

AGENDA

City of Aurora
PLANNING COMMISSION MEETING
Tuesday, August 06, 2013, 7:00 p.m.
Council Chambers
21420 Main Street N.E., Aurora, Oregon

- 1. Call to Order of Planning Commission Meeting:**
- 2. City Recorder Calls Roll**

Chairman, Schaefer
Commissioner, Willman,
Commissioner, Gibson
Commissioner, Graham,
Commissioner, Fawcett,
Commissioner, TBA,
Commissioner, Sallee

- 3. Consent Agenda**

All matters listed within the Consent Agenda have been distributed to each member of the Aurora Planning Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the consent Agenda and placed on the Regular Agenda by request.

Minutes

- I. Aurora Planning Commission Meeting –July 02, 2013**
- II. City Council Minutes – June, 2013**
- III. Historic Review Board Minutes –**

Correspondence

I.

- 4. Visitor**

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Council could look into the matter and provide some response in the future.

- 5. New Business**

A. Discussion and or Action on Supreme Court Ruling on Takings.

- 6. Old Business**

A. Discussion and or Action on Vending Carts on Private Property.

7. Commission Action/Discussion

A. City Planning Activity (in Your Packets) Status of Development Projects within the City.

8. Adjourn,

Minutes
Aurora Planning Commission Meeting
Tuesday, July 02, 2013 at 7:00 P.M.
Aurora Commons Room, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002
Relocated to;
Aurora Fire Hall

STAFF PRESENT: Kelly Richardson, City Recorder
Renata Wakeley, City Planner

STAFF ABSENT:

VISITORS PRESENT: Bill Graupp, 14629 Ehlen Aurora
Scott Brotherton, 15499 4th Aurora
Patrick Harris, 15038 3rd Aurora
Bill Simon, 21441 Main Aurora
Michael Ausec, 21680 Main Aurora
Karen Townsend, Aurora
Jim Champion, 14783 Ehlen Aurora
Sharon Willis, Aurora
Susie Conor, Aurora
Brian Asher, 21514 Liberty Aurora

1. Call to Order of Planning Commission Meeting

The meeting was called to order by Planning Chair Joseph Schaefer at 7:00 p.m.

2. City Recorder Did Roll Call

Chairman, Schaefer - Present
Commissioner, Willman Present
Commissioner, Gibson Present
Commissioner, Graham Present
Commissioner, Fawcett Absent, came in late at 7:21
Commissioner, Sallee Present

3. Consent Agenda

Minutes

- I.** Aurora Planning Commission Meeting –June 04, 2013
- II.** City Council Minutes – May, 2013
- III.** Historic Review Board Minutes –

No comments....

Correspondence

- I. **Email and Letter from the Mortuary Board in Regards to Back Yard Burial**, clarification on this was given by city recorder and city planner. This was talked about last year during a Council meeting an update came in so it was placed in your correspondence as and FYI.

4. Visitor

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Planning Commission could look into the matter and provide some response in the future.

5. Public Hearing opens at 7:29pm

- A. **Legislative Amendment 11-01 (LA-13-01) which would amend sections of the Aurora Municipal Code – Title 17 also known as Historic Preservation Ordinance of the City of Aurora.**

City Planner explains the process and she goes on to read her staff report as inserted here.

TO: Aurora Planning Commission
FROM: Renata Wakeley, City Planner
RE: Legislative Amendment 13-01 (LA-13-01)
DATE: June 25, 2013

REQUESTED ACTION

The Planning Commission's options for taking action on Legislative Amendment 13-01 include the following:

- A. Recommend that the City Council adopt Legislative Amendment 13-01:
1. As presented by staff; or
2. As amended by the Planning Commission (stating revisions)
- B. Recommend that the City Council take no action on Legislative Amendment 13-01
- C. Continue the public hearing:
1. To a time certain, or
2. Indefinitely

BACKGROUND

Aurora's Municipal Code includes Title 17, known as the " Historic Preservation Ordinance of the City of Aurora", which provides preservation standards and regulations for the design of buildings and structures within the historic commercial and residential overlays of the City of Aurora.

Title 17 was last updated in 2002. In 2012, the Aurora City Council directed the Planning Commission to work with the Aurora Historic Review Board to update and streamline Title 17 based upon feedback and concerns from the public.

Generally, the proposed update includes changes to the following:

- Clarify which structures in the district are considered "contributing" and "non-contributing".
- Clarify/establish standards related to: additions, porches, landscaping, paint colors, signage, etc.
- Clarify noticing requirements and the responsible entities for decisions in the historic district.
- Clarify/update design standards applicable to properties and structures within the historic district.

Legislative Amendment 13-01 includes the adoption of code amendments to Title 17 of the Aurora Municipal Code. The revisions are attached in a **bold** and ~~strikethrough~~ format for review purposes.

FINDING OF FACT AND CONCLUSIONS

The Aurora Planning Commission, after careful consideration of the testimony and evidence in the record, adopts the following Findings of Fact and Conclusions:

1. In accordance with the post-acknowledgement plan amendment process set forth in Oregon Revised Statute 197.610(1), the City Planner submitted the draft proposed amendments to the Oregon Department of Land Conservation and Development on May 29, 2013, which was 35-days prior to the first evidentiary hearing on July 2, 2013.
2. Amendments to the Code, Comprehensive Plan, and/or Maps are considered Legislative Amendments subject to 16.80.20. Legislative Amendments shall be made in accordance with the procedures and standards set forth in AMC 16.74-Procedures for Decision Making-Legislative. A legislative application may be approved or denied.
3. AMC 16.74.030 outlines notice requirements. 10 days prior to the first evidentiary hearing, the City sent written notice of the hearing to all property owners within the historic commercial and historic residential overlays. Section 16.74.030.C.3. requires notice to be published at least seven days prior to the scheduled hearing date. Notice will be published in the Canby Herald on July 3rd, 2013 for the City Council public hearing date. As there are two hearing dates, staff finds adequate notice to allow for comment period has been provided as the Council hearing date is scheduled for August 13, 2013. Notice of both hearings was also mailed to every property owner within the district and posted at City Hall on June 25, 2013.
4. Proposed amendments for consideration of legislative changes to the provisions of the Comprehensive Plan, implementing ordinances and maps are a legislative action, not a quasi-judicial action. Section 16.74 calls for amendments to the Development Code to be processed as a recommendation by the planning commission and the decision by the city council.
5. AMC 16.74.060 includes the standards for decision of Legislative Amendments as outlined under FINDINGS below.

FINDINGS

- A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:
 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes (ORS) Chapter 197;

FINDINGS: Goal 1, Citizen Involvement: A public hearing on the proposed amendments was held before the Planning Commission on July 2, 2013 and a second hearing will be held by the City Council on August 13, 2013. Notice was posted at City Hall, published in the Canby Herald, and provide to the

Historic Review Board. The staff report was available for review one week prior to the planning commission hearing. This is consistent with City procedures. Goal 1 is met.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged AMC. Goal 2 generally supports clear and thorough local procedures and the code update is intended to clarify, simplify and streamline regulations for the approval entity and the general public. Goal 2 is met.

Goal 3, Agricultural Lands: Goal 4, Forest lands: Goals 3 and 4 are not applicable. The proposal does not involve or affect farm or forest lands.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources. Goal 5 is not applicable. The proposal does not address Goal 5 resources.

Goal 6, Air, Water and Land Resource Quality: Goal 6 is not applicable. The proposal does not address Goal 6 resources.

Goal 7, Natural Hazards: Goal 7 is not applicable. The proposal does not address Goal 7 resources.

