



Staff Report

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Date: 9/9/2024
Item #: 4.a.

TO: Mayor and City Council
THROUGH: Keith Stahley, City Manager
FROM: Kristin Retherford, Community Planning and Development Department Director

SUBJECT:

Public hearing for proposed code amendment related to housing and other issues.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods
Result Area(s): Welcoming and Livable Community

SUMMARY:

The proposed code amendment (CA24-01), Ordinance Bill No. 8-24, updates the Unified Development Code (UDC) to promote housing development, comply with State rules and laws, and update other provisions of the code.

ISSUE:

Shall the City Council engross Ordinance Bill No. 8-24 and advance it to second reading?

RECOMMENDATION:

Engross Ordinance Bill No. 8-24 and advance it to second reading.

FACTS AND FINDINGS:

Procedural Findings

- 1) The proposed code amendment are amendments to the Unified Development Code (UDC), which is a legislative land use decision under SRC 110.085. The Planning Commission (PC) or Historic Landmarks Commission (HLC) 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 Council under SRC 300.1110.

- 2) The Historic Landmarks Commission initiated the proposed amendments to SRC Chapter 230 by HLC Resolution No. 2024-01 on March 21, 2024.
- 3) The Planning Commission initiated the proposed code amendment by PC Resolution 2024-01 on April 16, 2024.
- 4) 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 submitted on April 29, 2024, meeting the notice requirement.
- 5) All required notices have been provided as required under SRC 300.1110(e). Public notice was mailed May 21, 2024, and public notice was published in the newspaper, as required under SRC 300.1110(e)(2), on May 27, 2024 and June 3, 2024.
- 6) On June 11, 2024, HLC and PC conducted a joint public hearing on the proposed code amendment to review and receive public testimony. Subsequent to the provision of public testimony and consideration of the proposal by the PC and HLC, the public hearing was closed. The HLC voted to recommend City Council approval of the proposed amendments to SRC Chapter 230 (**Attachment 1**), and the PC voted to recommend City Council approval of the proposed code amendment (**Attachment 2**).
- 7) On July 8, 2024, the City Council voted to conduct a public hearing on Ordinance Bill No. 8-24.

Proposed Amendments

The proposed code amendment is included as Exhibit A of Ordinance Bill No. 8-24 (**Attachment 3 and Attachment 4**). The purpose of the proposed code amendment is to help meet Salem's housing needs by promoting development of a variety of housing types, while complying with State rules and laws. For example, the proposed code amendment streamlines the approval process for residential uses, encourages the development of small mixed-use projects, and allows middle housing on smaller lots in a multifamily zone, among other changes.

These proposed changes advance goals and policies in the updated Salem Area Comprehensive Plan that aim to promote housing choices and mixed-use development in the Salem area. The proposed code amendment updates other provisions of the Unified Development Code (UDC) and is summarized below.

1. Streamline the approval process

The proposed code amendment streamlines the approval process for housing developments and mixed-use projects in several ways, as described below. These proposed amendment addresses changes in State law.

- *Allow adjustments for mixed-use projects in specific areas*

The proposed code amendment would allow applicants to apply for an administrative adjustment if their mixed-use project could not meet a specific design standard in the Edgewater/Second Street Mixed-Use Corridor (ESMU) zone, West Salem Central Business District (WSCB) zone, South Waterfront Mixed Use (SWMU) zone, and Portland-Fairgrounds

Road Overlay Zone. Under the City's adjustment process, notice is sent to neighbors and the applicable neighborhood association, and staff considers any public input and determines if the adjustment criteria are met.

Currently, applicants who cannot meet one or more design standards - such as providing canopies or awnings along a certain percentage of a building's ground floor - must go through a public hearing process to seek approval. This process can add time, money, and uncertainty to the approval process for housing projects. The ESMU, WSCB, SWMU, and Portland Fairgrounds Road Overlay Zone are the only zones in Salem that still require this public hearing process to deviate from design standards. The proposed code amendment therefore eliminates Class 2 and Class 3 Design Review, which only apply to applications that are subject to design guidelines and the associated public hearing process. (Ordinance Bill No. 8-24 includes language that allows existing Class 2 and Class 3 Design Review approvals to be modified or extended.)

