CITY OF PHILOMATH

980 Applegate Street
PO Box 400
Philomath, OR 97370
541-929-6148
541-929-3044 FAX
www.ci.philomath.or.us

Mission: To promote ethical and responsive municipal government which provides its citizenry with high quality municipal services in an efficient and cost effective manner.

PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS
980 Applegate Street

September 16, 2019
6:00 p.m.

MEETING AGENDA

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF MINUTES**
   3.1 Minutes of August 26, 2019

4. **FILE PC19-08 – ZONING AMENDMENTS**
   4.1 Public Hearing
   4.2 Discussion and Decision

5. **FILE PC19-09 – ANNEXATIONS**
   5.1 Public Hearing
   5.2 Discussion and Decision

6. **ADJOURNMENT**

NEXT MEETING

October 21, 2019 @ 6:00 p.m. (If Needed)

NOTICE: Given 2 business days' notice, an interpreter will be made available for the hearing impaired or those with limited English proficiency. Contact person: Ruth Post, (541) 929-6148.

PHILOMATH PLANNING COMMISSION
MINUTES
August 26, 2019

1. <u>CALL TO ORDER</u>: Vice Chair Gibbs called the meeting to order at 6:00 pm.

2. <u>ROLL CALL:</u>

Present: Commissioners Gary Conner, Joseph Sullivan, Lori Gibbs, Steve Boggs, and Peggy Yoder.

Staff: Chris Workman City Manager, Deputy City Attorney Amy Cook, and City Recorder Ruth Post.

Excused: Commissioners Stein and Gay.

3. <u>APPROVAL OF MINUTES</u>

3.1 Minutes of July 15, 2019

Page 7, Line 322: Commissioner Yoder requested addition of the work "just" to read "not just Philomath."

Commissioner Sullivan requested correction of the spelling of clientele in all occurrences; Page 4, Line 198: correct "tracts" to "tracks;" and Page 8, Line 397: correct "conquers" to "concurs."

MOTION: Commissioner Conner moved, Commissioner Boggs second, to approve the minutes of July 15, 2019, as amended. Motion APPROVED 5-0 (Yes: Boggs, Conner, Gibbs, Sullivan, and Yoder; No: None).

3.2 Minutes of July 22, 2019 Work Session – Commissioner Yoder moved, Commissioner Boggs second, to approve the minutes of July 22, 2019, work session as presented. Motion APPROVED 4-0 (Yes: Boggs, Conner, Gibbs and Yoder; No: None; Abstained: Sullivan).

3.3 Minutes of July 29, 2019 – Yoder moved, Commissioner Conner second, to approve the minutes of July 29, 2019, as presented. Motion APPROVED 5-0 (Yes: Boggs, Conner, Gibbs, Sullivan and Yoder; No: None).

4. <u>DISCUSSION & DECISION</u>

4.1 File Number: PC19-02, PC19-03, PC19-04, PC19-05, PC19-06, PC19-07

Applicant: Scott Lepman Company

Application Type:

- Master Plan (PC19-02)
- Industrial Flex Space (PC19-03)
- Indoor Storage/Outdoor Storage – Boat & RV (PC19-04)
- RV Park (PC19-05)
- Conditional Use Permit (PC19-06)
- Lot Coverage Variance (PC19-07)
- Location: 617 N 19th St., Assessor's Map 12612, Tax Lot 100, 200 & 201

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Mr. Workman summarized the staff recommendations for conditions of approval, including several new conditions added after the July 29 meeting. He stated that the applicant is aware of all of those conditions and has stated no issues with them. He reviewed the optional motions provided with several variations provided dependent upon the Commission's decision.

Commissioner Conner questioned the language of Conditions #7 and #8 regarding the accompanying applications for a variance and riparian setback requirements. Mr. Workman reviewed the options available. He summarized a minor or major modification application that might be required should the state or federal regulatory agencies make a decision impacting the riparian zone. There was discussion about the 0.3% variance.

Commissioner Yoder questioned if all of the conditions of approval suggested in the applicant's rebuttal are included or not in the staff recommended conditions. As an example, she gave the condition described on Page 27 of applicant's rebuttal under Concern 28 Response for a 50% survival rate requirement for wetland plantings. There was discussion about the rebuttal and the potential conditions of approval described by the applicant in their responses. Mr. Workman stated that the applicant offered those conditions but staff was leaving those decisions up to the Planning Commission.

Commissioner Yoder requested confirmation that the recreational vehicles (RV's) at the RV park would be required to be 2005 model year or newer. Mr. Lepman confirmed that was correct.

Commissioner Yoder requested additional information about the police calls at the Blue Ox Albany RV Park described on Rebuttal Page 10, Concern 7. Applicant's Planner Candace Ribera summarized the call history, noting that some of the calls were for outside factors and not actually related to the residents of the park.

Commissioner Yoder, stated she didn't consider the Rebuttal Page 13, Concern 10 Response: "So more trips means more money to the City" as a positive statement. She noted in talking to people around town that she had received negative feedback about the application. Commissioner Sullivan raised the question of ex parte contact declarations. Ms. Cook reviewed ex parte contact and the need to disclose any new information that any member of the Commission had received from an outside source that the remainder of the Commission wouldn't know. Commissioner Yoder stated she had not received any new information in her conversations with community members.

Commissioner Yoder questioned a difference between the Applicant's Rebuttal dated 7/26/2019 and the Rebuttal dated 8/26/19 in the Million Gallons per Day (MGD) calculations estimated for the RV Park. Applicant's engineer, Brian Vandetta, Udell Engineering stated the first rebuttal response had an incorrect figure and the final rebuttal response contains the final calculations.

Commissioner Yoder questioned if the easement to the City for a future bike/pedestrian path is not utilized by the City in the future, what would happen to that segment of the property. Mr. Workman explained that the easement is not a requirement to construct the path; and if it is never constructed, it would remain as is, without disturbance of the associated wetlands.

Commissioner Yoder questioned if the 50% survival rate of wetlands plantings referred to on Rebuttal Page 27, Concern 28, could be increased. Mr. Lepman described his experiences in working with regulatory agencies regarding wetlands habitat restoration and enhancement. He described having an independent monitor perform an annual review. Applicant's wetlands specialist, Allen Martin, provided more detail regarding wetlands criteria set out by state and federal regulators. He stated there are already existing native wetlands plants that would be enhanced by additional plantings and there would be no problem meeting a 50% or higher survival rate. He further explained concerns, however, with an extended monitoring period, such

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as 5 years, due to unpredictability of drought or other conditions that could have an impact on survival long-term. He stated the goal is to demonstrate an improvement in the function of the wetlands.

Commissioner Boggs questioned who would require the annual reports. Mr. Martin stated it wouldn't be the State because their intent is to voluntarily enhance the existing wetlands and not as a part of a mitigation credit. He stated it could be an agreement between the City and Mr. Lepman and the inspection would be by a qualified botanist. Mr. Lepman stated that, in those instances where they needed to do monitoring, they have historically hired a wetlands consultant to provide it. Mr. Martin stated there is no requirement by the State to do this and any monitoring would be at the City's request. He stated it would typically begin after the plantings are installed.

Commissioner Sullivan stated he would like the applicant to address the question in Sandy Heath's testimony, page 2, regarding storm water drainage of the RV park. He questioned if this was being addressed in Applicant's Rebuttal Page 36, Concern 48 regarding surface hardening and runoff. Mr. Vandetta verified the design for storm water management on the two sites are independent of each other and further described the infrastructure requirements for the RV park's Stormwater.

Commissioner Yoder questioned the use of barbed wire fence described in Applicant's Rebuttal Page 29, noting that there are prohibitions against barbed wire in the municipal code. Mr. Workman stated this type of design issue would typically be addressed in the Public Works infrastructure pre-design meetings.

Commissioner Yoder questioned if the six additional conditions of approval offered by the applicant will be automatically be added if the application is approved. Mr. Workman restated that staff did not make any assumptions regarding those conditions and they would need to be added separately if desired by the Commission. There was discussion about addressing each of the six conditions separately.

Commissioner Yoder questioned if the condition of approval suggested by the applicant on Rebuttal Page 23, Concern 18 regarding inadvertent archaeological discovery should be added. Consensus of the Commission was that it did not need to be added.