Goal 8, Recreational Needs: Goal 8 is not applicable. The proposal does not address Goal 8 resources.

Goal 9, Economic Development: The draft code amendments partially respond to a need identified within the business community to clarify code requirements. The proposed code amendments are not found to deter employment or business opportunities. Goal 9 is met.

Goal 10, Housing: Goal 10 is not applicable. The proposal does not address Goal 10 issues.

Goal 11, Public Facilities and Services: Goal 11 is not applicable. The proposal does not address Goal 11 issues.

Goal 12, Transportation: The draft code amendment provide for some parking exemptions for historic commercial properties to allow greater flexibility for historic resources in meeting newer code provision for parking. However, the proposal does not address Goal 12 issues.

Goal 13, Energy Conservation: Goal 13 is not applicable. The proposal does not address Goal 13 resources.

Goal 14, Urbanization: Goal 14 is not applicable. The proposal does not address Goal 14 issues.

ORS 197 does not include specific notice requirements for legislative processes but the City met all notice requirements under AMC for Legislative Amendments. ORS 227.186, more commonly known as Measure 56 notice, does not apply as the proposed amendment does not reduce permissible uses of properties in the affected zone. However, the City did send notice to each property owner within the historic commercial and residential overlay.

2. Any federal or state statutes or rules found applicable;

FINDINGS: Staff finds the adoption actions are consistent with Oregon Revised Statute 197.610(1) for notice to the Department of Land Conservation and Development. Measure 56 notice was not required as the proposed amendments do not reduce permissible uses on historic commercial and residential overlay zone properties. However, notice was mailed at least 10 days prior to the first public hearing to all historic commercial and residential overlay properties. lands. Notice was also mailed to the Oregon

State Historic Preservation Office (SHPO) who provided comments on the draft code update (see Exhibit B). Staff finds this criterion is met.

3. The applicable comprehensive plan policies and map; and

The following Comprehensive Plan Goals and associated policies were found to be applicable to this application:

Goal 1- Citizen Participation: Develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

FINDINGS: A public hearing on the proposed amendments was held before the Planning Commission on July 2, 2013 and a second hearing will be held by the City Council on August 13, 2013. Notice was posted at City Hall on June 25, 2-013 for both public hearings and published in the Canby Herald on July 3rd for the August City Council meeting. The staff report was available for review one week prior to the planning commission hearing. This is consistent with City procedures. Staff finds this condition is met.

Goal 2- Planning Process: Establish a land use planning process and policy framework document (comprehensive plan) as a basis for all decisions and actions related to use of land and ensure adequate factual base for such activities.

FINDINGS: Adoption actions are consistent with the acknowledged AMC. The update to Title 17 is also intended to clarify when properties or structures are subject to decisions or actions and clarify the approval authority for said decisions. The intent of the update is also to provide better noticing of decisions and appeal opportunities for all decision. Staff finds this condition is met.

Goal 9- Economic Policies

3. *Foster commercial and industrial activities to meet the expressed needs of City residents.*

FINDINGS: The draft code amendments respond to a need/concern identified within the historic overlay to clarify the code and remove interpretations of the code in order to all applicants a greater understanding and clarity on the regulations and design standards to be followed. The proposed code amendments are not found to deter employment or business opportunities. Staff finds this condition is met.

Goal 12- Transportation Policies

2. *Encourage transportation improvements which support the community's economic development and create a pedestrian friendly atmosphere.*
3. *Establish a street system which is consistent with orderly growth, minimizes conflicts with adjacent land uses, and provides a circulation system which is safe and efficient for both vehicles and pedestrians.*

FINDINGS: The draft code amendments reduce the parking standards for some commercial historic properties to be more in line with the small lot sizes and their potential inability to meet current parking standards. Staff finds this condition is met.

4. The applicable provisions of the implementing ordinances.

FINDINGS: Title 17 is intended to provides preservation standards and regulations for the design of buildings and structures within the historic commercial and residential overlays of the City of Aurora.

The application and legislative amendment intends to clarify implementing ordinance within Title 17. In addition, the update intends to clarify noticing requirements and decision authorities for properties subject to Title 17. Staff finds the proposed code amendments can be established in compliance with the development requirements and implementation ordinances of the Aurora Municipal Code.

- B. Consideration may also be given to proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.

FINDINGS: Staff does not find a change in circumstance or mistake but rather the City Council directed the Planning Commission to work with the Historic Review Board to clarify and update inconsistencies in the implementing ordinances so as to ease understanding of requirements for property and business owners within the historic district. Staff finds this criterion is met.

Exhibit A: Draft Title 17 code update
Exhibit B: June 19, 2013 comments from SHPO

Explains all notice requirements and State ORS and goals. Hope to come to agreement and recommendation to the City Council for adoption.

Chairman Schaefer explains the big picture on what the Planning Commission has been doing. Explains the hearing process again and that we are happy to hear from you the audience. Currently in Title 17 there is a procedural process but the actual rules are in the Historic Guidelines we want to put them into the title 17 document that is before us tonight they have been made clear and straight forward. SHPO has commented and we are now saying 3 specific items can be done/reviewed by staff.

1. Roof
2. Paint
3. \$2,500 dollar and below landscaping projects.

Only the design regulations are being proposed for change, we are not changing permitted uses or zoning. This is all about the text of the code and for text and changes in materials. Currently the HRB Guidelines applies to all properties within the district and so we are proposing that there will be classifications such as contributing 1920 and non contributing after 1920 under lighter restrictions.

1. roof pitch 8/12 or steeper
2. all need front porches
3. garages
4. windows size.

So this essentially should simplify the process and not be as strict.

SHPO said we should have a designation for historic landmarks and a process. This will be a very small percent of properties.

SHPO highly recommended most of which goes before HRB could be handled by staff and I don't think this is appropriate because this would leave little for HRB to do, I think that we should still know what is happening and regulate within the district.

Chairman Schaefer asks for a Show of hands to get a sense of how many people want to speak to determine the time allotment for each speaker. 4 people raise their hands so 10 minutes is the agreed amount of time.

Patrick Harris the museum curator, this all sounds good to me I am seeing a few issues like do we really call out the significance of the colony structures as well as they should be? This is really a very elite German group of structures in pacific NW, many of them were built by their children and the people of the Aurora Colony and we should preserve that history. I do think the HRB should have a lot of input because they really have a greater understanding and appreciation on the benefits of having a business in our town.

There are a significant amount of buildings outside of the city but in the district and they could make their own building be considered to be significant structures as a historic landmark.

Chairman Schaefer, remarks I think the SHPO items are going to answer those concerns and more.

Mike Ausec, Aurora Oregon, my first concern is some statement about parking is being repealed via title 16, **Chairman Schaefer** what we are proposing is to eliminate some parking requirements and allow some commercial properties to be exempt from title 16 requirement as many historic commercial properties find it difficult to meet more modern parking standadards.

Next item contributing and non contributing roofs and you are saying roofs would be either wood or black asphalt and I don't agree with this because black is hot.

Next landscaping I think this is something new, you are mandating additional requirements on commercial properties, where are they going to find additional land to meet this requirement, **Chairman Schaefer** these properties that are listed they are grandfathered in and you raised a question that I would want to ponder because I wonder for new development is this going to be too hard to follow. It is clarified that the landscaping projects under 2500 would be approved by staff. There are buffering minimums and it is explained that it would be the applicants choice on a list provided for trees. Wakeley will work on clarity for this section.

