Staff Memo
 - Information Requests
- ORD 1755 – Code Process Amendment Package
- PC Recommendation Memo
- Staff Memo – Implementation Process

Staff Memo dated 11/14/2024

 West Linn	
STAFF REPORT FOR THE PLANNING COMMISSION	
FILE NUMBER:	CDC-24-01
HEARING DATE:	October 2, 2024
REQUEST:	To consider adoption of text amendments to West Linn Community Development Code Chapters 1, 2, 22, 32, 35, 36, 41, 46, 48, 54, 55, 56, 75, 96, and 99. The proposed parking reform amendments will bring the City into compliance with CFEC requirements found in OAR Chapter 660 Division 12.
APPROVAL CRITERIA:	Community Development Code (CDC) Chapters 98 and 105
STAFF REPORT PREPARED BY:	Darren Wyss, Planning Manager
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	PC Staff Report

Code Process Concepts



Why?

- City Attorney/Staff identified processes to update
 - Provide clarity
 - Clear and objective
 - Equity
 - Compliance with ORS
- CC Work Session – October 2023
- CC/PC Work Session – March 2024

What?

- Appeal Process
- Extensions of Approval
- Home Occupations
- Expedited/Middle Housing Land Divisions



Information Requests



CDC 99.250

99.250 APPLICATION FOR APPEAL OR REVIEW

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

1. **Date and case file number of** ~~A reference to the~~ **decision being** application sought to be appealed, ~~and~~

2. **Documentation that the appellant** ~~A statement explaining how the petitioner~~ qualifies as a party of standing, as provided by CDC 99.140.

3. **A statement describing the basis of the appeal that includes a citation to the West Linn Municipal Code and/or Community Development Code approval criteria or development standard(s) that is not met in the application, or that the appellant claims have been incorrectly interpreted or applied.**

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

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

~~C.~~ **D.** The hearing on the appeal or review shall be de novo; however, all evidence presented to any lower approval authority shall be made part of the record and shall be considered and given equal weight as evidence presented on appeal.

~~D.~~ ~~The appeal or review application may state grounds for appeal or review.~~



Information Requests

- Potential Impacts to HOPs with “Pupils/Students”
 - 313 approved HOPs
 - Self-selected categories most likely to have “pupils/students”

Category	Total Number of HOPs	Percent of Total HOPs
Educational Services/Tutoring	4	1.3%
Instructor	3	1.0%
Music	1	0.3%



Information Requests

🍃 Appeal Authority

- Larger jurisdictions limit appeals to CC for only discretionary decisions (Type III)
- Tigard uses HO and some others use PC/DRB as appeal authority for staff level decisions (Type I/II)

🍃 Scope of Appeal

- De Novo vs. On-the-Record
 - Variety of approaches
 - Some allow Appeal Authority to set the scope

De Novo Appeal Hearing

Pros

Introduce evidence that was overlooked
Extends public's time to review proposal
Allows public to submit new evidence
Allows applicant to submit new evidence

Cons

Lessens importance of original decision
Can lengthen appeal hearing process b/c new evidence
Increase costs to applicant and City
Increases potential for 120-day clock violation

Information Requests



	Appeal Body	Scope of Appeal	Additional Information
City of Oregon City			
			Muni Code Chapter 17.50.190
Type I	Not Appealable	n/a	
Type II	City Commission	On-the-Record	Limited to Issues Listed in Notice to Appeal
Type III	City Commission	On-the-Record	Limited to Issues Listed in Notice to Appeal
City of Lake Oswego			
			Muni Code Chapter 50.07
Ministerial (Type I)	Not Appealable	n/a	
Other Decisions (II/III)	City Council	On-the-Record	De Novo Exception in Code (50.07.003(7))
City of Wilsonville			
			Chapter 4 - Planning and Land Development
Planning Dir. (Class I/II)	Design Review Board (DRB)	De Novo, but Discretion to Limit to On-the-Record	DRB Decision Appealable to City Council (4.022)
DRB (Class II)	City Council	On-the-Record	Discretion to allow new evidence or Full De Novo
City of Tualatin			
			Chapter 32: Development Review Procedures
Type I	Not Appealable		
Type II	City Council	De Novo	Architectural Review to Architectural Review Board First
Type III	City Council	De Novo	
City of Gladstone			
			Chapter 17.92
Staff Decision	Planning Commission (PC)	Submitted Application	PC Decision Appealable to City Council (17.92.010)
PC Decision	City Council	PC Decision	

Information Requests



	Appeal Body	Scope of Appeal	Additional Information
City of Milwaukie			Chapter 19.1000 Review Procedures
Type I	Planning Commission	Unrestricted De Novo	Allows new evidence by any Party
Type II	Planning Commission	Unrestricted De Novo	Allows new evidence by any Party
Type III	City Council	On-the-Record De Novo	No new evidence, Testimony limited to record, Scope limited to issues raised on appeal
City of Tigard			Title 18.710.100
Type I	Hearings Officer	De Novo	
Type II	Hearings Officer	De Novo	
Type III	City Council	De Novo	Limited to 5 Discretionary Application Types
City of Beaverton			Development Code Chapter 50 - Procedures
Type I	Planning Commission	De Novo	
Type II	Planning Commission	De Novo	
Type III	City Council	De Novo	Can request On-the-Record
City of Hillsboro			Chapter 12.70.180
Type I	Planning Commission	De Novo	
Type II	Planning Commission	De Novo	
Type III	City Council	On-the-Record	Code contains specific provisions on granting request for De Novo proceedings

Type I and II Decisions are staff level

Type III Decisions are by an appointed Board or Commission, or Hearings Officer



QUESTIONS OF STAFF?

Work Session Agenda Bill

Date Prepared: September 26, 2024

For Meeting Date: October 7, 2024

To: Rory Bialostosky, Mayor
West Linn City Council

Through: John Williams, City Manager *JRW*

From: Peter Mahuna, Police Chief

Subject: Amending West Linn Municipal Code Chapter 5 Relating to attracting and feeding wild animals

Purpose:

Discuss possible amendment to Municipal Code Chapter 5 (Public Protection) to prohibit attracting or feeding certain wild animals.

Question(s) for Council:

Does Council wish to amend Chapter 5 to prohibit attracting and feeding wild animals? What amount of public review of a draft ordinance would Council wish prior to considering a final ordinance?

