

WHEREAS, the Planning Commission for the City of Lebanon conducted a hearing on Planning File No. 10-02-09 and made findings recommending certain amendments to the Development Code of the City of Lebanon on April 21, 2010; and

WHEREAS, the City Council, pursuant to the provisions of the Lebanon Development Code, after appropriate notice given, has conducted a hearing to take testimony, hear arguments and to consider all of the evidence concerning such proposed Development Code amendments, such hearing being conducted on July 14, 2010; and

WHEREAS, the City Council has considered all relevant evidence and deliberated.

NOW, THEREFORE, the City of Lebanon ordains as follows:

Section 1. In addition to the findings referred to above, the City Council does hereby adopt and find those matters contained in Exhibit "B" which is incorporated herein by this reference as if fully set forth at this point.

Section 2. Based upon the findings adopted herein, the Lebanon Development Code is hereby amended as specified in Exhibit "A", which is incorporated herein by this reference as if fully set forth at this point.

Section 3. Said Exhibit "A" shall be attached to, and become a part of, the Lebanon Development Code upon entry of this order.

Passed by the Lebanon City Council by a vote of 6 in favor and 0 against and approved by the Mayor this 14th day of July, 2010.

CITY COUNCIL OF LEBANON, OREGON



Kenneth I. Toomb, Mayor

Bob Elliott, Council President

ATTEST:


Linda Kaser, City Clerk/Recorder

EXHIBIT "A"

A. Land Uses (Chapter 16.03 and Chapter 16.32)

- Section 16.03.020 is revised to include the following item: Movie Theater, Theaters [C]
- Section 16.03.040.B (Class II Commercial Uses) is revised to include the following item: Movie Theater, Theaters
- Section 16.32.020 (Glossary) is revised to include the following new definition:

MOVIE THEATER, THEATER: A structure or part of a structure devoted to showing motion pictures; or, for dramatic, dance, musical, or other live performances. The facility may include one or more auditoriums, a lobby and may serve refreshments, including meals.

- ### B. Religious Facilities (Chapter 16.05) - Applicable provisions in Section 16.05.070, Table 16.05-5, are amended (new language in *italics*):

16.05.070 Public Uses Allowed in the Residential Zones

Table 16.05-5: Public Uses (Civic or Institutional) Allowed in Residential Zones			
Use Categories	Z-RL	Z-RM	Z-RH
Public Uses with Class II Impacts:			
Other Public Uses such as Meeting Facilities or Related Facilities	CU	CU	CU
<i>Other Public Uses such as Meeting Facilities or Related Facilities; a maximum 10% expansion of existing structures or improvements.</i>	AR	AR	AR

- ### C. Schools – Residential Zones (Chapter 16.05) - Applicable provisions in Section 16.05.070, Table 16.05-5, are amended (new language in *italics*):

16.05.070 Public Uses Allowed in the Residential Zones

Table 16.05-5: Public Uses (Civic or Institutional) Allowed in Residential Zones			
Use Categories	Z-RL	Z-RM	Z-RH
Public Uses with Class II Impacts:			
Public Uses such as Community Centers, Colleges, Universities, Community Colleges, and Adult Education Facilities; Municipal Courts; Museums, Nursery Schools, Preschools; Public Safety Facilities, Including Fire/Emergency Medical Services and Police Stations, and Emergency Communication Broadcast Facilities; Public Squares, Plazas, <i>Schools</i> , Senior Centers, Social Service Facilities, Soup Kitchens, Vocational Training for the Physically or Mentally Challenged, Utility Substations, Youth Club facilities.	CU if adjacent to collector, arterial, or highway	CU if adjacent to collector, arterial, or highway	CU if adjacent to collector, arterial, or highway
<i>Public Uses (above); a maximum 10% expansion of existing structures or improvements.</i>	AR	AR	AR

- ### D. Accessory Dwellings (Chapter 16.05) - Section 16.05.150.A.2.a is revised (old language stricken, new language **bold**):

- a. Floor Area: Accessory dwellings shall not exceed 1,000 square feet of floor area, or 40% of the primary unit, whichever is smaller. The unit can be a detached cottage, a unit attached to a garage, **an addition to an existing home**, or in a portion of an existing house.

- E. **Residential Homes/Facilities (Chapter 16.05)** - Section 16.05.040, Table 16.05-2 is revised (old language stricken, new language in *italics*):

16.05.040 Residential Uses Allowed in the Residential Zones

Table 16.05-2: Residential Land Uses Allowed in Residential Zones	
Residential Uses with Class III Impacts:	
State Regulated Special Residential Group Living	
<ul style="list-style-type: none"> • Homes (5 or fewer) • Group Facility (6+) 	<p><i>AR- OP in All Residential Zones</i></p> <p><i>CU for 6 or more OP - RM and RH Zones Only</i></p>

- F. **Mixed Use Zone – Expansions (Chapter 16.07)** - Section 16.06.100 is revised with the addition of the following new Section:

Expansion of Existing Commercial, Industrial and Public Facilities in the Mixed Use Zone

Additions to existing structures or the construction of new buildings, that do not result in more than a 10% increase in the existing building or improvement square footage, shall be subject to the following requirements:

1. If the establishment of the new use requires a Conditional Use, then the expansion identified in this Section shall be subject to an Administrative Review.
2. If the establishment of the new use requires an Administrative Review, then the expansion identified in this Section shall be subject to a Ministerial Review.
3. This Section does not alter requirements for facilities approved by the Planned Development review process.

- G. **Commercial Zones (Chapter 16.08)** - Applicable portion of Section 16.08.060, Table 16.08-3, is revised (old language stricken, new language in *italics*).

16.08.60 Commercial Uses Allowed in the Commercial Zones

Table 16.08-3: Commercial Land Uses Allowed in Commercial Zones			
<i>Land Uses</i>	Z-NCM	Z-CCM	Z-HCM
(See pages 10-12 of Chapter 16.03 for further details and listings regarding Commercial Uses)			
Commercial Uses with Class III Impacts:			
Breweries <i>without food service</i> (5,000 square feet or less)	N	CU AR	AR
Other Commercial Uses such as Auto Sales and Services, Commercial Centers; Breweries, Distilleries, and Wineries (less than 5,000 sq ft); Mini-Storage Units (<i>including RV storage</i>), Outdoor Amphitheaters Sales or Leasing of Consumer Vehicles Including Passenger Vehicles, Motorcycles, Light and Medium Trucks, and Other Recreational Vehicles, Shopping Mall.	N	N	CU AR

- H. **Industrial Zone (Chapter 16.09)** - Relevant portions of Section 16.09.060, Table 16.09-3, are revised (old language is ~~stricken~~, new language in *italics*).

16.09.060 Commercial Uses Allowed in the Industrial Zone

Table 16.09-3: Commercial Land Uses Allowed in the Industrial Zone		
Land Uses	Z-IND West of 5 th Street	Z-IND East of 5 th Street
(See pages 9-12 of Chapter 16.03 for further details and listings regarding Commercial Uses)		
Commercial Uses with Class III Impacts:		
<i>Breweries, Distilleries, and Wineries, without food service</i>		AR
Other Commercial Uses such as Gas (Filling) Stations; Mini-Storage Units		CU
<i>Mini-Storage Units (including RV Storage)</i>		OP
<i>Race Tracks (Auto, Horse, Dog, Bike, Motorcycle, Boat, etc.)</i>		CU

- I. **Industrial Zone - Fences (Chapter 16.09)** - The following new subsection is added to Section 16.09.110.B:

4. Fences

Industrial uses are subject to the fencing requirements of the RM zone with the following exceptions:

1. Where an 8-foot fence is allowed, a 10-foot fence may be permitted.
2. Security fencing material (e.g., barbed wire) may be placed on the upper 2-feet of a fence, provided that portion of the fence below the security material is at least 6-feet in height.