Discussion returned to Applicant Rebuttal Page 27, Concern 28 regarding yearly inspection of voluntary wetlands plantings. Mr. Martin reviewed the process for initial plantings and making sure they survive. The intent is to improve the native plant diversity and have some survival success. Commissioner Gibbs noted the applicant intends to do the plantings anyway. She questioned if the Commission wanted to make it a condition. Commissioner Conner recommended letting the professionals who deal with those types of issues do those things. Mr. Martin questioned what the intended goal was. He stated they are trying to enhance the riparian area and tip the scales. Ms. Ribera stated they have done this same thing at other projects. Commissioner Sullivan emphasized the need for a specific reason to justify a condition of approval. Mr. Workman suggested the Commission might want to require proof of survival of installed wetlands plants for one year. There was additional discussion about unintended consequences for requiring it. Mr. Workman noted the developer is still subject to DSL Wetlands requirements and the City can report them to the Wetlands Division, who are diligent about following up.

Commissioner Yoder requested discussion about Applicant's Rebuttal Page 32, Concern 37, regarding protection of the 50-foot buffer area along the creek. Mr. Vendetta stated the applicant is willing to go above and beyond to ensure protection of the riparian corridor. Mr. Workman offered to draft language for a condition of approval.

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RECESS: Chair Gibbs called a 5 minute break at 6:56 p.m. and reconvened at 7:01 p.m.

Based on the Commission's discussion, Mr. Workman suggested addition of Condition of Approval #13: Must install within the 50-foot wide riparian corridor a vegetated filter strip along the creek side of the trail.

Commissioner Yoder noted the applicant's response to protecting the riparian corridor from runoff at the RV pads as outlined in their Tenant agreement requirements regarding mechanical work and storage of personal items. She questioned if it should be an additional condition of approval.

Continuing to review the potential conditions of approval offered in the Applicant's Rebuttal, Commissioner Yoder addressed Page 37, Concern 55, regarding placement of animal waste bag stations along the private trail. Commissioner Gibbs suggested if the applicant wants to do it, let them do it. Commissioner Yoder noted the applicant offered to accept a condition of approval requiring it.

Commissioner Yoder questioned if the City engineer's concerns had been addressed somewhere. Mr. Workman identified staff proposed condition of approval #2e as addressing those concerns.

There was discussion about the City process for business or industrial occupancy or re-occupancy of space to ensure compliance with current code requirements. Mr. Workman confirmed that any change of occupancy now results in a site design review to address any deficiencies that may exist in a site. Commissioner Sullivan recommended striking staff proposed condition of approval #9.

MOTION: Commissioner Sullivan moved, Commissioner Conner second, to strike staff proposed condition of approval #9 and add #13 (regarding the 50-foot wide riparian corridor vegetated filter strip). Motion APPROVED 5-0 (Yes: Boggs, Conner, Gibbs, Sullivan and Yoder; No: None).

Commissioner Sullivan questioned staff condition #6 regarding payment in lieu of construction of the public bike/pedestrian path, particularly why the City would want cash instead of actual construction of the path. Mr. Workman explained that the applicant will be required to install sidewalk on 19th Street; but, under the current circumstances, if they construct the path it will lead to nowhere. He explained the section of potential path to the south of the applicant's property that is not City owned, which would result in the applicant-constructed path dead-ending at the property line. He explained future opportunities to construct the path, dependent upon development of the adjacent property. Mr. Sullivan questioned if, down the road, construction costs increase and the payment would be insufficient to cover the cost. Mr. Sullivan questioned if the Commission felt construction of the path should be required.

Mr. Martin pointed out that state and federal regulatory agencies require any path going through a wetland to have independent utility and they wouldn't likely approve construction for a path that leads to nowhere. Mr. Lepman offered that a path to nowhere could be a policing issue and an attractive nuisance. Mr. Workman explained that the Park Master Plan encourages bike & pedestrian paths and it's one of the few things that can be done in a riparian zone. Mr. Martin stated that the regulatory agencies are there to protect the wetlands and would recommend sending the path out to 19th Street anyway, even though it wouldn't be as aesthetically pleasing.

Commissioner Sullivan stated his concern with Applicant's Rebuttal Page 8, Concern 4: Housing Goal 10. He stated the case could be made that the park does provide low-income

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housing based on the 17% in the table on Page 9 who give “rent was too high” as their reason for being monthly residents at the Albany Blue Ox RV Park. He stated the City’s Comprehensive Plans points out there is such a thing as sub-standard housing and it seems that an RV park, if used as a permanent residence, is sub-standard because it’s small and doesn’t have access to the same sort of facilities that a normal house would. The people that live in temporary housing can pull up and leave at a moment’s notice, so their investment in the community and the lifestyle that they get from that are diminished. He saw a problem with 70% of their RV park residents being long-term. He stated the Comprehensive Plan also encourages tourism and he completely agrees with that; however, as proposed, this wouldn’t be as much tourism as it would be a massive opportunity for sub-standard housing. He didn’t see how this proposal could align with the Comprehensive Plan unless there was a maximum length-of-stay required, which would probably undermine all of the economic reasons for doing this in the first place.

Commissioner Conner stated that the City zoning and codes do things to encourage certain things so the most that we can do with Goal 10 is to manage the zoning and the rules to encourage and to discourage. He added that this being an RV park, it’s not really a housing facility, it’s a commercial development and personal rights. If somebody owns and RV and wants to live in it, they can. He didn’t see that the City code gives the Commission a mandate to dictate where someone can live and for how long, provided it meets certain standards; and if we have certain standards for an RV park, we ought to allow them. Commissioner Sullivan countered that if we have an RV park, there is nothing in the City code that would prevent them from living there long term; however we have an obligation to our Comprehensive Plan to only build things that are in keeping with our goals. Commissioner Conner disagreed that we are not building it; we are encouraging or discouraging it based on our zoning. Commissioner Sullivan stated the Comprehensive Plan is out of date but, regrettably, this is what we have to go on; and Goal 10 they make a valid point that we have to make an accurate interpretation of what Goal 10 is trying to promote. He cited Supreme Court case Siporen v. City of Medford regarding Wal-mart, in which the Supreme Court rules that when any local government plausibly interprets its own land use regulations by considering and then choosing between harmonizing or conflicting provisions, that interpretation must be affirmed. He added that when he looks at the Comprehensive Plan, he sees conflicting provisions such as promoting tourism but not promoting sub-standard housing; and the only way he could make sense of these two was if there was a restriction saying this was only to be built to short-term residents then we’d be meeting both goals. He added if it was approved as presented, it explicitly states that 70% of the people are there for long term.

Commissioner Gibbs stated she knows people who have lived for quite a while in RV’s and they wouldn’t necessarily say it was a bad situation. She added that the applicant has indicated a limitation to 2005 RV’s. She didn’t feel it has to be considered sub-standard. Commissioner Sullivan agreed this was a good point; however, one of the reasons he is concerned about it being sub-standard is because of the number of people who said they don’t have any choice, the rent was too high, because they have to downsize, because they’re recently single. These didn’t sound like positive reasons for making lifestyle choices. He stated no problem with workers living in an RV so they don’t have to drive back and forth but it does some like some people are there because they have no place else to live. He related it to living under a bridge. Commissioner Conner noted that Commissioner Sullivan was referring to the almost 18% who said that rent was too high. Commissioner Sullivan agreed and added that it was also the 6% who were recently single.

Commissioner Gibbs stated that it was similar to those who live in a tiny house that may be small but has everything that they need to be happy. Commissioner Sullivan stated he was a proponent of tiny housing as a good way for people to have a lesser impact; and if someone wants to, it’s a great lifestyle. He stated these are fine-tuned knobs and there could be unintended consequences. Commissioner Sullivan stated the tiny houses he has seen on

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private property have an ownership attitude, are well built and well maintained; but people, living in an RV for financial reasons, will pick up and drive from here to there and everywhere they stay is just a parking lot. He stated he has camped and stayed in a Wal-Mart parking lot but it's not home and he doesn't treat it like it is home. He stated it looks like a fantastic park; but if we're trying to promote ownership and healthy housing, there are concerns there. Commissioner Conner stated that is what is to be promoted in a residential area, and this is not a residential area. Mr. Workman suggested it would be hard to argue that this is sub-standard housing in an industrial zone. He stated it might be different if it was residential housing trying to meet the Comprehensive Plan residential housing goals. He noted this an industrial location and is the only Philomath zone that allows an RV park. He added that when the Comprehensive Plan was adopted, there was an understanding that in an industrial zone and RV park was seen as a business and industry, not housing. Commissioner Sullivan stated he would make the argument that the location isn't desirable specifically because it is an industrial zone. He stated that weekend campers would want a nice location to stay, not an industrial facility next to boat storage, mixed-use industrial facility with railroad tracks. He added if it was smaller to cater to weekend travels to come visit Oregon it would hit all the buttons; but it's really quite large and 70% of it will be used for as temporary shelter for a significant portion of people who can't afford anything better. He stated this is not meeting Oregon's Goal 10 standards and provides an opportunity for sub-standard housing. Commissioner Yoder stated that works out to be 152 RV's.