Background & Discussion:

A community member spoke at the September 9, 2024 City Council Meeting about the potential health impacts and public nuisance issues with residents feeding wild animals and the unintended consequences of doing so. The food being left out was initially intended for feral cats, however it has attracted skunks, rats, and crows. The amount of bird droppings that cover play structures and backyard furniture creates a health hazard. Community members have asked for an ordinance to be created to prohibit the attracting and feeding of wild animals.

Propose Ordinance Change

An ordinance based on language from neighboring cities is attached. It would add new sections to the West Linn Municipal Code that defines attractants, feeders, water features, and wild animals. The new section would prohibit attracting or feeding of wild animals by declaring it to be a public nuisance, but would create exceptions, including for birdfeeders, feeding of domesticated rabbits, and feeding under permits obtained from state agencies.

Other Considerations

This ordinance would create standards within the City of West Linn but could be very challenging to enforce, as will be discussed at the Work Session. Enforcement may be simpler

with very egregious cases. Enforcement would follow the process requirements of other nuisances, which begin in MC 5.495.

The proposed ordinance has not yet been reviewed by the City Attorney. Legal review and editing would be provided following Council initial discussion and direction.

Council Options:

- 1) Direct staff to bring the proposed ordinance to the next Council Meeting for adoption.
- 2) Direct staff to revise the proposed ordinance and bring to the next Council Meeting for adoption.
- 3) Direct staff to conduct public outreach prior to returning to Council for a decision.
- 4) Direct staff to leave the Code as is.

Staff Recommendation:

Staff recommends moving forward with the Ordinance and recommends allowing public comment prior to further consideration, including forwarding to all neighborhood associations in a timely manner to allow their discussion at an upcoming meeting.

Attachments:

1. Draft Ordinance

ORDINANCE XXXX

AN ORDINANCE RELATING TO ATTRACTING AND FEEDING WILD ANIMALS AND AMENDING WEST LINN'S MUNICIPAL CODE

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

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the feeding of wildlife in an urban environment can lead to negative impacts on animals, people, and the environment; and

WHEREAS, feeding wildlife can lead to aggressive behavior towards humans, which presents health and safety concerns for residents and visitors; and

WHEREAS, feeding wildlife can artificially support the growth and carrying of capacity of urban wildlife populations, compromising wildlife health, and increasing human exposure to and conflict with wildlife; and

WHEREAS, feeding wildlife can cause certain species to localize activity in the vicinity of those food sources, thus increasing associated negative impacts on residents and visitors within those neighborhoods; and

WHEREAS, the City Council has a duty and interest in protecting public health, safety, and welfare within the City of West Linn.

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

SECTION 1. New Section(s). West Linn Municipal Code Section(s) 5.540 Purpose through 5.545 Exemptions are added to read as follows:

5.540 Purpose. Feeding wild animals in an urban environment is both detrimental to wildlife health and causes a public health nuisance and safety hazard that negatively impacts public health and welfare. This chapter is intended to prohibit, with exceptions, the feeding of certain wild animals within the city of West Linn so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

5.545 Definitions.

“Attractant” means any substance that draws animals to a particular location and includes, but is not limited to, food and garbage. Attractant does not include ponds, water features, lawns, flowers, shrubs, trees, fallen fruit, or gardens that are eaten by wild animals.

“Feeder” means any device or container used for feeding animals.

“Bird feeder” A container, receptacle or apparatus designed for the feeding of songbirds or other backyard birds.

“Feed” to give, place, expose, deposit, distribute or scatter any edible material which can be utilized for consumption by wild animals. Feeding does not include baiting for the legal taking of fish and/or game.

“Water feature” means a decorative landscaping element that incorporates water.

“Wild animal” means, for the purpose of this chapter, all non-domesticated animals (i.e., bear, cougar, coyote, deer, fox, opossum, rabbit, raccoon, skunk, rats, and other rodents).

5.540. Attracting or Feeding Wild Animals Prohibited. The attracting or feeding of wild animals within the city limits is declared to be a public nuisance and is prohibited. This prohibition includes a person placing or knowingly allowing food or other attractants to be placed on private property or public property with the intent of attracting or feeding wild animals. No person shall store pet food or animal feed in a negligent manner likely to attract wild animals.

5.545. Exceptions. The prohibitions in this section do not apply to:

A. Feeding of birds; provided that the food is contained in a bird feeder which is reasonably designed to avoid access by wild animals and placed in a manner to avoid access by wild animals.

B. Feeding of domesticated rabbits kept in an enclosure.

C. Feeding of wild animals kept under a valid permit issued by the Oregon Department of Fish and Wildlife.

D. Any state, county or local government employee or agent authorized to implement a wildlife management program involving baiting, or any other person authorized to bait and trap wildlife pursuant to state law.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said

ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION X. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the _____ day of _____, 2024, and duly PASSED and ADOPTED this _____ day of _____, 2024.

RORY BIALOSTOSKY, MAYOR

ATTEST:

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

	City Manager		City Attorney		Difference	
	<i>Low</i>	<i>High</i>	<i>Low</i>	<i>High</i>	<i>Low</i>	<i>High</i>
Lake Oswego	169,380.96	205,907.04	156,983.52	190,805.76	7.60	7.61
West Linn	-	202,456.80	-	220,500.00		-8.53
Wilsonville	175,000	207,346.62	-	122,985		51.08
Milwaukie	148,998	201,481.80	131,539.2	167,877	12.45	18.20
Tigard			135,744	177,480		
Beaverton	211,173	282,994.08	160,387.92	214,942.56	27.34	27.33
Happy Valley						

Mollusky, Kathy

From: [REDACTED]
Sent: Saturday, November 16, 2024 9:20 AM
To: City Council
Cc: Wyss, Darren
Subject: Code Process Amendment Package Work Session - De Novo

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Councilors,

I am writing to request that you continue to allow de novo appeals of quasi-judicial decisions.

I have lived in West Linn for over twenty years and this topic has been discussed many times by past City Councils. The public has been whiplashed back and forth as different Councils have allowed, and then restricted, de novo in our city. **I urge you to keep current practice and continue to allow de novo.**

As stated in the October 25, 2024 Work Session Agenda Bill memorandum from Darren Wyss, a de novo appeal hearing **allows both the public and applicant** to “Introduce evidence that was overlooked”. Therefore, de novo allows for the most complete record of evidence at a hearing by not restricting the presentation of new information which might influence the hearing’s outcome. Isn’t that what we all expect, that a complete record of evidence be presented to the hearing body before a decision is made? If so, you must keep de novo.