Solar I didn't see anything that would limit me to do an entire roof of solar panels. **Chairman Schaefer** it is not allowed it is allowed on the ground, **Wakeley** the State says the City can regulate within the district staff will work to confirm this with the state agencies. **Chairman Schaefer** by remaining silent it is considered prohibited.

Another issue why would you prohibit drive up and drive through type businesses, **Chairman Schaefer** states it is to be more pedestrian friendly.

Chairman Townsend of HRB, first I would say that we have been working on this for a long time and Chairman Schaefer of the Planning Commission has been a great help to the City and it needs to be recognized, this is what he does for a living and so he has saved the City a great amount of money.

At the HRB meeting we noticed on pg 3 Admin and exempt items, **Chairman Schaefer** this is a mistake and it needs to be listed as staff decisions and it will be reflected. **Chairman Townsend** does that also include paint on non contributing structures **Chairman Schaefer** states SHPO says we shouldn't on anything but I say on contributing we should require it, so if you want a color scheme you let staff know you choose the scheme and then your good to go but if it's not on the list you go before the HRB for approval.

Historic Review Board feels that on non contributing structures there should be a wide range of colors to choose from so people have a large choice of colors. However we think that all selections should be reviewed by staff as well.

Next; Signs pg 420 LED signs, we appreciate your look at the signs however we did decide to be consistent that day glow and images not be allowed and the color should be consistent.

Pg 420 new business signs was supposed to allow a new business to put up a sign immediately until it can be approved within 90 days, the reason is while manufacturing and the due process is being followed. This purpose is not to allow someone as a temp business to have any type of sign and to be able to put it up without approval.

The Board thinks we should have a different category for Colony structures because this is the basis for the distinction for Aurora history, added to non contributing and contributing structures, so I have worked up a relevant list of items to consider. The importance of preservation of the colony standards is very important.

Scott Brotherton, what is the difference between day glow and fluorescent lights **City Planner Wakeley** states that it is the way the tubing is made and this is identified in the code.

Chairman Schaefer asks if anyone on the Planning Commission has any comment. Hearing none he moves on.

Chairman Schaefer, I am intrigued with text only for the LED no images we have limited it to 3 square feet. We cannot limit content but no images is interesting.

Commissioner Graham, likes the comments on landmarks and including a distinction for colony structures.

Commissioner Gibson asks for clarification, on Chairman Schaefer's hesitation, for colony distinction.

Chairman Schaefer this is a regulatory document I think this is appropriate for the guidelines only.

Chairman Townsend you then leave it open for anyone to tear off the authentic pieces and little by little you are not authentic any longer there is nothing in there for preservation.

Commissioner Fawcett, how many Colony structures in Aurora 9-10 maybe we include the colony structure section in with the contributing structures that way control is given to HRB.

Commissioner Graham with that in mind would HRB require this no not if they didn't want to, **Townsend** states that State OR standards says that you should try to fix and preserve, so we keep things authentic.

Chairman Townsend I think it is an easy fix and that this should be added to each section.

Brian Asher I feel that it should be up to the HRB they should suggest that all items significant to the structure be put back. **Townsend** there is nothing in the code that would make this be preserved.

Asher Asks if anyone has gone outside our district and done some research on this subject, **Tracy Schaefer** what about structure is it dealt with in the building code and maybe the building official should weigh in on this issue and this is something we are trying to fold into our code to give our city authority.

Asher, fencing there is nothing on rod iron fencing I think the period items should be allowed.

Townsend I think if someone can show history that this was allowed then maybe we should consider it.

Chairman Schaefer asks **Patrick** if this was historic in during that period and he states no there isn't any history to show this. **Commissioner Sallee** states that I have seen pictures of old wire fencing

Patrick states yes maybe so for wire.

Trying to think of an example if I wanted to build a more modern building made out of metal siding would this be allowed, **Chairman Schaefer** no it's not allowed, maybe rod iron decorative items would. So if McDonalds wanted in here and were willing to look like our buildings with no drive through it would be allowed. Well yes.

Councilor Brotherton asks when you say staff and you want to appeal it from staff then it goes to HRB and then Council. Yes that would be correct states **Schaefer**.

Tim Champion, started to make a statement then decides not too because he is having a hard time hearing.

Sharon Willis no comment.

Susie Corcoran no comment.

Councilor Bill Graupp,

1. I like SHPO recommendations, on format of code with landmarks

Major discussion 17:16 my problem is that, when you have 010 I suggest that we should roll it through our legal dept so we keep out of trouble 17:20 I want to see this go before the Planning Commission not just straight to Council. We pay the City Planner to do all this and make notice to everyone and follow the process for the appeal's.

I also think the Kuri Gill comments are very viable and should be more considered.

Chairman Schaefer, currently HRB decisions or denials should be a recommendation to Planning Commission in regards to the appeal process. He speaks to the 120 day rule, there may not be enough time to go before Planning Commission and then to Council.

Chairman Schaefer, either HRB is a decision making body or it isn't, Councilor Graupp they don't have the legal representation to help them, I think they should recommend to PC and then the PC would make the decision because of comments that legal requirements were not being followed.

City Planner Wakeley, we changed the noticing items and there is a written process. Councilor Graupp that's why I like SHPO comments to make the land use discussion because it keeps us out of trouble.

Townsend, on HRB I have been involved for many years and over the past years the procedure has relaxed in the past 10 years to be exact but not currently. The HRB is good for the public because it's a cost savings for people to come before our board first.

Councilor Graupp, many items that have come before the Council are very elevated by this point and the Council has just allowed these appeals because the goal is to avoid lawsuits. I am referring to new construction.

8:30pm Chairman Schaefer closes the hearing for Commissioners to deliberate.

Chairman Schaefer, I am intrigued about regulating text only and saying no symbols, and be legal. City Planner, Wakeley states I think you can. I think we can say text only just not what is being said, I will verify.

Consensus is to recommend to the City Council for text only change, if permitted by the state law.

Commissioner Fawcett, I think color is going to be hard to regulate, and define.

City Planner Wakeley, summarizes

1. Paint, so the concern between regulation or not, on contributing and noncontributing structures
Commissioner Graham, I think some very bad colors combinations could potentially come out of this.
Commissioner Sallee I think large list is needed. Chairman Schaefer thinks we could regulate commercial but not residential as easily.
Commissioner Fawcett, what kind of control do you have Chairman Schaefer really make them go through process?
Commissioner Gibson, I think we should not regulate.
Commissioner Willman noncontributing, I need clarification.

Commissioner Fawcett here is an example take the bistro lets say they could do pink because it's a non contributing structure, so discussion is to have a smaller pallet for contributing and a much larger for non contributing. Chairman Schaefer so now we are talking to regulate this.

Commissioner Sallee and Commissioner Graham, yes we are.
Commissioner Willman, I think regulation in the commercial district only.

Consensus of the Commission is for commercial, non- contributing structure to have a large list of colors but to be regulated.

Discussion on proposed new category for colony structures as presented by HRB,
Chairman Schaefer No I believe it should be as a landmark, Commissioner Sallee, Commissioner Fawcett both stated that they were not clear as to which ones are colony contributing.

It is recommended that a new fee schedule be established to cover noticing requirements.

Last item Councilor Graupp, proposes that on new construction applicants should go before Planning Commission as the governing board for decision process, to expedite and stream line the process. The discussion between the Planning Commissioner members is to recommend this process to the Council.

It is the recommendation of the Planning Commission to recommend that new construction applications go before the Planning Commission rather than the HRB.

Discussion Closes,

A motion is made by Commissioner Graham to recommend title 17 as discussed with the changes proposed during this meeting and is seconded by Commissioner Gibson. Motion Passes Unanimously.

