



law and rules, add new temporary uses, and address other issues?

## **RECOMMENDATION:**

Pass Engrossed Ordinance No. 22-22 for the purpose of amending the Unified Development Code to respond to a Land Use Board of Appeals decision, implement changes in State law and rules, add new temporary uses, and address other issues

## **FACTS AND FINDINGS:**

### ***Procedural Findings***

- 1) The proposed code amendment are amendments to the Unified Development Code (UDC), which are legislative land use decisions under SRC 110.085. Legislative land use proceedings may be initiated by staff by preparing an ordinance bill and placing the ordinance on the Council agenda for first reading under SRC 300.1110. The City Council may schedule a public hearing on the matter, refer it to another Review Authority for review and recommendation, or decline to initiate it.
- 2) On October 24, 2022, the City Council voted to hold a public hearing on Ordinance Bill No. 22-22.
- 3) SRC 300.1110(e)(1)(A) requires that the City mail notice of the first evidentiary public hearing in a legislative land use proceeding not more than 40 days, but not less than 20 days prior to the first hearing. Amendments to the UDC require notice to the Director of the Department of Land Conservation and Development no later than 35 days before the first public hearing pursuant to SRC 300.1110(d). Because the proposed code amendment restricts some land uses, ORS 227.186 requires written individual notice to the owner of each affected property. This notice is commonly referred to as a "Ballot Measure 56 notice." All required notices have been provided in accordance with the above requirements.
- 4) On November 14, 2022, the City Council held a public hearing on Ordinance Bill No. 22-22 and voted to engross the ordinance and advance it to second reading.

### ***Proposed Amendments***

Engrossed Ordinance Bill No. 22-22 (**Attachment 1**) amends the UDC to respond to a Land Use Board of Appeals (LUBA) decision, implement changes in State law and rules, add new temporary uses, and address other issues. The proposed code amendment is included as Exhibit A of Engrossed Ordinance Bill No. 22-22 (**Attachment 2**)

- 1) *Amending commercial zones and the Industrial Commercial zone*

The proposed code amendment responds to an order issued by the LUBA in East Park, LLC vs. City of Salem. Specifically, LUBA found that the City erred in denying a conditional use permit for a proposed multifamily development in the Retail Commercial (CR) zone because the criteria for such a permit is not clear and objective. ORS 197.307 requires that local governments only apply clear and

objective standards, conditions, and procedures regulating the development of housing. Currently, multifamily housing is only allowed in the CR zone - and Commercial General (CG) and Industrial Commercial (IC) - through a conditional use permit. LUBA determined that some of the criteria for a conditional use permit are not clear and objective. Criteria, for example, include an evaluation of whether a proposed use is reasonably compatible with surrounding property. (LUBA thus ordered the City to approve the conditional use permit for the proposed multifamily development, and the City has done so.)

This proposed code amendment rectifies the issue related to clear and objective standards identified by LUBA by removing the requirement for a conditional use permit for multifamily housing in the CR, CG, and IC zones. The amendment would instead allow multifamily housing outright in the CR, CG, and IC zones if that housing is located in a mixed-use building. (A mixed-use building must include a combination of residential and nonresidential uses.) Multifamily housing as a standalone use would not be allowed.

Currently, there are roughly 1,200 properties in Salem zoned CR, CG, or IC, which are generally located in employment areas and corridors such as Fairview Industrial Drive SE, Mission Street SE, and Portland Road NE. Of those properties, roughly 40 are developed with multifamily housing, a duplex, or a triplex. That means approximately 3 percent of properties zoned CR, CG, or IC (and roughly 3.5% of land zoned CR, CG, or IC) include such housing. Under the proposed code amendment, existing uses in the CR, CG, and IC zones - including multifamily housing - would become continued uses, and such uses could be rebuilt, altered, or enlarged. As mentioned earlier, multifamily housing in a mixed-use building would be allowed outright under the proposed amendment, thus promoting such development in Salem.

In addition, the proposed amendment ensures that the CR, CG, and IC zones continue to accommodate Salem's employment needs. The Salem Economic Opportunities Analysis (EOA), adopted in 2015, determined that the Salem area has a projected deficit of commercial land. The proposed code amendment helps meet this need by ensuring that the CR, CG, and IC zones are generally preserved as employment lands and used for employment uses as opposed to standalone housing, which can be accommodated in residential and mixed-use zones.

As part of the recently-adopted Our Salem project, the City redesignated and rezoned land to accommodate Salem's housing needs - including land that allows multifamily housing outright - and as a result, Salem has met its projected housing needs and adopted the Salem Housing Needs Analysis (HNA). Specifically, the Our Salem project added land that is designated Multiple Family and Mixed Use throughout Salem. Much of the land that was redesignated to Mixed Use was previously zoned CR or CG and located along frequent transit routes, as the City aimed to encourage housing and mixed-use development near transit service. Other land zoned CR or CG was not rezoned as part of the Our Salem project, as it was intended to remain commercial land that helped meet Salem's employment needs.