In recent years, Salem has shifted to using the City's adjustment process to simplify, expedite, and promote housing development. For example, in 2020 as part of the Multifamily Housing Design project, the City *removed* the requirement for standalone multifamily housing - projects comprised solely of housing - to go through a public hearing process if they could not meet a design standard. Such projects can now seek an administrative adjustment.

- *Allow adjustments to special use standards for housing*

A few types of housing, including townhouses in single-family zones, are considered special uses in Salem. This means the uses are allowed, but they must meet additional standards unique to the use. The proposed code amendment would allow developers of townhouses and other residential special uses to apply for an administrative adjustment if they cannot meet a special use standard. Currently, if a developer cannot meet a special use standard for certain residential uses, they must apply for a conditional use permit. That conditional use permit process includes a public hearing. Changing the process to an administrative adjustment would expedite the approval process. The City already allows accessory dwelling units and middle housing projects - both of which are special uses - to seek adjustments when a developer cannot meet a special use standard.

- *Streamline historic design review process for new housing*

The proposed code amendment would create a new administrative historic design review process for housing development within historic districts or additions to existing historic structures. The new process would specifically apply to new construction within residential, commercial and public historic districts or additions or alterations of existing historic structures - either within those historic districts or individually listed local landmarks - that create new housing units. Such projects would be reviewed administratively as opposed to going through a public hearing before the Historic Landmarks Commission (HLC). Applicants, however, could choose to go through a public hearing before HLC if they preferred. The proposed code amendment would also allow such housing projects to seek administrative adjustments to historic design standards.

- *Allow adjustments to density standards in specific areas*

The proposed code amendment would allow an applicant to seek an adjustment to density requirements in the Portland-Fairgrounds Road Overlay and Capitol Mall (PM) zones.

Currently, the code prohibits any deviations from the density requirements in those two zones. In all other zones in Salem, the City has removed this prohibition to provide greater flexibility for housing developments in recent years. As mentioned above, the adjustment process still provides the public with an opportunity to give input.

2. Allow more housing options

The proposed code amendment allows for a greater variety of housing options, as described below.

- *Allow single-family and two-family uses as part of mixed-use buildings*

The proposed code amendment would allow the development of single-family and two-family housing that are part of mixed-use buildings in the Mixed Use-I (MU-I) and Mixed Use-II (MU-II) zones. Currently, standalone single-family and two-family uses are largely prohibited in those two mixed-use zones because the zones are intended for higher-density development. There are some smaller lots, however, that are zoned MU-I and MU-II in Salem, and they may not be able to fit three units, which is allowed in both zones today. By allowing single-family and two-family housing in mixed-use development, smaller lots can accommodate housing, even if only one or two units.

Requiring the one or two units to be part of a mixed-use building ensures that the City's mixed-use land is not used solely for single-family or two-family homes. Instead, the proposed code amendment promotes mixed-use development in the MU-I and MU-II zones, while also expanding the type of housing allowed in those zones. Single-family and two-family uses are already allowed as part of mixed-use buildings in the MU-III zone.

- *Allows accessory dwelling units with townhouses*

The proposed code amendment would allow accessory dwelling units (ADUs) to be developed with townhouses. Currently, ADUs are only allowed with detached single-family homes, including manufactured homes. Under the proposed change, ADUs could be built with up to two attached townhouses, with one ADU on each townhouse lot. The ADUs could be attached or detached from the townhouses. This proposed change promotes a greater variety of housing options on a lot, while encouraging infill development and the efficient use of land.