- J. **Schools – Public Zone (Chapter 16.10)** - Applicable portions of Section 16.10.080, Table 16.10-5, are amended (old language ~~stricken~~, new language in *italics*):

16.10.080 Public Uses Allowed in the Public Use Zone (Z-PU)

Table 16.10-5: Public Uses (<i>Civic or Institutional</i>) Allowed in the Public Use Zone	
<i>Land Uses</i>	
Public Uses with Class II Impacts:	
Public Uses such as Colleges, Universities, Community Colleges, and Adult Education Facilities; Museums, Nursery Schools, Preschools; Public Squares, Plazas, Social Service Facilities, Soup Kitchens, Vocational Training for the Physically or Mentally Challenged, Private Utility Substations; Youth Club facilities; Botanical Gardens; Surplus Food Distribution Centers; Transit Centers.	CU <i>AR with mandatory Public Hearing by Planning Commission</i>
<i>Public Uses (above); a maximum 10% expansion of existing structures or improvements.</i>	AR
Other Public Uses such as Schools	AR with mandatory Public Hearing by Planning Commission
<i>Other Public Uses such as Schools; a maximum 10% expansion of existing structures or improvements.</i>	AR

K. **Flood Plain Overlay Zone – (Chapter 16.11)** – The following items in Section 16.11.070. Flood Plain Overlay Zone (FP-OZ) are amended (old language ~~stricken~~; new language in **bold**):

G. Special Flood Hazard Area Identification--Study and Maps Adopted

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "~~The Flood Insurance Study for the City of Lebanon, Oregon,~~ **The Flood Insurance Study for Linn County, Oregon and Incorporated Areas,**" dated ~~January, 1981, revised September 1, 1983,~~ **September 29, 2010,** with accompanying flood insurance maps is adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study and the FIRM are on file at the Lebanon Community Development Center, 853 Main Street. The best available information for flood hazard area identification as outlined below in Subsection O.6 shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Subsection O.6. ~~"Any future map amendments or revisions to the above noted 1983 revision shall be adopted by reference and declared to be part of this Chapter and overlay zone.~~

P. Base Flood Areas

4. Manufactured Homes:

All manufactured homes to be placed or substantially improved within **A** zones ~~A-1-30 and AE~~ shall be elevated on a permanent foundation such that the ~~lowest floor of the manufactured home is a~~ **bottom of the longitudinal chassis frame beam shall be a** minimum of one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with the provisions of Section 16.11.070.P.2.b.

L. **Clear Vision – (Chapter 16.12)** - Section 16.12.030.H.4, would be replaced with the following new language, *incorporating existing clear visions requirements*:

4. The following measurements shall establish a clear vision area:
 - a. Corner Lots. The clear vision area for corner lots shall be 20 feet along the right-of-way of each intersecting street.
 - b. Street-Driveway. The clear vision area for a street-driveway intersection shall be 10 feet along the driveway from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the driveway.
 - c. Street-Alley. The clear vision area for street-alley intersections shall be 10 feet along the alley from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the alley.
 - d. Street-Private Access Easement. The clear vision area for street-access easement intersections shall be 10 feet along the access easement from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the access easement.

- e. Dimension Exceptions. When the angle of intersection between streets, other than an alley, is less than 30 degrees, the distance shall be 25 feet. Dimensions for clear vision areas for new development in the Central Business Commercial Zone (Z-CCM), shall be specified by the City Engineer on a site by site basis given the near total build out of that zone.

M. Parking – Espresso Stands (Chapter 16.14) - Section 16.14.070.B, Table 16.14.070-1 (6)(i) is amended as follows: (new language in **bold**):

(i) Eating or drinking establishments with drive-thru facilities (Fast Food)	10 spaces per 1000 sq. ft. of net floor area	5 percent of required vehicle parking, or 4 spaces, whichever is greater
Coffee or food kiosks (e.g., espresso stands)	2 spaces	1 space

N. Signs (Temporary) (Chapter 16.18) - Section 16.18.030.A.2, is revised as follows (new language in **bold**):

2. Temporary signs which are non-illuminated, have an overall face area not exceeding 32 square feet in a residential, commercial, or industrial zone, are not permanently installed, and are intended to be located on property for short durations of time (**generally** not to exceed 180 days). Such signs typically include, but are not limited to, real estate lease and sales, political signs, construction signs, and garage sale, open house, special event, and similar signs. Such signs shall only be posted for the duration of the activity. No sign shall be extended into or extend over a street right-of-way.

Section 16.18.030.B.3, is eliminated in its entirety and all subsequent items renumbered (applicable Section noted below):

3. ——— Temporary Signs without a permit.

O. Commercial, Mixed Use and Industrial Signs (Chapter 16.18) - Section 16.18.040.B, Table 16.18.040-3, #3.a is revised as follows (new language in *italics*):

B. Signage in Commercial, Mixed Use, Industrial, and Public Use Zones

Table 16.18.040-3: Signage Standards for Commercial, Mixed Use, Industrial, and Public Uses in the Z-CCM, Z-HCM, Z-NCM, Z-MU, Z-IND and Z-PU Zones	
Types of Signage	Standards (Permitted as follows)
3. Free Standing Pole Sign	<p>a. Number: A maximum of one (1) sign per parcel is allowed <i>in lieu of the monument sign</i>.</p> <p>b. Area: Except as may be approved by a Planned Development, the maximum sign area shall be 100 square feet per side, two sides maximum.</p> <p>c. Height and Clearance: Shall not exceed a total height of 20 feet measured from the grade of the property where the sign is to be located or grade of the street immediately in front of the subject property (whichever is higher). (1) The minimum clearance below the lowest portion of a free-standing sign and the ground below shall be 9 feet in a required street or side yard. (2) In any driveway or parking area, the minimum clearance below the lowest portion of a free-standing sign and the ground below shall be 14 feet.</p> <p>d. Location: Signs shall not be placed in clear vision areas, or within 25 feet of a residentially zoned property, and shall not project over a property line.</p>

- P. **Review Exemptions - (Chapter 16.20)** - Section 16.20.010.C is replaced with the following new language:

C. Exemptions

Except as noted in this Section, land use applications, reviews and approvals are not required for a change in use within an existing building or portion thereof. For the purpose of this exemption, Class I and Class II activities shall be considered interchangeable. Class III activities may be replaced with Class I, Class II or Class III activities; however, no Class III activity shall replace a Class I or Class II activity without being subject to the applicable land use review process.

- Q. **Decision and Procedure Summary - (Chapter 16.20)** - Section 16.20.030.E is revised as follows (old language ~~stricken~~; new language in **bold**):

E. Final Decision and Appeals

1. A Ministerial decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first.
2. ~~With one exception (noted below in Subsection 4), a Ministerial decision is the final decision of the City, and cannot be appealed to other City officials, the Planning Commission, or the City Council.~~
3. ~~Ministerial Decisions may be appealed to the Oregon Land Use Board of Appeals (LUBA). An appeal of a Ministerial decision for a land use to LUBA must be filed within 21 days the decision date.~~
42. ~~As noted in Chapter 16.29 (Section 29-3.3 Class 1 Fence Variances), a~~ **A** decision by the Planning Official may be appealed to the Planning Commission.

