

**A BILL FOR AN ORDINANCE AMENDING
THE CITY OF LEBANON DEVELOPMENT
CODE**

) **ORDINANCE BILL NO. 2012-9**
)
) **ORDINANCE NO. 2837**

WHEREAS, the Planning Commission for the City of Lebanon conducted a hearing on July 18, 2012 regarding Planning File No. 12-04-19 and made findings recommending certain amendments to the Development Code of the City of Lebanon; 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 August 8, 2012; 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.

After Recording, Please Return To:

City of Lebanon
Attn: City Clerk
40 N. 2nd Street
Lebanon, OR 97355

LINN COUNTY, OREGON **2012-12674**
ORD-ORD
Cnt=1 Str=7 S. WILSON **08/20/2012 03:03:43 PM**
\$50.00 \$11.00 \$15.00 \$19.00 \$10.00 **\$105.00**



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I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.


Steve Druckenmiller - County Clerk



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 for and 0 against and approved by the Mayor this 8th day of August, 2012.


Kenneth I. Toomb, Mayor
Bob Elliott, Council President

Attested:


Linda Kaser, City Clerk / Recorder

EXHIBIT "A"
AMENDMENTS TO THE LEBANON DEVELOPMENT CODE

Lebanon Development Code Section 16.08.100.B shall be replaced in its entirety with the following new language:

B. Drive-Through Service and Walk-up Windows

Where permitted by the Development Code, the following standards shall apply for drive-through service and walk-up windows:

1. Drive-Through Service
 - a. Circulation. The overall circulation plan for a site shall not cause traffic congestion on surrounding streets and shall minimize potential nuisances to nearby residential property caused by vehicles and use of the order board.
 - b. Access and Window Location. Wherever feasible, drive-through lanes shall be accessed from the rear of a site, and run along the interior side property line.
 - c. Vehicle Stacking. All drive through lanes shall provide a minimum of 80-feet of stacking as measured from the drive-up window to the entrance of the drive-through lane.
 - d. Setbacks. Where a drive-through lane will be located between a building and a roadway, a minimum 10-foot landscaped setback shall be required from the roadway right-of-way to the drive-through lane.
 - e. Screening. The drive through lane shall be screened by a combination of plantings, berms, and/or low retaining walls at least four-feet in height.
 - f. Operation. Specific design and operational conditions may be imposed with approval of the drive-through facility. These may include, but are not limited to, additional vehicle stacking, increase in screening height, regulating the hours of operation and other measures, to reduce potential impacts on surrounding properties.

2. Walk-Up Window
 - a. Circulation. The service window shall be so located as not to interfere with pedestrian traffic along the adjacent sidewalk and vehicle traffic entering or exiting the site.
 - b. Setback. There shall be a minimum 2-foot setback between a service window and an adjacent property boundary.
 - c. Surfacing. The area where patrons place orders and receive ordered items shall be surfaced in concrete, brick, stone or other suitable surface material.
 - d. Noise. The use of a loudspeaker shall be prohibited.
 - e. Operation. Specific design and operational conditions may be imposed with approval of the walk-up facility. These may include, but are not limited to, regulating the hours of operation, screening or buffering and other measures to reduce potential impacts on surrounding properties.

3. Automated teller machines, kiosks, and similar apparatus are exempt from these regulations provided their location does not interfere with pedestrian and vehicle access.

EXHIBIT B
LEBANON CITY COUNCIL FINDINGS
Planning File No. 12-04-19

I. NATURE OF THE APPLICATION

This matter comes before the Lebanon City Council on the application of the City of Lebanon to amend the Lebanon Development Code.

