



Staff Report

File #: 22-19

Version: 1

Date: 1/24/2022

Item #: 5.b.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

Deliberations - 2021 Unified Development Code Update

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Natural Environment Stewardship; Welcoming and Livable Community

SUMMARY:

Deliberations on proposed amendments to Salem Revised Code Title X (Unified Development Code) and various other identified chapters to comply with recent changes in State law, including House Bill 2001, and addressing issues that have arisen in the application of the Unified Development Code (UDC) since 2019; together with a proposed legislative zone change to change the zoning of those properties within the downtown in the General Retail/Office overlay zone that are currently zoned RH (Multiple Family High-Residential), CO (Commercial Office), and CR (Retail Commercial) to CB (Central Business District).

ISSUE:

Shall the City Council engross Ordinance Bill No. 13-21 as recommended under section 2 of this report and advance to second reading?

RECOMMENDATION:

Engross Ordinance Bill No. 13-21 as recommended under section 2 of this report and advance to second reading.

FACTS AND FINDINGS:

Procedural Findings

1. Pursuant to SRC 300.1110(a)(2), the Planning Commission may initiate a legislative land use proceeding by the adoption of a resolution referring the matter to public hearing for review and recommendation to the City Council.
2. On August 17, 2021, the proposed code amendments were initiated by the Planning Commission with the adoption of Resolution No. 21-01. Subsequently on September 7, 2021, the proposed legislative zone change was initiated by the Planning Commission with the adoption of revised Resolution No. 21-01 that added the proposed legislative zone change to the resolution in addition to the proposed code amendments.
3. ORS 197.610 and OAR 660-018-0020 require that notice be provided to the Department of Land Conservation and Development (DLCD) on any proposed amendment to a local land use regulation at least 35 days prior to the first public hearing. Notice to DLCD was initially submitted on August 17, 2021 and was subsequently followed by a revised notice on August 31, 2021, which included the proposed legislative zone change in addition to the proposed code amendments.
4. On September 10, 2021, notice of the public hearing before the Planning Commission was mailed to all affected property owners as required under ORS 227.186. Public notice, as required under SRC 300.1110(e)(1)(A), was also mailed September 15, 2021, and public notice was published in the Statesman Journal newspaper, as required under SRC 300.1110(e)(2), on September 23, 2021, and September 30, 2021.
5. On October 5, 2021, a public hearing was held before the Planning Commission to receive public testimony on the proposal. The Planning Commission voted to recommend City Council approval of both the proposed amendments and the legislative zone change, together with additional revisions recommended by staff included in the October 5, 2021, supplemental staff report and further additional recommended revisions by the Planning Commission
(Attachment 1).
6. On November 22, 2021, the City Council conducted first reading of Ordinance Bill No. 13-21 and voted to hold a public hearing on the proposed amendments. The hearing was scheduled for December 6, 2021.
7. Notice of the City Council public hearing was mailed pursuant to SRC requirements *on* November 23, 2021, and published in the Statesman Journal newspaper.

8. On December 6, 2021, the City Council conducted a public hearing to receive evidence and testimony on the proposal. In consideration of the public testimony provided, the Council subsequently voted to continue the public hearing until December 13, 2021, in order to allow for submission of additional public testimony and to allow for further consideration of the proposed amendments.
9. On December 13, 2021, the City Council voted to close the public hearing and leave the written record open until January 10, 2021, for submission of additional written evidence and testimony.

Proposed Code Amendments

1. A general summary identifying and describing the proposed amendments is included as **Attachment 2**. The complete text of the proposed amendments is included Ordinance Bill No. 13-21 (**Attachment 3**).
2. **Recommended further revisions engrossing ordinance bill:**

Based on the public comments and testimony provided on the proposed amendments that are described later in this report, staff recommends that Ordinance Bill 13-21 be further revised as identified in this section. The recommended further revisions (“engrossments”) address the requirements for managed temporary villages for the unsheltered; minimum parking requirements for multi-family housing for people with intellectual and developmental disabilities; maximum parking requirements for middle housing; tree preservation requirements; the proposed amendments to the Fairview Mixed-Use (FMU) zone; and the effect of the proposed amendments on subsequent applications for extension of existing land use approvals.

a) Managed temporary villages (SRC Chapter 701).

As staff has continued to work to identify locations for managed micro shelter and safe vehicle parking shelter sites throughout the City for the unsheltered under the current emergency authorization, the need for further revisions to the proposed standards for managed temporary villages have been identified beyond those originally recommended to the Planning Commission on October 5th. In order to provide greater flexibility in the location, siting, and operation of managed temporary villages, the following further revisions to the proposed standards for managed temporary villages are recommended:

- ***Maximum number of renewals allowed.*** Increase the maximum number of temporary use permit renewals allowed to nine. Currently a maximum of four annual renewals are proposed to be allowed for managed temporary villages, allowing them to operate at a location for a total of five years. However, in recognition of the likely continuing need for this type of transitional shelter and the efforts and resources that will

go into their siting, approval, and establishment at a site, allowing them to operate for a greater amount of time by receiving up to nine renewals, for a maximum total of 10 years, will help to promote greater operational stability and less disruption. If a managed temporary village is found to be operating in a manner which doesn't conform to the applicable standards, an application for renewal may be denied.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(1)(B) on page 2 of the attachment.

- ***Allowed locations in residential zones.*** Expand where managed temporary villages may be located within residential zones to include properties that are owned or leased by a government entity. Currently managed temporary villages are only proposed to be allowed in residential zones when located on the site of a religious assembly use. Allowing managed temporary villages on land within residential zones that is owned or leased by a government entity expands the locations where these facilities may be allowed. The specific additional proposed location standards included under SRC 701.030(c)(2) would continue to apply.

Because the recommended further revisions affect the allowed uses section of multiple zones, they have not been included in Attachment 4. Staff therefore recommends that the City Council direct staff to engross the ordinance bill to add managed temporary villages as a permitted use on land owned or leased by a government entity in the Residential Agriculture (RA), Single-Family Residential (RS), Duplex Residential (RD), Multiple Family Residential (RM-I), Multiple Family Residential (RM-II), and Multiple Family High-Rise Residential (RH) zones.

- ***Locations within floodplains.*** Allow managed temporary villages to be located within mapped flood plains subject to meeting the requirements of the City's Floodplain Overlay Zone (SRC Chapter 601).

Currently the proposed amendments specifically prohibit managed temporary villages from being located within mapped floodway or floodplain areas. This proposed siting restriction, however, has raised concerns that it further limits potential sites within the community that are already currently difficult to find. Allowing managed temporary villages to be sited within floodplains subject to the requirements of the City's floodplain ordinance treats the use similarly to other uses that are allowed within floodplains when approved and developed in conformance with the requirements of SRC Chapter 601. In addition, managed temporary villages approved within a mapped flood plain are also proposed to require the submittal of a flood warning and response plan that includes advance warning coordination and an evacuation plan for enhanced safety. The

restriction prohibiting managed temporary villages from being located within mapped floodways is proposed to remain unchanged.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(b)(5) and SRC 701.030(c)(2)(B)(v) on page 2 of the attachment.

- ***Locations next to a basic education use.*** Clarify that managed temporary villages may not be located adjacent to a basic education use, which includes grades 1-12, but would not include day care/preschools. Provides that a managed temporary village would continue to be eligible for renewal if a basic education use locates adjacent to the village *after* the village has received approval.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(1)(B) and 701.030(c)(2)(B)(ii).

- ***Maximum number of shelter units.*** Clarify that any shelter units provided inside a building don't count towards the maximum number of shelter units allowed on a site.