6. New Business

7. Old Business

A. Discussion and or Action on LA-13-01

A motion is made by Commissioner Graham to recommend title 17 as discussed with the changes proposed during this meeting and is seconded by Commissioner Gibson. Motion Passes Unanimously.

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7. Commission Action/Discussion

A. City Planning Activity (in Your Packets)
Status of Development Projects within the City.

- Vision update at the August meeting

9. Adjourn 9:06 P.M.

A motion to adjourn the July 02, 2013 meeting is made by Commissioner Sallee and seconded by Commissioner Willman. Motion Passes Unanimously.

Chairman, Schaefer

ATTEST:

Kelly Richardson, City Recorder

Minutes
Aurora City Council Meeting
Tuesday, June 11, 2013, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Jan Vlcek, Finance Officer
Bob Southard, Water Superintendent
Otis Phillips, Waste Water Superintendent
Dennis Koho, City Attorney
Pete Marcellais, Marion County Deputy

STAFF ABSENT: NONE

VISITORS PRESENT: Kris Sallee, Aurora
Betsy Imholt, Aurora
Rodger Eddy, Portland

1. Call to Order of the City Council Meeting

The meeting was called to order by Mayor Greg Taylor at 7:03 p.m.

2. Administrative Assistant does roll call

Mayor Taylor – present
Councilor Graupp - present
Councilor Brotherton -present
Councilor Sahlin – present
Councilor Vlcek – came in late at 7:15 missed roll call

3. Consent Agenda

- I. City Council Meeting Minutes – May 14, 2013
- II. Planning Commission Meeting Minutes – May 07, 2013
- III. Historic Review Board Minutes –April 25, 2013

Correspondence

I. None

Motion to approve consent agenda was made by Councilor Vlcek, seconded by Councilor Graupp. Motion passes.

4. Visitors

Anyone wishing to address the City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the City Council could look into the matter and provide some response in the future.

Betsy Imholt, Aurora Colony Days information provided, gave handouts for colony days and parade forms. The candy throwing policy, Mayor Taylor cites the email from the insurance company that we cannot throw candy from moving vehicles however we could allow walkers hand out candy.

Betsy, is doing good with private sponsors and we are wanting revenue sharing money outcome which was approved at last meeting.

No one else spoke.

5. Public Hearing, call to order Vlcek states his nature of possible conflict and that it will not have bearing on this and no comments from other City Council so he will be allowed to participate and vote.

Mayor Taylor reads the procedure for public hearing opens at 7:13 pm

- ❖ **City of Aurora Budget 2013/2014,**
- ❖ **Finance Officer, Vlcek reads the staff report, as inserted,**
- ❖ **Testimony, none being said**
- ❖ **No comments**
- ❖ **Closes at 7:17 pm**

Deliberation and or comments (none)

Councilor Graupp makes motion to adopt the budget as recommended by the Budget Committee and Councilor Sahlin seconds the motion. Motion approved.

6. Discussion and or Action on Rodger Eddy Property Matter, City Attorney Koho starts discussion out with this is not really a public hearing but it is on the appeal and it's an opportunity for the City to lay out the course of action and for property owner rebuttal,

- **MEMO provided by City Attorney Koho gives options,**
- **Sustain**
- **Disallow**
- **Sustain part but not all**
- **Or extend for a period of time**

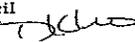
Public Hearing is open at 7:21 pm Mayor Taylor reads the procedure and states the purpose of the hearing as the letter sent to Mr. Eddy on January 31, 2013. City

Attorney Koho begins explaining to the Council if there are any conflicts of interest that should be stated now. Which are stated by each councilor below;

- Mayor, Taylor has seen property and is aware of the property and do I believe this will influence my participation no.
- Councilor Graupp, I have seen the property by the side walk and there are concerns for the property values surrounding it and for the safety of people passing by.
- Councilor Brotherton I have seen it by the sidewalk and because of the legion hall concerns from children and it's an eyesore for a decade now.
- Councilor Vlcek, as a member of the fire dept I headed up the report of the fire at that time and I did walk the property.
- Councilor Sahlin I am aware and my opinion will be based on the code.

City Attorney Koho, reads and explains the notices in question,

- Jan 31, 2013 letter rescinded the notice of June 2012 and listed each section of the code that affected the property; it is likely to collapse and is damaged from years of neglect.
- He recaps the packet that is in your packet it covers many years of discussion from the council about the decapitation and deterioration of the property.
- The City has a letter from our inspector that recaps the property as well.
- Items are below.

TO: Mayor Taylor and City Council
FROM: Dennis Koho, City Attorney 
DATE: June 1, 2013
SUBJ: Eddy Appeal

At the June 11 meeting, the Council will hear the appeal filed by Rodger Eddy on his behalf and on behalf of any other actual or purported owners of the City's Notice dated January 30, 2013. That Notice required certain actions be completed or substantially completed by April 1, 2013.

Although the Notice did not specify the opportunity for appeal and its deadline, Mr. Eddy was in communication with the Council and the City Attorney from the start. He always requested his opportunity for appeal before the Council and will be asked at the outset of the appeal if he waives the specifics in the Notice. From a legal sense, his actual opportunity to participate in an appeal trumps any deficiency in advising him of his right to appeal.

The property in question is well known to the Council as it is near City Hall itself. Council Members should indicate for the record if they have seen the property and if so, has the viewing helped form any opinions about the property. The owners will then be allowed to present evidence to refute any tentative opinions that you may have.

A copy of the latest Notice is attached and is hereby made a part of the record. It cites several areas of concern and the specific section of the Code that provides authority for the alleged violation. After you hear the testimony and review all of the evidence, you can deliberate on the issues alleged and uphold all, some, or none of the violations alleged. In doing so, you should consider only that testimony and evidence which is in the record. This is another reason for stating any tentative conclusions you may have reached after viewing the property.

The allegations fall into three general categories:

- The structures on the property are unsafe;
- The structures on the property unrepaired following damage; and
- The structures pose some sort of public nuisance.

I will discuss below each category, the allegation from the notice, and the evidence in hand as of this writing - including a letter from Mr. Eddy's engineer.

Memo to Council on Eddy Appeal

Page 1 of 3

- Councilor's own observations as made a part of the record and disclosed
- Statements from members of the community, if any, which have been made part of the record of this appeal

The Structures Pose Some Sort of Public Nuisance

Allegations:

- The building or structure, as a result of damage by fire, wind, earthquake, or flood, dilapidation or deterioration, or for any other reason, has become an attractive nuisance to children; a harbor for vagrants, criminals, or immoral persons; or a place that will enable persons to resort thereto for the purpose of committing unlawful or immoral acts. §11.
- The building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence. §15.

Evidence:

- Letter from The Building Department (which provides building inspection for the City)
- Councilor's own observations as made a part of the record and disclosed
- Statements from members of the community, if any, which have been made part of the record of this appeal
- In particular, repeated public testimony at City Council meetings by representatives of the VFW whose building neighbors the property in question. Those statements are included in and made a part of the record by reference.

In defense, Mr. Eddy has provided a number of documents which are attached to this report, a report signed by his engineer attesting to the structure, and I anticipate he will present oral testimony as well.

At the close of testimony, the council has several options. It can close the record and move immediately to deliberations or it may leave the record open so that either side may present additional or rebuttal evidence. It also may adjourn the appeal hearing for up to two weeks to allow for personal inspections of the property.