- R. **Administrative Review (Site Design) - (Chapter 16.20)** - Section 16.20.040.D is amended follows (old language ~~stricken~~; new language in **bold**):

D. Administrative Decision Requirements

1. The Planning Official ~~[and as applicable the Planning Commission]~~ **applicable decision authority** shall make Administrative written decisions addressing all of the relevant decision criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the Planning Official ~~[and as applicable the Planning Commission]~~ **applicable decision authority** shall approve, approve with conditions, or deny the requested land use decision application or action.
2. **Unless otherwise required by provisions in the Development Code, Administrative Reviews involving the establishment of a new structure or facility, or the expansion of an existing structure or facility, shall be subject to the following specific criteria:**
 - a. **The proposal shall conform to use, height limits, setbacks and similar development requirements of the underlying zone.**
 - b. **The proposal shall comply with applicable access and street improvement requirements in Chapters 16.12 and 16.13, respectively.**
 - c. **The proposal shall comply with applicable parking requirements in Chapter 16.14.**

- d. The proposal shall comply with applicable screening and landscaping provisions in Chapter 16.15.
- e. Any required public facility improvements shall comply with provisions in Chapter 16.16.
- f. Where applicable, the proposal shall comply with development requirements within identified hazard areas and/or overlay zones.
- g. The proposal shall comply with the supplementary zone regulations contained in Chapter 16.19 or elsewhere in the Development Code.

S. Property Line Adjustment (Chapter 16.22) - Section 16.22.160.B.1 is revised as follows (old language stricken; new language in **bold):**

- 1. Decision-Making Process. Property line adjustments shall be reviewed by means of a **Administrative Ministerial** procedure, as governed by the provisions of Chapter 16.20, using decision criteria contained in Subsection C below. The road authority(ies) shall be notified of **let property** line adjustments that may significantly affect property access, or traffic volumes or operations of their facilities.

Section 16.22.160.D.1 is revised (old language stricken; new language in **bold**):

- 1. Recording. Upon the City's approval of the proposed property line adjustment, the applicant shall record the property line adjustment with Linn County within **one year** of approval (or the decision expires).

T. Fence (Chapter 16.29 and Chapter 16.08) - Section 16.29.030.C is modified as follows (old language stricken):

16.29.030 Minor Adjustments (Class 1)

C. Decision Criteria

The City's Planning Official may grant a Minor Adjustment to height limitations and/or set back requirements on fences and walls, if such variations: ~~4. do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets.; and, 2. fences greater than 36" in height are not located within the required set back area of a street abutting yard.~~

Chapter 16.05, Table 16.05-8 is revised (old language stricken):

Table 16.05-8: Development Standards for Residential Zones -- Building/Structure Height			
Building/Structure Height			
Standard	Z-RL	Z-RM	Z-RH
<u>Level Site (slope less than 15%), maximum height</u>	25 ft	40 ft	40 ft
<u>Sloping Site (15% or greater), maximum height</u>	Highest Point of Site + 1 story (maximum of 2 stories)	Highest Point of Site + 1 story (maximum of 3 stories)	Highest Point of Site + 1 story (maximum of 3 stories)
<u>Fences, Retaining/Garden Walls</u>			
Max. Height. – Front Yard	3 ft	3 ft	3 ft
Max. Height. – Interior Side	8 ft	8 ft	8 ft
Max. Height – Rear Yard	8 ft	8 ft	8 ft
Max. Height – Street Side	3 ft	3ft	3 ft
Max. Height – Reverse Frontage Lot (rear)	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).
<ul style="list-style-type: none"> • Where allowed, fences and walls shall not exceed six feet (6') unless set back ½ foot from the property line for every foot in excess of six feet (6'). • Eight foot (8') fences or walls are allowed, but any height over six feet (6') requires a building permit. • Using a Class 1 Variance process (<u>Ministerial Review</u>), the City's Planning Official may grant variations to the above height limitations and set back requirements on fences and walls, if such variations: (1) do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets; and, (2) fences greater than 36" in height are not to be located within the required setback of a street-abutting yard. If the requested variations do not meet the above criteria, the Planning Official shall direct the applicants for the variations to the fence/wall standards to use either a Class 2 or Class 3 variance process. See Chapter 16.29 for Variance requirements and processes. • Gates are required in fences to access the area beyond the fence for maintenance. 			

Chapter 16.05, Section 16.05.100 is revised (old language stricken; new language in **bold**):

C. Setback Yards and Exceptions for Fences and Walls

Walls and fences built on property lines are subject to the height standards in **Table 16.05-8** and the provisions of Clear Vision standards in Section 16.12.030.H, and 16.15.060, Fences and Walls. However, using a Ministerial Review process, the City's Planning Official may grant variations **a variance of up to 15% to the above height limitations and set back requirements on fences and walls, if such variations:** ~~(1) do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets; and, (2) fences greater than 36" in height are not to be located within a street abutting yard.~~ **The Planning Official may direct applicants for variations to the fence/wall standards to use the Variance Process. Applicants may initially select the Variance Process for their requests (16.29).**

U. Class 2 Adjustments (Chapter 16.29) - Section 16.29.040.C.4 is revised to include the

following new subsections:

(6) Minimum Lot Area

Up to a 5 percent reduction in the minimum lot area standard.

(7) Maximum Building Height

Up to a 10 percent increase in the maximum height limitation.

V. **Nonconforming Use (Chapter 16.30)** - Section 16.30.060 is revised as follows (new language in **bold**):

16.30.060 Destruction of a Nonconforming Use or Structure

If more than 50% of the square footage of a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause (excluding intentional demolition of an undamaged building), a future structure or use on the site shall **comply with the following**:

- A. **Non-residential Uses: The new use shall comply** with the provisions of the zone in which the property is located, or the property owner may apply for approval through an Administrative Review process to continue with the existing nonconforming use and/or to replace the nonconforming structure in its present location. Approval to replace the damaged structure shall not allow the replacement or repaired structure to be more non-conforming than it was originally. Such repairs or replacements must meet current building codes.
- B. **Residential Uses: A nonconforming residential use may be replaced provided construction of the replacement dwelling is lawfully commenced within one year of the damage or destruction.**

W. **Lot of Record (Chapter 16.30)** - Section 16.30.090.C is revised as follows (old language stricken; new language in **bold**):

C. Procedure

A lot of record determination shall be made by the Planning Official using the ~~Administrative Review~~ **Ministerial Decision** Procedure (see Chapter 16.20). It shall be the property owner's responsibility to demonstrate that the subject property meets the lot of record decision criteria listed in Subsection 16.30.090.B above.

EXHIBIT B
LEBANON CITY COUNCIL FINDINGS
Planning File No. 10-03-13

I. NATURE OF THE APPLICATION

This matter comes before the Lebanon Planning Commission on the application of the City of Lebanon to amend various chapters in the Lebanon Development Code.

II. BACKGROUND INFORMATION

The City wishes to amend Lebanon Development Code. Proposed amendments clarify, identify, and expand uses allowed in the various zones; revise review procedures and requirements for certain uses; revise clear vision, fence and parking standards; clarify certain sign regulations; revise nonconforming use review requirements; update flood plain regulations and modify language to conform with state regulations regarding residential homes and facilities. Specific language is contained in the attached Ordinance Exhibit "A."

III. PUBLIC HEARING

A. Planning Commission Action

A public hearing was held on this application before the Lebanon Planning Commission on April 21, 2009. At that hearing, City Planning File 10-02-09 was made a part of the record. Notice of the hearing was published consistent with the requirements in Chapter 16.20 of the Lebanon Development Code. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

At the conclusion of the hearing, the Planning Commission deliberated on the issue and voted to recommend the City Council adopt the proposed amendments to the Development Code. The Commission found the proposed changes consistent with the applicable decision criteria.

B. City Council Action

A public hearing was held on this application before the Lebanon City Council on July 14, 2010. At that hearing, City Planning File 10-02-09 was made a part of the record. Notice of the hearing was published consistent with the requirements in Chapter 16.20 of the Lebanon Development Code. No objection was raised as to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. At the conclusion of the hearing, the City Council deliberated on the issue and voted to adopt the proposed amendments to the Lebanon Development Code. The Council found the proposed changes consistent with the applicable decision criteria.