Currently the maximum number of shelter units allowed within a managed temporary village is 40. There are circumstances envisioned, however, where a managed temporary village may be located on the same site as a building that will also include shelter units within it. The shelter units within a managed temporary village, however, are intended to be located outside of a building and the 40-shelter unit maximum is therefore not intended to apply to any shelter units provided within a building on the same site. Clarifying that the maximum shelter unit standard doesn't apply to shelter units within a building helps to increase the number of unsheltered that can be served on a site without increasing potential impacts that might otherwise occur if additional shelter units were allowed outside of a building.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(3)(A) on page 2 of the attachment.

- ***Required setbacks.*** Revise proposed setbacks to provide greater flexibility in siting shelter units and supporting facilities. Based on experience from siting existing managed micro shelter and safe vehicle parking shelter sites in the City and the challenges

associated with finding suitable locations, the need for flexibility in terms of site setbacks has been identified.

Currently a minimum 15-foot perimeter setback is required for managed temporary villages. No shelter units, storage areas, sanitation facilities, off-street parking and vehicle use areas, or any other structures or areas associated with the use may be located within the setback area.

In order to provide additional siting flexibility, required setbacks are recommended to be revised to reduce the minimum setback abutting industrial and employment zoned properties (*Employment Center (EC), Industrial Commercial (IC), Industrial Business Campus (IBC), Industrial Park (IP), General Industrial (IG), Intensive Industrial (II), and Second Street Craft Industrial Corridor (SCI)*) to five feet while maintaining a minimum required 15-foot setback abutting streets and all other zones. Additionally, it's recommended that existing paved off-street parking and vehicle use areas on sites be allowed to be used for the placement of shelter units and the parking of vehicles regardless of their setback, and that required perimeter fencing/screening for the managed temporary village be allowed within the required setback area.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(6)(A) on pages 4 and 5 of the attachment.

- **Attached structures.** Allow shelter units that are attached. Currently the proposed amendments imply that shelter units must be detached. However, there are companies that manufacture structures that include shelter units that are attached in one structure. In order to ensure that the proposed amendments don't preclude the possibility of utilizing temporary structures that include attached shelter units, further revisions are recommended to clarify that shelter units suitable for attachment (*excluding tents, vehicles, etc.*) may be attached in one structure.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(6)(D)(i) on page 5 of the attachment.

- **Required separation/clear space around shelter units.** Decrease the minimum separation/clear space required around shelter units to six feet. Currently a minimum separation/clear space of eight feet is proposed around shelter units. However, as the required separation between shelter units increases, the usable area of the site that can be utilized for the siting of shelter units is correspondingly decreased. As such, concerns have been expressed regarding the current minimum 8-foot separation requirement and its impact on locating shelter units on a site. In order to address these concerns and provide for the more economical use of limited on-site space while at the same time promoting safety and pedestrian accessibility, a minimum separation of six feet is proposed. The minimum 6-foot separation is proposed to be required around each shelter unit and any structure containing attached shelter units.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(6)(D)(ii) on page 5 of the attachment.

- **Surfacing requirements for parking and vehicle use areas.** Allow shelter units provided in vehicles and parking and vehicle use areas to be located on either a paved or compacted gravel surface. Currently the proposed standards require shelter units provided in vehicles and parking and vehicle use areas to be located on a paved hard surface material meeting the Public Works Design Standards. Comments from shelter operators express concern, however, over the requirement for these areas to be paved and instead suggest that compact gravel be allowed in-lieu of paving to minimize the amount of alterations required to existing sites.

In order to address this concern, further revisions are proposed to the vehicle use area surfacing requirements included in the amendments to allow shelter units in vehicles and parking and vehicle use areas to be located on either a paved surface or on a compacted gravel surface. In order to minimize any potential impacts associated within the allowance of compacted gravel surfaces, additional standards are proposed requiring a minimum 10-foot long paved driveway leading into the property to reduce the potential for gravel being tracked into the public street right-of-way, as well the installation of a physical barrier to prevent vehicle access and parking on the gravel surfaces when the managed temporary village is no longer in operation on the property.

The proposed further revisions are identified in **Attachment 4** and specifically modify SRC 701.030(c)(6)(D)(iii) and SRC 701.030(c)(6)(F) on page 5 of the attachment.

- **Vehicle requirements.** Eliminate standard requiring vehicles to be operable. Currently the proposed standards require that any vehicle used as a shelter unit must be operable. Comments from shelter operators indicate, however, that vehicles utilized by individuals may not always be operable and therefore such a standard can be a barrier to shelter access. In order to address this concern, the standard requiring vehicles used as shelter units to be operable is recommended to be removed.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(6)(D)(vii) on page 5 of the attachment.

- **Bicycle parking.** Reduce the minimum required bicycle parking for managed temporary villages to 0.25 spaces per shelter unit. Currently the minimum bicycle parking for managed temporary villages is one space per shelter unit. Comments from shelter operators indicate, however, that their current experience is that roughly one-quarter of shelter residents require space for parking of bicycles. In order to align the proposed minimum bicycle parking requirement with the anticipated need, it is recommended that the standard be reduced to a minimum of 0.25 spaces per shelter unit. The proposed revision would result in a minimum of 10 bicycle parking spaces being required for a

managed temporary village of 40 shelter units and since the standard is a minimum it wouldn't bar the operator from providing additional bicycle spaces if there is an increased demand.

The proposed further revisions are identified in **Attachment 4** and specifically modify proposed SRC 701.030(c)(6)(E) on page 5 of the attachment.

b) Parking requirements (SRC Chapter 806).

Two further revisions are recommended to the off-street parking requirements included under SRC Chapter 806. They include the following:

- ***Minimum parking requirement for multi-family housing people with intellectual and developmental disabilities.*** Amend the off-street parking requirement for multiple family uses to establish a standard specific to multi-family housing serving people with intellectual and developmental disabilities.

As identified in the summary of the public testimony provided, comments were received from an organization in the community who provides housing and services to individuals with intellectual and developmental disabilities. As indicated in their comments, they request that the minimum off-street parking requirements for multiple family development be amended to require a minimum of one space per four dwelling units, consistent with what is currently required for low income elderly housing, in order to better align the minimum parking requirement of the code to the needs of the population served - who rarely have a vehicle or a driver's license.

In order to address this identified need, the multiple family parking requirements included under SRC Chapter 806 are recommended to be further revised to establish a minimum off-street parking requirement of one space per four dwelling units for multiple family developments housing people with intellectual and developmental disabilities. The proposed further revision is included in **Attachment 4** and specifically modifies SRC 806.015(a) - Table 806-1, on page 7 of the attachment.

- ***Maximum off-street parking for middle housing.*** Establish a maximum off-street parking requirement for middle housing.

The maximum allowed off-street parking for a particular use under the code is generally based on its corresponding minimum off-street parking requirement. For uses where a minimum off-street parking requirement is not established, a maximum parking requirement still applies, but the maximum parking standard is established under a separate table in the parking standards of the development code (SRC 806.015(d)(2) - Table 806-2B). Based on the Planning Commission's recommendation to eliminate the minimum off-street parking requirements for middle housing, a new maximum off-street parking standard needs to be established to correspond to the eliminated minimum and

prevent a gap in the development code.

The current maximum off-street parking requirement for three family, four family, and multiple family uses located within the CSDP area or within one-quarter mile of the Core Network (*where no minimum off-street parking for these uses is required*) is 1.75 spaces per dwelling unit.

In order to establish a maximum off-street parking requirement for middle housing that is consistent with the current maximum parking applicable to three family, four family, and multiple family uses located within the CSDP area or within one-quarter mile of the Core Network, SRC Chapter 806 is recommended to be further revised to establish a maximum off-street parking requirement of 1.75 spaces per dwelling unit.

The proposed further revisions are included in **Attachment 4** and specifically modify SRC 806.015(d)(2) and Table 806-2B, on page 13 of the attachment.

c) **Tree preservation requirements (SRC Chapter 808).**

In order to address issues raised in the public testimony concerning the amendments to the tree preservation ordinance, the following additional further revisions are recommended:

- **Definition of arborist.** Revise the definition of arborist to clarify that they must be certified by either the International Society of Arboriculture (ISA) or the American Society of Consulting Arborists (ASCA). The current definition of arborist includes individuals certified by the ISA, the American Society of Consulting Arborists, or a similar professional organization.