It appears to me that the primary reason previous Councils have looked to restrict de novo is to shorten hearing times. I hope that is not the case here. Being an elected official sometimes requires sitting through a long hearing or having to hold another hearing to gather all the pertinent evidence. **That is the job of an elected official** – gathering all the evidence before making a decision. De novo aids in that process by giving both sides the ability to introduce new evidence to make a complete record.

Finally, in the memorandum from Mr. Wyss he states that removing de novo “Compresses public’s time to review proposal”. That would **favor the applicant** over the public in a hearing. De novo, as I stated above, allows both the public and the applicant to submit new information, thus keeping a level playing field.

Please keep appeal hearings in West Linn a de novo process so that both the public and applicant have the best opportunity to present ALL the evidence.

Thank you.

Ed Schwarz
West Linn

Mollusky, Kathy

From: Ian Brown [REDACTED]
Sent: Sunday, November 17, 2024 8:02 PM
To: City Council
Subject: de novo review

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Councilors,

Please maintain your de novo review authority over quasi-judicial decisions. Such decisions require deliberation and the opportunity to review all evidence and arguments. Your authority, and your responsibility, should not be limited by prior proceedings.

Thank you

Ian Brown

1968 6th Ave, West Linn, OR 97068

Mollusky, Kathy

From: jennifer aberg <[REDACTED]>
Sent: Sunday, November 17, 2024 6:57 PM
To: City Council
Cc: Willamette Neighborhood Association President; jennifer aberg
Subject: Fwd: Removal of De Novo

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Dear West Linn City Councilors,

I understand that the City of West Linn is reviewing the requirement for *de novo* law. As a resident of West Linn for the past 28 years, I am deeply concerned that this change is under consideration. I am writing to urge you to preserve the *de novo* law. Below, I have outlined the key reasons why maintaining this policy is vital to our community's integrity and future.

- **Promotes Fairness and Equity**

A *de novo* approach ensures that every case or issue is examined independently and without bias from prior decisions. In a diverse city like ours, it is essential to provide equal footing for all individuals and entities when presenting their cases or concerns.

- **Encourages Transparency and Public Trust**

By committing to *de novo* review, the city reaffirms its dedication to transparency. This fosters trust among residents, who can have confidence that their concerns will be thoroughly evaluated based on the merits of each case, rather than being overshadowed by historical precedent.

- **Allows Adaptability to Changing Contexts**

A *de novo* law allows the city to revisit policies and decisions with a fresh perspective. This adaptability is critical in addressing new challenges and opportunities without being constrained by outdated precedents.

- **Supports Comprehensive Decision-Making**

The *de novo* review process encourages thorough evaluation of evidence, arguments, and potential impacts. This ensures that decisions are well-informed, accountable, and beneficial to the broader community.

- **Prevents Continuation of Bad Policies**

Decisions based on precedents can sometimes become misaligned with the city's current values or realities. The *de novo* process safeguards against perpetuating outdated or inequitable policies, promoting a forward-thinking and progressive governance model.

Thank you for your attention to this important matter.

Sincerely,

Jennifer Aberg

1250 9th Street; [REDACTED]

Mollusky, Kathy

From: Kathy Hinrichs <[REDACTED]>
Sent: Monday, November 18, 2024 11:48 AM
To: City Council
Cc: Wyss, Darren
Subject: De novo appeals process review

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Council Members,

I am requesting that you support retention of the de novo process in appeals hearings. I believe doing so provides the best opportunity to gather all relevant and critical information in order to make the most well informed decisions possible. In many cases, the impact of these decisions can be long-term and/or irreversible to either the applicant or the general public. We owe it to all involved to provide a comprehensive process so that all relevant information can be considered.

I respectfully request that you keep our appeals hearings a de novo process.

Thank you.

Kathy Hinrichs
A 40+ year resident of West Linn

Mollusky, Kathy

From: Marti Long <[REDACTED]>
Sent: Monday, November 18, 2024 10:06 AM
To: City Council
Subject: De Novo appeals

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As a citizen of West Linn, I urge you to retain de novo appeals. Many times citizens are unaware of a proposal until it is approved; the ability to appeal on a de novo basis is crucial for the community to be heard. To eliminate it would be a gift to developers—who as the ones seeking the approval already have notice of the action, a more sophisticated understanding of the process, and lawyers and advisors. To remove this as a step away from democracy and towards oligarchy.

When I look around my neighborhood, I see older homes being torn down and developed by wealthy corporations controlled by a few wealthy individuals. I can't help but think that eliminating de novo review will only benefit these same few individuals. This is not progress.

Marti Long
2136 5th Ave
West Linn
Sent from my iPhone

Mollusky, Kathy

From: Patricia Gayle <[REDACTED]>
Sent: Sunday, November 17, 2024 9:03 PM
To: City Council
Cc: Wyss, Darren
Subject: West Linn de novo process

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West Linn City Council

Please keep the appeal hearings active in West Linn a de novo process so that both the public and applicant have the best opportunity to present all the evidence available.

Thank you,

Patricia Foster
Sent from my iPhone

Mollusky, Kathy

From: A Sight for Sport Eyes <sporteyes@yahoo.com>
Sent: Friday, November 15, 2024 8:25 PM
To: City Council; Planning Commission (Public)
Subject: Testimony for joint meeting on 11/18

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Dear City Council and Planning Commission:

Please accept this testimony for your joint work session on Monday the 18th. This is a modified testimony I had already sent to the Planning Commission for their work on these code amendments. I appreciate the Planning Commission making the recommendation to uphold the existing full de novo process. However, at the last city council meeting, the Mayor mentioned that he wanted to revisit the de novo process. This concerns me.

If you get rid of or limit the de novo process, the community at large will be limited only to what the appellant puts in their brief. You often have residents, not lawyers appealing who are not familiar with code. They do their best to learn how to appeal in a very short amount of time, but might miss things they don't understand or know about in the code.

I also think we need to look at why the 2017 council changed to the de novo process. If I look at this [West Linn Tidings](#) article, this move to de nova was to:

“to allow for what they feel to be a more inclusive and comprehensive appeal process.”