IV. FINDINGS OF FACT-GENERAL

The Lebanon Planning Commission, after careful consideration of the testimony and evidence in the record, adopts the following General Findings of Fact:

A. The applicant is the City of Lebanon.

- B. The City wishes to amend Lebanon Development Code. Proposed amendments clarify, identify, and expand uses allowed in the various zones; revise review procedures and requirements for certain uses; revise clear vision, fence and parking standards; clarify certain sign regulations; revise nonconforming use review requirements; update flood plain regulations and modify language to conform with state regulations regarding residential homes and facilities. Specific language is contained in the Ordinance Exhibit "A."
- C. The decision to approve or deny shall be based on the criteria contained in the Lebanon Development Code: Chapter 16.28 – Comprehensive Plan and Development Code Text Amendments.

V. APPLICATION SUMMARY

A. The City of Lebanon adopted a new Development Code in December 2008 and began implementation of the document on January 12, 2009. City staff approached the Commission in January 2010 to consider possible changes to the Code. With the Commission's approval, staff returned with proposed language for the February 2010 Commission meeting. Based on comments from both work sessions, City staff returned with the final language and findings, which are contained in this document. The following Sections summarize the material contained in Ordinance Exhibit "A."

B. Land Uses (Chapter 16.03)

Movie theaters (and theaters) were not included in the list of identified land uses. This activity will be listed as Class II commercial activities with a definition included in Chapter 16.32 (Glossary). Specific changes include:

Section 16.03.020 is revised to include the following item: Movie Theater, Theaters [C]

Section 16.03.040.B (Class II Commercial Uses) is revised to include the following item: Movie Theater, Theaters

Section 16.32.020 (Glossary) is revised to include the following new definition:

MOVIE THEATER, THEATER: A structure or part of a structure devoted to showing motion pictures; or, for dramatic, dance, musical, or other live performances. The facility may include one or more auditoriums, a lobby and may serve refreshments, including meals.

C. Religious Facilities (Chapter 16.05)

The Code allows churches in the residential zones with a Conditional Use permit, but also requires a Conditional Use for all expansions, regardless of size. The revisions would allow an Administrative Review process if an expansion involves up to 10% of the area of existing structures or improvements; otherwise, a Conditional Use is required. *Applicable* provisions in Section 16.05.070, Table 16.05-5, are amended as follows (new language in *italics*):

16.05.070 Public Uses Allowed in the Residential Zones

Table 16.05-5: Public Uses (Civic or Institutional) Allowed in Residential Zones			
Use Categories	Z-RL	Z-RM	Z-RH
Public Uses with Class II Impacts:			
Other Public Uses such as Meeting Facilities or Related Facilities	CU	CU	CU
<i>Other Public Uses such as Meeting Facilities or Related Facilities; a maximum 10% expansion of existing structures or improvements.</i>	AR	AR	AR

D. Schools – Residential Zones (Chapter 16.05)

The Code allows schools in the residential zones with a Conditional Use permit, but also requires a Conditional Use for all expansions, regardless of size. The revisions would allow an Administrative Review process if an expansion involves up to 10% of the area of existing structures or improvements; otherwise, a Conditional Use is required. Further, the changes clarify “schools” as an identified Public Use. The applicable provisions in Section 16.05.070, Table 16.05-5, are amended as follows (new language in *italics*):

16.05.070 Public Uses Allowed in the Residential Zones

Table 16.05-5: Public Uses (Civic or Institutional) Allowed in Residential Zones			
Use Categories	Z-RL	Z-RM	Z-RH
Public Uses with Class II Impacts:			
Public Uses such as Community Centers, Colleges, Universities, Community Colleges, and Adult Education Facilities; Municipal Courts; Museums, Nursery Schools, Preschools; Public Safety Facilities, Including Fire/Emergency Medical Services and Police Stations, and Emergency Communication Broadcast Facilities; Public Squares, Plazas, <i>Schools</i> , Senior Centers, Social Service Facilities, Soup Kitchens, Vocational Training for the Physically or Mentally Challenged, Utility Substations, Youth Club facilities.	CU if adjacent to collector, arterial, or highway	CU if adjacent to collector, arterial, or highway	CU if adjacent to collector, arterial, or highway
<i>Public Uses (above); a maximum 10% expansion of existing structures or improvements.</i>	AR	AR	AR

E. Accessory Dwellings (Chapter 16.05)

Accessory dwellings are secondary dwellings located on the same lot as a single family home, often called “mother-in-law” apartments. Current regulations do not allow the creation of an accessory dwelling by constructing an addition to an existing home. This would be permitted with the following changes to Section 16.05.150.A.2.a (old language stricken, new language in **bold**):

- b. Floor Area: Accessory dwellings shall not exceeding 1,000 square feet of floor area, or 40% of the primary unit, whichever is smaller. The unit can be a detached cottage, a unit attached to a garage, **an addition to an existing home**, or in a portion of an existing house.

F. Residential Homes/Facilities (Chapter 16.05)

ORS 197.665 and 197.667 respectively require a city to permit residential homes wherever single-family homes are permitted, and, allow residential facilities wherever multi-family homes are permitted. Regulations siting residential homes or facilities cannot exceed the regulations siting single-family or multi-family homes, respectively. To comply with State law, Section 16.05.040, Table 16.05-2 is revised (old language ~~stricken~~, new language in *italics*):

16.05.040 Residential Uses Allowed in the Residential Zones

Table 16.05-2: Residential Land Uses Allowed in Residential Zones	
Residential Uses with Class III Impacts:	
State Regulated Special Residential Group Living	
<ul style="list-style-type: none"> • Homes (5 or fewer) • Group Facility (6+) 	<p>AR <i>OP in All Residential Zones</i></p> <p>GU for 6 or more <i>OP - RM and RH Zones Only</i></p>

G. Mixed Use Zone – Expansions (Chapter 16.07)

Commercial or industrial expansions in the Mixed Use zone require either an Administrative Review or a Conditional Use (Sections 16.07.060 and 16.07.070), regardless of the expansion’s size. To streamline the review process for minor improvements, the revisions would allow an Administrative Review in place of a required Conditional Use and a Ministerial Review in place of an Administrative Review. Section 16.06.100 is revised with the addition of the following new Section:

C. Expansion of Existing Commercial, Industrial and Public Facilities in the Mixed Use Zone

Additions to existing structures or the construction of new buildings, that do not result in more than a 10% increase in the existing building or improvement square footage, shall be subject to the following requirements:

1. If the establishment of the new use requires a Conditional Use, then the expansion identified in this Section shall be subject to an Administrative Review.
2. If the establishment of the new use requires an Administrative Review, then the expansion identified in this Section shall be subject to a Ministerial Review.
3. This Section does not alter requirements for facilities approved by the Planned Development review process.

H. Commercial Zones (Chapter 16.08)

The Code requires a Conditional Use to establish (or expand) an auto sales business within the Highway Commercial zone, the only zone where such a use is allowed. For this reason, it is appropriate to change the Code to only require an Administrative Review. Given the location and intent of the Highway Commercial zone, there is no need to restrict the size of breweries, distilleries and wineries – potential impacts can be addressed through the Administrative Review process. Consistent with current practice, allow RV storage as part of a mini-storage warehouse. Finally, a small brewery operation

(as opposed to a brew-pub) was found to be appropriate downtown (Z-CCM), as they are often paired with restaurants. Applicable portion of Section 16.08.060, Table 16.08-3, is revised (old language stricken, new language in *italics*).

