



Staff Report

File #: 24-155

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Item #: 5.a.

TO: Mayor and City Council
THROUGH: Keith Stahley, City Manager
FROM: Dan Atchison, City Attorney

SUBJECT:

Council Call-Ups as recommended by the Council Rules Committee.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods
Result Area(s): Good Governance

SUMMARY:

January 25, 2024, the Council Rules Committee recommended changes to City Council Rules. In addition to the recommended rules changes, which City Council adopted, the Committee recommended that City Council initiate a land use process to restrict Council Call-Up of certain types of land use decisions. City Council directed that staff bring the question of council call-ups to a future City Council meeting

ISSUE:

Shall City Council direct staff to initiate an amendment to the Unified Development Code (UDC) to restrict Council Call-Up of certain types of land use decisions as outlined in this report?

RECOMMENDATION:

Direct staff to initiate an amendment to the UDC to restrict Council Call-Up of certain types of land use decisions as outlined in this report.

FACTS AND FINDINGS:

SRC 300.1050 ([Sec. 300.1050. - Review by the Council. | Code of Ordinances | Salem, OR | Municode Library <https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH300PRLAUSAPLELAUSPR_S300.1050RECO>](#)) permits the City Council

to call up for review certain quasi-judicial land use decisions made by the Planning Administrator, Hearings Officer, Historic Landmarks Commission, or Planning Commission. The City Council may also hear appeals of certain land use decisions. If a decision is called up or appealed to Council, a *de novo* public hearing is scheduled before City Council, and Council has the option to affirm, affirm with conditions, or reverse the lower decision (*de novo* means new evidence may be presented). Council's decision is the final decision of the City and may be appealed to the Oregon Land Use Board of Appeals (LUBA).

The call-up procedure only applies to quasi-judicial land use decisions. These are decisions where an applicant has applied for a specific use or action, such as a site plan review, subdivision, or zone change for a specific property or small group of properties. Decisions on code amendments and Comprehensive Plan text amendments are always made by Council initially and any appeal is to LUBA.

The Committee recommended that City Council consider changes to Council call-up authority to potentially eliminate call-ups for some classes of land use decisions, including those where Council has limited discretion under Oregon law to substantively change the lower decision.

The Table in **Attachment 1** sets forth the land use decisions that Council may call up under the current code and Committee's proposed changes. In some cases, a decision may either be called up by Council or appealed to Council. The Committee recommends that if the potential for call-up is eliminated, the ability to appeal the decision to Council is eliminated as well. If appeal to City Council is eliminated, then the initial decision, if made without a hearing, will be subject to a public hearing and appeal to the Planning Commission or Hearings Officer.

Under the recommendation, call ups and appeals to Council would be eliminated for application types, including a) Applications involving needed housing; b) Site Plan Review; c) Urban Growth Area Preliminary Declarations, and; d) Wireless Communication Facilities.

Applicants have the right under the City Code and state law to consolidate multiple applications and have them considered together. Consolidated applications may include applications like Site Plan, Tree Variance, Driveway Access Permit. In some instances, one of the applications may be eligible for call-up but another may not. If Council directs staff to initiate a land use amendment for this proposal, staff will analyze how to address consolidated applications and provide a proposal for consideration. One option is to not allow for the consolidated application to be called up for review.

For some application types, such as needed housing, the City is required to approve an application if it meets the clear and objective standards. However, many applications seek adjustments or variances to those standards. In those cases, where the applicant voluntarily opts out of the clear and objective standards, the City may use discretion in determining whether an adjustment or variance is met. In those cases, Council call-up may be appropriate. If Council directs staff to initiate

a land use amendment to address council call-ups, staff will analyze the issue and provide a recommendation to Council.

The rationale for eliminating the recommended application types is set forth below:

- a. Needed housing. City staff and City Council have little or no discretion to modify an approval or reject an application due to statutory requirements that require only clear and objective criteria be applied.
- b. Sign CUP or Variance. Sign Conditional Use Permits (CUP) and sign variances were removed from the Code with the 2023 sign code amendment. The associated call-ups for these application types should have been removed then, and will be removed with the next amendment to SRC chapter 300.
- c. Site Plan Review. On some occasions site plan review involves multi-family housing and needed housing statutes limit Council's discretion. Even for commercial or industrial developments, Site Plan Review is largely an administrative process to ensure that code standards are met for a use that is already permitted. The City has no discretion at the site plan stage to outright deny a use that is "permitted" under the City Code, and conditions may only be imposed that further the application's compliance with the applicable development standards or to mitigate for a requested deviation from the code standards.
- d. Urban Growth Area (UGA) Preliminary Declarations. The decisions are for the pre-development planning stage and identify what major public facilities are needed to serve a development as determined by City Council approved master plans. These public facilities include street improvements, water, sewer, stormwater, and parks. The decision is based on the City Council adopted master plans for each facility and simply provide notice to developers about what facilities are needed to serve a given development. The decisions do not impose a requirement to build facilities, that imposition comes later during the specific application for the proposed land use, where the impact of the proposed use and the need for public facilities to serve the use and surrounding properties can be determined. UGA decisions are rarely appealed by themselves, and removing the ability to call-up such decisions will have little impact on Council's authority.
- e. Wireless Communication Facilities. Federal law largely limits local governments' authority to regulate what, where, and how wireless communication facilities (cell towers, antenna, and related infrastructure) may be sited within a jurisdiction. Much like needed housing applications, the City has very limited discretion to limit or prohibit proposed new wireless communication facilities.

New State Laws. Council directed this item be brought back for council consideration after the

State Legislature's short session ended in case new laws were passed that might affect this issue. Staff have reviewed all the land use related bills that were passed. A few affect the City's ability to issue land use decisions:

- Requirement that local governments to approve adjustments for housing developments, subject to an exemption for jurisdictions that meet certain criteria. Staff are considering proposing an amendment to the UDC that would allow the City to qualify for the exemption. Call ups for applications related to housing are proposed for elimination.
- Requirement that local governments treat nonconforming use applications as a "limited land use" decisions. This would likely limit the City's decision to only apply clear and objective standards and prevent the City from imposing discretionary conditions of approval. Decisions relating to nonconforming uses are currently subject to council call-up. If Council directs staff to initiate a code amendment to restrict call-ups, staff will review the new legislation and make a recommendation on whether call-ups for nonconforming uses should be eliminated.

Under the City's Code and Oregon land use law, all land use decisions issued without an initial public hearing may be appealed and a public hearing will be conducted. Even if Council call-up or appeal to City Council is eliminated through this proposal, land use decisions will still be subject to a local appeal and to appeal to LUBA.

Any recommended changes to call-up procedures will require a change to Council Rule 5 and to the UDC. Amendments to the UDC typically take several months to implement due to requirements for notice to the State, conducting public outreach and required public hearings. If Council adopts the Committee's recommendation to makes changes to the call-up procedures, staff will initiate a code amendment consistent with the recommendation.

BACKGROUND:

Council call-up is not unique to the City of Salem. Some other Oregon jurisdictions give authority to their governing body to review or make the initial decision on quasi-judicial land use decisions. However, these are generally smaller communities. Staff reviewed the development code of other Oregon cities and Beaverton, Eugene, Gresham, Hillsboro, and Medford do not provide for council call-up of lower decisions, though some decisions are appealable to the city council.

Dan Atchison
City Attorney

Attachments:

1. Council Call-Up Table - Current and Proposed