II. BACKGROUND INFORMATION

The City wishes to amend Lebanon Development Code by establishing new regulations regarding drive-through/drive-up windows, walk-up windows and free-standing kiosks. 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 July 18, 2012. At that hearing, City Planning File 12-04-19 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 Lebanon 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 August 8, 2012. At that hearing, City Planning File 12-04-19 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 City Council, 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 by establishing new regulations regarding drive-through (or drive-up) windows, walk-up windows and free-standing kiosks. 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 reviewed a Class 3 Variance to permit the placement of the drive-through driveway adjacent to a public street and street intersection (Jack-in-the Box) and reviewed a modified Planned Development to allow the Central Willamette Federal Credit Union drive-through. Both projects did not fully comply with current Code standards, although perceived safety issues were mitigated. For these reasons, the Commission requested Department staff review the current language for possible revisions.
- B. Current standards require drive-through facilities to orient toward “an alley, driveway, or interior parking area, and not a street.” Such facilities must be separated by a 10-foot landscaped buffer from the street and cannot be oriented toward a street corner (exceptions are made for walk-up teller machines and kiosks). Queuing areas cannot obstruct driveways and trash receptacles and walk-up service are required.
- C. Compliance is particularly difficult with corner lots, or if access is restricted; e.g., ODOT access restrictions. While current Code restrictions address aesthetic concerns and traffic safety with potential headlight glare (as witnessed by the above two cases) the installation of sufficient buffering/screening reduced some of these concerns making alternative approaches viable.
- D. Ordinance Exhibit “A” contains proposed new language. In many cases it is similar but divides this Section into two parts: the first addressing a drive-in or drive-through and the second addressing a walk-up window, something that may occur in the downtown. The proposed drive-through language (in *italics*) is summarized below:

Section 16.08.100.B.1

1. *Drive-Through Service*

- a. *Circulation. The overall circulation plan for a site shall not cause traffic congestion on surrounding streets and shall minimize potential nuisances to nearby residential property caused by vehicles and use of the order board.*

The objective is to minimize traffic impacts and noise on adjacent residential properties. Generally, this is less likely an issue within a commercial-zoned area.

- b. *Access and Window Location. Wherever feasible, drive-through lanes shall be accessed from the rear of a site, and run along the interior side property line.*

This is a preference and can be enforced if it is a feasible option. However, if it is not feasible, then the driveway and/or facilities may be located in a manner similar to other approved sites.

- c. *Vehicle Stacking. All drive through lanes shall provide a minimum of 80-feet of stacking as measured from the drive-up window to the entrance of the drive-through lane.*

This Section establishes minimum stacking requirements and measurement. Due to variations in car length, the calculation is based on length rather than number of vehicles.

- d. *Setbacks. Where a drive-through lane will be located between a building and a roadway, a minimum 10-foot, landscaped setback shall be required from the roadway right-of-way to the drive-through lane.*

The 10-foot setback remains a requirement and specifically must be landscaped. Clarified language specifies the measurement must be from the adjacent right-of-way and not "roadway".

- e. *Screening. The drive through lane shall be screened by a combination of plantings, berms, and/or low retaining walls at least four-feet in height.*

Recognizing the issue of headlight glare, this Section requires screening and/or buffering with a minimum height of 48". Nothing in this provision allows a violation of the clear vision requirements.

- f. *Operation. Specific design and operational conditions may be imposed with approval of the drive-through facility. These may include, but are not limited to, additional vehicle stacking, increase in screening height, regulating the hours of operation and other measures, to reduce potential impacts on surrounding properties.*

The Development Code requires an Administrative Review or Conditional Use application to establish a drive-through facility. This subsection allows the decision maker to require other design or operational conditions.

The proposed walk-up language (in *italics*) is summarized below:

Section 16.08.100.B.2

2. Walk-Up Window

- a. *Circulation. The service window shall be so located as not to interfere with pedestrian traffic along the adjacent sidewalk and vehicle traffic entering or exiting the site or adjacent properties.*

Similar to sidewalk signs, the location of the window cannot interfere with pedestrian and vehicle traffic. This may be especially critical when the building is located adjacent to an alley.

- b. *Setback. There shall be a minimum 2-foot setback between a service window and an adjacent property boundary.*

Providing a setback will effectively create a "sales" counter and reduce interference along the walkway.

- c. *Surfacing. The area where patrons place orders and receive ordered items shall be surfaced in concrete, brick, stone or other suitable surface material.*

This is a safety item to avoid migrating dirt along a public sidewalk.

- d. *Noise. The use of a loudspeaker shall be prohibited.*

This limitation is a reasonable prohibition against unnecessary noise.