The proposed further revision is included in **Attachment 4** and specifically modifies SRC 808.005 on page 14 of the attachment.

- **Definition critical root zone.** Revise the definition of critical root zone to allow the critical root zone of non-significant trees to be determined by an arborist. The current proposed definition requires the critical root zone of all trees to be established based on a ratio of one-foot of radius for each one-inch of dbh of the tree.

The recommended revision to allow the critical root zone of non-significant trees to be determined by an arborist is in response to the recommendations provided by the representatives of the Home Builders Association and provides the option of allowing a certified professional to determine the applicable critical root zone based on the specific characteristics of the tree and the associated site conditions.

Under the revised definition, the critical root zone of significant trees will continue to be based on the one-foot of radius for each one-inch of dbh ratio. The proposed further

revision is included in **Attachment 4** and specifically modifies SRC 808.005 on page 14 of the attachment.

- **Definition of significant tree.** Revise the definition of significant tree to include Douglas fir with a dbh of 30 inches or greater and exclude those trees that the City's Urban Forester identifies should not be classified as significant. The current proposed definition of significant tree included with the amendments expands the definition to include Oregon white oaks down to 20 inches dbh and any other tree (*excluding Douglas fir*) with a dbh of 30 inches or greater. Further review of the proposed amendments by the Urban Forester, however, indicates that there are certain species of trees that should not be considered significant regardless of their size. Trees that the Urban Forester recommends should not be considered significant include:
 - Tree of heaven (*Ailanthus altissima*);
 - Empress tree (*Paulownia tomentosa*);
 - Black cottonwood (*Populus trichocarpa*); and
 - Black locust (*Robinia pseudoacacia*).

In addition, the Planning Commission's October 5, 2021, recommendation to the City Council included a change to the proposed definition of significant that excluded Douglas fir with a dbh of 30 inches or greater.

Further review of this recommended revision by the Urban Forester, however, indicates that Douglas fir with a dbh of 30 inches or greater should be retained in the proposed amended definition of significant tree due to the importance of the species in providing wildlife habitat, retaining a natural ecosystem, and increasing the City's tree canopy.

In order to address the comments provided from City's the Urban Forester, the definition of significant tree is recommended to be further revised to exclude the specific trees identified that should not be considered significant and to include Douglas fir with a dbh of 30 inches or greater as originally recommended by staff.

The proposed further revisions are included in **Attachment 4** and specifically modify SRC 808.005 on page 15 of the attachment.

- **Preservation of trees on lots or parcels 20,000 square feet and greater.** Clarify that the tree preservation requirements of SRC 808.025 applicable to lots or parcels 20,000 square feet or greater also apply to middle housing development. Currently the tree preservation requirements of SRC 808.025 apply to single family and two-family residential development. Under House Bill 2001, standards applicable to middle housing development must be consistent with those applicable to single family residential development. Amendments are proposed throughout SRC Chapter 808 to establish this consistency, but in the original drafting of the amendments the requirements of SRC 808.025 were inadvertently left out and are now recommended to

be included in the ordinance.

The proposed further revisions are identified in **Attachment 4** and specifically modify SRC 808.025 on page 16 of the attachment.

- ***Additional factors to consider in the approval of tree removal permits, tree conservation plans, and tree conservation plan adjustments.*** Establish additional factors to be considered in the review of tree removal permits, tree conservation plans, and tree conservation plan adjustments where the approval criteria require a determination that there are no reasonable design alternatives that would enable preservation of a tree or trees.

The City's tree preservation ordinance currently includes specific approval criteria for tree removal permits, tree conservation plans, and tree conservation plan adjustments that require a determination to be made regarding whether there are reasonable design alternatives that exist which would enable the preservation of a tree or trees when such applications propose the removal of significant trees or trees in riparian corridors, or propose less than the minimum percentage of trees required to be preserved.

Comments submitted from representatives of the Home Builders Association expressed concern about the level of uncertainty and discretion associated with the "no reasonable design alternatives" standard, especially as it relates to the proposed expanded definition of significant tree, and proposed a revision to specify clear and objective standards for the removal of significant trees when necessary for streets, utility easements, driveway approaches, and increasing density.

In consideration of these identified concerns, staff recommends that the approval criteria for tree removal permits, tree conservation plans, and tree conservation plan adjustments be further revised to introduce additional factors to be considered in evaluating whether or not reasonable design alternatives exist and to help further define those circumstances when tree removal is warranted. The recommended additional factors provide for consideration of required streets, utilities, site topography, residential density, and other factors in determining whether a tree removal is necessary; but do not include consideration of driveway location due to the inherent greater flexibility in siting driveways in a manner to avoid impacts to trees.

The additional factors will apply in those situations when an approval criterion for a tree removal permit, tree conservation plan, or tree conservation plan adjustment requires a determination that there are no reasonable design alternatives.

The proposed further revisions are identified in **Attachment 4** and specifically modify SRC 808.030(d)(5), SRC 808.035(d)(2), and SRC 808.040(d)(2) on pages 18-19, 21, and 23-24 of the attachment.

- ***Mitigation measures for tree conservation plans and tree conservation plan***

adjustments proposing tree preservation of less than 30 percent. Establish mitigation measures for tree conservation plans and tree conservation plan adjustments that propose preservation of less than 30 percent of the trees on the property.

Under the current tree preservation ordinance, mitigation is not specifically required for tree conservation plans or tree conservation plan adjustments preserving less than the minimum required percentage of trees. Replanting is, however, typically required as a condition of approval.

In the comments submitted by the representatives of the Home Builders Association, an amendment was suggested that would allow the removal of additional significant trees if the subdivisions were designed with a solar panel offset. While staff does not support allowing the removal of additional significant trees if replaced with solar panels, the concept of providing mitigation measures other than tree replanting in certain circumstances to help achieve the City's climate and density goals is one that can be implemented in the code. As such, staff recommends that the amendments be further revised to establish mitigation measures that an applicant can choose from in those situations when a tree conservation plan or tree conservation plan adjustment proposes to preserve less than the minimum required 30 percent of the trees on the property.

In order for a tree conservation plan or tree conservation plan adjustment to be approved preserving less than the minimum required 30 percent, it must first, however, be demonstrated that there are no reasonable design alternatives that would enable a minimum of 30 percent of the trees to be preserved. In those situations where there are no reasonable design alternatives that would enable a minimum of 30 percent of the trees on the property to be preserved, any combination of one of the following mitigation measures would be required to be provided for each tree removed in excess of 70 percent:

- *Residential density increase.* One middle housing dwelling unit or accessory dwelling unit (ADU) provided for each tree removed;
- *Solar power off-set.* One solar array provided for each tree removed;
- *Electric vehicle charging.* One residential electric vehicle charging station for each tree removed;
- *Open space lot.* An open space lot reserved in the development that is planted with two trees for each tree removed.

The proposed further revisions are identified in **Attachment 4** and specifically modify SRC 808.035(d)(1)(E), SRC 808.035(e), SRC 808.040(d)(1)(E), and SRC 808.040(e) on pages 20, 21-22, 23, and 24 of the attachment.

d) Amendments to the Fairview Mixed-Use (FMU) zone (SRC Chapter 530).

As indicated in the summary of the public testimony provided, comments were received both in favor and in opposition to the proposed amendments to the Fairview Mixed-Use (FMU) zone. The one comment received in opposition to the proposed amendments recommends that the City Council not adopt the proposed revisions to the Fairview Mixed-Use (FMU) zone and indicates that if the amendments are adopted, an appeal to the Land Use Board of Appeals (LUBA) will likely follow.