Commissioner Sullivan continued that his second concern is that the goal of industrial land, citing the Comprehensive Plan Goal for industrial land and agreeing that the mixed-use portion of the application does do that. He stated, however, that using the space to store boats and allow people to camp doesn't meet that goal. He stated he likes the mixed-use and tourism but doesn't like the rest of it; adding that he is flattered that Philomath was chosen but only sees 20% of the project meeting the City's goals and 80% of it not. Commissioner Gibbs stated that we live in a place where people are allowed to buy land and, if they've met the criteria, we don't get to pick what someone else puts on their place. Commissioner Yoder stated if it doesn't fit with the Comprehensive Plan, it doesn't meet the criteria. Commissioner Sullivan reiterated that the Comprehensive Plan rewrite should have been done a long time ago; but when this was written, they didn't say we want a giant RV park. Commissioner Conner disagreed, stating the Zoning Code says an RV park and storage units are allowed in an industrial area. He added f it was a conditional use, then we could have that discussion; but these are allowed uses. He noted that this is a quasi-judicial proceeding; so they still have to come to the Commission even if it's completely allowed. If it meets the code requirements then it should be approved. Commissioner Sullivan stated just because it's in the code doesn't make it in agreement with the Comprehensive Plan.

Commissioner Sullivan stated that just because something is permitted by the law, it can still seem to be unconstitutional; and that's why courts decide how the law is to be interpreted. He cited that the term quasi-judicial means the question is whether it's in compliance with our code and with our Comprehensive Plan and are those two things in line with each other. Commissioner Gibbs questioned if the process was to go by the Comprehensive Plan or by the code. Mr. Workman stated where the Comprehensive Plan has conflicting interests, such as tourism, housing, and types of industries, the interpretation is up to the Planning Commission as to whether one is going to outweigh the other. He added that the number of jobs to be created should be compared to what other types of uses this industrial site could be used for. The Commission needs to mindful of all of the aspects of the Comprehensive Plan but cautioned looking at housing requirements and goals when looking at industrial sites. Commissioner Sullivan stated he has a problem with that. He recounted a conversation with Mr. Workman when the development was first unveiled and that Mr. Workman had concerns whether the industrial use would materialize or not. He stated that Mr. Workman stated it was going to provide zero jobs as a storage facility but that the Commission was free to shoot it down. He

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stated, at the time, he questioned why Mr. Workman was talking to the applicant as if it were a good thing; and Mr. Workman stated that Philomath is open for business, and it's the Commission's job to shoot it down. Mr. Sullivan stated it is the Commission's place to make sure the application is in conformance with the Comprehensive Plan and it's Mr. Workman's job to hold his hand out to anybody. Mr. Workman stated if the Planning Commission doesn't feel like this provides enough jobs, that would be an issue you can take up. He added that the Commission still needs to make findings relative to the Comprehensive Plan that it was a criteria to deny on that basis. He noted that there is no specific number of new employees per acre given as a criteria and added that there are also spinoff jobs created. He stated that, hypothetically, Commissioner Sullivan's statement is accurate but there are a lot of other things to consider. Commissioner Sullivan agreed and noted there are two sides to the issue. Mr. Workman stated the focus of this application was on tourism, and commercial and industrial development.

Commissioner Yoder stated she sides with Commissioner Sullivan that the flex space is so small and the large size of the RV park with 70% of the people living there long-term, even though it's allowed, doesn't seem to be the best use for the town. She suggested taking it in pieces would be better. She stated she has gotten a lot of really good feedback from people who live here. She noted upcoming code revision project with Transportation Growth Management. Commissioner Sullivan stated that based on Comprehensive Plan vision that was developed, he sees some of the development that meets the goals and a big section that doesn't. He stated he would love to approve the parts that do good things for Philomath and not approve those that don't.

Commissioner Yoder questioned if the different applications have to be voted on together. Mr. Workman explained the over-arching master planned development application and the individual applications that are under that. He added that the variance and conditional use permit are the only two separated out. Mr. Sullivan stated no problems with the variance.

Commissioner Boggs stated he was conflicted. He stated he has been complaining about vacant industrial spaces for 25 years and there are a lot of people concerned about water usage with all of the development coming. He stated if this development comes in it would probably use the least amount of water of any industrial use. He noted that any heavy industrial use is going to use a lot of water. He cited more jobs as also creating more traffic. He stated if the RV space was half the size he'd think it was the best thing ever. He stated concerns with Stormwater runoff making flooding worse on the Marys River and the south side of town where he lives.

Commissioner Yoder stated citizens haven't even seen the effects of the development that has been approved and maybe Philomath needs to close for a bit and cool down and absorb what has been approved. She stated she understands that nothing happened during the recession. Mr. Workman stated that each of those developments has reviewed the impacts and the checks have been done. These developments take a long time to come in; and at some point you have to rely on the impact studies that have been completed. He added that for every project the Commission has reviewed there have been five that didn't make it through the staff review to reach the Commission. He noted the state doesn't allow cities to just stop growing; they are protecting forests and farms by expecting cities to develop criteria and make decisions based on them. Commissioner Conner stated that one of the checks is the zoning that has been in put in place, along with the Comprehensive Plan and Zoning Code. Commissioner Sullivan stated the controlling land use document is the Comprehensive Plan; and even if the application meets the Zoning Code, the Comprehensive Plan is the controlling document. Commissioner Conner agreed, noting that the property is zoned industrial, per the Comprehensive Plan. Commissioner Sullivan stated he didn't take issue with the zoning, but the goals state that industrial land is for

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creating jobs and the reference to sub-standard housing creates doubts. Commissioner Conner stated that RV parks are allowed in the industrial zone.

Commissioner Gibbs questioned if the applicant had considered any other configurations. Mr. Lepman stated they are testing the waters with the flex space versus the storage. He stated the RV park is located in a beautiful space for a park. He stated they have tenants that have varied income levels and this is not low-income housing. Commissioner Sullivan stated it's just the large scale of the RV park; and if it was a third of the size, he'd be very happy. He questioned if Mr. Lepman would be willing to go to a smaller RV park. Mr. Lepman stated this is not a trailer park. They will have full-time on-site managers and groundskeepers. Ms. Cook redirected the Commission to the application and criteria.

Commissioner Yoder stated she would vote no on a motion for the full application. There was discussion about options related to approval or denial. Ms. Cook noted that the definition of a campground would need to be identified due to the City code prohibiting overnight use of an RV for more than 72 hours unless it is in a campground. There was discussion about the definition of a campground. Mr. Workman pointed out that any decision of the Planning Commission can be appealed to the City Council by any party or the applicant could come back with a new application. There was discussion about creation of a definition of a campground. Commissioner Sullivan questioned if there are any other provisions in the code related to campgrounds. Mr. Workman stated the code identified earlier by Ms. Cook is the only one.

MOTION: Commissioner Sullivan moved to deny the application based on findings that the use of the industrial land does not provide sufficient jobs as defined by the Comprehensive Plan goal and because the extremely large size of the RV park calls into question the question of substandard housing as discussed in Section III of the Comprehensive Plan.

Commissioner Conner restated that the code allows RV parks, and this is an RV park. Mr. Workman stated that the applicant has be up front that they intend to allow long-term stays. He stated it doesn't do the applicant justice by changing the definition of a campground.

There was discussion surrounding the wording of the motion. Ms. Post restated the motion.

MOTION SECOND: Commissioner Yoder seconded the motion on the table.

Commissioner Conner restated that an RV park is listed as an allowable use. He stated that judging the application on the basis of the code, he doesn't see how they've failed to meet the criteria. Commissioner Boggs questioned if any of the issues raised by Commissioner Sullivan goes against the applicable criteria. Mr. Workman stated that Commissioner has identified where they do conflict. He stated that the code calls for employment centers. He questioned if we want a much larger employer or would it create more traffic and use more water. He stated Commissioner Sullivan is correct there are conflicting goals in the Comprehensive Plan and the question is if one outweighs the other. There was discussion about the potential number of jobs to be created. Commissioner Gibbs stated you don't know when you start a business how it's going to turn out.

