

ORDINANCE NO. 761

AN ORDINANCE AMENDING WILSONVILLE CODE SECTION 4.022. APPEAL AND CALL-UP PROCEDURES.

WHEREAS, Wilsonville Code (WC) Section 4.022 currently identifies two different dates for appeal and City Council call-up of Development Review Board (DRB) quasi-judicial actions; and

WHEREAS, the expiration of the opportunity to appeal is 14 days from the date of the DRB notice of decision; and

WHEREAS, the expiration of the City Council call-up is 14 days from the date of the DRB decision; and

WHEREAS, this disconnect in appeal and call-up dates, in rare circumstances, does not afford the Council enough time to adequately review a DRB decision and call up that item for Council review; and

WHEREAS, the City Council desires that the dates be aligned to afford adequate opportunity to review DRB notices of decision in contemplation of potential call-up; and

WHEREAS, on July 21st, 2014 the City Council conducted a worksession on this proposal and directed staff to prepare the code amendments; and

WHEREAS, the particular amendment to Wilsonville Code Section 4.022 is located in Section 4.022(.03), City Council Call-up.

WHEREAS, on November 17, 2014, the City Council held a public hearing regarding the above described matter, wherein the City Council considered the staff report and, upon deliberation, concluded that in order to give the City Council more time to consider a call-up, Section 4.022(.03) A. be amended to give the City Council the same fourteen (14) calendar days from the date of the posting of the DRB notice of decision, as opposed to the date the DRB decision was actually rendered, to call the item up for review.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. Wilsonville Code Section 4.022(.03) A. is amended as follows:

(.03) City Council Call-up.

A. Within fourteen (14) calendar days of *the posting of the Development Review Board notice of decision* ~~final action~~ on any project, the City Council on its own

motion, may cause any final action taken by the Development Review Board to be called up for review by the full Council. If the City Council determines by majority vote that an emergency exists in that the Development Review Board will not complete its review of a given application with sufficient time for the Council to consider and resolve any appeals within the statutorily mandated 120-day limit, the City Council may vote to call the matter up for hearing by the Council prior to the completion of the Development Review Board's action on the matter.

2. The City Recorder is directed to amend WC Section 4.022(.03) A. by replacing the existing text with the approved text above, and to make such format, style and conforming changes to match the format and style of Chapter 4 of the WC.
3. Except as set forth above, the remainder of WC Section 4.022 remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read the first time at a meeting thereof on November 17, 2014 and scheduled for the second reading on December 1, 2014, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 1st day of December, 2014, by the following votes:

Yes:-5- No: -0-

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this ____ day of December, 2014.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor President Starr	Yes
Councilor Goddard	Yes
Councilor Stevens	Yes
Councilor Fitzgerald	Yes

Attachments:

Attachment A: Staff Report, dated November 17, 2014.

**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: November 17, 2014	Subject: Ordinance No. 761 Proposed Code Amendment to Section 4.022 – Appeal and Call-up Procedures Staff Member: Chris Neamtzu, Planning Director Department: Community Development	
Action Required <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: 11/17/14 <input checked="" type="checkbox"/> Ordinance 2 nd Reading Date: 12/1/14 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input checked="" type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: At the City Council work session on July 21 st Council directed staff to proceed with this code amendment.	
Staff Recommendation: Staff recommends that the Council adopt Ordinance No 761		
Recommended Language for Motion: I move to approve Ordinance No. 761 on 1 st reading.		
PROJECT / ISSUE RELATES TO:		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Planning and Land Development Ordinance

ISSUE BEFORE COUNCIL: Whether to amend Section 4.022 (.03) A. of the Wilsonville Code, pertaining to the City Council call-up period of decisions rendered by the Development Review Board.

EXECUTIVE SUMMARY: The City Council has requested that staff clarify and nominally extend the duration of time allowed to call up any final action taken by the Development Review Board (“DRB”) for review by the full City Council. Staff recommends a revision to Wilsonville Code Section 4.022, Appeal and Call-up Procedures.

Over the summer, due to a holiday, a DRB hearing was moved from its normal Monday date to Thursday. As a result of that rare date change, the City Council had less time than normal to consider whether to call up a DRB decision. This situation caused Council members some concern. Staff was asked to look at the feasibility of giving the City Council more time to call up a DRB decision while still keeping the City process timely for the applicant and other impacted parties.

Under our existing Code, the applicant or any impacted party of a DRB decision has 14 calendar days from the date of the posting of the notice of the decision to appeal the decision to the City Council. The time frame for the City Council to call up the decision on its own, however, is measured from the shorter duration of the date the DRB actually made the decision, as opposed to the date notice of the decision was posted.

Staff recommends that the Code be amended (see Exhibit A) to give the City Council the same 14 calendar days from the date of the posting of the notice of decision, as opposed to the date the decision was actually rendered, to call it up. This gives the City Council more time to consider a call-up, while still keeping the application on track to allow a timely final decision be made within the statutory 120-day time period,

This change will make the time frame equal to that afforded to applicants and other impacted parties for appeal. With this change, if there is any delay in the posting of the notice, such delay cannot impact the time frame the City Council has to consider and call-up a DRB decision. It will remain incumbent on staff to post the notice of the decision, from which the call-up time period will be measured, as soon as reasonably possible.

EXPECTED RESULTS: The proposed changes will give City Council more time during which to determine whether a matter should be called up while still keeping the current time lines for applicant's or other impacted parties' appeal rights as already codified under the current Code language.

TIMELINE: This Ordinance will be in effect 30 days following the second reading of the Ordinance, which is scheduled at this time to be held on December 1, 2014 making the code amendment effective on January 1, 2015.