Commercial Uses Allowed in the Commercial Zones

Table 16.08-3: Commercial Land Uses Allowed in Commercial Zones			
Land Uses	Z-NCM	Z-CCM	Z-HCM
(See pages 10-12 of Chapter 16.03 for further details and listings regarding Commercial Uses)			
Commercial Uses with <u>Class III</u> Impacts:			
Breweries <i>without food service</i> (5,000 square feet or less)	N	CU AR	AR
Other Commercial Uses such as Auto Sales and Services, Commercial Centers; Breweries, Distilleries, and Wineries (less than 5,000 sq ft); Mini-Storage Units (<i>including RV storage</i>), Outdoor Amphitheaters Sales or Leasing of Consumer Vehicles Including Passenger Vehicles, Motorcycles, Light and Medium Trucks, and Other Recreational Vehicles, Shopping Mall.	N	N	CU AR

I. Industrial Zone (Chapter 16.09)

The Industrial zone conditionally permits mini-storage warehouses yet allows freight storage and warehousing outright. Revisions would allow a mini-storage warehouse outright, including RV storage. Breweries, distilleries and wineries can be considered industrial-type activities, but are not allowed in the zone. The change would allow these activities – but specifically exclude restaurants - as Class III commercial uses, subject to an Administrative Review.

The Willamette Speedway property is designated Industrial. As the Code limits racetracks to the Highway Commercial zone, the use would immediately become nonconforming if annexed, effectively prohibiting expansion of the facility without corresponding map amendments. The revisions would conditionally permit a racetrack in the Industrial zone. Relevant portions of Section 16.09.060, Table 16.09-3, are revised (old language is stricken, new language in *italics*).

16.09.060 Commercial Uses Allowed in the Industrial Zone

Table 16.09-3: Commercial Land Uses Allowed in the Industrial Zone		
Land Uses	Z-IND West of 5th St	Z-IND East of 5th St
(See pages 9-12 of Chapter 16.03 for further details and listings regarding Commercial Uses)		
Commercial Uses with <u>Class III</u> Impacts:		
<i>Breweries, Distilleries, and Wineries, without food service</i>		AR
Other Commercial Uses such as Gas (Filling) Stations; Mini-Storage Units		CU
<i>Mini-Storage Units (including RV Storage)</i>		OP
<i>Race Tracks (Auto, Horse, Dog, Bike, Motorcycle, Boat, etc.)</i>		CU

J. Industrial Zone - Fences (Chapter 16.09)

The Industrial zone does not include fencing requirements. Due to the unique nature of the zone, special consideration must be given to security issues. The following new subsection is added to Section 16.09.110.B:

4. Fences

Industrial uses are subject to the fencing requirements of the RM zone with the following exceptions:

- a. Where an 8-foot fence is allowed, a 10-foot fence may be permitted.
- b. Security fencing material (e.g., barbed wire) may be placed on the upper 2-feet of a fence, provided that portion of the fence below the security material is at least 6-feet in height.

K. Schools – Public Zone (Chapter 16.10)

A Conditional Use is required for community colleges, adult education facilities, and similar activities, although these programs are likely to be located within school facilities. In addition, establishing or expanding a school requires an Administrative Review before the Commission; this may be inappropriate for minor expansions. To address these issues, all Class II uses such as community colleges (and similar uses) would be processed as an Administrative Review subject to a Planning Commission hearing. Expansions up to 10% would be processed as an Administrative Review; however, subject only to a staff review. The following portions of Section 16.10.080, Table 16.10-5 are amended (old language ~~stricken~~, new language in *italics*):

16.10.080 Public Uses Allowed in the Public Use Zone (Z-PU)

Table 16.10-5: Public Uses (<i>Civic or Institutional</i>) Allowed in the Public Use Zone	
<i>Land Uses</i>	
Public Uses with <u>Class II</u> Impacts:	
Public Uses such as Colleges, Universities, Community Colleges, and Adult Education Facilities; Museums, Nursery Schools, Preschools; Public Squares, Plazas, Social Service Facilities, Soup Kitchens, Vocational Training for the Physically or Mentally Challenged, Private Utility Substations; Youth Club facilities; Botanical Gardens; Surplus Food Distribution Centers; Transit Centers.	CU <i>AR with mandatory Public Hearing by Planning Commission</i>
<i>Public Uses (above); a maximum 10% expansion of existing structures or improvements.</i>	AR
Other Public Uses such as Schools	AR with mandatory Public Hearing by Planning Commission
<i>Other Public Uses such as Schools; a maximum 10% expansion of existing structures or improvements.</i>	AR

L. Flood Plain Overlay Zone – (Chapter 16.11)

The Federal Emergency Management Agency adopted a new Flood Insurance Rate Map for Linn County and changed certain regulations. To maintain eligibility in the National Flood Insurance Program, the City is obligated to update the Code with the revisions noted below. The following items in Section 16.11.070 Flood Plain Overlay Zone (FP-OZ) are amended (old language ~~stricken~~; new language in **bold**):

G. Special Flood Hazard Area Identification--Study and Maps Adopted

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "~~The Flood Insurance Study for the City of Lebanon, Oregon,~~ **“The Flood Insurance Study for Linn County, Oregon and Incorporated Areas,”** dated ~~January, 1981, revised September 1, 1983,~~ **September 29, 2010**, with accompanying flood insurance maps is adopted by reference and declared to be a part of this Chapter. The Flood Insurance Study and the FIRM are on file at the Lebanon Community Development Center, 853 Main Street. The best available information for flood hazard area identification as outlined below in Subsection O.6 shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Subsection O.6. ~~“Any future map amendments or revisions to the above noted 1983 revision shall be adopted by reference and declared to be part of this Chapter and overlay zone.~~

- P. Base Flood Areas
4. Manufactured Homes:

All manufactured homes to be placed or substantially improved within **A** zones ~~A-1-30 and AE~~ shall be elevated on a permanent foundation such that the ~~lowest floor of the manufactured home is a~~ **bottom of the longitudinal chassis frame beam shall be a** minimum of one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with the provisions of Section 16.11.070.P.2.b.

M. Clear Vision – (Chapter 16.12)

Section 16.12.030.H contains clear vision area standards but does not establish standards for a driveway/street intersection. To address the driveway/street intersection, Section 16.12.030.H.4, is replaced with the following new language, which also incorporates existing clear vision requirements:

4. The following measurements shall establish a clear vision area:
 - a. Corner Lots. The clear vision area for corner lots shall be 20 feet along the right-of-way of each intersecting street.
 - b. Street-Driveway. The clear vision area for a street-driveway intersection shall be 10 feet along the driveway from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the driveway.
 - c. Street-Alley. The clear vision area for street-alley intersections shall be 10 feet along the alley from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the alley.
 - d. Street-Private Access Easement. The clear vision area for street-access easement intersections shall be 10 feet along the access easement from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the access easement.

- e. Dimension Exceptions. When the angle of intersection between streets, other than an alley, is less than 30 degrees, the distance shall be 25 feet. Dimensions for clear vision areas for new development in the Central Business Commercial Zone (Z-CCM), shall be specified by the City Engineer on a site by site basis given the near total build out of that zone.

N. Parking – Espresso Stands (Chapter 16.14)

Depending on the Code interpretation, an espresso stand either requires one parking space for every four fixed seats (or for each 50 square feet of dining/drinking area without fixed seats); or, 10 spaces per 1,000 square feet of net floor area. Neither option adequately addresses parking needs of a drive-in facility. Recognizing the business focus is on drive-through operations, limiting parking to employees-only is appropriate. Table 16.14.070-1(6)(i) is amended (new language in **bold**):

(i) Eating or drinking establishments with drive-thru facilities (Fast Food)	10 spaces per 1000 sq. ft. of net floor area	5 percent of required vehicle parking, or 4 spaces, whichever is greater
Coffee or food kiosks (e.g., espresso stands)	2 spaces	1 space

O. Signs (Temporary) (Chapter 16.18)

The sign duration is revised to recognize some temporary signs may require more than 180 days (e.g., commercial real estate signs). Section 16.18.030.A.2, is revised as follows (new language in **bold**):

- 4. Temporary signs which are non-illuminated, have an overall face area not exceeding 32 square feet in a residential , commercial, or industrial zone, are not permanently installed, and are intended to be located on property for short durations of time (**generally** not to exceed 180 days). Such signs typically include, but are not limited to, real estate lease and sales, political signs, construction signs, and garage sale, open house, special event, and similar signs. Such signs shall only be posted for the duration of the activity. No sign shall be extended into or extend over a street right-of-way.