Mr. Workman stated that one of the concerns being raised is the age of the 2003 Comprehensive Plan. He noted that in 2008 development dropped off and planning documents aren't so much dated by time as they are by growth. He identified updates to the Comprehensive Plan along the way including zone changes and the new transportation section updated last year. He stated that part of what's approved in the Comprehensive Plan is the Comprehensive Plan Map and it designates where the industrial uses go and at the same time it designates the types of use. Mr. Workman stated if you look back twenty years, there hasn't been a lot of change in the use and there's still a lot of available industrial property that the City

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has on the zoning map. Sullivan: Comp Plan doesn't give the option of approving something out of desperation just because nobody has developed the land. He added that even though the code allows for RV parks on industrial lands, the Comprehensive Plan doesn't say we really want this, it says we really want jobs. Commissioner Sullivan stated if this is denied and the RV park goes away, he would be very sad.

VOTE: Motion APPROVED 3-2 (Yes: Boggs, Sullivan, Yoder: No: Conner and Gibbs).

Ms. Cook stated this was a final decision of the Planning Commission with appeal rights to the City Council.

MOTION: Commissioner Yoder moved, Commissioner Sullivan second, to deny the conditional use (PC19-06) to allow for observation decks to encroach into the Newton Creek Riparian Corridor based on the findings of fact adopted by the Planning Commission. Motion FAILED 1-4 (Yes: Yoder; No: Boggs, Conner, Gibbs and Sullivan).

MOTION: Commissioner Sullivan moved, Commissioner Boggs second, to approve the conditional use to allow for observation decks to encroach into the Newton Creek Riparian Corridor based on the findings of fact contained in the Staff Report dated June 26, 2019, for file PC19-06, Conditional Use Permit. Motion APPROVED 4-1 (Yes: Boggs, Conner, Gibbs and Sullivan; No: Yoder).

MOTION: Commissioner Sullivan moved, Commissioner Boggs second, to approve the application for a 0.3% variance to the maximum allowed lot coverage based on the findings of fact contained in the staff report dated June 26, 2019, for file PC19-07, Lot Coverage Variance. Motion APPROVED 4-1 (Yes: Boggs, Conner, Gibbs and Sullivan; No: Yoder).

5. <u>ADJOURNMENT</u>:

There being no further business, Vice Chair Gibbs adjourned the meeting at 8:42 p.m.

SIGNED: ATTEST:

_____ _____

Lori Gibbs, Vice Chair Ruth Post, MMC, City Recorder

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STAFF REPORT

DATE:	September 10, 2019
NATURE OF APPLICATION:	Update the City of Philomath Development Code.
APPLICANT:	City of Philomath
APPLICABLE CRITERIA:	Section 18.105.060 of the Philomath Municipal Code (PMC)
PROPERTY LOCATION:	City Wide
STAFF CONTACT:	Patrick Depa, Associate Planner
FILE NUMBER:	PC19-08

Background

As you recall, the Planning Commission and staff went over these proposed amendments and their intended purpose over the course of several meetings including an open house for the public to read about the changes and comment on them. The attached code amendments are the result of the notes and testimony we took during those meetings.

Summary

The purpose of this update is to recognize changing standards within the community predominately related to commercial and residential parking, manufactured home development standards, temporary storage, housing in the downtown commercial district, the validity of approved plans and pre-existing approvals and new code addressing the protection of the city's existing tree canopy. These are stop gap code changes to address the increase in development and to prevent any undesirable projects in the downtown that would throw off the city's downtown main street improvements project.

The purpose of the hearing is to determine if the code amendments are sufficient to address their intended purpose and use and to arrive at a recommendation to the City Council.

The proposed language that would supplant the existing

Section 18.105.060 provides the criteria for Type IV legislative amendments. The decision-making criteria are enumerated under subsection G as follows:

Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. **The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for comprehensive plan amendments only);**

This is not a comprehensive plan amendment. The Statewide Planning Goals and Guidelines are not applicable to amending this language

2. **Comments from any applicable federal or state agencies regarding applicable statutes or regulations;**

Notice was provided to the Department of Land Conservation and Development. No comments were received from any state or federal agency.

3. Any applicable intergovernmental agreements; and

Intergovernmental agreements address coordination of development aspects and are not applicable to the amendments.

4. **Any applicable comprehensive plan policies and provisions of this Code that implement the comprehensive plan. Compliance with Chapter 18.135 PMC shall be required for Comprehensive Plan Amendments, and Land Use District Map and Text Amendments.**

Chapter 18.105-060 pertains to legislative amendments specifying that amendments are policy decisions made by the City Council.

The applicable comprehensive plan policies identified by a review of that document relating to this topic include:

Citizen Involvement Polices

1. The City of Philomath shall continue to hold public hearings on all comprehensive plan and zoning ordinance amendments.

2. The City of Philomath shall provide for ongoing citizen involvement in the planning process of continuing to follow the approved Citizen Involvement Program.

Findings: The City has held public open houses and received comments factored into the final documents and the City will hold public hearings before the Planning Commission and City Council to afford the general public the opportunity to be involved.

Housing Policies

1. The City of Philomath shall encourage the development of low cost housing in order to meet the housing needs of elderly, low-income, and handicapped persons.

2. The City will encourage the utilization through incentives for mixed-use zoning to allow people to reside in closer proximity to employment opportunities. *(Added by Ord. #720 on 9/22/03.)*

Findings: The City will continue to seek and support many different varieties of housing choices which is evident in the expansion of the Mobile Home Park Special Standards for Certain Uses and the clarification of preferred residential development in the city's downtown commercial core.

Recommended Motion:

I MOVE THAT:

A. **The Findings of Fact as presented in the staff report be adopted and the Planning Commission recommend approval to City Council the proposed development code amendments as presented in File No. PC19-08.**

Or

B. *The Findings of Fact as presented in the staff report and modified in opposition to the applicable criteria be adopted and the application to amend the Development Code as presented in File No. PC19-08 be denied.*

PROPOSED CHANGES TO THE ZONING CODE

Plan Approvals

18.10.050. Validity of approved plans and pre-existing approvals.

A. Developments, including subdivisions, projects requiring development review or site design review approval, or other development applications for which approvals were granted, are subject to the following:

1. **Start of Construction.** Site plan approval is valid for a period of eighteen (18) months from the date of approval. Building permits must be issued and physical construction as set forth below must commence within the eighteen (18) month period.

2. **Extensions.** Upon written application prior to expiration, the planning commission, or city council, as applicable, may authorize an extension of the time limit of the site plan approval for an additional one (1) year. The extension shall be based on evidence from the applicant that the development has a likelihood of commencing construction within the extension period. The planning commission, or city council, as applicable, may require compliance with any amendments to the zoning ordinance adopted since the date of the original approval.

3. **Expiration of Site Plan Approval.** In cases where at least 25% of the construction authorized by a site plan approval is not complete within eighteen (18) months of site plan approval or granting of an extension, the site plan approval shall automatically become null and void and all rights thereunder shall terminate.

B. Amendment of development approvals shall comply with Chapter 18.130 PMC, Modifications to Approved Plans and Conditions of Approval.

C. All development proposals received by the city after the adoption of this title shall be subject to review for conformance with the standards under this title or as otherwise provided by state law. [Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.5], 2003.]

Manufactured Home Parks

18.35.100 Special standards for certain uses.

D. Manufactured Home Park. Manufactured home parks are allowed on parcels of five (5) acres or larger, subject to compliance with subsections (D)(1) through (D)(5) of this section:

1. Allowed Uses. Single-family residences, manufactured home park manager's office, home occupations, and accessory structures, which are necessary for the operation and maintenance of the manufactured home park (e.g., landscape maintenance).

2. Space. The minimum size pad or space for each home is 2,500 square feet; provided that the overall density of the park does not exceed 12 units per acre. Each space shall be at least 30 feet wide and 40 feet long, in accordance with ORS 446.100(1)(c).

3. Setbacks and Building Separation. The minimum setback between park structures and abutting properties is 10 feet. The minimum setback between park structures and public street right-of-way is 15 feet. At least a 10-foot separation shall be provided between all dwellings. Dwellings shall be placed a minimum of 14 feet apart where flammable or combustible fuel is stored between units. Park structures shall be placed no closer than five feet to a park street or sidewalk/pathway. An accessory structure shall not be located closer than six feet to any other structure or dwelling, except that a double carport or garage may be built which serves two dwellings. When a double carport/garage is built, the carport/garage shall be separated from all adjacent structures by at least three feet.