“Inclusive” being the key word for me here. Again, the lay person is not going to know our code inside and out. If you limit what can be appealed, this means only those able to hire attorneys are really going to be able to make the best case if we returned to an "on the record" process. Also of note is this quote:

“The current council, on the other hand, felt handcuffed by the on the record process, particularly during a series of recent development appeal hearings when evidence the councilors viewed as important could not be introduced.”

If evidence is in the record for the PC hearing but is not listed in the appeal document, then it wouldn't be able to be introduced in the City Council hearing which is the exact reason council changed the code in 2017.

The change to “on the record” was done in 2014, and only lasted a few years before being changed back in 2017. During those 'on the record' years, council was able to read the notes from what happened at the planning commission meeting. But if the appellant failed to bring forward all of the issues the planning commission heard, the council would not be able to consider anything but was in the appeal.

For instance, let's say the neighbor who brought forward the appeal cared most about the traffic and only appealed citing the relevant traffic codes. At the council hearing, another neighbor gave valid testimony citing WRA and protecting areas that could disturb sensitive lands. If we get rid of full de novo, the council would have to ignore that testimony. This doesn't seem fair that you would be put in a position for someone to give valid testimony rooted in the code, and have to completely ignore it. The person giving the testimony is going to feel completely unheard by council in this situation, and it will just create a lack of faith in the system by the public. The open de novo system allows all testimony to be considered instilling faith in the public process.

While I understand a limited de novo was being considered, my interpretation of this limited de novo meant that if that same person gave testimony on traffic and a new traffic study was done in between the PC and council hearing, that new traffic study could be admitted because it is related to the same codes that were brought forward on the appeal. It is technically "new information" but new information based on the same codes mentioned in the appeal brief. However, it would not allow the process mentioned above where different codes that were not in the brief (WRA in the example I gave). This nuance is what takes the general public out of the process, limiting it only to what one appellant decides to appeal on.

I did a Google search on “de novo” as it is used in Oregon law. This is what I found:

" "de novo" refers to a new trial on an entire case, where the issues of law and fact are determined without referring to any previous legal conclusion or assumption made by the previous court. The term is Latin for "anew," "from the beginning," or "afresh". In de novo review, the appellate court does not defer to the decisions made in the trial court and looks at the issue as if the trial court had never ruled on it."

From this definition, a limited de novo does not meet the “spirit of the law”. It would not allow the hearing to be “anew”. It is not “looking at the issue as if the Planning Commission had never ruled on it”. It is limiting the hearing to evidence only put forth in the appellant's brief. Again, these are the same issues that the 2017 council had, and why they made the code changes then.

Let's also consider that not all applications go to the Planning Commission. If it is a planning manager decision, unless you live within 500 feet of the application, you don't know there is this application being reviewed. Thus, the first time one finds out about a decision may be during the appeal, and the appeal hearing may be the only chance to give testimony. Since the appeal is the first time the general public would hear about the application, if the on the record or modified de novo process would limit the general public only to the codes that the appellant found fault with, and does not give the general public any time to research the issue and introduce any of their personal concerns. It means the appellant's opinion is the only opinion heard which again is limiting public comment and creates further distrust of the process.

On CCI (Committee for Community Involvement) we threw out the idea of being a resource for people to come and discuss land use issues. Perhaps if we had something like this in place where the lay person could have some free help in drafting their appeal, this code change would be more palatable. But since in a planning manager decision, the rest of the public may only see this application for the first time at the council hearing, we need a full de novo process so issues missed by the lay person can be addressed at the single public hearing. I still believe CCI could be a resource for individuals looking to appeal an application, giving them the code help they may need in crafting an appeal. Something to think about in the future.

Also, usually only one person appeals, as the cost is high. Thus, getting rid of a full de novo process would require the person filing the appeal cover all potential issues. Again, in my example before, perhaps the appellant only cares about traffic so they write their appeal about traffic. This means if someone also wants to appeal for the WRA issues, they have to file a separate appeal and pay the \$400 to ensure their testimony will be admissible in the appeal hearing. Again, these are barriers to equity.

While I know the argument that will be made that one could just ask for their concerns to be addressed in the appeal document, in my “what if” scenario, this would require the neighbor to somehow get a hold of this random stranger and ask them “can my arguments be part of your appeal”. While they could say yes, many people don’t like the help of strangers, nor do they have time to meet within that short 2 week period. This again, puts it back on the resident to pay \$400 to do their own appeal in order to ensure their point of view can be addressed. I had this happen when we appealed to LUBA on the Athey Creek School. The person who was decided to be the appellant did not want to include my concerns in their brief. (LUBA limits you to so many words, and he didn’t have time to meet with me). So I had to pay the nearly \$1000 to appeal myself in order for my concerns to be heard. Again, this creates an equity issue for those that may not have be in a financial position to make a second appeal.

While Oregon does allow cities and certain municipalities to limit “de novo” to what is in the appeal, maybe staff can tell you what cities actually do this. If this limited de novo approach is used, the only way to have code issues heard that were in the PC hearing but disallowed at the council hearing would be LUBA. Again, just an inequity for residents to have to pay what amounts to now \$1000 to appeal to LUBA simply because council made a change in the code, which as mentioned, already failed the community in 2014 through 2017 and why it was short lived.

I’m hoping you can see that this any limiting of de novo silences the voice of the general public. It creates potential cost barriers for the public, and doesn’t meet the “spirit of the law”. It allows some new evidence, but not all, and does not allow for a “anew” hearing as de novo intends. I agree that the added language of requiring that code be cited in an appeal to be valid is acceptable. Codes should be cited. However it is the limiting of the hearing to only these codes that is the issue as not everyone should have to file a separate appeal at a \$400 cost just to make sure they also have a voice.

I understand the mayor's concern about new evidence being introduced and that staff or the applicant may not have time to research as this can cause hearings to have to be continued. However, I do think most issues are addressed in the PC hearing, and that would give the applicant and staff time to research between the hearings. I can't think of any recent land use hearings that I've been part of where there was much new added between the council and PC hearings. There may have been things that council was concerned about that PC wasn't concerned about. And that could still happen with on the record or limited de novo which could also require a continuance. But it is pretty rare for completely new evidence to come out that wasn't heard by the Planning Commission. I don't think that this is a big enough issue historically to completely limit public input through limiting de novo. A full de novo process really allows the most transparency in the process and should not be changed.