As temporary signs do not require a permit, Section 16.18.030.B.3, is eliminated in its entirety and all subsequent items renumbered:

~~5. Temporary Signs without a permit.~~

P. Commercial, Mixed Use and Industrial Signs (Chapter 16.18)

Commercial and industrial uses are allowed both a free-standing pole sign **and** monument sign on the property. This is contrary to other sign code provisions. Section 16.18.040.B, Table 16.18.040-3, #3.a is revised, limiting a business to a free-standing sign or monument sign (new language in *italics*):

C. Signage in Commercial, Mixed Use, Industrial, and Public Use Zones

Table 16.18.040-3: Signage Standards for Commercial, Mixed Use, Industrial, and Public Uses in the Z-CCM, Z-HCM, Z-NCM, Z-MU, Z-IND and Z-PU Zones	
Types of Signage	Standards (Permitted as follows)
3. Free Standing Pole Sign	<p>a. Number: A maximum of one sign per parcel is allowed <i>in lieu of the monument sign</i>.</p> <p>b. Area: Except as may be approved by a Planned Development, the maximum sign area shall be 100 square feet per side, two sides maximum.</p> <p>c. Height and Clearance: Shall not exceed a total height of 20 feet measured from the grade of the property where the sign is to be located or grade of the street immediately in front of the subject property (whichever is higher).</p> <p>(1) The minimum clearance below the lowest portion of a free-standing sign and the ground below shall be 9 feet in a required street or side yard.</p> <p>(2) In any driveway or parking area, the minimum clearance below the lowest portion of a free-standing sign and the ground below shall be 14 feet.</p> <p>d. Location: Signs shall not be placed in clear vision areas, or within 25 feet of a residentially zoned property, and shall not project over a property line.</p>

Q. Review Exemptions - (Chapter 16.20) -

Unless permitted outright, land use activities are subject to a Ministerial, Administrative or Quasi-Judicial Review. Section 16.20.010.C allows exemptions to these requirements. However, this Section is not clear whether the review exemption takes into account the activity's "Class" and associated impacts. To clarify these provisions, this Section is replaced with the following new language:

C. Exemptions

Except as noted in this Section, land use applications, reviews and approvals are not required for a change in use within an existing building or portion thereof. For the purpose of this exemption, Class I and Class II activities shall be considered interchangeable. Class III activities may be replaced with Class I, Class II or Class III activities; however, no Class III activity shall replace a Class I or Class II activity without being subject to the applicable land use review process.

R. Decision and Procedure Summary - (Chapter 16.20)

This Chapter establishes procedural requirements for reviewing land use applications, with the material summarized in Table 16.20.020-1. With one exception, LUBA hears appeals of Ministerial Reviews. Appropriately, the Commission prefers to hear all appeals of Ministerial decisions. Section 16.20.030.E is revised as follows (old language stricken; new language in **bold**):

E. Final Decision and Appeals

1. A Ministerial decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first.
- ~~2. With one exception (noted below in Subsection 4), a Ministerial decision is the final decision of the City, and cannot be appealed to other City officials, the Planning Commission, or the City Council.~~
- ~~3. Ministerial Decisions may be appealed to the Oregon Land Use Board of Appeals (LUBA). An appeal of a Ministerial decision for a land use to LUBA must be filed within 21 days the decision date.~~
42. As noted in Chapter 16.29 (Section 29-3.3 Class 1 Fence Variances), a **A** decision by the Planning Official may be appealed to the Planning Commission.

S. Administrative Review (Site Design) - (Chapter 16.20)

This Chapter establishes procedural requirements. Some activities require an Administrative Review, but lack specific decision criteria, the prime example being development of a vacant site. To help in the review site development proposals, Section 16.20.040.D is amended as follows (old language ~~stricken~~; new language in **bold**):

D. Administrative Decision Requirements

1. ~~The Planning Official [and as applicable the Planning Commission]~~ **applicable decision authority** shall make ~~Administrative~~ written decisions addressing all of the relevant decision criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the ~~Planning Official [and as applicable the Planning Commission]~~ **applicable decision authority** shall approve, approve with conditions, or deny the requested land use decision application or action.
2. **Unless otherwise required by provisions in the Development Code, Administrative Reviews involving the establishment of a new structure or facility, or the expansion of an existing structure or facility, shall be subject to the following specific criteria:**
 - a. **The proposal shall conform to use, height limits, setbacks and similar development requirements of the underlying zone.**
 - b. **The proposal shall comply with applicable access and street improvement requirements in Chapters 16.12 and 16.13, respectively.**
 - c. **The proposal shall comply with applicable parking requirements in Chapter 16.14.**
 - e. **The proposal shall comply with applicable screening and landscaping provisions in Chapter 16.15.**
 - e. **Any required public facility improvements shall comply with provisions in Chapter 16.16.**
 - f. **Where applicable, the proposal shall comply with development requirements within identified hazard areas and/or overlay zones.**
 - g. **The proposal shall comply with the supplementary zone regulations contained in Chapter 16.19 or elsewhere in the Development Code.**

T. Property Line Adjustment (Chapter 16.22)

Property line adjustments require an Administrative Review and the recording of related documents within 60-days of approval. Experience indicates these are minor land use actions and may require more than 60-days to complete recording requirements. Therefore, Section 16.22.160.B.1 is revised to use a Ministerial Review (old language ~~stricken~~; new language in **bold**):

3. Decision-Making Process. Property line adjustments shall be reviewed by means of a ~~Administrative~~ **Ministerial** procedure, as governed by the provisions of Chapter 16.20, using decision criteria contained in Subsection C below. The road authority(ies) shall be notified of ~~let~~ **property** line adjustments that may

significantly affect property access, or traffic volumes or operations of their facilities.

Section 16.22.160.D.1 is revised to extend the recording deadline (old language stricken; new language in **bold**):

1. Recording. Upon the City's approval of the proposed property line adjustment, the applicant shall record the property line adjustment with Linn County within ~~60 days~~ **one year** of approval (or the decision expires).

U. Fence (Chapter 16.29)

Fences located within a street yard setback are limited to a maximum height of 36-inches. This may not be essential where there is corner lot; however, altering this standard requires a Class III Variance. Changes would allow this to be reviewed as a staff review. Fences over 6-feet in height must be set back from a property line. This setback creates a gap between fences or forces a shared fence to be located entirely on a single property. Section 16.29.030.C is modified as follows (old language stricken):

C. Decision Criteria

The City's Planning Official may grant a Minor Adjustment to height limitations and/or set back requirements on fences and walls, if such variations: ~~1. do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets.; and, 2. fences greater than 36" in height are not located within the required set back area of a street abutting yard.~~

Chapter 16.08, Table 16.05-8 is revised, with the old language stricken.

Table 16.05-8: Development Standards for Residential Zones -- Building/Structure Height			
<i>Building/Structure Height</i>			
Standard	Z-RL	Z-RM	Z-RH
<u>Level Site (slope less than 15%), maximum height</u>	25 ft	40 ft	40 ft
<u>Sloping Site (15% or greater), maximum height</u>	Highest Point of Site + 1 story (maximum of 2 stories)	Highest Point of Site + 1 story (maximum of 3 stories)	Highest Point of Site + 1 story (maximum of 3 stories)
<u>Fences, Retaining/Garden Walls</u>			
Max. Height. – Front Yard	3 ft	3 ft	3 ft
Max. Height. – Interior Side	8 ft	8 ft	8 ft
Max. Height – Rear Yard	8 ft	8 ft	8 ft
Max. Height – Street Side	3 ft	3ft	3 ft
Max. Height– Reverse Frontage Lot (rear)	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).	3 ft, or up to 8 ft with 5 ft landscape buffer, if there is excess ROW (e.g., a minimum of 15 feet between sidewalk and property line on fully improved site).