Because the proposed ordinance includes a variety of amendments including some which are time sensitive, in the case of the amendments implementing the middle housing requirements of House Bill 2001, and which must be adopted by a certain date, staff recommends that the City Council direct staff to establish a separate ordinance for the proposed amendments to the FMU zone.

Establishing an ordinance specific to the proposed amendments to the FMU zone will allow for any appeal of the proposed FMU zone amendments to be addressed separately and avoid any unnecessary delay to the adoption of the amendments implementing HB2001.

e) Effect of amendments on the extension and expiration of approved land use applications.

For existing land use applications that have gone through their respective review process and have been approved but development has not yet commenced prior to the expiration date of the approval, the City's land use procedures ordinance, pursuant to SRC 300.850, provides that, when applicable, such approvals may be extended through either a Class 1 or Class 2 extension. A Class 1 extension may be approved when there have been no changes to the standards and criteria used to approve the original application and a Class 2 extension may be approved when there have been no changes to the standards and criteria used to approve the original application that would require modification of the original approval.

Because the proposed amendments included with the ordinance bill modify and update various standards throughout the development code it's possible that some existing land use approvals that were issued prior to the effective date of this ordinance and some land use applications that are currently under review and being processed would not be able to be approved for an extension if development under the approval had not already commenced prior to the decision expiration date because the proposed changes to the standards would require a modification of the original approval.

It is not the intent of the proposed amendments, however, to invalidate existing land use approvals, or existing land use applications that are being reviewed under current standards, or to preclude them from being extended when there is still time remaining under their original approval. In order to ensure that the proposed amendments do not unintentionally prevent the approval of extensions to existing land use decisions that have been through the review process and approved, or existing land use applications that are currently submitted

and under review based on the current standards, staff recommends that the City Council direct staff to add a section to the ordinance bill specifying that:

Land use applications submitted and/or approved prior to the effective date of this ordinance that would require Class 2 extension approval as a result of changes to development standards and criteria included in this ordinance may, notwithstanding the approval criteria for Class 2 extensions included under SRC 300.850(b)(4)(B), receive Class 2 extension approval provided the decision has not expired and there are remaining extensions available. Nothing in this section shall be construed to grant more time or additional extensions beyond that which is otherwise allowed under the original approval.

Because the above identified revisions aren't currently included in the ordinance, staff recommends that the City Council direct staff to engross the ordinance to include these additional recommended changes.

Public Outreach & Testimony

1. The proposed amendments were presented to the Planning Commission through a series of work sessions that were held on June 1, 2021, June 15, 2021, July 20, 2021, and August 16, 2021. The public was invited to attend and staff publicized the work sessions through emails to an interested parties list of roughly 2,500 people.

In addition, staff held a series of virtual informational meetings where downtown property owners were invited to attend to learn more about the proposed changes to the Central Business District (CB) zone and the proposed legislative zone change to CB.

2. **Public testimony for Planning Commission hearing.** Public testimony on the proposed amendments was received both prior to and at the Planning Commission public hearing. Testimony received indicated, in summary, support for various elements of the proposed amendments including the proposed revisions relating to transit requiring the construction of transit stops when needed as a condition of development and including the Transit District on list of agencies to receive notice of land use applications and legislative land use proposals; the revisions allowing self-service storage as a special use within existing buildings in the CB (Central Business District) zone that are located outside the Salem Downtown Historic District; the elimination of commercial parking as a permitted use in the ESMU (Edgewater/Second Street Mixed-Use Corridor) zone; and the increase in the variety of poultry allowed and the number of birds that may be kept.

Several comments were provided concerning the proposed amendments to the City's tree preservation ordinance (SRC Chapter 808). Comments received indicated support and opposition to those amendments. Comments received in support of the amendments expressed the benefits the proposed amendments will have on improving the ability of the City to maintain the City's tree canopy and the environmental benefits that will have. Comments received in opposition to the amendments expressed concerns regarding the impacts the proposed

amendments will have on housing development and housing affordability within the City as a result of the proposed expanded tree protection requirements.

In addition to the testimony provided in support of the proposed amendments, testimony was also received expressing concerns pertaining to the definitions of "waterway" and "riparian corridor" within the code and how they relate to the new proposed waterway setback for middle housing required under State House Bill 2001 and the riparian corridor tree and vegetation protection requirements under the City's tree protection ordinance; the proposed revisions allowing managed temporary villages for the unsheltered; the proposed standards for cottage housing included under SRC Chapter 700 (Special Uses); the requirement that new dwellings on existing lots abutting an alley take access from the alley; and the requirement that middle housing provide a minimum of one off-street parking space per dwelling unit.

The written testimony provided concerning the proposed amendments for the Planning Commission hearing is included as **Attachment 5**.

- 3. Public testimony for City Council hearings.** Additional public testimony on the proposed amendments was received for both the December 6, 2021, and December 13, 2021, Council hearings, as well as during the open record period which ended on January 10, 2022.

Testimony submitted during the December 6th and December 13th Council hearings is included as **Attachment 6** and additional testimony submitted during the additional open record period is included as **Attachment 7**.

A summary of the testimony received, organized by general topic, is provided below.

- a) Keeping of Poultry and Other Animals (SRC Chapters 50 & 95).** Comments were received both in favor and in opposition to the proposed amendments increasing the number of and variety of poultry that may be kept in the City. A comment was also provided in opposition to the allowance of keeping miniature swine.

Comments in favor of the amendments express support, in summary, because:

- ❖ Increasing the variety of poultry that may be kept to include smaller birds results in less space being needed than for chickens and tighter coops that should limit access to feed by rodents and other pests.
- ❖ Smaller birds are a great option for people to have more control over their food source, and due to their small size and impact they will be the best option for citizens while we continue to build density in Salem.

Comments in opposition to the amendments express concerns pertaining to the following:

- ❖ Increasing the amount of poultry that may be kept will attract more vermin including

- rats and possums going after both the poultry and their eggs.
- ❖ Increasing the amount of poultry that may be kept to 12 poultry per lot will result in more nuisances and impacts on adjacent residents, including smell and flies. It is recommended that if more poultry than six per lot are proposed to be allowed, then they should be required to be located on a lot with a larger minimum backyard size.
- ❖ Keeping of poultry is an attack on single family home owners that pay high property taxes that choose not to have livestock near their home.
- ❖ Poultry and pigs do not belong in single family neighborhoods because these animals are hazardous to neighbors through disease, pet cats and dogs, and the lack of clear standards and real City enforcement of codes and rules.

Staff Response: The proposed amendments respond to a need identified by members of the community to increase the number and variety of poultry that may be kept in the City. The proposed increase in the variety of poultry allowed allows for other smaller types of birds, such as quails, doves, and pigeons to be kept to meet resident's needs and because these species are smaller a slight increase in the maximum number which may be kept has also been proposed. Keeping poultry can help individuals to live more sustainably and self-sufficiently when it comes to their food sources and standards are in place for the keeping of these birds to minimize potential impacts on abutting properties.

In regard to the keeping of miniature swine, this use has been allowed in the code for quite some time. The proposed amendments simply relocate the standards currently in place for the keeping of miniature swine from their current location under SRC Chapter 95 (Miscellaneous Offenses) to SRC Chapter 50 (Property Maintenance) so the standards for keeping of animals within the City can be better grouped together in one location in the code.

- b) Property Boundary Verifications (SRC Chapter 205).** Several comments were received expressing concern and opposition to the proposed elimination of the Property Boundary Verification Process included under SRC 205.065. Comments received indicate, in summary, that the property boundary verification process should not be eliminated because it's an effective tool for the development community to bring projects to market in a timely manner without unnecessary process that adds time and money to the City's review process and to the private sector. It is explained that elimination of the property boundary verification process will have unintended consequences that will negatively impact the ability to develop properties within the City. It is indicated that the property boundary verification process allows a property owner that owns contiguous lots to establish the exterior boundary line of the lots as the property line for building permit purposes, allowing development of the entire parcel as a single unit of land without requiring consolidation and avoiding the significant costs and delay associated with serial property line adjustment and replat processes.