I really hope you decide to move forward with planning commissions recommendation and retain the existing full de novo process.

Thank you for your time and service to the city.

Shannen Knight

A Sight for Sport Eyes 1553 11th St. West Linn, OR 97068 www.sporteyes.com 888-223-2669

Mollusky, Kathy

From: William House <[REDACTED]>
Sent: Monday, November 18, 2024 10:43 AM
To: City Council
Subject: Agenda Item 5 - De novo process

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William House
3483 Cascade Terrace, West Linn

I urge the City Council retain the de novo process in our city code. I believe that revoking the process has a negative impact on public involvement in our city by creating a financial barrier in the form of significant fees for filing new appeals.

Thank you for your consideration of my public comment.

William House

COVER LETTER

11/17/24

To: City Council of West Linn

From: Steve Peterson – 4070 Serango Ct, West Linn

Subject: Wildlife Feeding Ordinance

I wish to offer comments on the proposed ordinance. I intend to be present at the Nov 18 meeting to clarify my comments if necessary. Also attached are Edited Draft Ordinance and Exhibits.

First, I believe the ordinance should specify which birds may not be fed. Exhibit 1 shows the birds that are relevant to our community. Those coded in yellow are my recommendations. Examples of ordinances that show birds not to feed are in Exhibits 3, 4, 5, 6, 8, 10, 11, and 12. Exhibit 14 describes why crows, seagulls, and pigeons are nuisance birds. My reasons for excluding geese, ducks, gulls and pigeons seems to conform with the standards set by many communities. Excluding crows is based on my experience with my neighbor who generously fed crows that resulted in more than 100 to visit several times a day, make a lot of noise, and defecate on our houses. It is well documented that Portland is home to a roost of crows that number between 15,000 and 20,000. It has created a lot of problems for Portland. Crows are protected and have flourished and do not need to be fed. Crows roost in Portland during the cold season and move to the surrounding territory in the warmer season to nest and rear young. During the warmer season is when we have had way too many crows hanging around our houses. We should be proactive in preventing West Linn from becoming a place where crows roost.

Second, the ordinance should specify more accurately which birds may be fed. Exhibit 1 shows my recommendations with those coded in green. My research and reading, and life experience tells me hummingbirds and woodpeckers need to be included. Examples of ordinances that attempt to be clear about this are Exhibits 4, 5, and 6.

Third, some people may greatly overfeed birds with too many feeders and too much food, and cause way too many birds to hang around the neighborhood. In the last decade, Starlings were especially bad in this regard. When this happens, the ordinance might help guide them to cut back on the feeding until the birds thin out. Exhibit 12 speaks to this idea.

Fourth, it is well documented that one of the biggest downsides to feeding birds is attracting rodents. Even with the best of efforts, a person who is zealous about feeding birds can easily cause a big rodent problem, unless they are diligent about keeping thing cleaned up and keeping the rats out of the feeders. Our neighborhood had a severe problem with mice and rats, thought to be caused by feeding wildlife. Many of the neighbors hired pest control services to address the symptoms. Examples of ordinances from other communities that relate to this are Exhibits 7, 9, and 13.

Thank you very much for your attention to this issue.

SECTION 1. New Section(s). West Linn Municipal Code Section(s) 5.540 Purpose through 5.545 Exemptions are added to read as follows:

5.540 Purpose. Feeding wild animals in an urban environment is both detrimental to wildlife health and causes a public health nuisance and safety hazard that negatively impacts public health and welfare. This chapter is intended to prohibit, with exceptions, the feeding of certain wild animals within the city of West Linn so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

5.545 Definitions.

“Attractant” means any substance that draws animals to a particular location and includes, but is not limited to, food and garbage. Attractant does not include ponds, water features, lawns, flowers, shrubs, trees, fallen fruit, or gardens that are eaten by wild animals.

“Feeder” means any device or container used for feeding animals.

“Bird feeder” A container, receptacle or apparatus designed for the feeding of ~~songbirds or~~ **other** backyard birds.

“Feed” to give, place, expose, deposit, distribute or scatter any edible material which can be utilized for consumption by wild animals. Feeding does not include baiting for the legal taking of fish and/or game.

“Water feature” means a decorative landscaping element that incorporates water.

“Wild animal” means, for the purpose of this chapter, non-domesticated **mammals** (i.e., bears, cougars, coyotes, deer, foxes, opossums, rabbits, raccoons, skunks, rats, and other rodents) **and non-domesticated birds (i.e., crows, ducks, geese, gulls, and pigeons).**

“Backyard birds” - means certain non-domesticated birds that visit local backyards. (i.e., humming birds, birds in the woodpecker (Piciformes) order, and birds in the songbird (Passeriformes) order, except crows.)

5.540. Attracting or Feeding Wild Animals Prohibited. The attracting or feeding of wild animals within the city limits is declared to be a public nuisance and is prohibited. This prohibition includes a person placing or knowingly allowing food or other attractants to be placed on private property or public property with the intent of attracting or feeding wild animals.

5.545. Exceptions. The prohibitions in this section do not apply to:

A. Feeding of **backyard birds **on private property**; provided:**

- 1. the food is contained in a bird feeder which is reasonably designed to avoid access by wild animals, and placed in a manner to avoid access by wild animals.**

2. feeding does not cause an unreasonably large number of birds to congregate on surrounding properties.

3. feeding does not cause an unreasonably large attraction of mice or rats on the property or surrounding properties.

B. Feeding of domesticated rabbits kept in an enclosure.

C. Feeding of wild animals kept under a valid permit issued by the Oregon Department of Fish and Wildlife.

D. Any state, county or local government employee or agent authorized to implement a wildlife management program involving baiting, or any other person authorized to bait and trap wildlife pursuant to state law.

EXHIBITS

Exhibit 1 - Bird Classification

There are more than 11 Orders of Birds found in our community. References: Familiar Birds of the Northwest by Nehls, Portland Audubon Society, and Birds of Oregon by Burrows and Gilligan.