Once the record closes, the Council should deliberate and make a determination on each allegation. The Council may affirm or modify all, some or none of the allegations. If the Council affirms any of the allegations, it should provide the City Attorney with direction on the imposition of civil penalties or prosecution should the matter not be resolved. Penalties of \$500 may be imposed for each day a nuisance goes unresolved if prosecuted as a violation under AMC 8.08.25 and another \$250 per day under AMC 8.10.230. The penalties are cumulative.

Memo to Council on Eddy Appeal

Page 3 of 3

The Structures on the Property are Unsafe

Allegations:

- A portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property. §4.
- Part of the building or structure is likely to partially or completely collapse because of, but not limited to, dilapidation, deterioration, or decay; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of the foundation; or any other cause, that is likely to cause partial or complete collapse of the building. §7.
- The building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used. §8.

Evidence:

- Letter from The Building Department (which provides building inspection for the City)
- Councilor's own observations as made a part of the record and disclosed
- Statements from members of the community, if any, which have been made part of the record of this appeal

The Structures on the Property Unrepaired Following Damage

Allegations:

- The subject property has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose, or location. §3.
- A portion of a building or structure has remained on a site after the demolition or destruction of the building or structure for a period in excess of 30 days so as to constitute such building or portion thereof an attractive nuisance or hazard to the public. §16.

Evidence:

- Admissions from the property owner
- Letter from The Building Department (which provides building inspection for the City)

January 31, 2013

Edventures Ltd
Register Agent Janet Eddy
Interested Party Rodger Eddy
2582 NW Lovejoy St.
Portland, OR 97210

Re: Property at 21520 Main Street NE, Aurora

Dear Edventures Ltd, Ms Eddy and Mr. Eddy:

This letter follows the City Council discussion at their meeting on January 8, 2013. You were present for the discussion. The Council ordered me to issue a new notice to you that 1) Rescinds the notice to you issued last June; and 2) Contains the correct allegations so that you can address the Council's concerns over your property.

Rescinded Notice

Accordingly, the Notice issued to you in June 2012 and signed by Lyle McCuistion as the Chief of Police and Building Official is rescinded and no longer in effect. Any time limitations contained in that notice are now void and the limitations and deadlines below will take their place.

New Notice

You are the owner of record of the property located at 21520 Main Street NE in Aurora, Oregon. I have viewed the building and property and determined that it to be dangerous as defined in the Aurora Dangerous Building Code, AMC 8.10.010, *et seq.* Such structures may be required to be repaired, vacated, or demolished.

AMC 8.10.020 states the purpose of the code is to remedy structures which from any cause endanger the life, limb, health, morals, property, safety, or welfare of the general public. Please see AMC 8.10.050 for a list of specific conditions which constitute a dangerous building.

Mr. Eddy, I will try to be brief I am not going to repeat the City's position as prior stated as far as evidence and the allegations we deny that it is not unsafe for which it is being used.

- The letter from the Building Dept did not have any supporting evidence from them.
- There are no written comments from the public we deny additions from the property owners, I do not see that this applies
- Again the letter from the building dept again is not from an experienced person
- The allegation of being unsafe or harboring of unwanted visitors this has not been documented by any dept such as deputy reports.

I have been concerned that in the good faith agreement with me in 2006 signed by Mayor Carr that would allow the structure to remain as is. I did do a records request and I received my records in a timely matter. I was trying to retrieve the agreement (2006) from the city however it was not found, City Recorder Richardson stated there is not one to find. I do think that the resolution 514 shows proof of its existence because following it then came the 515 resolution. I could not retrieve police reports in question either to show if there was a problem or not.

There was a cover page on the January minutes that references nothing.

January minutes and the resolution signed the 9th day 515 appeals 514 and that all nuisances have been taken care of and so there was no need for resolution 514, and it was based on the same set of circumstances in my opinion that exists today and a lot of material in your report was based on prior information to resolution 515 it dealt with 514 I was attempting to show history.

- Not in your packet from Nov 2006 is a letter from a construction company and at that time it could be rebuilt.
- April 16th 2012 letter to Mr. Koho that we felt we were not in non-compliance. We read a paragraph from the letter that states that it is not compromised and the letter from Michael Alea and he originally looked at the building on February 14th 2012 and he states that he feels there is no danger of collapse, in 2004 he states he gave information about rebuilding and states the condition of the building and that its in good shape, except the building materials on top of the structure. Some decay was noticed. (As you see from the copy of the letter)

MICHAEL E. ELIA, P.E.
CONSULTING ENGINEER
PO BOX 6376, PORTLAND, OREGON 97228

TEL (503) 246-0621

mike@michaalelia.com

April 19, 2013

Rodger Eddy
2582 NW Lovejoy St.
Portland, OR 97210

Re: Building at 21520 Main St. N.E., Aurora, Oregon 97002

Dear Mr. Eddy:

As requested, I have provided the following services:

1. I visited and inspected the building located at 21520 Main St. N.E., Aurora, Oregon 97002 on February 14, 2013;
2. I have reviewed a letter addressed to you from the City of Aurora, dated January 13, 2013.

General Summary

At the time of my visit on February 14, 2013, the wood structure and concrete foundation located at 21520 Main St. N.E., Aurora, Oregon 97002, did not appear to be in danger of imminent collapse. The letter from the City of Aurora, Dated January 13, 2013, did not provide evidence of structural distress or conditions consistent with danger of imminent collapse.

Background Information

The building located at 21520 Main St. N.E., Aurora, Oregon 97002, was damaged by fire in 2002. In 2004, I provided professional engineering services for the repair and reconstruction of the building. The services included the design and detailing of a lateral force resisting system, a gravity load carrying system and a method to strengthen the existing foundation walls.

Inspection Accomplished February 14, 2013

As requested, on February 14, 2013, I visited and inspected the structure. Generally, the structure was in a condition similar to that noted in 2004, with the exception that all upper elements above the main ground level diaphragm had been removed and the diaphragm had been covered with metal sheeting.

A few structural elements showed signs of early stages of decay, and some decay was noted in the diaphragm surface. The presence of minor surface decay was confirmed by pick tests. The interior conditions of some beams were evaluated by hammer soundings and were found to likely be free of decay. Evidence of structural distress consistent with the possibility of imminent collapse, such as excessive deflection of beams and joists, and the crushing of wood members at points of support, was not noted. At the time of my visit, the structure did not appear to be in danger of imminent collapse.

The condition of the foundation appeared to be unchanged from that observed in 2004. At the time of my recent visit, detrimental cracking, bulging or other evidence of foundation distress was not observed. The foundation did not appear to be in danger of imminent collapse.

City of Aurora Letter, Dated January 13, 2013

It appears that the letter provided by the City of Aurora was in response to the City's concern that the public health, safety and general welfare may be in jeopardy. The letter states that viewing the structure led them to the opinion that the building was dangerous. It appears that the letter drew conclusions as to the existing structure's structural strength and stability, and made claims that the structure is likely to partially or completely collapse, and made other specific conclusions based on a visual viewing of the property. No statements were provided to indicate that the conclusions presented in the letter were developed by an expert, or that close examination and testing of any kind had been accomplished to support the stated conclusions.

Generally, it has been my experience that opinions relating to a structure's and foundation's strength, stability, and risk of collapse need to be confirmed by a professionally licensed engineer. Reference to an expert of this type was not noted in the letter.

Conclusion

A visit was made to 21520 Main St. N.E., Aurora, Oregon 97002. The purpose of the visit was to inspect the structure at the site. The structure was visually inspected, and pick tests and hammer soundings were performed.

A letter from the City of Aurora addressed to Rodger Eddy, dated January 13, 2013, was reviewed. As noted in a general summary at the beginning of this letter, at the time of my visit on February 14, 2013, the wood structure and concrete foundation located at 21520 Main St. N.E., Aurora, Oregon 97002, did not appear to be in danger of imminent collapse. It appeared that the conclusions in the letter were based solely on a viewing of the structure.