CURRENT YEAR BUDGET IMPACTS:

N/A

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 11/5/14
No financial impact

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 11/05/2014
Ordinance is approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

Public hearings on this proposal will be held as part of this review process. The proposed amendments are being sent directly to Council without a Planning Commission recommendation because staff has determined that this is a minor code revision and it was requested by the City Council.

POTENTIAL IMPACTS OR BENEFITS TO THE COMMUNITY: The proposed code amendment will align DRB dates for appeal and call-up which will result in improved vetting of land use decisions.

ALTERNATIVES: Do not adopt or modify the proposed Ordinance.

CITY MANAGER COMMENT:

Exhibits:

EXHIBIT A – Redlined Code Section 4.022, Appeal and Call-Up Procedures

EXHIBIT A

Redlined Code Section 4.022, Appeal and Call-Up Procedures

Strikethrough = deleted words

Bold/italic = New words

Proposed revision is found in Section 4.022(.03) A and is highlighted below.

Section 4.022. Appeal and Call-up Procedures.

- (.01) Administrative Action Appeals. A decision by the Planning Director on issuance of a Site Development Permit may be appealed. Such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters except expedited land divisions, which may be appealed to a referee selected by the City to consider such cases. Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030, and such appeals shall be filed, including all of the required particulars and filing fee, with the City recorder as provided in this Section. Any affected party may appeal a Class II decision by filing an appeal, including all of the required particulars and filing fee, with the City Recorder within fourteen (14) calendar days of notice of the decision. Either panel of the Development Review Board, or both panels if convened together, may also initiate a call-up of the Director's decision by motion, without the necessity of paying a filing fee, for matters other than expedited land divisions. The notice of appeal shall indicate the nature of the action or interpretation that is being appealed or called up and the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code.
- (.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed.
- (.03) City Council Call-up.
- A.** Within fourteen (14) calendar days of ***the posting of the Development Review Board notice of decision*** ~~final action~~ on any project, the City Council on its own motion, may cause any final action taken by the Development Review Board to be called up for review by the full Council. If the City Council determines by majority vote that an emergency exists in that the Development Review Board will not complete its review of a given application with sufficient time for the Council to consider and resolve any appeals within the statutorily mandated 120-day limit, the City Council may vote to call the matter up for hearing by the Council prior to the completion of the Development Review Board's action on the matter.

- B. Notice of the call-up shall be provided in the same manner as an appeal to all parties who have testified or submitted written materials, the Planning Director, and the members of the respective commission or board, and shall also be posted and published as provided in Section 4.012. The notice shall describe the property, set forth the nature of the action and state the time, place and date set for hearing and whether public testimony is to be received.
 - C. In the event the City Council votes to call-up an action taken by the Development Review Board, any approvals granted by the Board shall be suspended until the Council has acted on the call-up.
 - D. Upon review, the Council may, by resolution or order, affirm, reverse or modify in whole or part, a determination, condition or requirement, or remand with or without instruction, the decision or part thereof that has been called up. (Added by Ordinance #396 - May 4, 1992)
- (.04) Notice. Legal notice of a hearing on an appeal shall set forth:
- A. The date of the hearing.
 - B. The issue(s) being appealed.
 - C. Whether the review will be on the record or whether new evidence will be accepted, if known.
- (.05) Scope of Review.
- A. At its discretion, the hearing body may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. Except, however, that the standard of review on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo.
 - B. The reviewing body shall issue an order stating the scope of review on appeal to be one of the following:
 - 1. Restricted to the record made on the decision being appealed.
 - 2. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
 - 3. A de novo hearing on the merits.
- (.06) Review on the Record
- A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:
 - 1. A factual report prepared by the Planning Director or the Director's designee.
 - 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
 - 3. The written transcript or electronic recording of the hearing and a detailed summary of the evidence.

- B. The reviewing body shall make its decision based upon the record after first granting the right of argument on the record, but not the introduction of additional evidence to any party who has filed a notice of appeal. The reviewing body shall decide if the correct procedure was followed and if so, was the correct or appropriate decision made based on the applicable policies and standards.

(.07) Review Consisting of Additional Evidence or De Novo Review.

- A. Except as otherwise specified in this Code, or required by State law, the reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that that additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
 - 1. Prejudice to the parties.
 - 2. Convenience or availability of evidence at the time of the initial hearing.
 - 3. Surprise to opposing parties.
 - 4. The competency, relevancy and materiality of the proposed testimony or other evidence.
 - 5. Such other factors as may be determined by the reviewing body to be appropriate.
- B. "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

(.08) Review Body Decision

- A. Upon review, the referee, Commission, or Board may by Resolution or the Council shall by order, affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review.
 - 1. When the referee, Commission, or Board modifies or renders a decision that reverses a decision of the Planning Director, the referee, Commission or Board, in its Resolution, shall set forth its findings and state its reasons for taking the action.
 - 2. When the Council modifies or renders a decision that reverses a decision of the Commission or Board, the Council, in its order, shall set forth its findings and state its reasons for taking the action.
 - 3. When the Council modifies or renders a decision of the Commission or Board, the Council, in its order, shall set forth its findings and state its reasons for taking the action.
 - 4. When the Council elects to remand the matter back to the lower review body for such further consideration as it deems necessary, it shall include a statement explaining the error to have materially affected the outcome of the original decision and the action necessary to rectify such.

- B. Action by the review body shall be decided by a majority vote of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The review body shall render its decision no later than sixty (60) calendar days after the filing of the request for review and shall file that decision with the City Recorder within five (5) working days after it is rendered.
- (.09) Effective Date of Decisions. A decision of the Planning Director, Planning Commission, or Development Review Board shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written notice of decision, unless appealed or called up for review by the Council in accordance with this Section. If a matter is heard by the Council or referee, the decision shall become effective immediately.