Order	Members
1. Ciconiiformes ...	Hérons
2. Anseriformes ...	Swans, Geese, Ducks
3. Falconiformes ...	Hawks, Eagles, and Vultures
4. Galliformes ...	Grouse, Quails, Pheasants and Turkeys
5. Charadriiformes ...	Sandpipers and Seagulls
6. Columbiformes ...	Doves and Pigeons
7. Strigiformes ...	Owls
8. Apodiformes ...	Swifts and Hummingbirds
9. Coraciiformes ...	Kingfishers
10. Piciformes ...	Woodpeckers, Sapsuckers and Flickers
11. Passeriformes (Songbirds or Perching Birds) ...	Blackbirds, Bluebirds, Buntings, Bushtits, Chickadees, Cowbirds, Creepers, Crossbills, Crows, Finches, Flycatchers, Goldfinches, Grosbeaks, Jays, Juncos, Kinglets, Larks, Longspurs, Martins, Meadowlarks, Nuthatches, Orioles, Pipits, Robins, Ravens, Siskins, Sparrows, Starlings, Swallows, Tanagers, Thrushes, Towhees, Warblers, Waxwings, Wood-Pewee, Wrens, and Vireos.

Backyard Birds (may feed)

Nuisance Birds (may not feed)

Exhibit 2 - City Ordinance for Dundee, OR

"Feeder" means any device or container used for feeding animals.

"Water feature" means a decorative landscaping element that incorporates water.

"Wild animal" means, for the purpose of this chapter, bear, cougar, coyote, deer, fox, opossum, rabbit, raccoon, or skunk. [Ord. 575-2021 Exh. A].

6.12.030 Attracting or feeding of wild animals prohibited.

The attracting or feeding of wild animals within the city limits is declared to be a public nuisance and is prohibited at all times. This prohibition includes a person placing feeders or knowingly allowing food or other attractants to be placed on their property or public property with the intent of attracting or feeding wild animals. No person shall store pet food or animal feed in a negligent manner likely to attract wild animals. [Ord. 575-2021 Exh. A].

6.12.040 Exceptions.

The prohibitions in DMC [6.12.030](#) do not apply to:

A. Feeding of birds; provided, that the food is contained in a feeder which is reasonably designed to avoid access by wild animals and placed in a manner to avoid access by wild animals.

Exhibit 3 - City Ordinance for Burns, OR

"Wildlife" includes any animal which is not normally domesticated including, without limitation, bears, coyotes, deer, elk, foxes, groundhogs, opossums, raccoons, skunks, turkeys, and waterfowl. [Ord. 15-837(2) § 4, 2015]

6.15.040 Feeding, baiting, and maintaining wildlife prohibited – Notice – Abatement.

(1) The following is hereby declared to be a public nuisance and unlawful: (a) feeding, baiting, and/or maintaining any wildlife, including, without limitation, hand feeding or setting out food to be left attended or unattended, which creates or has the potential to create a hazard to the public health, safety, and/or welfare of humans and/or property; (b) leaving, storing, and/or maintaining any feed or attractant in a manner and location accessible to any wildlife which creates or has the potential to create a hazard to the public health, safety, and/or welfare of humans and/or property; and/or (c) feeding stray or feral cats if such feeding creates or has the potential to create a hazard to the public health, safety, and/or welfare of humans and/or property.

Exhibit 4 - City Ordinance for Cannon Beach, OR

"Feeder" means any device or container used for feeding animals.

"Songbird" means any of a large number of bird species in which the vocal organ is developed in such a way as to provide various sound notes commonly known as a bird song.

"Wild animal" means any amphibian, bird, fish, mammal, reptile or other animal which is not normally domesticated in this state; or any non-domestic, or untrained animal which because of its size, natural disposition, or other characteristic constitutes a hazard or menace to persons or animals or is likely to damage property. Such animals might include, but are not limited to, a bear, cougar, wolf or coyote, ferret, opossum, raccoon, rabbit, skunk, squirrel or weasel, or an eagle, hawk, falcon or other bird of prey.

(Ord. 19-6 § 1)

☐ § 6.10.020 **Attracting or feeding of wild animals prohibited.**

The attracting or feeding of wild animals within the city limits is declared to be a public nuisance and is prohibited at all times. This prohibition includes a person placing or knowingly allowing food or other attractants to be placed on their property or public property with the intent of attracting or feeding wild animals. Nothing contained in this section shall prohibit the feeding of songbirds provided that the food is contained in a feeder which is reasonably designed to avoid access by wild animals and placed in a manner to avoid access by wild animals. This section does not prohibit the feeding of wild animals kept under a valid permit issued by the Oregon Department of Fish and Wildlife.

(Ord. 19-6 § 1)

Exhibit 5 – City Ordinance for Warrenton, OR

☐ § 6.09.010 **Definitions of terms.**

As used in this chapter:

-) "Attractant" means any substance that draws animals to a particular location and includes, but is not limited to, food, garbage, or salt lick. Attractant does not include lawns, flowers, shrubs, trees, or gardens that are eaten by wild animals.

"City" means the City of Warrenton.

"Feeder" means any device or container used for feeding animals.

"Songbird" means any of a large number of bird species in which the vocal organ is developed in such a way as to provide various sound notes commonly known as a bird song.

"Wildlife" shall include any animal which is not normally domesticated including, but not limited to, bear, cougar, coyote, wolf, deer, elk, feral cats, foxes, groundhogs, opossums, raccoons, squirrels, skunks, and turkeys.

(Ord. 1200-A § 1, 2016)

☐ § 6.09.020 **Attracting or feeding of wildlife prohibited.**

The attracting or feeding of wildlife within the City limits is declared to be a public nuisance and is prohibited at all times. This prohibition includes any manner by which a person places or knowingly allows food or other attractants to be placed on their property or public property with the intent of attracting or feeding wildlife. Nothing contained in this section shall prohibit the feeding of songbirds or squirrels provided that the food is contained in a feeder which is reasonably designed to avoid access by wildlife and placed in a manner to avoid access by wildlife. This section does not prohibit the feeding of wildlife kept under a valid permit issued by the Oregon Department of Fish and Wildlife (ODFW).

(Ord. 1200-A § 1, 2016)

Exhibit 6 - City Ordinance for Gearhart, OR

90.01 Definitions of Terms

- A. "Attractant" means any substance that draws animals to a location and includes, but is not limited to food, garbage outside of an enclosed container, or salt lick. Attractant does not include lawns, flowers, shrubs, compost piles, trees or gardens that are eaten by wild animals.
- B. "City" means the City of Gearhart.
- C. "Feeder" means any device or container used for feeding animals.
- D. "Songbird" means any of a large number of bird species in which the vocal organ is developed in such a way as to provide various sound notes commonly known as a birdsong.
- E. "Wildlife" shall include any animal which is not normally domesticated including but not limited to bear, cougar, coyote, wolf, deer, elk, foxes, groundhogs, opossums, raccoons, seagulls, skunks, turkey, and wild geese or other migrating bird species.