- ~~Where allowed, fences and walls shall not exceed six feet (6') unless set back ½ foot from the property line for every foot in excess of six feet (6').~~
- Eight foot (8') fences or walls are allowed, but any height over six feet (6') requires a building permit.
- Using a Class 1 Variance process (Ministerial Review), the City's Planning Official may grant variations to the above height limitations and set back requirements on fences and walls, if such variations: ~~(1) do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets; and, (2) fences greater than 36" in height are not to be located within the required setback of a street-abutting yard.~~ If the requested variations do not meet the above criteria, the Planning Official shall direct the applicants for the variations to the fence/wall standards to use either a Class 2 or Class 3 variance process. See Chapter 16.29 for Variance requirements and processes.
- Gates are required in fences to access the area beyond the fence for maintenance.

Chapter 16.05, Section 16.05.100 is revised (old language ~~stricken~~; new language in **bold**):

C. Setback Yards and Exceptions for Fences and Walls

Walls and fences built on property lines are subject to the height standards in **Table 16.05-8** and the provisions of Clear Vision standards in Section 16.12.030.H, and 16.15.060, Fences and Walls. However, using a Ministerial Review process, the City's Planning Official may grant variations **a variance** of up to 15% to the above height limitations and set back requirements on fences and walls, if such variations: ~~(1) do not infringe upon the clear vision triangle requirements at intersections of streets or at the intersections of driveways and streets; and, (2) fences greater than 36" in height are not to be located within a street abutting yard.~~ The Planning Official may direct applicants for variations to the fence/wall standards to use the Variance Process. ~~Applicants may initially select the Variance Process for their requests (16.29).~~

V. Class 2 Adjustments (Chapter 16.29)

Changes involving building setbacks and site coverage require a Class 2 Adjustment (Section 16.29.040). The provisions do not extend to similar, but minor changes, in lot area or building height. To allow minor changes in lot area and building height, Section 16.29.040.C.4 is revised to include the following new subsections:

(6) Minimum Lot Area

Up to a 5 percent reduction in the minimum lot area standard.

(7) Maximum Building Height

Up to a 10 percent increase in the maximum height limitation.

W. Nonconforming Use (Chapter 16.30)

A property owner may repair, maintain and expand an existing nonconforming residential use, provided improvements comply with development requirements of the Residential Mixed Density zone. However, if a nonconforming residence is destroyed, the property owner must apply for an Administrative Review to rebuild the structure. This makes it problematic for owners to maintain or sell the residence, as banks will often not lend unless the home can be replaced outright. In effect, these homes may become derelict

without a financial incentive to replace a damaged structure. To allow outright replacement for nonconforming residential uses, Section 16.30.060 is revised as follows (new language in **bold**):

16.30.060 Destruction of a Nonconforming Use or Structure

If more than 50% of the square footage of a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause (excluding intentional demolition of an undamaged building), a future structure or use on the site shall **comply with the following**:

- A. Non-residential Uses: The new use shall comply** with the provisions of the zone in which the property is located, or the property owner may apply for approval through an Administrative Review process to continue with the existing nonconforming use and/or to replace the nonconforming structure in its present location. Approval to replace the damaged structure shall not allow the replacement or repaired structure to be more non-conforming than it was originally. Such repairs or replacements must meet current building codes.
- B. Residential Uses: A nonconforming residential use may be replaced provided construction of the replacement dwelling is lawfully commenced within one year of the damage or destruction.**

X. Lot of Record (Chapter 16.30)

Section 16.30.090 allows development of nonconforming properties, provided it can be shown the property conforms to rules in effect when it was created. However, this Section requires an Administrative Review application to make this determination. Given a single property is involved, a Ministerial Review is appropriate in those instances where the creation of the property *cannot be readily* determined. Section 16.30.090.C is revised as follows (old language ~~stricken~~; new language in **bold**):

C. Procedure

A lot of record determination shall be made by the Planning Official using the ~~Administrative Review~~ **Ministerial Decision** Procedure (see Chapter 16.20). It shall be the property owner's responsibility to demonstrate that the subject property meets the lot of record decision criteria listed in Subsection 16.30.090.B above.

- Y. The Community Development Department provided a notice of this request to the Department of Land Conservation and Development (DLCD) and Oregon Department of Transportation (ODOT). The DLCD field representative suggested not allowing restaurants as part of a brewery, winery or distillery within the Industrial zone. These changes were incorporated in the final document. The document also includes required changes to the flood plain regulations. Otherwise DLCD, and ODOT, did not oppose the revisions. No other agency or citizen commented.

VI. CRITERIA AND FINDINGS

- A. The discussion in the previous Section outlines 25 separate actions that can be placed into three general categories:

1. New Uses/Definitions – Add movie theaters as a commercial use and establish appropriate definition (Chapters 16.03 and 16.32); include RV storage in mini-storage warehouses in the HC zone (16.08); and, permit outright mini-storage warehouses (and RV storage), and, breweries, distilleries and wineries with an Administrative Review in the Industrial zone (16.09).
2. Revised Procedures – Administrative Review to process limited religious facility expansions in Residential zones (16.05); Administrative Review to process limited school expansions in Residential zones (16.05); correct processing requirements for residential homes/facilities in Residential zones (16.08); establish processing options for limited expansions in the MU zone (16.07); Administrative Review for auto sales, and, breweries, distilleries and wineries, in HC zone, and, breweries in the CCM zone (16.08); Administrative Review for limited school (and similar use) expansions in the Public Use zone (16.10); clarifying when exemptions apply (16.20); Commission hearing of appeals of Ministerial Reviews (16.20); establish new site design review standards (16.20); Ministerial Review for property line adjustments, and extended recording deadline (16.22); Class 1 variance to modify fence height/setback (16.29); Class 2 variance to reduce lot area and building height (16.29); allow rebuilding of nonconforming residences (16.30); and, Ministerial Review for nonconforming lots (16.30).
3. Revised Development Regulations – Expanding existing homes to create an accessory dwelling (16.05); elimination of certain fence setbacks (16.05); establish new fence regulations for Industrial zone (16.09); update FEMA regulations (Chapter 16.11); expand clear vision requirements (16.12); parking standards for espresso stands (16.14); expanding time limits for temporary signs (16.18); and, clarifying use of monument and free standing signs for businesses (Chapter 16.18).

On balance, these amendments allow greater flexibility to property owners for use of their property, and to City staff to help expedite land use development.

- B. Chapter 16.28 establishes the procedures and criteria for amending the text of both the Comprehensive Plan and the Development Code. Section 16.28.010 identifies the purpose of text amendments while Section 16.28.020 identifies the various types of amendments. The proposed changes involve only the text of the Development Code; amendments to the Comprehensive Plan are not required.
- C. Section 16.28.030 identifies those agents authorized to initiate a text amendment. Conforming to provisions in this Section, City staff, in conjunction with the Planning Commission, initiated this action.
- D. Section 16.28.040 requires the City Recorder to maintain records of all changes to the Development Code. This administrative process requires City compliance.
- E. Sections 16.28.050 and 16.28.060 require all proposed amendments to the Comprehensive Plan Text shall be consistent with Oregon's Statewide Planning Goals, and with all adopted facility plans, including the Transportation System Plan. These Sections do not apply, as the proposal does not amend the Plan.

- F. Section 16.28.070 requires Development Code amendments to be consistent with the City's Transportation System Plan.

FINDINGS: In the limited cases where new uses are allowed, the City has the authority to require a Traffic Impact Study or Analysis (LDC Section 16.12.010.B and Section 16.20.110). The Study or Analysis must indicate the proposed use complies with the adopted TSP or mitigation measures are available to ensure compliance. These requirements remain. Otherwise, the amendments do not change functional classifications or performance standards for City transportation routes.