If additional information is needed or if there are questions, please call.

Sincerely,

Michael E. Elia, P.E.



Michael E. Elia, Consulting Engineer
Project No. 626

- It appears that the letter concludes a safety concern and conclusion. There are no statements that any testing has been done and by no means no licensed professionals have done these tests except to do a visual check.
- So this is my evidence for the structural portion of the allegations and as far as the nuisance nothing has been documented and it could happen at any point in time.
- As far as the letter that City Attorney Koho handed me tonight it is the cities effort to now show an experience professional and this was all visual and I would dispute that no formal inspections were done and I would also state that I had tried to put up a fence I went through the process and now I erected a sample of the fence to show what we could do and we were advised by the city not to do it and I can't put up a taller fence because it would be against the regulations, and this would address the safety concerns from the legion hall.
- I would much prefer to cooperate and would like to work with the city.

Mayor Taylor calls for any more comments hearing none he asks the applicant a few clarifying questions.

- He asked Mr. Eddy if he was in fact involved with adventures LLC in any official capacity, Eddy states that is correct I am not involved in an official capacity. I could get a letter from my wife to allow me to speak to the matter at hand if needed.
- After 12 years with this property there has been no attempt to sell or clean it up. This is a new day and new council and we do feel this is a safety issue and a nuisance in the business district, so the fence is a mood point and we want it demolished or rebuilt.
- Councilor Sahlin asks the City Attorney based on the evidence presented do you believe there is enough evidence to uphold the city standing. Attorney Koho, I do believe that there is enough evidence with the letters and opinions stated. Koho by full disclosure as far as our Ordinances we would have to send out notice on this and notice of fine of 500 a day.
- Councilor Graupp on the ORD where do we stand not relative to any one of the bullets that is listed in the nuisance ORD is enough to be out of compliance and could trigger this. Yes Stated by Koho.
- Asking the police dept (Deputy Marcellais) do you believe that this property is more of a hazard than any other property in town yes, Deputy Marcellais yes, I do believe that this could be more of a serious situation than any other.
- Nuisance, Definition is read by KOHO
- Eddy responds length of time he states 2007 is the time frame and the property has been for sale and that was about the time property collapse came across the nation.
- I do have active interest and they have stated that the basement is a value, he is asked if he has written letters to support this. (none were presented at this time)
- Eddy, asks the deputy Marcellais if a fence would help the safety, visually yes but it would create a barrier to then allow people or kids to be seen if on the property and being mischievous.
- City Attorney Koho, let me make sure that you are in charge of the property and the right person to speak to this. (Yes) replied MR. Eddy.

The hearing is closed at 8:04 pm

Discussion between City Councilors ensues,

- First question is about how many liens are on the property at this time City Recorder states 3 so far.
- This has been an ongoing issue for a decade now.
- Councilor Sahlin I just want to make sure we follow our code and effectively apply our code and to make sure we are doing it correctly so we are not talking about this in another 10 years.
- Councilor Vlcek, so are we putting this off (unsafe) we agree that there has been professionals inspect so he said she said thing isn't happening. This is truly unsafe.

A motion is made to follow the code and the Resolution that is now in place is made by Councilor Sahlin and seconded by Councilor Brotherton. Motion Passes.

7. **Discussion with Parks Committee**, OSU report two trees are classified imminent danger prior one so there are three. Let's get a quote and move forward.

Councilor Sahlin we talked about recycle containers is it more beneficial to just look at something that is premade.

Bases came in , I have not placed them yet I think we need it sprayed first then I (Sahlin) will drag it.

8. **Discussion with Traffic Safety Commission**, none

9. **Reports**

A. Marion County Deputy Report – (included in your packet)

- Informs Council of his report
- Are there any issues that you need to bring up, Mayor Taylor asks about the camera in the park no it's not there anymore and no problems have been reported as of yet.
- Recognition of the you tube video on drunk driving video from North Marion School.
- I have sat down with Betsy on the Colony Days items and we have a plan in place, we are looking at cadets, reserves, the posse and the cars being involved at some level.

B. Finance Officer's Report – Financials (included in your packets)

- ❖ Audit is on the Sept 15th calendar.
- ❖ The cash statement balanced.
- ❖ We have 2 weeks left and so there is some actual numbers and many are over budget at this point.
- ❖ Letter from Auditor for approval, **consensus** from the Council is to allow Mayor Taylor to sign, it.

C. Public Works Department's Report – (included in your packet)

1. Monthly Status Report (Storm Water)
2. Monthly Status Report (Water), copper line disintegrate from 2004 this is going to be an issue all over town where these lines are because of the acid soil. We need to budget for them now.
 - Storm water survey still on track for July
 - No more questions
3. Parks Report, OSU Tree Report as discussed before.

A. Waste Water Treatment Plant Update (from Otis Phillips, (included in your packet)

Everything looks good...

Two new interns are working out great.

D. City Recorder's Report (included in your packet) , reads her report.

No questions.

- E. **City Attorney's Report** – (not Included in your packet)
- None as discussed during the public hearing.

9. Ordinances and Resolutions

- A. **Discussion and or Action on Resolution 669 Supporting a Farmers Market**, read by title only.

Motion to approve Resolution 669 is made by Councilor Vlcek and Sahlin seconds. Motion Passes

- B. **Discussion and or Action on Resolution 670 with SEDCOR**, read title only no discussion.

Motion to approve Resolution 670 was made by Councilor Graupp seconded by Councilor Brotherton. Motion Passes

- C. **Discussion and or Action on Resolution 671 State Revenue**, read by title only with no discussion.

Motion to approve Resolution 671 was made by Councilor Sahlin and seconded by Councilor Vlcek. Motion Passes.

- D. **Discussion and or Action on Resolution 672 Declaring the City's Election to Receive State Revenues.** Read by title only.

Motion to approve Resolution 672 was made by Councilor Graupp and seconded by Councilor Brotherton. Motion Passes.

- E. **Discussion and or Action on Resolution 673 Adopting the 2013/2014 Budget and Making Appropriations.** Read by title only.

Motion to approve Resolution 673 was made by Councilor Sahlin and seconded by Councilor Brotherton. Motion Passes.

- F. **Discussion and or Action on Resolution 674 Levying AD Valorem Taxes for Fiscal Year 2013/2014** read by title only.

Motion to approve Resolution 674 was made by Councilor Graupp and seconded by Councilor Brotherton. Motion Passes.

10. New Business

- A. **Discussion and or Action on City of Aurora LED Streetlight offer from PGE (Presented by Luanne Berkey, Lighting Specialist), Wendy Buck presents**, at the time of the Franchise agreement you asked about LED light and Melisa is in charge of this and so I will hand it over to her, Melisa, not sure how familiar you are with the street lights they are more energy efficient and they last longer and they are expected to last 25 years, LED is much more directional and keeps it on

the road. We do have shields available they are a bit more cost involved. But they are much better.

Councilor Brotherton asks is this a potential pole purchase, (PGE) there are about 79 lights that we (PGE) currently own and if we convert them then the remaining amount you own we would like to purchase them from you at 22,000 b poles and if we convert them and we go down about 600 savings a year.

So we are paying for the B poles.

A 5.49 a month

B Poles .85 pole

If you (PGE) own the pole we are then paying all maintenance on the pole.

Can you give us a submittal of fees, it is determined that they did that.

Councilor Sahlin is the style going to change, no (PGE) states.