4. Landscaping/Buffering. Manufactured home parks shall be landscaped as follows:

   a. When manufactured homes are oriented with their back or side yards facing a public right-of-way, the planting of a six-foot wide landscape buffer between the right-of-way and a manufactured home park is required for the privacy and security of residents or aesthetics of the streetscape.

   b. The park shall provide landscape screening along the park boundary abutting adjacent properties.

   c. The landscaping screening shall consist of evergreen trees or shrubs of a minimum three (3) feet in height, which are spaced so they provide a semi-continuous screen at maturity. Alternative screening devices subject to prior approval may be utilized if they conceal the manufactured home park as effectively as the required landscaping described above and provided the screening is kept in good repair.

   d. Exposed ground surfaces in all parts of the manufactured home park shall be paved, covered with stone or other solid material, or protected with grass, trees, or shrubs that are capable of preventing soil erosion. The ground surface in all parts of every manufactured home park shall be graded and equipped to drain all surface water in a safe, efficient manner.

   e. Minimum 20% of the site shall be dedicated to open space, excluding roads, and shall be designated on the site plan. Should recreational areas also be proposed, these shall also be shown on the plans.

5. House Design Manufactured homes in parks shall meet the following design standards, consistent with ORS 197.314(6):

   a. The manufactured home shall have a pitched roof with a slope not less than three feet in height for each 12 feet in width (14 degrees).
   b. The manufactured home shall have exterior siding and roofing which in color, material and appearance are similar or superior to the exterior siding and roof material used on nearby residences (e.g., horizontal wood or wood-appearance siding is considered superior to metal siding and roofing).

6. Streets and Sidewalks. All streets within the park shall be constructed and paved in accordance with city standards for local roads as outlined in the City's Transportation System Plan (TSP) unless other standards are approved by the Planning Commission. The manufactured home park shall be provided with a walk system in conformance with city requirements. Two (2) access points shall be provided to a major street to allow a secondary access for emergency vehicles. A boulevard entrance extending to the first intersection of interior park streets shall be interpreted as satisfying this requirement.

7. On Site Sales. The business of selling or storing new and/or used manufactured homes as a commercial operation in connection with the operation of a manufactured home development is prohibited. New or used manufactured homes located on lots within the manufactured home development to be used and occupied on that site may be sold by a licensed dealer and/or broker. This section shall not prohibit the sale of a used manufactured home by a resident of the manufactured home development provided the development permits the sale.

8. Signage. There shall be a maximum of two (2) sixteen (16) square foot monument signs per street frontage with an entrance that shall bear the name and address of the manufactured home park. Such signs shall be located ten (10) feet from the lot line/right-of-way line and shall comply with *Chapter 18.95 Regulating Placement of Signs.*

Multi-family in Commercial Zones

18.40.090 Special standards for certain uses.

Residential in Commercial District Table 18.40.020

-Asterisk added after to "Multifamily" in the C-1, directing multifamily in all commercial zones to the specials standards section of the code.

-Change "the O-R zone" to "a commercial zone"

Table 18.40.020
Land Uses and Building Types Allowed in the Commercial Districts

C-1 Central Commercial	C-2 General Commercial	O-R Office/Residential
Allowed Uses (A) Bank or financial institution. (B) Church. (C) Day care centers, including family day care homes. (D) Drive-in or drive-through facilities.* (E) Funeral parlor. (F) Fraternal lodge. (G) Membership club. (H) Multifamily and row housing.* (I) Retail sales and service establishments that do not require the outside storage of goods, supplies or equipment not otherwise identified in this section. (J) Offices. (K) Professional offices. (L) Public buildings and uses including public park, post office, public office, fire station, public community center, public parking lot, and public library. (M) Residences, provided they are in conjunction with another use that is allowed or allowed by an approved conditional use permit. Residences must be located above the allowed use. (N) Recreation vehicles, including travel trailers, camping trailers, fifth-wheel trailers, motor homes, and/or other vehicles designed for temporary occupancy may not be stored or occupied in the zone. (O) Residential care facility. (P) Restaurants including takeout only establishments. (Q) Taverns. (R) Sidewalk displays.	Allowed Uses (A) All uses allowed in the C-1 zone. (B) Assembly of products. (C) Automobile or trailer sales and service. (D) Car wash. (E) Motels. (F) Service station and vehicle repair shop. Conditional Uses (A) Light manufacturing.	Allowed Uses (A) Church, nonprofit religious or philanthropic institution. (B) Office. (C) Home occupation; subject to PMC 18.145.020. (D) Multifamily dwelling.** (E) Family day care home or facility. (F) Parking lot. (G) Residential or child care home or facility. Conditional Uses The planning commission may grant a conditional use permit for the following uses: (A) Research laboratories. (B) Tower, water tank, or similar structure in conjunction with a building or buildings on the same lot. (C) Funeral parlor. (D) Pharmacy. (E) Community center. (F) Governmental structure or use of land, including park, playground, fire or police station, library, or City Hall. (G) Nursing home, rest home, retirement home, residential care facility, convalescent hospital or similar facility. (H) Membership club. (I) Public and private schools.

Uses marked with an asterisk (*) are subject to the standards in PMC 18.40.090, Special standards for certain uses. Home occupations and temporary uses are subject to the standards in Chapter 18.145 PMC.

** Multifamily dwellings in ~~the O-R~~ a commercial zone are subject to the standards of the R-3 zone in Chapter 18.35 PMC. [Ord. 799 § 7, 2015; Ord. 737 § 1, 2006; Ord. 734 § 1, 2005; Ord. 720 § 7[2.2.110], 2003.]

A. Residential Uses. Higher density residential uses, such as multifamily buildings and attached townhomes, are allowed to encourage housing near employment, shopping and services. All residential developments shall comply with the standards in subsections (A)(1) through (A)(6) of this section, which are intended to require mixed-use development;

conserve the community's supply of commercial land for commercial uses; provide for designs which are compatible with a storefront character; avoid or minimize impacts associated with traffic and parking; and ensure proper management and maintenance of common areas. Residential uses that existed prior to the effective date of the ordinance codified in this title are exempt from this section.

1. Mixed-Use Development Required. Residential uses shall be allowed only when part of a mixed-use development (residential with commercial or public/institutional use). Both vertical mixed-use (housing above the ground floor), and horizontal mixed-use (housing on the ground floor) developments are allowed, subject to the standards in subsections (A)(2) through (A)(6) of this section.
2. Limitation on Street-Level Housing. No street frontage may be occupied by residential uses. This standard is intended to reserve storefront space for commercial uses and public/institutional uses; it limits residential uses to above the street level on upper stories or behind street-level storefronts. For parcels with street access at more than one level (e.g., sloping sites with two street frontages), the limitation on residential building space shall apply to all street frontages. Minimal street frontage may be given for stairways or access corridors to residential uses.

Temporary Storage

18.40.090 Special standards for certain uses.

H. Long term or temporary storage of semi-truck and/or tractor/trailers is prohibited. Accessory parking of semi-truck and/or tractor/trailers shall not exceed 24 hours.

1. Long-term storage of tractor/trailers is allowed in industrial zoned districts.
2. All parking or storage of tractor/trailers shall be screened from public view and adjacent residentially zoned properties with a fence no less than six (6) feet tall.
3. Temporary parking of tractor/trailers not approved in this section may apply for a temporary permit through the Planning Commission.

Urban Tree Canopy

Chapter 18.70 LANDSCAPING, A STREET TREES AND URBAN FOREST
Sections:
18.70.010 Purpose.
18.70.020 Landscape conservation.
18.70.030 New landscaping.
18.70.040 Street trees.
18.70.050 Repealed.
18.70.060 Urban Canopy: Application for tree removal permit.

18.70.070 Mitigation.
18.70.080 Public nuisance definition.
18.70.090 Notice required for nuisances.
18.40.100 Violation and penalty.

18.70.010 Purpose.

The purpose of this chapter is to promote community health, safety and welfare by protecting natural vegetation, setting development standards for new landscaping and street trees, maintaining the urban canopy through a tree removal system and laying out a process for handling nuisance trees and vegetation. Together, these elements of the natural and built environment contribute to the visual quality, environmental health and character of the community. Trees provide climate control through shading during summer months and wind screening during winter. Trees and other plants can also buffer pedestrians from traffic. Walls, fences, trees and other landscape materials also provide vital screening and buffering between land uses. Landscaped areas help to control surface water drainage and can improve water quality, as compared to paved or built surfaces.