Staff Response: As identified in the applicability section of the property boundary

verification process included under SRC 205.065(a), the purpose of a property boundary verification is to provide a process where the outside boundary of two or more contiguous units of land held under the same ownership may be established as the property line for purpose of application of the **Building Code**. A property boundary verification does not however, serve any function in consolidating multiple contiguous properties held under the same ownership as one unit of land for purposes of application of the UDC.

In the case where a property boundary verification has been approved, a building is allowed to be located over interior property lines without the need to provide building separation or firewalls that would otherwise be required under the Building Code had no property boundary verification been approved, but the building and any other development on the site, including off-street parking areas, must still comply with the applicable setbacks of the UDC adjacent to those interior property lines. As such, property boundary verifications create a conflict where setbacks no longer apply under the building code but still apply under the UDC. The only way to then eliminate the corresponding required setback under the UDC is for an applicant to apply for a zoning adjustment, which in itself adds time, cost, and uncertainty to a development project. Zoning adjustments can only be approved if the applicable approval criteria are met. One of the applicable zoning adjustment approval criteria requires the applicant to demonstrate that the purpose underlying the standard proposed for adjustment is either clearly inapplicable to the development or equally or better met by the proposed development. In the case of an applicant requesting to eliminate a required 5-foot building setback applicable on both sides of an interior property line, it is difficult to provide sufficient findings demonstrating how no building setback equally or better meets the intent of providing the required 5-foot setback.

Property boundary verifications also create confusion in that although they allow buildings to be constructed over continuous property lines at the point in time when the contiguous properties are under the same ownership, but property boundary verification approval does nothing, however, to actually consolidate the existing properties into one lot. As such, despite the approval of a property boundary verification, the underlying properties continue to exist as legal units of land which can be sold off at any time. If one or more of the units of land which make up the site are sold off separately, any building that was approved to be constructed over the property lines pursuant to the property boundary verification approval will become nonconforming under the Building Code unless it was designed to include the necessary firewalls adjacent to those interior property lines.

An additional problem with property boundary verifications is that it is a type of application that is not specifically recognized under ORS Chapter 92, the chapter of the Oregon Revised Statutes that identifies State requirements for the division and reconfiguration of land. Further, the allowance of buildings to be constructed over internal contiguous property lines through the property boundary verification process also has the potential to conflict with the provisions of ORS 209.150, which requires any person who has disturbed or destroyed any survey monument of record in the office of the county surveyor or county clerk to cause a professional land surveyor to reference and replace the monument within 90 days of the removal, disturbance, or destruction. When a building has been approved to be constructed

over a property line and there are existing survey monuments that exist along that line which will be destroyed through the construction process, it will not be possible to replace those survey monuments as required under this statute.

In order to avoid the problems associated with property boundary verifications, the best way to consolidate multiple lots under contiguous ownership to facilitate redevelopment is to go through either the property line adjustment or replat process. Both processes are recognized under ORS 92 and result in an actual consolidation of the lots and elimination of interior property lines. The review processes associated with these applications is not unnecessarily burdensome and they result in a better solution that does not require applicants to apply for corresponding zoning adjustments to eliminate UDC required setbacks that may or may not be able to be approved.

- c) **Class 3 Site Plan Review Approval for Developments Involving Conditions of Approval (SRC Chapter 220)**. Two comments were received expressing concern about the proposed amendment requiring Class 3 Site Plan Review approval for applications that require conditions of approval to be placed on them. It is explained that this amendment seems needlessly broad as many small and otherwise inconsequential developments will be forced to go through a lengthy and costly process. It is indicated that this should be revised to be more flexible as to not inhibit small business and other budget-constrained developments from otherwise making improvements.

Staff Response: The proposed amendment to require Class 3 Site Plan Review for applications that involve placement of conditions on the approval will not result in additional process or cost burdens on applicants because any application that currently requires a condition of approval in order to meet an approval criterion or development standard is considered either a land use decision or limited land use decision requiring Class 3 Site Plan Review. Under the proposed amendments, developments that meet the applicable development standards of the code, and therefore do not need to be conditioned, will continue to be processed as either Class 1 or Class 2 Site Plan Reviews.

The proposed amendment is intended to address situations that have arisen in the past where an applicant has volunteered to have a condition placed on their development approval, but because the application otherwise met the applicable standards of the code and was being processed as a Class 2 Site Plan Review, a condition could not be placed on it. The proposed amendment addresses this issue and makes it clear that in those situations, the application can instead be processed as a Class 3 Site Plan Review.

- d) **House Bill 2001 (Middle Housing - Various Chapters)**. Comments were received both in favor and in opposition to the proposed amendments implementing House Bill 2001. Comments in favor of the amendments express support because of the effect they will have on promoting greater housing variety and affordability to better meet the needs of the City's diverse population. The comments also express support for the Planning Commission's recommendation to eliminate the minimum off-street parking requirements for middle housing because it will allow the flexibility that this type of residential development will need

to be efficient and successful for the community members they are intended to serve.

Comments in opposition to the amendments express concerns about the impacts that allowing middle housing in single family residential neighborhoods will have on the character and livability of those neighborhoods. Concern and opposition was also expressed regarding the Planning Commission's recommended elimination of the off-street parking requirement for middle housing. The comments explain, in summary, that:

- ❖ A minimum of one off-street parking space per dwelling unit should be required for middle housing as originally recommended by staff.
- ❖ Not requiring any parking for middle housing is unfair to existing and future single family and multifamily residents as it shifts the demand for parking to the public right-of-way which other residents, visitors, and delivery vehicles are already competing for.
- ❖ It's not reasonable to assume all residents in middle housing units will not have a vehicle.
- ❖ Eliminating the minimum off-street parking requirement for middle housing will result in a disservice to both current homeowners and potential renters of middle housing because people will not suddenly give up their vehicles to move into a middle housing development.
- ❖ If no off-street parking is required and no on-street parking is available, it is uncertain where people will park.
- ❖ Not requiring off-street parking for middle housing will negatively affect city infrastructure, add to traffic congestion, affect emergency services, and shift the cost burden from private developers to the public.

One comment was also received urging the City to consider the implications of the 2008 Land Use Board of Appeals (LUBA) decision *Johnson v. Jefferson County* and how it relates to the proposed middle housing amendments pertaining to waterway setbacks and the City's comprehensive plan policies relating to Statewide Planning Goal 5 resources.

Staff Response: The Planning Commission's recommendation to eliminate the minimum off-street parking requirement for middle housing is consistent with the strategies identified in the City's Climate Action Plan and forthcoming State of Oregon rules for Climate Friendly and Equitable Communities. Currently parking is not required for Accessory Dwelling Units anywhere in the city or for Multi-family housing constructed within the Central Salem Development Program Area (CSDP) or within ¼ mile of the Core Network. Middle housing that consists of three and four family uses are included in the previously adopted parking requirement elimination for multi-family in the CSDP and with ¼ mile of the Core Network. The Planning Commission recommendation would extend that city-wide and include two family, townhouses and cottage clusters. Additionally, the Our Salem Zoning Subcommittee is recommending the elimination of parking for mixed-use developments in mixed-use zones within ¼ mile of the Core Network.

The Planning Commission found that eliminating the requirement does not necessarily mean that parking will not be provided but instead will be determined by the market. The recommendation, if adopted, will provide more flexibility in developing housing.

In regard to the proposed amendments establishing a waterway setback for middle housing, Division 46 (*Middle Housing in Medium and Large Cities*) of the Oregon Administrative Rules (OAR) requires medium or large cities that have not adopted land use regulations pursuant to OAR 660-023-0090 for riparian corridors to apply a 100-foot setback to middle housing developed along a riparian corridor.