- e. *Operation. Specific design and operational conditions may be imposed with approval of the walk-up facility. These may include, but are not limited to, regulating the hours of operation, screening or buffering and other measures to reduce potential impacts on surrounding properties.*

The Development Code requires an Administrative Review or Conditional Use application to establish a drive-through facility. This subsection allows the decision maker to require other design or operational conditions.

- D. Finally, in Section 16.08.100.B.3, ATMs, free-standing kiosks (e.g., "Redbox") are exempt from these restrictions provided they do not interfere with pedestrian and vehicle access.
- E. The Department sent out notice of the Code amendments to affected agencies and the Department of Land Conservation and Development; no comments were received

VI. CRITERIA AND FINDINGS

- A. 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.
- B. Section 16.28.030 identifies those agents authorized to initiate a text amendment. Conforming to provisions in this Section, the Planning Commission and City staff initiated this action.
- C. Section 16.28.040 requires the City Recorder to maintain records of all changes to the Development Code. This administrative process requires City compliance.
- D. 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 City's Plan.
- E. Section 16.28.070 requires Development Code amendments to be consistent with the City's Transportation System Plan.

FINDINGS: City staff has the authority to require applicants to conduct a Traffic Impact Study or Analysis for any new use (LDC Sections 16.12.010.B and 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. The amendments do not change these requirements. Further, the Code amendment does not change functional classifications or performance standards for City transportation routes.

- F. 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 City Council. For the record, this Commission hearing and process comply with the requirements for a legislative action.
- G. 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 goals adopted by the City.

FINDINGS: Findings in response to the above noted criteria:

1. DLCD Administrative Rules – Oregon Administrative Rules address a variety of issues including development on farmland, provisions for needed housing, requirements to expand an urban growth boundary, meeting natural resource planning requirements and similar issues. The DLCD did not identify specific Administrative Rules for the City to consider in their findings.

2. Statewide Planning Goals - Compliance with the Statewide Goals is noted as follows:

Goal 1, Citizen Involvement: The Planning Commission and City Council will 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 do not alter existing regulations that affect identified historic, cultural, or natural resources within Lebanon.

Goal 6, Air, Water and Land Resource Quality: The Code currently regulates drive-through facilities. These amendments revise some of the design requirements, granting additional flexibility. However, nothing in this amendment establishes or promotes land uses that adversely affect air, water or resource quality issues.

Goal 7, Natural Hazards: The Code amendment does not alter development requirements for natural hazard areas; these remain in force.

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: The City anticipates the Code amendment will allow greater flexibility for businesses using such facilities, providing positive economic benefits.

Goal 10, Housing: The proposed Code amendment considers design changes to drive-through facilities and therefore does not affect housing supply or 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. The amendment does not affect the City's ability to provide public services.

Goal 12, Transportation: As previously noted, the Code currently allows these types of facilities. These amendments modify the design requirements and do not create new uses or activities that significantly affect the City's transportation facilities.

Goal 13, Energy Conservation: The amendments are neutral with regard to energy conservation. For the record, all new construction must conform to applicable energy efficiency requirements.

Goal 14, Urbanization: The proposed amendments address urban uses within an urban environment, including provisions for related 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 Goal provisions, or, the Goals do not directly apply to the proposed amendments.

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 revision does not establish new regulations involving wetlands, wildlife habitat or other 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 proposed 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: As previously noted, the Code currently allows these types of facilities. These amendments simply modify the design requirements, allowing greater flexibility for individual businesses. As such, the City anticipates a positive benefit.

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

FINDINGS: The amendments do not directly apply, as they do not affect the City’s ability to meet the community’s 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: City staff has the authority to require applicants to conduct a Traffic Impact Study or Analysis for new development. 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: Uses allowed by the amendments must still comply with existing public facility requirements. Otherwise, the proposal does 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 and not the Plan or Zoning maps.

- 4. Other Facility Plans or Projects – No other plans or policies that apply to the proposed Code amendments were identified.

- H. The Code amendments provide greater flexibility for the establishment of drive-through facilities, recognizing the limitations associated with current regulations.

VII. CONCLUSION

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