18.70.020 Landscape conservation.

A. Applicability. All developments or sites two (2) acres or larger containing significant vegetation, as defined in subsection (B) of this section, shall comply with the standards of this section. The purpose of this section is to incorporate significant native vegetation into the landscapes of development and protect significant vegetation that is subject to requirements for sensitive lands (Chapter 18.55 PMC). The use of mature, native vegetation within developments is a preferred alternative to removal of vegetation and replanting. Mature landscaping provides summer shade and wind breaks, and allows for water conservation due to larger plants having established root systems.

F. Exemptions. The protection standards in subsection (D) of this section shall not apply in the following situations:
   1. Dead, Diseased, and/or Hazardous Vegetation. Vegetation that is dead or diseased, or poses a hazard to personal safety, property or the health of other trees, may be removed. Prior to tree removal, the applicant shall provide a report from a certified arborist or other qualified professional to determine whether the subject tree is diseased or poses a hazard, and any possible treatment to avoid removal, except as provided by subsection (F)(2) of this section.
   2. Emergencies. Actions made necessary by an emergency, such as tornado, windstorm, flood, freeze, utility damage or other like disasters, in order to prevent imminent injury or damage to persons or property or restore order, and it is impractical due to circumstances to apply for a permit.
   3. Agriculture, Commercial Tree Farm or Orchard. Tree removal or transplanting occurring during use of land for commercial agriculture, orchard(s), or tree farm(s) for nursery or Christmas tree production.
   4. Tree removal by the city or a utility within easements, rights-of-way, or on public lands.
   5. Abatement of a nuisance as defined in Chapter 9.15.070 PMC or trees owned by the City.

18.70.040 Street trees.

F. Restrictions. No person, except a city employee, contractor hired by the city, or the electrical utility and their authorized agents, shall perform any of the following without first obtaining a permit from the city:
   1. Plant, cut, tap, carve, top, remove or transplant any tree, shrub or other plant located in the public right-of-way or on city property. This does not prohibit routine care and pruning; [Ord. 618 § 5, 1993.]

2. Attach any rope, wire, nail, sign, poster or other object to any tree, shrub, or plant located in the public right-of-way or on city-owned property;
3. Dig a tunnel or trench on any public right of way or city-owned or controlled property.

G. Permit Process. Prior to issuing a permit, the city shall ensure that the action proposed conforms to the urban forestry plan and the arboricultural specifications manual. If the city finds that the work performed under the permit is not in conformance with the conditions of the permit, the city may:
1. Nullify the permit;
2. Issue a written work order that the applicant cease and desist all work for which the permit was issued;
3. Impose penalties as defined in this chapter; and
4. Charge to the applicant the cost of steps taken to correct damage done. [Ord. 791 § 3, 2015; Ord. 618 § 4, 1993.]

18.70.050 Fences and walls.
Repealed by Ord. 779. [Ord. 720 § 7[3.2.5], 2003.]

18.70.080 Public nuisance definition.
As defined in PMC 9.15.070. [Ord. 618 § 6, 1993.]

18.70.090 Notice required for nuisances.
Written notice shall be personally provided by door hanger, direct contact or sent by registered mail to the property owner.
A. The notice shall describe the kind of tree, shrub, or other plant, its location on the property, and the reason for declaring it a nuisance.
B. The notice shall include suggested actions that may be taken to abate the nuisance.
C. The notice shall require the elimination of the nuisance no less than 15 days after the notice is sent unless the nuisance is considered a hazard at which point a lesser time of elimination shall be imposed depending on the risk hazard.
D. The city may have the nuisance abated after 15 days and file the cost of abatement as a lien against the property. [Ord. 791 § 4, 2015; Ord. 618 § 7, 1993.]

18.40.100 Violation and penalty.
Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violations in the municipal court, shall be subject to a fine for each separate offense not to exceed $500.00 or three times the appraised value of the tree(s) or vegetation, whichever is greater. Each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.
If, as the result of the violation of any provision of this chapter, the injury, mutilation or death of a tree, shrub, or other plant located on city-owned or controlled property is caused, the cost of repair or replacement of such plant shall be borne by the party in violation.
The appraised value of trees shall be determined using methods described in the latest revision of "Valuation of Trees, Shrubs, and Other Plants," as published by the International Society of Arboriculture. [Ord. 618 § 8, 1993.]

Parking

18.75.030 Vehicle parking standards.
The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in subsection (A) of this section. The number of required off-street vehicle parking spaces shall be

determined in accordance with the following standards. Off-street parking spaces may include spaces in garages, carports, parking lots, and/or driveways if vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes), public right-of-way, pathway or landscape area. For calculating parking spaces, a two-car garage shall be calculated as one parking space towards the parking requirement and a three-car garage shall be calculated as two parking spaces towards the parking requirement. Credit shall be allowed for "on-street parking," as provided in subsection (B) of this section.

A. Vehicle Parking – Minimum Standards.

1. Residential Uses.

a. Accessory Dwelling. One space per unit.

b. Manufactured Home Parks. Same as for single-family detached housing.

c. Multifamily and Single-Family Attached Housing.

i. Studio units or one-bedroom units less than 500 square feet: one space/unit.

ii. One-bedroom units 500 square feet or larger: one and one-half spaces/unit.

iii. Two-bedroom units: one and three-quarters spaces/unit.

iv. Three-bedroom or greater units: two spaces/unit.

v. Retirement complexes: one space per unit.

d. Senior Housing. Same as for retirement complexes.

e. Single-Family and Duplex Housing. A minimum of two parking spaces shall be provided for each detached single-family dwelling or manufactured home on an individual lot with two bedrooms or less.

i. Three-bedroom dwellings: three spaces/unit.

ii. Four-bedroom dwellings or larger: three spaces/unit.

B. Credit for On-Street Parking. The amount of off-street parking required for commercial and industrial uses shall be reduced by one off-street parking space for every on-street parking space adjacent to the development, which would not obstruct a required clear vision area, nor any other parking that violates any law or street standard. Credit for on-street parking standards shall not be granted for residential uses. On-street parking shall follow the established configuration of existing on-street parking, except that angled parking may be allowed for some streets, where permitted by city, ODOT and/or county standards. The following constitutes an on-street parking space:

1. Parallel parking, each 24 feet of uninterrupted curb;
2. Forty-five/sixty degree diagonal, each 16 feet of uninterrupted curb;
3. Ninety degree (perpendicular) parking, each 10 feet of uninterrupted curb;
4. Curb space must be connected to the lot which contains the use;
5. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces is permitted unless otherwise approved by the city.

C. Parking Location and Shared Parking.

1. Location. Vehicle parking is allowed only on approved parking shoulders (streets), within garages, carports and other structures, or on driveways or parking lots that have been developed in conformance with this title. Specific locations for parking are indicated in Division 2 for some land uses (e.g., the requirement that parking be located to side or rear of buildings, with access from alleys, for some uses). (See also Chapter 18.65 PMC, Access and Circulation.)

2. Driveways in Front Yards**.** Front yards shall not be paved, with exception of a maximum sixteen (16) foot wide driveway leading to a garage or dedicated parking pad, except homes with a three (3) car garage may have up to a twenty four (24) foot wide driveway.

(a) Single-family residential parking spaces shall consist of a parking strip, driveway, garage, or combination thereof, and shall be located on the premises they are intended to serve.

(b) Single-family residential parking spaces shall be located on hard or pervious concrete, asphalt or permeable/grass pavers. Lawn and yard areas, other than designated parking areas, shall not be utilized for off-street parking. Driveways shall be required to be concrete if the adjoining street is concrete.

(c) A minimum three (3) foot wide lawn or landscape strip shall be required between the edge of parking area pavement and all lot lines to provide adequate room for drainage, snow storage and privacy screening.

(d) Circular drives shall be prohibited unless driveway access points are separated by an interior distance of seventy (70) feet. A minimum lot width of one hundred (100) feet shall be required.

Consolidated Proceedings

18.105.070 General provisions.

D. Applications.

1. Initiation of applications:
   a. Applications for approval under this chapter may be initiated by:
      i. Order of city council;
      ii. Resolution of the planning commission;
      iii. The planning official;
      iv. A record owner of property (person(s) whose name is on the most recently recorded deed) or contract purchaser with written permission from the record owner.
   b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
2. Consolidated Proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.

   a. When proceedings are consolidated:
      i. The notice shall identify each application to be decided;
      ii. The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and
      iii. Separate findings and decisions shall be made on each application.