In order to comply with the above identified requirement of State, the proposed amendments establish a 100-foot waterway setback that applies specifically to middle housing. The new waterway setback does not apply, however, to residential development other than middle housing.

The comment provided indicates that the proposed amendments establish, "a zero setback for dwellings in riparian corridors in single family zones..." This statement, however, is incorrect. The proposed amendments included with this update amend the code to establish a new waterway setback for middle housing development as required by HB2001. There are no other changes included in the proposed amendments that would reduce the required setbacks or riparian corridor protections currently required for single family dwellings in residential zones. All those existing setbacks and protections remain in place.

In addition, staff expects to conduct a Goal 5 update following the completion of the Our Salem project.

- e) **Central Business District (CB) Zone Design Standards (SRC Chapter 524)**. Two comments submitted express concern that the proposed amendments to the design standards of the Central Business District (CB) zone include unnecessary architectural design standards meant for a historic district. It is explained that these amendments will inhibit the very development we hope to see and it is recommended that the architectural design standards be removed because they are unwarranted, subjective, and limiting. The comments explain that the design standards in this district should maintain flexibility in order to make it a unique and new area of Salem that can become a destination.

Staff Response: Development within the CB zone is already subject to design standards, but the existing standards are minimal compared to other areas in the City where design review is required, and the standards are not sufficient to ensure development in a manner that promotes a vibrant and attractive pedestrian-friendly downtown urban environment. As such, the proposed amendments include a few additional design standards to promote improved building and site design based on existing design standards applicable in other zones and overlay zones within the City where an urban pedestrian-friendly development pattern is desired. The additional proposed design standards address:

- ❖ Minimum ground floor building height;

- ❖ Building façade design/articulation;
- ❖ Ground floor dwelling unit entry separation from street;
- ❖ Upper floor windows;
- ❖ Parking location behind or beside buildings; and
- ❖ Ground level and rooftop mechanical and service equipment screening.

The additional CB zone design standards included with the proposed amendments are intended to promote the basic fundamentals of good building and site design, are not onerous, and still allow for flexibility in design.

- f) Self-Service Storage within existing buildings in the CB zone (SRC Chapters 524 & 700).** One comment received expressed support for the proposed amendments allowing self-service storage within existing buildings downtown in the Central Business District (CB) zone, but concern was raised, however, that the amendments limit self-storage in existing buildings to only the basements and upper floors of buildings. The comment explains that in cases like the JCPenney building or the former Statesman Journal building, the buildings are so deep that a viable commercial use could be hard to find. The comment recommends that the proposed standards be further revised to also allow self-service storage on the first floor of buildings, but only in the rear portion of the building; reserving the first 50 feet of depth for pedestrian commercial uses such as retail and office.

Staff Response: The proposed amendments allowing self-storage within existing buildings in the CB zone intentionally restrict the storage use of the building to the basement and upper floors in order to ensure the ground floor of the building remains occupied by active uses supportive of the downtown urban environment. The amendments do allow, however, the leasing office and other non-storage customer services areas associated within the use to be located on the ground floor, as well as loading docks and service elevators - when located at the rear of the building and not occupying any portion of the ground floor space within the building abutting a street. Staff would have concerns, however, over potential unintended consequences if the amendments were further revised to allow self-storage on the ground floor of any building in the CB zone, except for the first 50 feet of depth.

- g) Proposed Revisions to Fairview Mixed-Use Zone (SRC Chapter 530).** Comments were received both in favor and in opposition to the proposed amendments to the Fairview Mixed-Use (FMU) zone.

One of the comments received in support of the amendments indicates that as someone who has written two refinement plans and built most of the single-family homes in Fairview, it is highly recommended that the City Council approve the changes to the zoning ordinance. It is explained that without the proposed changes, the properties within the master planned area which are not currently approved with a refinement plan or ones that may need amending in the future, will likely become even more uncertain as to the development potential. It is indicated that in looking back at all of the refinement plans that have been approved to-date, likely none would have withstood the rigid interpretation handed down by

LUBA in the *Mumper v. City of Salem* case. The comment indicates that uncertainty as to the parameters of what and how this 270 acres can be developed, both by City staff and developers, leaves the future of this property in a state of unknown, which usually means undeveloped. One important aspect necessary for the success of this development as envisioned by the City depends on build out of the entire master development. Unfortunately, without these staff recommended changes, such connection is unlikely anytime in the foreseeable future.

The other comment submitted in support of the proposed amendments indicates that Simpson Hills LLC is one of the largest single land owners within the Fairview FMU zone and they support the modifications recommended by City staff. The comment indicates that without the proposed modifications development on the Simpson Hills LLC property will be severely affected in a negative way. It is indicated that there is proven success within Fairview for allowing Refinement Plans and their amending.

The one comment received in opposition recommends that the City Council not adopt the proposed revisions to the Fairview Mixed-Use (FMU) zone and indicates that if the amendments are adopted, an appeal to the Land Use Board of Appeals (LUBA) will likely follow. The comment received indicates, in summary, that the amendments are internally inconsistent and inconsistent with the Fairview master plan, and clearly in response to the recent Land Use Board of Appeals (LUBA) decision, *Mumper v. City of Salem*, in which LUBA reversed the City's decision approving an application for a refinement plan and subdivision for a portion of the former Fairview Training Center site. The comment indicates that the proposed amendments weaken the standards and criteria put in place many years ago and will do a disservice to the original vision of the Fairview master plan and the Council's constituency by relegating the master plan vision for development to a mere superfluity. It is explained that if the plans or drawings included in the master plan depicting the layout of the development, including, but not limited to the location of streets, City utilities, paths/trails, open space, buildings, or specific uses is simply conceptual, than amendments to refinement plans would not actually be implementing or refining the Fairview master plan. It is indicates that the Fairview master plan contains numerous diagrams that cannot be simply because the text of the plan specifically implements those diagrams. Because of this the City cannot say that the diagrams included in the plan are conceptual without also affecting the text of the Fairview master plan.

Staff Response: The proposed amendments to the FMU zone include revisions required to bring the zone into compliance with recent changes in State law (*specifically HB3109 concerning child day care homes and centers*); revisions to allow managed temporary villages for the unsheltered and emergency shelters; and revisions to address the issues raised in LUBA's reversal (*in Mumper v. City of Salem*) of the City's approval of a refinement plan and subdivision for approximately 14.07 acres of the former Fairview Training Center site known as the woods.

In *Mumper v. City of Salem*, a refinement plan and corresponding subdivision was approved

by the Planning Commission for residential development of approximately 14.07 acres of the former Fairview Training Center site. The Planning Commission's decision was appealed to and affirmed by the City Council. The Council's decision was appealed to LUBA who subsequently reversed the decision and denied the refinement and subdivision because it was not consistent with the provisions of the Fairview Master Plan.

In order to address the issues raised in the LUBA decision and amend the FMU zone in a manner that conforms to how the code and Fairview Master Plan have been historically applied and interpreted in the approval past refinements plans, a series of amendments are proposed to:

- ❖ Provide greater clarity regarding the purpose of the Fairview Plan and its regulatory authority over subsequent refinement plans.
- ❖ Revise approval criteria for refinement plans under SRC 530.030(e) to specify which specific portions of the Fairview plan that refinements plans must be found to be in conformance with.
- ❖ Clarify that the maps and drawings in the plan are conceptual/illustrative in nature and may be further revised by refinement plans in substantial conformance with the thirteen sustainable land use principles included in the Fairview Training Center Redevelopment Master Plan document.
- ❖ Clarify who has standing to initiate amendments to the Fairview plan and refinement plans.
- ❖ Clarify that amendments to the Fairview plan and refinements plans are actual changes to the text and/or supporting documents of the plans, not site-specific proposals for development requesting deviation from the standards of a refinement plan (*e.g. a request that would normally be addressed through a variance or adjustment to the standard rather than an amendment to the plan*).

h) Temporary housing for the unsheltered (SRC Chapter 701). Once comment received expressed opposition to adding more temporary housing for the houseless in the proposed format. It is explained that the laws have to change in tandem with service and that these do not have to be in the central area of the city.