90.17 Attracting or Feeding of Wildlife Prohibited

The attracting or feeding of wildlife within the City limits is declared to be a public nuisance and safety issue and is prohibited. This prohibition includes any manner by which a person places or knowingly allows food or other attractants to be placed on their property or public property with the intent of attracting or feeding wildlife. Nothing contained in this section shall prohibit the feeding of songbirds or squirrels provided that the food is contained in a feeder which is reasonably designed to avoid access by wildlife and placed in a manner to avoid access by wildlife. This section does not prohibit the feeding of wildlife kept under a valid permit issued by the Oregon Department of Fish and Wildlife (ODFW).

Exhibit 7 - City Ordinance for Half Moon Bay, CA

8.08.030 Feeding of wildlife prohibited.

- A. No person shall purposely or knowingly feed wildlife on public or private property in the city of Half Moon Bay.
- B. No person shall leave or store any refuse, garbage, pet food, seed or birdseed, fruit, meat, dairy, vegetable, grain or other food in a negligent manner likely to attract wildlife.
- C. No person shall fail to take remedial action to cease contact or conflict with wildlife, including to secure or remove outdoor refuse, cooking grills, pet food, backyard bird feeders or any other similar food source or attractant, after being advised by the city of Half Moon Bay to undertake such remedial action. (Ord. C-2023-01 (Exh. A), 2023).

8.08.040 Exceptions.

The prohibitions in Section [8.08.030](#) are not applicable to:

- A. Landscaping, gardening, and/or maintaining vegetable gardens, fruit and nut trees or other plants, so long as such activities are not conducted for the purpose of feeding wildlife as defined in this chapter.
- B. Feeding of birds on private properties, to the extent authorized by law and subject to the following requirements:
 - 1. Feeding shall only be via a bird feeder.
 - 2. All bird feeders placed shall be suspended on a cable or otherwise secured at least five feet above ground level so as to prevent the bird feeders from being easily accessible to rodents and unintended wildlife.
 - 3. The area below and around bird feeders must be kept clean and free of seed and an accumulation of feces.
 - 4. No person shall knowingly allow a bird feeder to become an attractant for rodents or wildlife other than the intended birds.
 - 5. Bird feeders shall be maintained in a manner to prevent the spread of disease among wild bird populations.

Exhibit 8 - City Ordinance for Missoula, MN

6.02.020 Definitions. As used in this chapter unless the context otherwise indicates, the following terms shall have the meaning ascribed to each:

- A. "Wildlife" means skunks, foxes, raccoons, bats, wolves, wolf-hybrids, bobcats, bears, mountain lions, deer, elk, and any other species of normally non-domesticated animals.
- B. "Animal Control Officer" means all peace officers as that term is defined in Montana state law as well as all duly appointed animal control officers and animal control supervisors appointed by either the city or county to carry out and enforce each entity's respective animal control ordinances.
- C. "Attractant(s)" means any substance, including but not limited to, food, garbage, or salt lick, which draws wildlife to a particular location.
- D. "Feed" means a substance composed of grain, mineral, salt, fruit, vegetable, hay, or any other food material or combination of these materials, whether natural or manufactured, that may attract Wildlife.
- E. "Feeding" means the depositing, distributing, or tending of feed in an area frequented by Wildlife.

6.02.030 Conduct declared unlawful.

- A. It is unlawful to feed, provide feed or other attractants, excluding ornamental plants, vegetable gardens and properly hung feeders, to wildlife within the city limits.

6.02.040 Exceptions

- A. It is legal to feed birds, other than waterfowl and upland game birds, utilizing a bird feeder that can be accessed only by birds. Birdfeeders that are accessed by other animals other than birds or squirrels are in violation.

Exhibit 9 - City Ordinance for Milwaukee, WI

78-35. Bird Feeding. Feed for birds shall be placed in a covered hopper, gravity type feeder. The platform of the feeder shall be of reasonable size and surrounded by a ledge to deter food from blowing off. The feeder shall be placed on top of a rodent-proof pole which extends at least 3.5 feet above the ground and shall be placed at least 6 feet from the nearest climbable object, or the feeder may be suspended from a tree if protected by rodent guards. Feed for birds shall not be placed on the ground where it is accessible to rodents. No more than 4 bird feeders shall be located on any premises. The feeder shall be maintained in a sanitary condition and cleaned regularly. The area below the feeder shall also be kept free of accumulations of feed.

Exhibit 10 - City Ordinance for Glendale Height, IL

6-5B-1: PURPOSE:



The intent of this article is to protect the health, safety, and welfare of the community and its wildlife by prohibiting the feeding of wild animals and waterfowl, including ducks, geese, and gulls, on public and private property in the Village of Glendale Heights. This article is not intended to prohibit or prevent the incidental, sporadic or infrequent feeding of wild animals and waterfowl (e.g., feeding ducks a single piece of bread and that which is not immediately consumed dissolves or otherwise is consumed by fish; attaching an ear of corn to a squirrel feeder, or feeding song birds utilizing a well- maintained bird feeder), but rather prohibit or prevent the feeding of wild animals and waterfowl in such a manner which creates an unclean, unsafe, or unsanitary condition, either on such person's property, on the property of another, or on public property (e.g., unnatural or atypical accumulation of waterfowl feces, damaging or destroying vegetation and grasses due to large concentrations of waterfowl, or the "luring", "drawing", or "attracting" waterfowl away from the natural habitat of lakes, ponds and other bodies of water into private yards or public property).

It has been established that feeding wild animals and waterfowl increases the potential for damage to public parks and private property, may elevate the potential for the spread of disease, and contributes to water-quality problems such as summer algal blooms. In addition, it is the intent of this article to protect the welfare of the wild animals and waterfowl themselves, as wild animal studies have shown that feeding wild animals and waterfowl can interrupt their normal migration patterns, can make them more aggressive in demanding food, cause nutritional problems, expose them to danger by eliminating their natural fear of predators, and promote the spread of disease and disease-carrying parasites such as fleas and ticks. (Ord. 2018-104, 12-13-2018)

6-5B-2: NUISANCE DECLARED:



A. It is hereby declared unlawful and shall constitute a nuisance to repeatedly feed any wild animal or waterfowl on private or public property in a manner described in section [6-5B-1](#) of this article that creates an unclean, unsafe, or unsanitary condition.