STAFF REPORT

DATE:	September 10, 2019
NATURE OF APPLICATION:	Update the City of Philomath Development Code.
APPLICANT:	City of Philomath
APPLICABLE CRITERIA:	Section 18.105.060 & 18.135.00 (PMC)
PROPERTY LOCATION:	City Wide
STAFF CONTACT:	Patrick Depa, Associate Planner
FILE NUMBER:	PC19-09

Background

As you recall, the Planning Commission and staff went over the proposed amendments and their intended purpose over the course of several meetings including an open house for the public to read about the changes and comment on them. The attached code amendments are the result of the notes and testimony we took during those meetings.

Summary

The purpose of this update is to recognize changing standards within the community predominately related to annexation of property currently in the city's urban growth boundary. These amendments are focused on addressing new requirements that help the city determine in greater detail its capacities and limitations on new property proposed to come into our city.

The purpose of the hearing is to determine if the code amendments are sufficient to address their intended purpose and use and to arrive at a recommendation to the City Council.

The proposed language that would supplant the existing

Section 18.105.060 provides the criteria for Type IV legislative amendments. The decision-making criteria are enumerated under subsection G as follows:

Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. **The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for comprehensive plan amendments only);**

This is not a comprehensive plan amendment. The Statewide Planning Goals and Guidelines are not applicable to amending this language

2. **Comments from any applicable federal or state agencies regarding applicable statutes or regulations;**

Notice was provided to the Department of Land Conservation and Development. No comments were received from any state or federal agency.

3. Any applicable intergovernmental agreements; and

Intergovernmental agreements address coordination of development aspects and are not applicable to the amendments.

4. **Any applicable comprehensive plan policies and provisions of this Code that implement the comprehensive plan. Compliance with Chapter 18.135 PMC shall be required for Comprehensive Plan Amendments, and Land Use District Map and Text Amendments.**

Chapter 18.105-060 pertains to legislative amendments specifying that amendments are policy decisions made by the City Council.

The applicable comprehensive plan policies identified by a review of that document relating to this topic include:

Citizen Involvement Polices

1. The City of Philomath shall continue to hold public hearings on all comprehensive plan and zoning ordinance amendments.

2. The City of Philomath shall provide for ongoing citizen involvement in the planning process of continuing to follow the approved Citizen Involvement Program.

Findings: The City has held public open houses and received comments factored into the final documents and the City will hold public hearings before the Planning Commission and City Council to afford the general public the opportunity to be involved.

Housing Policies

1. Either annexation or delayed annexation must occur in order for City zoning to apply to residential lands currently in the urban fringe.

Findings: The City will continue to seek and support many different varieties of housing choices and will follow smart growth techniques and criteria to evaluate the need for new residentially zoned property to be annexed.

Urbanization Policies

1. The approval of urban development proposals within the urban fringe shall be based upon the availability of City services, contiguity to the City, and approval of delayed annexation.

2. The City of Philomath shall continue to use the delayed annexation procedure as a means of increasing the City's tax base.

3. When considering annexation requests, the City of Philomath should evaluate its ability to provide services to areas proposed for annexation.

4. When considering annexation requests, the City of Philomath shall notify Benton County (as specified in the Urban Fringe Management Agreement between Philomath and Benton County) in order to allow the Count to comment on the request.

Findings: With these new code amendments the City will be able to make better informed decisions using the new approach and examination of the all of the city's capacities that can be reviewed in conjunction with the required criteria.

Recommended Motion:

I MOVE THAT:

A. **The Findings of Fact as presented in the staff report be adopted and the Planning Commission recommend approval to City Council the proposed development code amendments as presented in File No. PC19-08.**

Or

B. *The Findings of Fact as presented in the staff report and modified in opposition to the applicable criteria be adopted and the Planning Commission recommend denial of the application to amend the Development Code as presented in File No. PC19-08.*

PROPOSED CHANGES TO THE ANNEXATION CHAPTER

Chapter 18.135
ANNEXATION
Sections:
18.135.010 Purpose.
18.135.020 Legislative amendments.
18.135.030 Annexations.
18.135.040 Record of amendments.
18.135.050 Transportation planning rule compliance.

18.135.010 Purpose.
The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this title and the land use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law. [Ord. 720 § 7[4.7.1], 2003.]

18.135.020 Legislative amendments.
Legislative amendments are policy decisions made by city council. They are reviewed using the Type IV procedure in PMC 18.105.060. [Ord. 720 § 7[4.7.2], 2003.]

18.135.030 Annexations.
A. Process. The process of annexation of land to the city allows for orderly expansion of the city and for the adequate provision of public facilities and services. The City Charter requires that annexation, and/or extension of city services beyond city boundaries may only be approved by a majority vote of the electorate.
B. Annexation Filing Deadlines.

1. Unless mandated by state law, all annexation requests approved by the city council shall be referred to the voters in accordance with the requirements of this title and ORS Division 222.
2. Annexation elections are scheduled for May and November. Applications for annexation shall be filed with the planning department before 5:00 p.m. on the second Thursday of November for a ballot election in May and before 5:00 p.m. on the second Thursday of May for a ballot election in November.

C. Requirements for Applications. Applications to the city for initiation of annexation proceedings made by individuals shall be on forms provided by the planning official and shall include the following material:

1. Written consent to the annexation signed by the requisite number of affected property owners, electors, or both, to dispense with an election within the territory to be annexed, as provided by state law.
2. A legal description of the property to be annexed.
3. A map of the area to be annexed, including adjacent city territory.
4. Sufficient information for city staff to allow for the completion of an impact analysis on existing and future city services including: water sewer~~,~~; drainage~~,~~; transportation and transit~~,~~; park facilities~~,~~; and city staffing, including but not limited to police, public works, and city administration. .
5. Sufficient information for city staff to allow for the completion of an impact analysis on community partner services including: school facilities; library services; fire services; and emergency medical services.
    i. If the applicant asks for agency comment before the hearing and no comments are received, capacity will be presumed to exist for that agency.

ii. If the applicant asks for comment before the hearing and the agency comments that there are no capacity concerns, capacity will be conclusive as to that agency.

iii. If the applicant asks for comment before the hearing and the agency comments that capacity does not exist but can exist, the applicant may enter into an agreement with that agency to achieve capacity.

6. In addition, city staff shall project what additional facilities will be required to serve the development described in the conceptual plan and, if necessary, how such facilities will need to be phased in over time. The application shall provide evidence of the need of the proposal by citing data and statistics that support the annexation.

7.~~5.~~ A statement outlining the method and source of financing required to provide additional facilities.

8.~~6.~~ A conceptual development plan shall be provided by the applicant and shall include the following:

i. A scale drawing of the site showing: the types and intensities of proposed development; existing streets that will be used for access and those streets that may need to be developed for access; the location of watercourses and other significant natural features; location of existing and necessary extension of public water, sanitary sewer, and storm drain facilities; and, existing uses and zoning on adjacent properties.

ii. The conceptual development plan shall contain sufficient detail on the actual or proposed site uses to allow city staff the opportunity to analyze the development's demand for new public infrastructure systems, as well as assess the impact on existing systems. Staff may develop hypothetical site design scenarios or model development at densities other than those proposed by the applicant to assess impact on public infrastructure.

9.~~7.~~ A statement indicating the type and nature of any comprehensive plan text or map amendments or zoning ordinance or zoning map amendments that may be required to complete the planned development.

10.~~8.~~ The application fee established by the city. In addition to the application fee, the planning official shall require a deposit that is adequate to cover any and all election costs.

D. Review of Application. City staff shall review the application and it shall be deemed complete if it contains the material required under this section.

E. Staff Evaluation. City Staff shall prepare a report that considers information submitted by the applicant as well as other sources of relevant information including but not limited to master utility plans, regional and local transportation system plans, and population studies. The report shall include an updated land use inventory with the development status of all other similarly zoned properties. From this information, a finding shall be made that the city has the capacity to provide required utility services in light of commitments already made to other approved developments. The staff evaluation of the application will endeavor to present a report for the public and review bodies that factually evaluate the proposal and may or may not agree with response information provided by the applicant. An annexation request including a future residential development shall be evaluated by city staff at its maximum possible density.