Staff Response: The proposed amendments address the needs of the unsheltered in our community by establishing managed temporary villages and emergency shelters as permitted uses in the development code. Both provide shelter and supportive services to those in need in a managed, secure setting. The proposed amendments include siting and operational standards designed to help meet the needs of those individuals utilizing the services and to promote security and minimize potential impacts on adjacent properties.

Managed temporary villages and emergency shelters are proposed to be allowed throughout the City in non-residential zones and within residential zones with limitations.

i) Minimum Off-Street Parking Requirement for People with Intellectual and

Developmental Disabilities (SRC Chapter 806). One comment received requests the City reduce the parking requirement to a minimum of one space per four dwelling units for people for Intellectual and Developmental Disabilities (IDD). It is explained that the reason for this request is because the model for providing services and support to individuals with intellectual and developmental disabilities is evolving away from congregate care like group homes and is instead moving towards a greater variety of individualized housing options. Affordable and safe housing for individuals with an Intellectual or Developmental Disability, that are not congregate care, are in short supply and converting current accessible congregate housing to affordable housing for individuals with an Intellectual or Developmental Disability can be burdensome due to parking requirements for multi-family dwellings. It is indicated that the proposed amendment to reduce the minimum off-street parking requirement for multi-family housing developments serving individuals with IDD will better align the minimum parking requirement of the code to the needs of the population served, who rarely have a vehicle or a driver's license.

Staff Response: In order to better align the minimum off-street parking requirement for individuals with IDD to their actual required parking needs, an amendment to the minimum off-street parking requirement is recommended under Section 12 of this report.

- j) Elimination of Parking Requirements City-Wide (SRC Chapter 806).** Comments were received indicating that while reducing parking minimum near transit is a great start, if the City is truly dedicated to housing affordability, parking mandates should be removed city-wide as Bend and Portland have already done.

Staff Response: The Planning Commission's recommendation for the amendments associated with middle housing included a proposed elimination of the off-street parking requirement for middle housing. As previously indicated, elimination of minimum off-street parking requirements is also consistent with the strategies identified in the City's Climate Action Plan and forthcoming State of Oregon rules for Climate Friendly and Equitable Communities. The Our Salem Zoning Subcommittee is also recommending the elimination of parking for mixed-use developments in mixed-use zones within ¼ mile of the Core Network. Eliminating minimum off-street parking requirements city-wide and for all uses with this amendment, however, would represent a significant change to the scope of the amendments included in this update and would instead need to be reviewed and evaluated through a separate legislative code amendment process.

- k) Bike Parking Requirements for Multi-Family Housing (SRC Chapter 806).** Three comments received express concerns about the proposed increase to the minimum bicycle parking requirement for multi-family developments within the CSDP area and within a quarter mile of a Core Network transit route. It is indicated that there is no evidence that this increase is warranted or needed and that the proposed increase will reduce the amount of space on the site for housing. It is explained that most cyclists prefer to park their bike in their dwelling where it is out of the weather and not in a shared space where it can be stolen. The proposed standard is unnecessarily cumbersome and will result in most multi-

family housing developments asking for an exception. It is recommended that this proposed requirement be modified to allow flexibility and instead require maybe 2 or 3 times as much bike parking in this area rather than making it 10 times the amount of other zones.

Staff Response: The amendments increase the minimum bicycle requirement from the current minimum of the greater of four spaces or 0.1 space per dwelling unit to a proposed minimum of one space per unit, but the proposed increase only applies to multiple family development within the downtown Central Salem Development Program (CSDP) area and within one-quarter mile of a Core Network Transit where there is no minimum off-street vehicle parking requirement.

The intent behind the proposed increase in the amount of bike parking spaces required for multiple family development in these areas is to promote utilization of alternative modes of transportation. The proposed increase in bike parking will not result in less space being available on site for housing because 100 percent of the required bicycle parking spaces for multiple family development may be located inside the building either in a shared bike room or within the dwelling units themselves, for those who are concerned about leaving their bike in a shared space. For multi-family developments where no off-street vehicle parking is required, the proposed amendments correspondingly intend to make it easier for people to have a bike.

- I) Tree Planting Requirements (SRC Chapter 807).** One comment received questions why the proposed amendments include an exemption from the tree replanting requirements of SRC Chapter 807 (*Landscaping and Screening*) for lots used for single family uses, two family uses, three family uses, four family uses, or cottage clusters. The comment indicates that shouldn't these types of lots also be required to plant trees?

Staff Response: The proposed amendments to SRC Chapter 807 do include an exemption from the tree planting requirements included under SRC 807.015(d) for single family and middle housing development. The reason for including this exception is to make it clear that the landscaping and tree replanting requirements of SRC Chapter 807 only apply to development other than single family and middle housing.

Single family and middle housing development must instead conform to the requirements of the tree preservation ordinance included under SRC Chapter 808, which includes separate tree preservation and planting requirements.

- m) Landscaping Permit (SRC Chapter 807).** One comment received recommends that consideration should be given to eliminating the proposed new requirement that a landscaping permit be submitted for properties requiring site plan review when a building permit is not required. It is explained that this requirement would only apply to Class 1 site plan reviews which expressly exempt properties where "no exterior improvements" including landscaping are required. This will put the burden of landscaping and screening requirements on existing properties that may not be able to accommodate landscaping,

therefore forcing a more involved land use review procedure that could negatively impact a property owner's ability to secure tenants for vacant properties.

Staff Response: The proposed amendments to SRC Chapter 807 (*Landscaping and Screening*) include a new requirement for a landscaping permit that is required for any development that is subject to the landscaping requirements of SRC Chapter 807 and that also requires site plan review, but a building permit is not otherwise required.

The proposed new landscaping permit will only apply in those narrow circumstances when landscaping and site plan review is required but there is no corresponding required building permit. For the majority of site plan review cases a landscaping permit will not be required because they will either be Class 1 Site Plan Reviews that involves only **interior** construction or tenant improvements or they will be Class 2 or Class 3 Site Plan Reviews that involve exterior improvements as well as a building permit.

A landscaping permit would be required, however, for a Class 2 or Class 3 Site Plan review that involved the development, expansion, or alteration of a an off-street parking or vehicle use area or the paving of an unpaved area because this type of development activity would likely trigger landscaping requirements under SRC Chapter 807, it is specific subject to site plan review under SRC Chapter 220, but a building permit is not required.

The purpose for the landscaping permit is to establish a formal mechanism through which the landscaping plans for a development that requires landscaping, but does not require a building permit, can be reviewed and inspected, similar to if a building permit had been required.

- n) **Barbed Wire or Electric Fencing in West Salem Central Business District (WSCB) zone.** A comment was received expressing the need for the code to be amended to allow barbed wire or electric fencing around properties within the West Salem Central Business District (WSCB) zone due to criminal activity resulting from unsheltered individuals camping in adjacent Wallace Marine Park. The comment received indicates that IN Self Storage operates a storage facility at 300 Musgrave Avenue NW and that at one time they would experience perhaps one criminal incident per year, but now deal with approximately five or six break-ins per week as a result of unsheltered camping in the park. The comment explains that they have inquired with the City about the possibility of installing barbed wire or electric fencing around their property to keep out potential burglars, but have been told that is not possible because the property is zoned WSCB. The comment requests an amendment to the code to allow barbed wire or electric fencing, at least in particular circumstances such as In Self Storage's.

Staff Response: In order to help address the issues associated with the unsheltered in our community, the proposed amendments establish managed temporary villages for the unsheltered as a temporary use that will be allowed in a variety of different zones. Allowing managed temporary villages will help the City and its community partners to provide

additional accommodations for the unsheltered in a managed and controlled environment with access to supportive services, which will in turn help to reduce unsanctioned camping and its associated impacts on adjacent properties.

