



## **CITY COUNCIL PUBLIC HEARING**

**Wednesday, August 15, 2018**

265 Strand Street, St. Helens, OR 97051

[www.ci.st-helens.or.us](http://www.ci.st-helens.or.us)

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### **Welcome!**

All persons planning to address the Council, please sign-in at the back of the room. When invited to provide comment regarding items not on tonight's agenda, please raise your hand to be recognized, walk to the podium in the front of the room to the right, and state your name only. You are not required to give your address when speaking to the City Council. If you wish to address a specific item on the agenda, you should make your request known to the Mayor as soon as possible before the item comes up. The Council has the authority to grant or deny your request. Agenda times and order of items are estimated and are subject to change without notice.

1. **Open Public Hearing - 6:30 p.m.**
2. **Topic**
  - 2.A. Text Amendments to the St. Helens Community Development Code related to Auxiliary Dwelling Units, Home Occupations, and Significant Wetland and Riparian Area Upland Protection Zones  
[ZA.1.18 Staff Report \(Council\).pdf](#)
3. **Close Public Hearing**

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**CITY OF ST. HELENS PLANNING DEPARTMENT  
STAFF REPORT  
Development Code Amendments ZA.1.18**

**DATE:** August 7, 2018  
**TO:** City Council  
**FROM:** Jacob A. Graichen, AICP, City Planner  
Jennifer Dimsho, Associate Planner  
**APPLICANT:** City of St. Helens  
**LOCATION:** Citywide  
**PROPOSAL:** Text Amendments to the Development Code related to auxiliary dwelling units, home occupations, and significant wetland and riparian area upland protection zones

**The 120-day rule (ORS 227.178) for final action for this land use decision is not applicable.**

**PUBLIC HEARING & NOTICE**

Hearing dates are as follows: July 10, 2018 before the Planning Commission and August 15, 2018 before the City Council.

Notice was published in the The Chronicle on June 27, 2018. Notice was sent to the Oregon Department of Land Conservation and Development (DLCD) on June 1, 2018. Notice was sent to agencies by mail or e-mail on June 21, 2018.

**APPLICABLE CRITERIA, ANALYSIS & FINDINGS**

**SHMC 17.20.120(1) – Standards for Legislative Decision**

The recommendation by the commission and the decision by the council shall be based on consideration of the following factors:

- (a) The statewide planning goals and guidelines adopted under ORS Chapter 197;
- (b) Any federal or state statutes or guidelines found applicable;
- (c) The applicable comprehensive plan policies, procedures, appendices and maps; and
- (d) The applicable provisions of the implementing ordinances.

**(a) Discussion:** This criterion requires analysis of the applicable statewide planning goals. The applicable goals in this case are Goal 1, Goal 2, Goal 5, and Goal 10.

***Statewide Planning Goal 1: Citizen Involvement.***

*Goal 1 requires the development of a citizen involvement program that is widespread, allows two-way communication, provides for citizen involvement through all planning phases, and is understandable, responsive, and funded.*

Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged comprehensive plan and land use regulations.

The City's Development Code is consistent with State law with regards to notification requirements. Pursuant to SHMC 17.20.080 at least one public hearing before the Planning Commission and City Council is required. Legal notice in a newspaper of general circulation is required too. The City has met these requirements and notified DLCD of the proposal. In addition, the City has sent notice to property owners potentially impacted by the proposed changes in land uses allowed on property as required by ORS 227.186.

Given the public vetting for the plan, scheduled public hearings, and notice provided, Goal 1 is satisfied.

### ***Statewide Planning Goal 2: Land Use Planning***

*This goal requires that a land use planning process and policy framework be established as a basis for all decisions and actions relating to the use of land. All local governments and state agencies involved in the land use action must coordinate with each other. City, county, state and federal agency and special districts plans and actions related to land use must be consistent with the comprehensive plans of cities and counties and regional plans adopted under Oregon Revised Statutes (ORS) Chapter 268.*

The City and State (i.e., DLCD) coordinated with regard to the adoption of this proposal. The City notified DLCD as required by state law prior to the public hearings to consider the proposal.

There are no known federal or regional documents that apply to this proposal.

Comprehensive Plan consistency is addressed further below.