B. This article does not prohibit the feeding of song birds using a well-maintained bird feeder which is a feeder that generally protects seed against the weather. (Ord. 2018-104, 12-13-2018)

Exhibit 11 - City Ordinance for Southgate, MI

610.16 ANIMAL NUISANCE.



It shall be unlawful for any person or persons to:

(a) Intentionally feed at-large or wild animals within the City, including but not limited to, pigeons, sea gulls, geese, raccoons, dogs, or cats, by placing any food, food scraps or other edible or inedible items for the purpose of attracting or feeding such animals so as to create a nuisance condition or create unclean, unsanitary, unsightly or odoriferous conditions, thereby creating a threat to public health, safety, or welfare, described in subsection (b) herein. A domesticated animal shall be deemed "at large" when it is off the property of its owner and not under the reasonable control of a competent person. The scattering of food or food scraps on the ground shall constitute prima facie evidence that the individual intended to violate this section.

(b) A nuisance condition shall be deemed to exist for purposes of subsection (a) herein when, as a natural and predictable result of the amount and type of food given, a wild or at-large animal and/or the repetitive nature of the feedings made, the wild or at-large animal does any of the following in the City:

- (1) Creates a habitat on residential property, damaging to the property;
- (2) Causes substantial damage to tangible personal or real property;
- (3) On more than one occasion, leaves visible feces on property;
- (4) Creates an unclean, unsanitary, or unsightly condition to the property, including that of an owner or occupant;
- (5) Creates offensive or obnoxious odors; and/or
- (6) Creates frequent or continued noise that unreasonably disturbs the comfort of others.

(c) In the event any officer of the City determines that a nuisance exists within the meaning of this section, such officer shall cause written notice to be served on the violator, requiring such person to abate the nuisance within the time specified. If the person fails to abate the nuisance as required, the City may undertake such abatement and charge the costs against the violator, payment of which may be assessed as a lien on the violator's property. For purposes of this section, the violator will be presumed on occupied property to be the occupant thereof.

Exhibit 12 - City Ordinance for Dearborn Heights, MI

THE CITY OF DEARBORN HEIGHTS ORDAINS THAT THE CODE OF ORDINANCES OF THE CITY OF DEARBORN HEIGHTS, MICHIGAN, IS HEREBY AMENDED SUCH THAT SECTION 6-97 IS AMENDED TO READ AS FOLLOWS:

SECTION I.

Sec. 6-97. - Unlawful ground feeding; unlawful feeding of feral/stray cats or dogs; and unlawful feeding of pigeons, gulls and doves.

(a) Unlawful ground feeding

(1) Generally. It shall be unlawful for any person to feed any wild animal, whether directly or indirectly, or to place or permit placement on the ground of any fruit, berries, grain, vegetables, nuts, salt, or other edible material or bait which may reasonably be expected to feed wild animals. Wild animals include, but are not limited to, raccoons, skunks, rodents, rabbits, crows, wild birds, rats, mice, fowl, waterfowl, gophers, groundhogs, moles, opossums, squirrels, and any and all other type of wild mammal, reptile and the like.

(2) Limitation. The general prohibition contained in this Subsection (a) of this Section 6-97 shall not apply to the feeding of wild birds provided that such feeding is done only from self-contained apparatus that supports (A) prohibiting access by other wild animals, (B) are elevated at least 48 inches above ground level, and (C) are designed to prevent feed or seed from falling to the ground.

However, this limitation shall not apply to any alleged violation of Subsection (c) of this Section 6-97.

(b) Unlawful feeding of feral/stray cats or dogs. Any unapproved feeding shall be unlawful as to any feral/stray cat or dog by any means, including hand feeding or setting out food whether or not the food is left attended or unattended. Any approved feeding shall be reviewed and approved by the Director of Animal Control/Ordinance.

(c) Unlawful feeding of pigeons, gulls and doves.

(1) Public nuisance. The roosting and lingering of pigeons, gulls and doves on public or commercial property poses a health hazard, in addition to offending aesthetic senses through bird contamination. Such lingering or roosting, or the encouragement of excessive bird congregation, on public, private, or commercial property is declared to be a public nuisance.

(2) It shall be unlawful for any person to feed pigeons, gulls, or doves in any manner on any public or commercial property in the city.

(3) It shall be unlawful for any person to feed pigeons, gulls, or doves in any manner on any private property in the city so as to cause them to roost and linger upon public or private property.

(4) Limitations. The general prohibitions contained in this Subsection (c) of this Section 6-97 shall not apply to pigeons and doves kept at all times in cages or city-licensed pigeon lofts, pursuant to sections 6-46 through 6-50 of this Code.

Exhibit 13 - City Ordinance for Hackensack, NJ

☐ § 52-49 **Prohibited conduct on private property.**

The feeding of waterfowl, songbirds, pigeons and other backyard birds shall be permitted outdoors on private property only if:

- A. Such feeding does not create an unreasonable disturbance that intrudes on the rights of surrounding property owners and renders others insecure in the use of their property;
- B. The feeding does not create an accumulation of droppings on the feeder's property or on the neighboring properties;
- C. The property does not become an attractant for rodents or other wild animals;
- D. All birdfeeders are placed at least five feet above the ground; and
- E. The birdfeeder's capacity for seed is no more than five pounds.

Exhibit 14 - Public Health Bulletin – Seattle & King County

Nuisance Birds

In addition to attracting rats, overfeeding birds can also attract nuisance birds such as pigeons, crows, seagulls, and starlings. These birds are scavengers and frequently return to places where there is a reliable food source.

Nuisances created by birds include:

- **Feces accumulation.** Bird feces are acidic and can damage property and vehicles. Build up of bird feces is smelly, slippery and unappealing to look at. Bird feces can also carry diseases.
- **Some birds are bad neighbors.** They can spread trash and feathers and their feces can cover lawns, roofs, cars and lawn furniture. Large flocks of birds create noise nuisances.
- **A perceived overall lower quality of life.** Homes and neighborhoods become less enjoyable when there are large populations of nuisance birds.