Because allowing barbed wire or electric fencing as requested would potentially impact all properties within the WSCB zone, including such a requirement would fall outside the scope of the amendments included with this update and would instead need to be reviewed and evaluated through a separate legislative code amendment process.

- o) Tree Preservation Ordinance (SRC Chapter 808).** Several comments were submitted in favor of the proposed amendments to the City's tree preservation ordinance and comments were also submitted expressing concern over the amendments.

Comments in favor express support for the proposed amendments and the expansion of the definition of significant tree to include Oregon white oaks down to 20 inches dbh and a greater variety of larger mature trees 30 inches dbh and greater, including Douglas fir (*Oregon's state tree*); the exclusion of the identified non-native invasive trees identified by the Urban Forester; the proposed increased protection of the critical root zones of trees; and the increase to the minimum percentage of trees that are required to be protected under tree conservation plans. The comments provided indicate, in summary, that:

- ❖ As a community that values livability, Salem can protect our environment while providing much need housing because these are not mutually exclusive goals. The many benefits of the City's urban tree canopy include sequestering carbon, cooling our neighborhoods, providing habitat, preventing crime, and increasing property values.
- ❖ Trees make our city more beautiful and livable, they reduce traffic noise, regulate temperature, make shade, absorb stormwater, provide wildlife habitat, improve people's mental health, help combat climate change, and contribute to the City meeting its climate action plan goals.
- ❖ Without a healthy, mature tree canopy Salem will be a miserable place to live. Established neighborhoods like NEN continue to lose many of the large healthy trees that contribute so much to our well-being, including century-plus-old Douglas Firs. Despite their health and incredible importance to the whole community, these trees get cut down because Salem's code is currently not strong enough to protect them.
- ❖ New trees are important but they won't have a canopy for 15 to 20 years; therefore established trees need to be preserved.
- ❖ Mature trees in new development will help regulate stormwater runoff in areas with lots of new paving, which saves the City government money and operations trouble; will help control high temperatures, which saves people money and reduces energy consumption; will provide habitat for wildlife; and will help improve people's mental health.

Comments in opposition to the amendments express concerns, in summary, pertaining the

impacts the amendments will have on the development of property within the City due to the proposed increases in tree protection and preservation requirements, especially those associated with the critical root zones of trees and the increase in the number of trees that will be categorized as significant. In order to help address these concerns, three recommended revisions to the amendments were introduced at the December 13, 2021 City Council hearing. The recommended revisions included:

1. Permit an arborist to be hired in-lieu of utilizing the prescriptive critical root zone for protection for non-significant trees which would be a detailed method for protecting the health of the tree.
2. Specify clear and objective standards for the removal of significant trees which are within the development improvement area (e.g. streets, PUD's, driveway approaches).
3. Permit the additional removal of significant trees when designing subdivisions with a solar panel offset.

Staff Response: Subsequent to the December 13, 2021, City Council public hearing staff met with representatives of the Home Builders Association of Marion and Polk Counties and some of the development community to discuss the three identified recommendations presented at the public hearing to determine whether any could be incorporated into the proposed amendments to SRC Chapter 808 in a manner that would continue to maintain the proposed increased tree preservation requirements included with the amendments but also provide a degree of clarity and flexibility to help address some of the concerns identified. As a result of those meetings staff has identified a series of recommend further revisions to SRC Chapter 808 addressing the three above identified recommendations that are included in Section 12 of this report.

Prior to the January 12, 2022, open record period deadline additional comments were received identifying a few additional areas where further consideration is recommended in order to help assure buildability, housing affordability, and density. These include:

1. Incorporate language into the tree conservation plan approval criteria allowing significant trees to be removed and/or less than 30 percent of the trees within a tree conservation plan to preserved if a minimum density of 5.5 units per net with a maximum of 15% middle housing cannot be achieved.
2. Add driveway location as a factor when considering the removal of significant trees. It is explained that staff addressed many of our concerns related to permitted justification for removal of significant trees during development except that driveway access was not a permitted reason. It is indicated that this is troubling as it will likely lead to a reduction of buildable lots. The comment indicates, however, that this could be mostly mitigated by adopting the density exception indicated under No. 1 above.
3. Allow an arborist to provide a professionally detailed tree protection program for each

tree, including significant trees. It is explained that the area under the tree can't be landscaped or fenced within the protected area - at least not until the builder has turned over the property to the owner - and this seems unworkable. It is explained that allowing a professional to give guidance to a builder seems preferable.

Amendment to City Fee Resolution

The proposed amendments will result in new land use application types being introduced for which associated application fees will need to be established. If the proposed amendments are approved, staff will bring forward a separate amendment to the City's Fee Resolution for City Council review and approval

Proposed Legislative Zone Change

In addition to the code amendments, a legislative zone change is also proposed to change the zoning of those properties within the downtown in the General Retail/Office overlay zone that are currently zoned RH (Multiple Family High-Residential), CO (Commercial Office), and CR (Retail Commercial) to CB (Central Business District). A map identifying the properties affected by the proposed zone change is included as **Attachment 8**.

The properties are currently designated Central Business District on the Salem Area Comprehensive Plan map. The proposed zone change will bring the zoning of the properties into alignment with their current comprehensive plan designation, eliminate existing conflicts that currently exist between the development standards of the underlying RH, CO, and CR zones and the design review standards and guidelines of the General Retail/Office overlay zone, and establish a zoning pattern that is consistent with that of the CB zoning of surrounding properties.

Substantive Findings

In order for a code amendment and a legislative zone change to be approved the City Council must find that they comply with the applicable approval criteria. SRC 110.085(b) establishes the approval criteria applicable to amendments to the Unified Development Code (UDC) and SRC 265.010(d) establishes the approval criteria applicable to legislative zone changes.

Findings demonstrating the proposal's conformance with the applicable approval criteria are included in Exhibit C to Ordinance Bill No. 13-21 (**Attachment 3**).

BACKGROUND:

In 2014, the Unified Development Code was completed and adopted as part of the Salem Revised Code (SRC Title X). The UDC was a complete reorganization and update of Salem's development codes. The UDC was adopted with the expectation that it would be regularly updated over time to ensure that any unanticipated issues or concerns were routinely reviewed and addressed and its provisions were kept current and up-to-date.

Ordinance Bill No. 13-21 updates the UDC and other identified chapters of the Salem Revised Code to address a variety of issues that have arisen since the last major update to the UDC in 2019. It includes minor housekeeping amendments as well as policy-related changes that respond to recent changes in State law - including State House Bill 2001 concerning the allowance of middle housing in single family residential zones; concerns from the community; and issues identified by staff to improve the application and administration of the UDC.

In conjunction with the proposed amendments to the code, a legislative zone change is also proposed to change the zoning of specific properties located within the downtown in the General Retail/Office overlay zone that are currently zoned RH (Multiple Family High-Residential), CO (Commercial Office), and CR (Retail Commercial) to CB (Central Business District) in order to align the zoning of the properties with their existing Central Business District comprehensive plan designation and to be consistent with the CB zoning pattern of surrounding downtown properties.

ALTERNATIVES:

City Council may:

- A. Advance the ordinance bill to second reading for enactment;
- B. Direct staff to engross the ordinance bill, as recommended under section 2 of this report, and advance to second reading for enactment;
- C. Refer the proposal back to the Planning Commission for further deliberation; or
- D. Decline to advance the ordinance bill to second reading.

Bryce Bishop,
Planner III

Attachments:

- 1. Planning Commission Recommendation (October 5, 2021)
- 2. Summary of Proposed Amendments
- 3. Ordinance Bill No. 13-21
- 4. Recommended Further Revisions Engrossing Ordinance Bill
- 5. Public Testimony - Planning Commission Hearing
- 6. Public Testimony - City Council Hearings
- 7. Public Testimony - Open Record Period
- 8. Legislative Zone Change Map