Given the inclusion of local, state, regional and federal documents, laws, participation and opportunity for feedback as applicable, Goal 2 is satisfied

### ***Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces***

*This goal is about protecting natural resources and conserving scenic and historic areas and open spaces to promote a healthy environment and natural landscape that contributes to Oregon's livability. It requires that riparian corridors and wetlands are inventoried and protected.*

The City maintains an inventory of riparian corridors and wetlands and plans for their protection with upland protection zones. Significant wetlands and riparian areas will still be protected with a reduced upland protection zone. **Reduction of the protection zone is desired by the Council to reduce the barriers to economic development.**

In order to find that the proposal complies with Goal 5, the City must reexamine why it adopted the rules it did. To start see **attached findings** as attached to ORD No. 2890 (the ORD that adopted the City's wetland and riparian area protection regulations).

The City adopted its riparian regulations based on the "safe harbor" provisions of OAR 660-023-0090. The OAR references a 75' upland protection area for streams with a flow greater than 1,000 cubic feet per second and a 50' upland protection area for streams with less flow. This is directly reflected in SHMC 17.40.015. We can't reduce the 75' requirement unless the city explores the "safe harbor alternative" as provided in said OAR.

The wetland protection regulations are based on the ESEE process in OAR-023-0040. The city considered much for its existing rules as detailed in said ORD No. 2890. Finding No. 8 lists the ESEE issues. Note finding 8.n, which provides basis for having 50' / 75' wide protection zones for wetlands. In order to change this, the City would have to go through an entire new process to adopt new findings. Note that Ordinance No. 2890 states that "the Planning Commission has spent over two years developing a Significant Wetland/Riparian Corridor Protection Plan and implementing ordinances." It appears care was taken at this time to adopt the most appropriate rules for the City.

This proposal does not conflict with the state and federal regulations for the protection natural resources given compliance as noted above. Goal 5 is not satisfied without a complete reanalysis and findings to replace that of ORD No. 2890, at the least.

**As such, no changes pertaining to the City's wetland and riparian areas are proposed.**

### ***Statewide Planning Goal 10: Housing***

*This goal is about meeting the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.*

With the passage of Senate Bill 1051 (referenced in more detail below), the State (and DLCD) have been an advocate in developing best practices for the provisions of ADUs. This is because ADUs can provide additional housing at a greater density and for a lower cost than traditional development. In order to help meet the housing needs of the City and of the State, the City is proposing to change the ADU permitting process to more closely align with the recommended best practices.

**Finding:** The proposed Development Code amendments further the statewide planning goals.

**(b) Discussion:** This criterion requires analysis of any applicable federal or state statutes or guidelines in regards to the Development Code amendments.

On August 15, 2017, Senate Bill 1051 was signed into law. Among the provisions, it stated:

*A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, **subject to reasonable local regulations related to siting and design.***

**Note:** An accessory dwelling unit is the same as an auxiliary dwelling unit for the purposes of our Development Code.

Though our current rules may comply with SB 1051, they do not meet the current best practices for such. Therefore, our rules could be seen as “unreasonable”, especially compared to other jurisdictions that are addressing SB 1051, including the City of Scappoose.

**Finding:** The proposed amendments will help the City comply with the known federal and state statutes in regards to the Development Code changes.

**(c) Discussion:** This criterion requires analysis of applicable comprehensive plan policies, procedures, appendices and maps. For the ADU amendments, the applicable goals and policies are:

**19.08.050 Housing goals and policies.**

*(1) Preface. Residents of the city of St. Helens are demographically in different stages of socioeconomics. As such, they vary in their family sizes, economic capabilities and interests and will desire different types of housing. The strategy is to ensure that sufficient lands are designated for those different phases and desires of current and future residents and to encourage policies and decisions to allow all residents the ability to find affordable housing.*

*(2) Goals.*

*(a) To promote safe, adequate, and affordable housing for all current and future members of the community.*

*(b) To locate housing so that it is fully integrated with land use, transportation and public facilities as set forth in the Comprehensive Plan.*

*(3) Policies. It is the policy of the city of St. Helens to:*

*(a) Maintain adequate development and building codes to achieve the city’s housing goals.*

*(b) Encourage the distribution of low income and/or multifamily housing throughout the city rather than limiting them to a few large concentrations.*

*[...]*

*(h) Encourage energy-efficient housing patterns in residential developments.*

**19.12.020 General residential category goals and policies.**

*(1) Goals. To create conditions suitable for higher concentrations of people in proximity to public services, shopping, transportation and other conveniences.*