- *Allow existing commercial buildings to convert to housing*

The proposed code amendment implements a new State law that requires larger cities to allow existing commercial buildings to convert to residential uses. These conversions may not occur on land that is zoned to allow industrial uses. This proposed code amendment codifies that change in State law in Salem's code; this provides clarity to developers and staff. In Salem, most zones that allow commercial uses - such as the City's mixed-use zones - already allow housing, or they allow housing as part of mixed-use buildings.

3. Update standards for housing development

The proposed code amendment revises development standards to encourage more housing in different areas, as described below.

- *Allow middle housing on smaller lots in a multifamily zone*

The proposed code amendment would decrease the minimum lot size for two and three family uses in the Multiple Family Residential-II (RM-II) zone to match the lot size requirements in the Single Family Residential (RS) zone. Currently, the minimum lot size is 6,000 square feet for

two and three family uses in the RM-II zone. Under the proposed amendment, the minimum lot size would be decreased to 4,000 square feet for two family uses and 5,000 square feet for three family uses. This would enable the development of more middle housing on existing small lots that are zoned RM-II.

- *Establish and increase minimum densities*

The proposed code amendment would establish a minimum density of 15 units per acre in the WSCB zone, which is located in West Salem. The proposed minimum density would apply *exclusively* to residential projects. The WSCB zone currently does not have a minimum density standard. The WSCB zone is intended to align with the CB zone and promote a walkable, vibrant, mixed-use center in West Salem. It allows a variety of housing, office, retail, recreation, and entertainment uses, and it allows buildings to be up to 70 feet tall.

The City has identified the WSCB zone as a potential Walkable, Mixed-Use Area (WaMUA) as part of Salem's work to implement the State-mandated Climate-Friendly and Equitable Communities (CFEC) rules. WaMUAs - called Climate-friendly Areas by the State - must meet specific requirements to comply with the CFEC rules, including having specific minimum densities. By establishing a minimum density of 15 units per acre, the proposed code amendment brings the WSCB zone into compliance with the density provisions in the CFEC rules for WaMUAs.

The proposed code amendment would also increase the minimum density in the Central Business District (CB) zone, which the City has identified as a potential WaMUA. Specifically, the minimum density in the CB zone is proposed to increase from 20 units per acre to 25 units per acre. This change would bring the CB zone into compliance with the density provisions in the CFEC rules for WaMUAs. (The CFEC rules require that the City establish at least one WaMUA that is at least 25 acres in size and has a minimum density of 25 units per acre.)

4. Other changes

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

- Allows small animal veterinary and grooming services in the Central Business (CB) zone.
 - As housing continues to be developed in downtown Salem, there has been a request to allow veterinary and grooming services in the CB zone, so residents can more easily access such services. Veterinary and grooming services are currently prohibited in the CB zone. The uses would need to be operated entirely indoors.
- Establishes standards for security fencing and gates in the Salem Downtown Historic District and CB zone.
 - Under the proposed amendment, fencing or gates used for security of recessed alcoves or entries of buildings could not block access to storefronts during normal business hours, could not cover storefront display windows, and could not be sight-obscuring.
- Changes the approval process for nonconforming uses where an applicant seeks to alter or expand that nonconforming use.
 - Currently, the approval process includes a public hearing before the hearings officer. The proposed code amendment would make the process an administrative approval that includes public notice. This implements a change in State law.

- Eliminate discretionary criteria for land divisions and site plan review.
 - The proposed code amendment removes several approval criteria that are discretionary in nature. For example, there is a criterion calling for safe, orderly, and efficient traffic circulation. The City already has standards elsewhere in the code that achieve that goal but do so in a more clear and objective way, such as the City's parking lot design and circulation standards and pedestrian access standards.
- Specify a minimum canopy/awning depth in all zones and overlay zones - 6 feet - where ground floor weather protection is required for buildings facing a street.
 - Currently, no minimum depth is required. Establishing a minimum depth helps ensure that canopies and awnings actually provide protection from the rain and other weather. Establishing similar weather protection standards in the Downtown Historic District and CB zone also helps to create consistency in the downtown area.
- Exempt outdoor storage areas in the IG zone from paving requirements
 - Currently, the City exempts vehicle storage areas in the IG zone from paving requirements. The proposed change would expand this exemption to all outdoor storage areas in the IG zone, whether materials were being stored, for example, or vehicles were being stored. Gravel outdoor storage areas in the IG zone would also be exempt from perimeter setback requirements where they abut another IG-zoned property.