F. Review Criteria. Annexations shall be reviewed by city staff to assure consistency with the purposes of this chapter, policies of the comprehensive plan, all requirements of all city ordinances, and other applicable policies and standards adopted by the city council and state of Oregon. In addition, a finding shall be made that the city is capable of providing services to the subject property(ies) commensurate with the needs of existing approved and proposed developments. Specifically, all applications for annexation must satisfy the following criteria:

1. Property to be annexed must be located entirely within the Urban Growth Boundary (UBG) of the City.

2. Property to be annexed is, or upon annexation will be, subject to the City's comprehensive plan.

3. At least one lot or parcel of the property to be annexed must be contiguous to the city limits or separated from the city limits only by a public right of way or a body of water.
4. Annexation of the property must be of benefit to the City and community of Philomath.
5. If the property to be annexed is or has been zoned or used for industrial or agricultural purposes, an inventory of known contaminants and how they will be abated by the applicant must be provided with the application for annexation at the time the application is filed.
6. If the property to be annexed is or has been zoned or used for industrial or agricultural purposes, a Phase I Environmental Assessment by a certified company shall be performed prior to annexation. The company selected by the applicant to perform this study must be approved by the city.
7. When property to be annexed exceeds 30 acres of developable land, development of the land must occur in phases, as specified in an annexation agreement between the applicant and the City.
8. Properties that include existing development must have a safe pedestrian route to school within 18 months of annexation.

Any review criteria that cannot be satisfied at the time the application is filed with the City may be satisfied through an annexation agreement between the applicant and the City. Annexation agreements shall be filed with the Benton County Recorder and shall run with the land.

G. If any studies are required at the time an annexation application is filed, the City shall contract for the study and the cost of the study shall be added to the application fee paid by the applicant at the time of submittal.

H~~G~~. Concurrent Application for comprehensive plan map or zoning map amendments. Application(s) for comprehensive plan map and/or zoning map amendments may be made concurrent with an application for annexation of territory. City approval of map amendments may be made contingent upon approval of the annexation.

I~~H~~. Annexation by Consent of All Owners of Land. When all the owners of land in the territory to be annexed consent in writing to the annexation of their land in the territory and file a statement of their consent with the city, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.
2. Application for said annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.
3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.
4. Written notice of a requested annexation shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.
5. The public hearing shall be conducted according to the requirements established for Type IV applications.
6. Should the public hearing be continued to a specific date by oral pronouncement prior to the closing of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.
7. Within 45 days following the public hearing, unless a continuance is announced, the commission shall make specific findings of fact. Based on the findings, the commission shall render a decision which shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements above, or be denied.

a. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision and findings of the commission, and any other materials deemed necessary for a decision by the council.

b. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

8. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements for a Type IV application.

9. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures in a Type IV application.

J~~I~~. Annexation by Non-Unanimous Triple Majority Consent Petition. When more than half, but not all, of the owners of land in the territory to be annexed who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.

2. Application for the annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.

3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.

4. Written notice of a requested change shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.

5. The public hearing shall be conducted according to the requirements established for a Type IV application.

6. Should the public hearing be continued to a specific date by oral pronouncement prior to the close of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.

7. Within 45 days following the public hearing, unless a continuance is announced, the commission
shall make specific findings of fact. Based on the findings, the commission shall render a decision that shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements of subsection (H)(7)(b) of this section, or denied.

8. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision and findings of the commission, and any other materials deemed necessary for a decision by the council.

9. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

10. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements stated for a Type IV application.

11. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures for a Type IV application.

K~~J~~. Findings and Decision. In the event the city council holds a public hearing on an annexation request, the city council may adopt the planning commission findings for approval or denial of the annexation, supplement the record as appropriate in the circumstances, or reject the findings of the planning commission and adopt new findings.

L~~K~~. Health Hazard Annexation. The city shall annex those areas constituting a health hazard in accordance with Oregon Revised Statutes, taking into consideration the ability of the city to provide necessary services. Annexation of areas constituting a health hazard are not subject to voter approval.

M~~L~~. Island Annexation. The following policies are adopted for island annexations:

1. The city shall attempt not to create islands of unincorporated territory within the corporate limits of the city. If such an island is created, the city council may set a time for a public hearing for the purpose of determining if the annexation should be submitted to the voters.

2. Written notice to property owners by first class mail will be made prior to annexation to allow for property owner responses. Failure to receive notice shall not in any way invalidate the annexation procedure that may be subsequently undertaken by the city.

3. Annexation of an island shall be by ordinance, subject to approval by the voting majority of the electorate.

N~~M~~. Comprehensive Plan and Zoning Designations.

1. The comprehensive plan map designation of the property at the time of annexation shall be used as a criterion to determine whether or not the proposed request complies with the Philomath comprehensive plan. A redesignation of the comprehensive plan map may be requested concurrent with annexation. The proposed redesignation shall then be used to determine compliance with the Philomath comprehensive plan.

2. Simultaneous application for annexation and a zone change is allowed; provided, that the zone change ordinance does not take effect until and unless the property is properly annexed to the city and incorporated within the city limits.

O~~N~~. Information on Proposed Annexation. The city newsletter shall be used to present an applicant's conceptual plan along with a summary of the city staff's analysis of the development's impact on public infrastructure. Other information to be presented shall include a vicinity map, size of the property, its current zoning and zoning upon annexation, a description of any comprehensive plan text or map amendment or zoning ordinance text or map amendment that is required and any other information that may assist in the explanation of the proposal. Annexation information in the city newsletter and on the election ballot shall include the following disclaimer statement:

> The conceptual plan associated with this annexation request may change. Any development proposal on this property shall require review and approval by the planning commission at a public hearing. Any future owner of this property who may propose a different development plan must pass through the same plan review process and public hearing. The city is not speaking in favor or against this conceptual plan.

Annexation requests submitted by the city are not required to contain a disclaimer statement.

P~~O~~. Election Procedures.

1. Pursuant to ORS 222.130(1), the statement of chief purpose in the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement of chief purpose shall not exceed 150 words.

2. Pursuant to ORS 222.130(2), the notice of an annexation election shall be given as provided in ORS 254.095 and 254.205, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.

3. Pursuant to ORS 222.111(7), two or more proposals for annexation of territory may be voted upon simultaneously; however, each proposal shall be stated separately on the ballot and voted on separately.

QP. Setting of Boundaries and Proclamation of Annexation. If the annexation is approved, the city council, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation (ORS 222.170(3)).

RQ. Submission of Annexation Reports. The city shall report all changes in the boundaries of the city to the county clerk, county assessor, and the state of Oregon as required by Oregon Revised Statutes.

SR. Exceptions. The city council may authorize an exception to any of the requirements of this section. An exception shall require a favorable vote of six or more council members and findings that indicate the basis for the exception. Any exception so approved shall not be in violation of state law or any applicable provisions of the City Charter.

S. Zoning of Annexed Areas. The city council shall designate all areas annexed to the city with a zone or zones. The city council shall provide notice in accordance with a Type IV application and conduct a public hearing prior to designating city zoning for annexed property. Designation of areas annexed by the city shall be subject to one of the following procedures:

1. If the proposed zoning designation corresponds to the comprehensive plan map designation for the property being annexed, the city council shall conduct a public hearing on the proposed zoning designation for the affected property. Notice for the hearing shall be provided for in accordance with a Type IV application, except all published and mailed notice shall be provided 20 days in advance of the hearing. Following the public hearing, the city council shall adopt an ordinance that assigns the zoning designation for the affected property.

2. If the proposed zoning designation does not correspond to the comprehensive plan map designation for the property being annexed, the proposal shall be reviewed by the planning commission as a comprehensive plan map amendment and zoning map designation pursuant to a Type IV application. Following planning commission review, the city council shall conduct a public hearing. Following the hearing, the city shall adopt an ordinance that designates the zoning of the affected properties, adopts approved amendments to the comprehensive plan map, if necessary.

3. The city may approve a comprehensive plan map amendment and/or zone designation for property prior to annexation and may specify that the plan map amendment and zone designation shall not become final unless the property is annexed to the city within a specified time.

T. The City is under no obligation to condemn, exercise eminent domain, or pay for the extension of services to an annexed property. [Ord. 720 § 7[4.7.3], 2003.]

18.135.040 Record of amendments.

The planning official shall maintain a record of amendments to the text of this title and the land use districts map in a format convenient for public use. [Ord. 720 § 7[4.7.4], 2003.]

18.135.050 Transportation planning rule compliance.

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-012-0060. Significant means the proposal would:

1. Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of "collector" street classification, requiring a change in the classification to an "arterial" street, as identified by the comprehensive plan/transportation system plan; or

2. Change the standards implementing a functional classification system; or

3. Allow types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or

4. Reduce the level of service of the facility below the minimum acceptable level identified in the comprehensive plan/transportation system plan.

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:

1. Limiting allowed land uses to be consistent with the planned function of the transportation facility;
2. Amending the transportation system plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation. [Ord. 720 § 7[4.7.5], 2003.]