Councilor Graupp what do you need from us to do the sale of the poles there would be contract if we are interested in it they could then do a contract up,

Consensus from the Council is to allow moving forward with an agreement for the next Council meeting. The numbers would be the same but we could give more description on options of styles and the locations of the poles.

B. Discussion and or Action on the Marion County Contract for Police Services.

Motion to approve the new contract with Marion County is made by Councilor Vlcek and is seconded by Councilor Sahlin. Motion Passes.

C. Discussion and or Action on IGA between City of Aurora and E-Permitting Services.

Motion to approve the IGA as presented is approved by Councilor Brotherton and seconded by Councilor Graupp. Motion Passes.

Discussion is that we are not paying for her (City Planner Wakeley) training because this is something she will need to do for her other contract cities as well.

D. Discussion and or Action on OLCC License Renewal

Motion to approve the renewal of OLCC License is made by Councilor Sahlin and seconded by Councilor Vlcek. Motion Passes.

E. Discussion and or Action on Contract Renewal with Willamette Valley Council of Governments. (City Planner)

Motion to approve the contract for the next year with COG is made by Councilor Sahlin and seconded by Councilor Graupp. Motion Passes

10. Old Business

A. Discussion and or Next Steps on Election Results & Charter Change

City Attorney Koho, yes 97 no 93 so the charter is amended. I just need the direction you want to go and I can draft an ORD. to use the correct language for the charter. None is given at this point.

Councilor Sahlin the Economic Development Committee is stagnant at this point and with SEDCOR.

Nothing is discussed about the property that was first initiated by Councilor Sahlin.

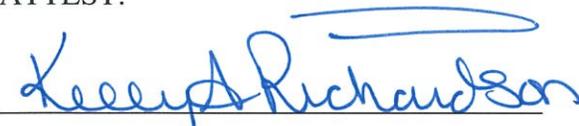
11. Adjourn

A motion to adjourn the June 11, 2013, meeting at 9:05 p.m. was made by Councilor Sahlin seconded by Councilor Graupp and passed unanimously.



Greg Taylor, Mayor

ATTEST:



Kelly Richardson, City Recorder

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KOONTZ *v.* ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 11–1447. Argued January 15, 2013—Decided June 25, 2013

Coy Koontz, Sr., whose estate is represented here by petitioner, sought permits to develop a section of his property from respondent St. Johns River Water Management District (District), which, consistent with Florida law, requires permit applicants wishing to build on wetlands to offset the resulting environmental damage. Koontz offered to mitigate the environmental effects of his development proposal by deeding to the District a conservation easement on nearly three-quarters of his property. The District rejected Koontz’s proposal and informed him that it would approve construction only if he (1) reduced the size of his development and, *inter alia*, deeded to the District a conservation easement on the resulting larger remainder of his property or (2) hired contractors to make improvements to District-owned wetlands several miles away. Believing the District’s demands to be excessive in light of the environmental effects his proposal would have caused, Koontz filed suit under a state law that provides money damages for agency action that is an “unreasonable exercise of the state’s police power constituting a taking without just compensation.”

The trial court found the District’s actions unlawful because they failed the requirements of *Nollan v. California Coastal Comm’n*, 483 U. S. 825, and *Dolan v. City of Tigard*, 512 U. S. 374. Those cases held that the government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government’s demand and the effects of the proposed land use. The District Court of Appeal affirmed, but the State Supreme Court reversed on two grounds. First, it held that petitioner’s claim failed because, unlike in *Nollan* or *Dolan*, the District *denied* the application. Se-

Syllabus

cond, the State Supreme Court held that a demand for money cannot give rise to a claim under *Nollan* and *Dolan*.

Held:

1. The government's demand for property from a land-use permit applicant must satisfy the *Nollan/Dolan* requirements even when it denies the permit. Pp. 6–14.

(a) The unconstitutional conditions doctrine vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up, and *Nollan* and *Dolan* represent a special application of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. The standard set out in *Nollan* and *Dolan* reflects the danger of governmental coercion in this context while accommodating the government's legitimate need to offset the public costs of development through land use exactions. *Dolan, supra*, at 391; *Nollan, supra*, at 837. Pp. 6–8.

(b) The principles that undergird *Nollan* and *Dolan* do not change depending on whether the government *approves* a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so. Recognizing such a distinction would enable the government to evade the *Nollan/Dolan* limitations simply by phrasing its demands for property as conditions precedent to permit approval. This Court's unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent. See, e.g., *Frost & Frost Trucking Co. v. Railroad Comm'n of Cal.*, 271 U. S. 583, 592–593. It makes no difference that no property was actually taken in this case. Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. Nor does it matter that the District might have been able to deny Koontz's application outright without giving him the option of securing a permit by agreeing to spend money improving public lands. It is settled that the unconstitutional conditions doctrine applies even when the government threatens to withhold a gratuitous benefit. See e.g., *United States v. American Library Assn., Inc.*, 539 U. S. 194, 210. Pp. 8–11.

(c) The District concedes that the denial of a permit could give rise to a valid *Nollan/Dolan* claim, but urges that this Court should not review this particular denial because Koontz sued in the wrong court, for the wrong remedy, and at the wrong time. Most of its arguments raise questions of state law. But to the extent that respondent alleges a federal obstacle to adjudication of petitioner's claim, the Florida courts can consider respondent's arguments in the first in-

Syllabus

stance on remand. Finally, the District errs in arguing that because it gave Koontz another avenue to obtain permit approval, this Court need not decide whether its demand for offsite improvements satisfied *Nollan* and *Dolan*. Had Koontz been offered at least one alternative that satisfied *Nollan* and *Dolan*, he would not have been subjected to an unconstitutional condition. But the District's offer to approve a less ambitious project does not obviate the need to apply *Nollan* and *Dolan* to the conditions it imposed on its approval of the project Koontz actually proposed. Pp. 12–14.

2. The government's demand for property from a land-use permit applicant must satisfy the *Nollan/Dolan* requirements even when its demand is for money. Pp. 14–22.

(a) Contrary to respondent's argument, *Eastern Enterprises v. Apfel*, 524 U. S. 498, where five Justices concluded that the Takings Clause does not apply to government-imposed financial obligations that "d[o] not operate upon or alter an identified property interest," *id.*, at 540 (KENNEDY, J., concurring in judgment and dissenting in part), does not control here, where the demand for money did burden the ownership of a specific parcel of land. Because of the direct link between the government's demand and a specific parcel of real property, this case implicates the central concern of *Nollan* and *Dolan*: the risk that the government may deploy its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed use of the property at issue. Pp. 15–18.

(b) The District argues that if monetary exactions are subject to *Nollan/Dolan* scrutiny, then there will be no principled way of distinguishing impermissible land-use exactions from property taxes. But the District exaggerates both the extent to which that problem is unique to the land-use permitting context and the practical difficulty of distinguishing between the power to tax and the power to take by eminent domain. It is beyond dispute that "[t]axes and user fees . . . are not 'takings,'" *Brown v. Legal Foundation of Wash.*, 538 U. S. 216, 243, n. 2, yet this Court has repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained through taxation, *e.g.*, *id.*, at 232. Pp. 18–21.

(c) The Court's holding that monetary exactions are subject to scrutiny under *Nollan* and *Dolan* will not work a revolution in land use law or unduly limit the discretion of local authorities to implement sensible land use regulations. The rule that *Nollan* and *Dolan* apply to monetary exactions has been the settled law in some of our Nation's most populous States for many years, and the protections of those cases are often redundant with the requirements of state law.

KOONTZ *v.* ST. JOHNS RIVER WATER
MANAGEMENT DIST.