5. Recommended engrossment of ordinance

Following first reading of Ordinance Bill No. 8-24, staff has identified a few additional code changes that require engrossing the ordinance. These additional proposed code changes have been included in the public notice for the City Council public hearing. The additional proposed code changes are as follows:

- Further revises the approval criteria for partitions and subdivisions by deleting examples of standards to which applications must comply, such as lot standards. The list of examples are not necessary, as proposed partitions and subdivisions are required to meet all applicable provisions in the UDC. *This proposed change responds to public comments received during the Planning Commission and Historic Landmarks Commission public hearing.*
- Exempt the construction of a retaining wall from having to go through site plan review. Currently, the construction of a fence is exempt from site plan review. This proposed change adds retaining walls to that exemption. The proposed change also exempts the paving of an unpaved area to the list of exemptions as long as there are no applicable standards.
- Define "hard surface material," and delete references to Public Works Design Standards. The UDC refers to Public Works Design Standards to determine what constitutes hard surface materials related to paving requirements; however, those Public Works standards do not include a definition of hard surface materials. This proposed change defines "hard surface materials" as including concrete, asphalt pavement, and pavers but excluding gravel. This creates clarify in the code for developers and the community.
- Requires applications for Class 2 Site Plan Review to include additional information needed to review proposed developments, such as the location of streets and a preliminary utility plan.

Class 2 Site Plan Review applies to developments that impact sites - as opposed to just the interior of buildings - so the additional information is potentially needed to fully review applications.

- Allow adjustments to design standards in the SWMU zone. This aligns with the proposed changes in the ESMU zone, WSCB zone, and Portland-Fairgrounds Road Overlay Zone that would allow adjustments to design standards. The SWMU zone was inadvertently left out of the code amendment. The proposed change streamlines the approval process for projects in the SWMU zone.
- Clarify the minimum depth required for driveways - 20 feet - leading to garages in townhouse-style multifamily developments. The proposed change ensures driveways of townhouse-style homes are deep enough to accommodate a vehicle without having it hang over and block all or part of a sidewalk.

Testimony Received

The comments provided for the Planning Commission and Historic Landmarks Commission public hearing are attached as **Attachment 5**. These comments have been summarized below, and staff responses have been provided. No additional comments have been received as of the writing of this staff report.

1. A comment included several questions related to proposed changes to the criteria for land divisions, including if the proposed changes meet the State's requirement for clear and objective standards, and what is meant by "special development standards."

Staff Response: The proposed changes to SRC Chapter 205 Land Division and Reconfiguration eliminate criteria for subdivisions and partitions that are discretionary in nature. Those criteria address issues that are otherwise addressed by clear and objective standards elsewhere in the UDC, and Criterion No. 1 requires compliance with all applicable provisions of the UDC. For example, Criterion No. 5 focuses on the safe, orderly, and efficient circulation of traffic into, through, and out of the development. Through compliance with the standards in SRC Chapter 803, including requirements for street connectivity, right-of-way dedication, and street improvements, the requirements of Criterion 5 are otherwise covered but in a fashion that does not require evaluation based on subjective terms such as "safe", "orderly", and "efficient."

The term "special development standards" refers to standards in the UDC that may not necessarily apply to all properties given that each property is unique. For example, not all properties are within a floodplain, and therefore not all development requires a floodplain development permit. As another example, not all properties are steep, and therefore not all development requires a geological or geotechnical analysis. The list of standards provided in SRC 205.010(d)(C) are examples of these types of standards. In response to this public comment however, staff has proposed to remove the list of examples, as noted earlier.