- G. Section 16.28.080 outlines the process for text amendments. This is a legislative action pursuant to Chapter 16.20 and requires hearings before both the Planning Commission and City Council. The Commission reviews the request and makes recommendation to the Council. The final decision on this matter rests with the Council.
- H. Specific decision criteria are contained in Section 16.28.090. The City may approve a Development Code Amendment application if it satisfies the relevant Decision Criteria: Oregon Department of Land Conservation and Development (DLCD) administrative rules, the applicable Statewide Planning Goals, the applicable provisions of the Lebanon Comprehensive Plan, and any other applicable and relevant facility or special area plans, specific projects or City-wide goals adopted by the City.

FINDINGS: Findings in response to the above noted criteria are reviewed below:

1. DLCD Administrative Rules – The Oregon Administrative Rules address a variety of issues including development on farmland, provisions for needed housing, requirements to expand an urban growth boundary and similar issues. Based on the Department's review, there are no Administrative Rules that specifically address the proposed revisions. Further, none were identified by the DLCD, or ODOT, in their review.
2. Statewide Planning Goals - Compliance with the Statewide Goals is noted as follows:

Goal 1, Citizen Involvement: Two Commission work sessions assisted in the development of the amending Code language. The Planning Commission and City Council conduct public hearings on the request, consistent with City procedures and the intent of the Goal.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the locally adopted Development Code requirements.

Goal 3, Agricultural Lands: The proposal does not involve or affect farmland. An exception to this goal is not required.

Goal 4, Forest Lands: The proposal does not involve or affect identified forestland. An exception to this goal is not required.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed changes to the Code to not alter existing regulations that affect identified historic, cultural, or natural resources within Lebanon.

Goal 6, Air, Water and Land Resource Quality: A majority of the amendments address procedures or development requirements. The few new uses simply allow activities permitted in one zone to be permitted in another – e.g., breweries, wineries and distilleries in the Industrial zone. Therefore, the amendments do not establish new land uses that adversely affect air, water or resource quality issues.

Goal 7, Natural Hazards: To comply with FEMA requirements and maintain eligibility in the National Flood Insurance Program, changes were made to the FIRM date, and, the manufactured home elevation requirement. Otherwise, development requirements for natural hazard areas are unaltered by the proposed Code amendments.

Goal 8, Recreational Needs: The proposed changes do not create uses that adversely affect recreational opportunities or involve land identified for recreational purposes.

Goal 9, Economic Development: On balance, the City anticipates the changes will promote economic development by expediting land use procedures and allowing new activities in certain zones – e.g., breweries, wineries and distilleries in the Industrial zone.

Goal 10, Housing: The amendments clarify requirements for residential homes and facilities and expand the construction options for an accessory residential dwelling. Otherwise, the proposed amendments do not directly involve the supply, location or the City's ability to meet housing needs.

Goal 11, Public Facilities and Services: Any new use allowed by the amendments must still comply with existing public facility requirements. Otherwise, the proposed amendments focus on procedural and development requirements that do not affect existing public facilities.

Goal 12, Transportation: As previously noted, the proposed Code revisions do not create uses or activities that impact the City's transportation facilities.

Goal 13, Energy Conservation: The amendments are neutral with regard to energy conservation.

Goal 14, Urbanization: The proposed amendments address urban uses within an urban environment, along with changes to procedural and development requirements.

Goals 15 to 19, Willamette River Greenway, Estuarine Resources, Coastal Shores, Beaches and Dunes, Ocean Resources: The proposals do not involve land within the Willamette Greenway or coastal areas.

In general, the proposed amendments are consistent with the intent of the Statewide Goals, or, the amendments do not directly affect Goal issues.

3. Lebanon Comprehensive Plan – The Comprehensive Plan consists of ten Chapters with each Chapter addressing specific land use issues such as housing or natural resources. Each Chapter is reviewed below:

a. Chapter 1: Introduction - This introductory Chapter describes the Comprehensive Plan, its relationship to the Statewide Land Use Goals, the Citizen Involvement program and key terminology. As introductory provisions, this Chapter does not directly apply to the proposed text amendments.

b. Chapter 2: Natural Environment – The Chapter address goals and policies related to the City's natural environment.

FINDINGS: This Chapter does not apply, as the Code revisions do not involve wetlands, wildlife habitat or other environmental resources identified as requiring preservation or protection.

c. Chapter 3: Urbanization – This Chapter provides the basic framework for future urban development within the City, including public facility provisions and annexations.

FINDINGS: This Chapter does not apply, as the proposal Code amendments do not affect, reduce or otherwise alter provisions for urban development within the community.

d. Chapter 4: Land Use – This Chapter details the goals and policies to assure the City provides different types of land within City limits that are suitable for a variety of uses.

FINDINGS: This Chapter does not apply as the proposal Code amendments do not modify or alter existing zoning, and thereby, the City's ability to provide different types of land, of suitable size and quantity, to meet a variety of development needs.

e. Chapter 5: Population & Economy – This Chapter addresses population growth and economic development as well as those trends affecting both.

FINDINGS: Generally, the bulk of the amendments address review procedures and development regulations. Economic benefit is anticipated by streamlining certain review processes and lessening some of the restrictions. Additional benefit is provided by allowing new activities in certain zones – e.g., breweries, wineries and distilleries in the Industrial zone. On balance, the revisions are consistent with the goals and policies promoted by this Chapter.

- f. Chapter 6: Housing – This Chapter establishes the City’s Goals and Policies related to Housing.

FINDINGS: The amendments do clarify requirements for residential homes and facilities and expand the construction options for an accessory residential dwelling. Otherwise, provisions in this Chapter do not directly apply, as the amendments do not affect the City’s ability to meet community housing needs.

- g. Chapter 7: Community Friendly Development & Preservation of Historic Resources - This Chapter focuses on policies creating a built environment suitable for the needs of a diverse population through a variety of uses scaled for the pedestrian, and capable of accommodating the automobile and mass transit.

FINDINGS: Policies in this Chapter focus on design elements to improve density and housing options while encouraging mixing or combining land uses (residential, commercial, industrial, public) to increase urban livability. Therefore, this Chapter does not directly apply to the request.

- h. Chapter 8: Transportation – This Chapter addresses the transportation needs of the City with an emphasis of creating a variety of transportation options for pedestrians, bicyclists, vehicles and mass transit.

FINDINGS: As noted, in the limited cases where new uses are allowed, City staff has the authority to require applicants to conduct a Traffic Impact Study or Analysis. This requirement still applies. Otherwise, the amendments do not change functional classifications or performance standards for City transportation routes.

- i. Chapter 9: Public Facilities and Service - The City is required by State law to plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.

FINDINGS: New uses allowed by the amendments must still comply with existing public facility requirements. Otherwise, the proposed amendments focus on procedural and development requirements that do not affect the City’s ability to provide needed services.

- j. Chapter 10: Plan Implementation, Amendment, and Land Use Planning Coordination – This Chapter establishes procedures for amending the Comprehensive Plan Map and Zoning Map.

FINDINGS: This Chapter does not apply as the proposal amends only the Development Code text; there are no changes to the Comprehensive Plan or Zoning maps.

- 4. Other Facility Plans or Projects - In reviewing other documents, Department staff did not identify plans or policies that apply to the proposed amendments.

- I. The majority of the proposed Code amendments relate to procedures and development regulations, while the few changes regarding land uses provide additional economic opportunities. Without exception, The Comprehensive Plan policies (as well as Administrative Rules and Statewide Land Use Goals) do not directly apply to the proposed Development Code amendments.

VII. CONCLUSION

The City Council concludes the proposed amendments to the Development Code comply with the applicable decision criteria.