Syllabus

Pp. 21–22.

77 So. 3d 1220, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.



Vending Carts on Private Property

31



If you are considering purchasing, installing or using a vending cart, it is important to understand which Building Code and Zoning Code standards may apply. Factors such as the location of the vending cart, the type of vending cart, and the utility services used by the vending cart will determine what Building Codes and Zoning Codes may apply and what permits will be required.

CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES
1900 SW 4th Avenue, Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds

Vending cart detail	Requirement
Location of vending cart	Check requirements with Planning and Zoning. PDOT approval required if placement is to be in right-of-way.
Mobile vending carts of any length	Associated development may require a zoning permit. Site built structures may require a building permit.
Mobile vending carts over 16' in length	Additional zoning restrictions apply. Check with Planning and Zoning.
Fixed vending carts	Must meet all requirements of Zoning and Building Codes. Requires a building permit and inspection.
Drive-through vending carts (mobile and fixed)	Regulated by the Zoning Code. Check with Planning and Zoning.
Electrical work	Requires an electrical permit and inspection.
Water service and sanitary sewer installed	Commercial plumbing permits and inspections are required.
Manufactured building used as a fixed vending cart	Must have stamp or insignia of approval issued by the State of Oregon.
Propane use	Portland Fire Bureau requires an annual permit.
Signs	Sign regulations apply and a sign permit is required.
Vending carts selling food	Require approval from the Multnomah County Health Department.

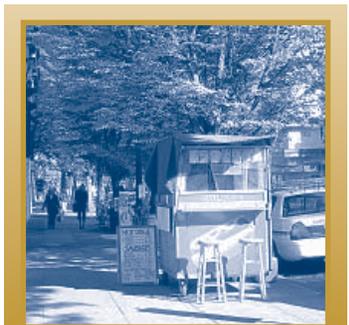
Location of vending carts

If you are considering a vending cart, your first step should be to decide on the location. The location of the vending cart determines which codes apply and what permits may be required.

The information in this handout is related to vending carts on private property.

If you are considering locating a vending cart in the public right-of-way (on the sidewalk), the Portland Office of Transportation (PDOT) must approve this. To contact PDOT, call 503-823-7002, or visit their Web site at www.portlandonline.com/transportation for more information.

If you are considering a location for a vending cart on private property, check to see if the zoning on the site allows retail uses. To research zoning on a particular property, go to www.portlandmaps.com or call the Planning and Zoning information line at 503-823-7526.



Example of a vending cart positioned in the public right-of-way which requires PDOT approval.

Types of vending carts

Mobile vending carts

Mobile vending carts are on wheels. A building permit is not required for a mobile vending cart. A zoning permit may be required for development associated with the mobile vending cart such as changes to an existing parking area, landscaping, and drive-through facilities.

Vending carts that are 16 feet or less in length are regulated in the Zoning Code as Utility Trailers. Vending carts over 16 feet in length, with or without wheels, are considered Heavy Trucks by the Zoning Code, and are not allowed in certain zones. Call Planning and Zoning at 503-823-7526 for more information.

Fixed vending carts

Vending carts of any length that have had the wheels removed are considered buildings and are subject to Building Code and Zoning Code requirements. A fixed vending cart of any length is considered a building and is subject to setback, building coverage, ground floor windows, and other Zoning Code regulations.

A building permit is required for a fixed vending cart. Fixed vending carts are required to have a rest room facility located on the property, a person door at least 32 inches clear width and 80 inches high, an accessible ramp, and an approved permanent foundation.

If plumbing fixtures are included in the vending cart, a connection to the sanitary sewer and domestic water service will be necessary.

Additionally, electrical service, including permanently wiring the building and installing a permanently wired feeder next to the fixed vending cart will be required.

Drive-through vending carts

Drive-through vending carts of any length, both mobile and fixed, are regulated by the Zoning Code. Drive-through facilities are only allowed in certain zones and plan districts in the City of Portland. Drive-through regulations can be found in Chapter 33.224 of the Zoning Code. You may contact the Planning and Zoning information line at 503-823-7526 for more information.

Public health requirements

Vending carts providing food or beverages for public consumption must receive approval from the Multnomah County Health Department. Multnomah County requires that all plumbing fixtures be connected to an approved drainage system (OSPSC 304.0, 305.0 and 713.0). Visit the Multnomah County Health Department Web site at www.mchealth.org or call 503-988-3816 for more information.

Utility services to vending carts

Propane use

Portland Fire Bureau requires an annual permit for vending carts that utilize propane for cooking.

2 • VENDING CARTS ON PRIVATE PROPERTY

Water service and /or sanitary sewer

A plumbing permit is required if a water service or sanitary sewer is installed. The plumbing must comply with the Oregon State Plumbing Speciality Code.

Electrical service

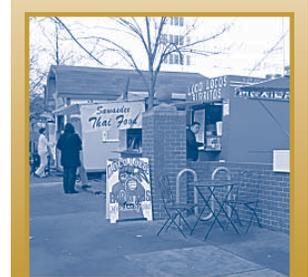
An electrical permit is required for electrical work done.

Manufactured buildings

Manufactured buildings that are being used as fixed vending carts must have a stamp or insignia of approval issued by the State of Oregon.

Vending cart signs

Vending carts are allowed one portable sign (A-board) per cart. The sign must comply with Title 32.30.030, Portable Sign Regulations. For more information on registering a portable sign, please call 503-823-7526.



Vending carts are allowed one portable sign. Portable signs must be registered with the City.

Helpful Information

Bureau of Development Services

City of Portland, Oregon
1900 SW 4th Avenue, Portland, OR 97201
www.portlandoregon.gov/bds

General Office Hours:

Monday through Friday, 8:00 am to 5:00 pm
BDS main number: 503-823-7300

Permit information is available at the following location:

Development Services Center (First Floor)
For Hours Call 503-823-7310 | Select option 1
Permitting Services (Second Floor)
For Hours Call 503-823-7310 | Select option 4

Important Telephone Numbers

BDS main number 503-823-7300
DSC automated information line 503-823-7310
Building code information 503-823-1456
Zoning code information..... 503-823-7526
Permit information for electrical, mechanical,
plumbing, sewer and sign..... 503-823-7363
Fire Bureau, propane permitting 503-823-3712
BDS 24-hour inspection request line..... 503-823-7000
Portland License Bureau..... 503-823-5157
City of Portland TTY 503-823-6868

For more detailed information regarding the bureau's hours of operation and available services;



Note: All information in this brochure is subject to change.

August 2013 Update

LAND USE APPLICATIONS

<u>Project</u>	<u>Status</u>
Building Permits/Correspondence	<ul style="list-style-type: none">• Correspondence with property owner at 21825 Airport Road NE
Sign Permits	
Manufactured Home Permit	
Land Use Applications	<ul style="list-style-type: none">• Discussion on potential Legislative Amendment to address/clarify food carts in the City (Chairman Schaeffer)

ADDITIONAL PLANNING

<u>Project</u>	<u>Status</u>
ODOT 99E Corridor Study	<ul style="list-style-type: none">• No updates from ODOT
Urban Renewal District Feasibility Study	<ul style="list-style-type: none">•
Development Code/HRB updates	<ul style="list-style-type: none">• City Council hearing for Title 17 scheduled for August 13th.
Vision Action Plan	<ul style="list-style-type: none">• 2013 update recommendations (2012 electronic version emailed to PC for preliminary reviews).
Misc.	<ul style="list-style-type: none">• Brochure sample for review and comment (Councilor Graupp is taking the lead on this)