The term “special setbacks” is established in SRC 800.040. Specifically, SRC 800.040(a) states: “To afford better light, air, and vision on public streets and to permit the eventual widening of streets without creating nonconforming structures, special setbacks are hereby established. No structures or paving, other than those identified under subsection (d) of this section, shall be placed within a special setback.” Special setbacks apply in addition to other setbacks required in the UDC, and they essentially ensure that development does not impede future street improvements to meet required widths in the UDC. In response to this public comment, staff has proposed to remove the reference to “special setbacks” and other examples of standards, as noted earlier.

2. The Land Use Committee of the South Central Association of Neighbors (SCAN) submitted a comment in general support of the proposed code amendment, except for the proposed changes to the historic design review process for new housing. SCAN also requested a few additional changes, including:
 - a. Prohibiting short-term rentals in all residential zones, including mixed-use zones
 - b. Deleting the minimum building height standards in the MU-I zone
 - c. Deleting the minimum ground floor height standards in the MU-I and MU-II zones

Staff Response: The proposed changes to the historic design review process continue to allow applicants to choose the existing approval process for new construction, addition, and alterations that provide new housing units. This includes the option to have a public hearing at the HLC for new construction projects within historic districts. The proposed code amendment expands the options for seeking approval to include administrative review. The proposed changes also implement a new State law that seeks to streamline approval processes for housing projects across Oregon, including historic projects.

The proposed code amendment does not make any changes related to short-term rentals and where they are allowed. In March, the City Council received a [staff report < https://salem.legistar.com/LegislationDetail.aspx?ID=6565618&GUID=6501C168-5328-4696- >](https://salem.legistar.com/LegislationDetail.aspx?ID=6565618&GUID=6501C168-5328-4696-) that described the current regulations for short-term rentals, neighborhood concerns, impacts on Salem’s housing stock, and possible policy options. The City Council chose not to direct staff to amend regulations to prohibit short-term rentals in single-family areas. Instead, following that meeting, staff is working to hire a third-party vendor, which would enable staff to provide more accurate information on the number of short-term rentals and accessory short-term rental units that are currently operating in Salem. In addition, if the City wanted to prohibit short-term rentals in all residential zones, staff would be required by State law to provide notice to impacted properties - known as a Measure 56 notice. That notice has not been provided as part of this proposed code amendment.

The proposed code amendment does not change any standards in the MU-I and MU-II zones besides the minimum required depth of awnings and canopies. (For consistency, that is a change that is proposed in all zones with weather protection requirements.) The City has just started to see developments being proposed in the MU-I and MU-II zones, and as more projects are proposed, the City may evaluate if any standards in the mixed-use zones are consistent barriers to development and therefore should be revised. In addition, the City is developing its first Housing Production Strategy, so potential barriers to housing development

in particular will be identified during that process. The Housing Production Strategy is expected to be completed by June 2025.

3. The West Salem Neighborhood Association submitted comments that:
 - a. Support streamlining review processes but asks the City Attorney to affirm that the proposed amendment complies with all “Oregon Development Standards” (see below)
 - b. Oppose the establishment of a 15 units per acre minimum density in the WSCB zone, stating no transportation analysis supports it
 - c. Request that the maximum height in the Edgewater/Second Street Mixed Use Corridor (ESMU) Zone be reduced to 40 feet along the east side of 2nd Street to ensure residential properties on 3rd Street NE have access to sunlight
 - d. Request that clear, objective decision-making points document how the granting of expectations and/or relief from design standards are to be made

Staff Response: The WSNA argues that the proposed code amendment violates state law regarding transportation. Specifically, WSNA appears to be arguing that by establishing a minimum density of 15 units per acre, the proposed code amendment would degrade the performance of Wallace Road NW and therefore significantly affect a transportation facility under Oregon Administrative Rules (OAR) 660-012-0060(1)(c). The existing Comprehensive Plan (Central Business) and zone designation (WSCB zone) for the West Salem business core has been acknowledged as complying with Statewide Planning Goal 12. When changes are proposed to plan and zone designations that are acknowledged, they are analyzed using a “reasonable worst case” scenario. WSNA appears to believe that by establishing a minimum residential density of 15 units per acre, the City is creating a worse worst-case scenario, but that is incorrect. Under the existing plan and zoning, there is no maximum residential density, and the setback and maximum building height requirements do not change. A practical maximum development could exceed 60 units per acre.