## 2) *Adding new temporary use categories for Safe Parking Shelters and Construction Modulars*

### Safe Parking Shelters

The proposed code amendment adds a new category of temporary use for safe parking shelters. It codifies the existing vehicles camping program as a temporary use permit. The current program was authorized under an emergency declaration in 2020. The proposed standards generally mirror the

current program, including allowing it on property owned by nonprofits, governments, and commercial entities; limiting the hours of operation; and requiring toilets and garage service. The temporary use permit would be good for three years and could be renewed. If the proposed safe parking shelter temporary use permit is approved by the City Council, staff will bring a fee resolution forward to establish a reduced fee for this permit.

### Construction modulares

The proposed code amendment adds a new category of temporary use for construction modulares, which would allow the temporary placement of a construction modular during active construction activities. The modulares, often times referred to as job shacks, are used by contractors during large, long-term construction projects, and they house office space, breakrooms, restrooms or similar facilities during construction. The permit would also allow for uses on the site to be temporarily relocated into modulares during constructions activities. Without the temporary use provision, these modulares, which require a building permit to be placed, are subject to the development standards in the zone which are intended for permanent structures. Under the proposed code amendment, the modulares would be required to be removed at the end of the construction project.

### 3) *Implementing Senate Bill 8*

The proposed code amendment creates a new affordable housing chapter to implement Senate Bill 8, which passed during the 2021 Oregon Legislative Session. SB 8, which has been incorporated into ORS 197.308, promotes the development of affordable housing by requiring local governments to allow such housing on properties zoned for commercial uses, religious assembly, or public lands, or the housing is owned by a public body or religious corporation. (Affordable housing is defined in SB 8 as housing in which each unit is available to families with incomes of 80 percent or less of the area median income or the average of all units is available to families with incomes of 60 percent or less of area median income, and the affordability period is at least 30 years.) This proposed code amendment allows such housing in all zones except the Industrial General (IG) zone. SB 8 does not require affordable housing to be allowed in zones designated for heavy industrial uses, which in Salem, is the IG zone.

*Engrossment of ordinance:* The proposed code amendment includes additional language to clarify that how a height bonus required in ORS 197.308 applies to affordable housing in Salem. Specifically, State law requires a height bonus to be tied to the maximum density in the zone in which the housing is located. However, in zones where there is no maximum density - such as the mixed-use zones - the code amendment clarifies that the height bonus is the maximum amount prescribed in ORS 197.308 (e.g., 36 feet). This clarifying language was not included in Ordinance No. 22-22 as it was presented for first reading, so staff recommends that the City Council engross the ordinance to include this additional language.

### 4) *Implementing House Bill 4064*

The proposed code amendment implements House Bill 4064, which restricts local governments from imposing additional standards to manufactured homes that do not apply to detached single-family homes. Specifically, the proposed amendment removes the special use standards that apply to manufactured homes such as requirements for roof pitches, minimum building size, and exterior color and material. HB 4064 passed during the 2022 Oregon Legislative Session.

5) *Implementing Climate-Friendly and Equitable Communities rules*

The proposed code amendment implements several of the new State administrative rules that resulted from the Climate-Friendly and Equitable Communities (CFEC) rulemaking. The CFEC rulemaking project came in response to Governor Kate Brown's Executive Order 20-04, which directed State agencies to reduce climate pollution. As mandated by the new rules, this code amendment requires new multifamily and mixed-use buildings with at least five units to provide electrical vehicle charging capacity to 40 percent of the spaces that serve the buildings. In addition, the amendment eliminates minimum off-street parking requirements for any use within a half-mile of transit corridors that have 15-minute service as well as for a variety of other uses citywide, including affordable housing, residential care facilities, shelters for people experiencing homelessness, and dwelling units that are smaller than 750 square feet. In addition to these changes, the City is required by the new State rules to make other parking reforms, which involve different policy options. Staff anticipates bringing these options to the Council in the future.

6) *Additional changes*

The code amendment makes several other changes, including the following:

- Prohibits psilocybin production in residential zones where marijuana production is currently prohibited
- Adds psilocybin service center as an example of an outpatient medical services and laboratories
- Simplifies minimum lot size standards for housing in the Commercial Office zone
- Ensures that property annexed into the city is zoned in a manner that implement its City Comprehensive Plan Map designation
- Clarifies standards for middle housing located on flag lots and number of lots served by flag lot accessways
- Corrects and/or deletes references to zones that have previously been eliminated

***Substantive Findings***

SRC 110.085 establishes the following approval criteria for an amendment to the UDC to be approved:

- a. The amendment is in the best interest of the public health, safety, and welfare of the City;  
and
- b. The amendment conforms with the Salem Area Comprehensive Plan, applicable statewide planning goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

Findings demonstrating the proposal's conformance with the applicable approval criteria are included in Exhibit B to Engrossed Ordinance Bill No. 22-22 (**Attachment 3**).

**BACKGROUND:**

The City periodically updates the UDC to respond to changes in State law and to address issues that

have arisen since the last code amendment. The City most recently overhauled the UDC with the adoption of the Our Salem project last summer. This proposed code amendment responds in part to an order issued by LUBA in East Park, LLC vs. City of Salem.

Eunice Kim  
Long Range Planning Manager

**Attachments:**

1. Engrossed Ordinance Bill No. 22-22
2. Exhibit A to Engrossed Ordinance Bill No. 22-22 - Code Amendment
3. Exhibit B to Engrossed Ordinance Bill No. 22-22 - Findings