While the proposed code amendment establishes a minimum density of 15 units per acre for exclusively residential development, it does not increase the maximum density allowed. The reasonable worst-case scenario remains the same. The proposed code amendment would not allow types or levels of traffic that are inconsistent with the functional classification of an existing or planned transportation facility, would not degrade the performance of an existing or planned transportation facility such that it would not meet performance standards identified in the TSP or comprehensive plan, and would not degrade the performance of an existing or planned transportation facility that it otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan. Therefore, the proposed code amendment complies with Goal 12.

The proposed code amendment does not change the maximum height in the ESMU zone, which is 50 feet. That was the maximum height that was established when the ESMU zone was created in 2018. The northeast boundary of the ESMU zone is adjacent to the RS zone. The ESMU zone requires a 20-foot setback for buildings when the abutting zone is residential, and this setback applies even if there is an alley separating the ESMU and residential zone.

The UDC includes criteria for granting adjustments in SRC Chapter 250. That criteria generally ask if the adjustment request equally or better meets the intent of the standard from which the

applicant is seeking relief. The criteria are not intended to be clear and objective; it is the standards - such as maximum heights, length of canopies or awnings, or minimum setbacks - that are clear and objective. If an applicant cannot meet a standard, they can apply for an adjustment where limited discretion is involved. Public notice is provided, and the public can submit comments. The approval or denial of an adjustment application is made by the Planning Administrator. That decision can be appealed to the Hearings Officer. This proposed code amendment expands where this adjustment process can be used in Salem.

4. The West Salem Neighborhood Association submitted a request to the City Attorney that the Legal Department make a legal determination as to whether the proposed code amendment brings the UDC into compliance with Oregon Development Statutes and corrects or resolves issues related to the Titan Hill and East Park land use cases.

Staff Response: The Legal Department reviewed the proposed code amendment prior to the Planning Commission and Historic Landmarks Commission public hearing. The Planning Division works with the Legal Department during all code amendment projects.

In 2022, the City Council adopted a code amendment that rectified the issue related to clear and objective standards identified by the Land Use Board of Appeals in East Park, LLC vs. City of Salem. Specifically, the City has removed the requirement for a conditional use permit for multifamily housing in the Retail Commercial (CR), General Commercial (CG), and Industrial Commercial (IC) zones. Currently, multifamily housing is allowed outright in those zones if the housing is located in a mixed-use building.

As stated above, the City Attorney and assistant city attorneys assist in drafting and reviewing draft code amendments and facts and findings supporting those amendments. The City Attorney believes the proposed code amendments comply with all applicable law.

Substantive Finding

The proposal includes amendments to the UDC. SRC 110.085 sets forth the following criteria that must be met for an amendment to the UDC to be approved:

1. The amendment is in the best interest of the public health, safety, and welfare of the City.
2. The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

Findings demonstrating the proposal's conformance with the applicable approval criteria are included as Exhibit B of Ordinance Bill No. 8-24 (**Attachment 6**).

BACKGROUND:

The City periodically updates the UDC to respond to changes in State law and to address issues that have arisen since the last code amendment. The City most recently overhauled the UDC with the adoption of the Our Salem project last summer.

Eunice Kim
Long Range Planning Manager

Attachments:

1. Historic Landmarks Commission Recommendation
2. Planning Commission Recommendation
3. Ordinance Bill No. 8-24
4. Exhibit A of Ordinance Bill No. 8-24 Proposed Code Amendment
5. Public Comments for Planning Commission and Historic Landmarks Commission Public Hearing
6. Exhibit B of Ordinance Bill No. 8-24 Findings