*(2) Policies. It is the policy of the city of St. Helens to:*

- (a) Require undeveloped public ways of record to be improved to applicable city standards as a condition to the issuance of building permits for lots that front these ways.*
- (b) Encourage the infilling of areas presently undeveloped due to topographical limitations to achieve a more efficient use of the land.*
- (c) Allow for the convenient location of grocery stores by the conditional use process.*
- (d) Develop rules for multifamily dwellings which are consistent with housing policies.*
- (e) Designate general residential lands as R-5, General Residential or AR, Apartment Residential on the city zoning map.*

**19.12.030 Suburban residential category goals and policies.**

- (1) Goals. To establish conditions which will maintain attractive, convenient residential living typical of moderate density semi-suburban areas.*
- (2) Policies. It is the policy of the city of St. Helens to:*
  - (a) Allow for the convenient location of grocery stores by the conditional use process.*
  - (b) Permit a degree of flexibility in residential site design and a mixture of housing, including multi-dwelling units, through the planned development procedures.*
  - (c) Promote the development of homesites at a density and standard consistent with: the level of services that can reasonably be provided and the characteristics of the natural environment.*
  - (d) Review diligently all subdivision plats in the suburban residential category to ensure the establishment of a safe and efficient road system.*
  - (e) Designate suburban residential lands as R-7, Moderate Residential, or R-10, Suburban Residential, on the city zoning map.*

The ADU text amendments support the Comprehensive Plan's housing policy of providing a range of affordable housing options for residents who are in demographically different stages of socioeconomics. Because ADUs are smaller and typically cost less to develop, the text amendments also support the wider distribution of lower cost housing, rather than limited them to a few concentrated areas. Both of the residential comprehensive plan designations support the additional density and efficient infill development that ADUs offer, as long as the development is consistent with the level of services that can be reasonably provided and consistent with the characteristics of the natural environment. The amendments to allow for ADUs will not change the underlying zoning requirements related to lot coverage, setbacks, landscaping, and density.

For the Home Occupation text amendments, the applicable goals and policies are:

**19.08.020 Economic goals and policies.**

*[...]*

*(2) Goals.*

- (a) To maintain favorable conditions for a growing, healthy, stable and diversified business and industrial climate.*

- (b) To encourage the expansion of employment opportunities within the urban area so residents can work within their communities rather than commute to jobs outside the county.*
- (c) To promote industrial development necessary to provide a balanced tax base for the operation of local government services.*
- (d) To establish greater local control over the destiny of the local economic development.*

The text amendments related to Home Occupations will remove a permit for businesses that essentially have no outward indication that a business is being operated out of the residence. This will encourage local employment for residents within the City, reducing the number of commuters and encouraging growth in the number of small businesses in the community.

#### **19.08.060 Natural factors and local resources goals and policies.**

*[...]*

##### **(2) Goals.**

- (a) To maintain and, where possible, enhance the air, water, and land resources of the St. Helens area.*

*[...]*

- (d) To ensure the conservation of substantial fish and wildlife habitats.*
- (e) To preserve open spaces within and between urban living areas.*
- (f) To encourage the protection of the forest area within the urban growth boundary.*
- (g) To preserve for the public benefit outstanding scenic areas.*

##### **(3) Policies. It is the policy of the city of St. Helens to:**

- (a) Participate in resource management planning through participation in collective federal, state, and regional agency planning programs.*

*[...]*

- (f) Encourage the preservation, restoration, and functionality of the open space corridors or rezone to open space zone the following lands:*

- (i) The canyon area adjoining Godfrey Park.*
- (ii) The unimproved gullies and creekbed systems.*
- (iii) The lands along significant riparian corridors and connecting wetlands.*

**Finding:** Goal 5 analysis is necessary to amend the City's wetland and riparian regulation pertaining to protection zones. As this analysis has not been done as part of these amendments, the City cannot change these provisions at this time.

**(d) Discussion:** This criterion requires analysis of the applicable provisions of the implementing ordinances.

**Finding:** The proposal modifies the Development Code but findings as to other applicable implementing ordinances are not necessary.

## **CONCLUSION & RECOMMENDATION**

**Based upon the facts and findings herein, staff recommends approval of the proposed text amendments to the Development Code.**

**Attachment(s):** Proposed text amendments (July 24, 2018 revision)

Findings as attached to ORD No. 2890 (the ORD that adopted the City's wetland and riparian area protection regulations)



underline words are added

~~words stricken~~ are deleted

[...] means skipping text as it reads in the code (e.g., to focus on text being edited in this document)

## **CHAPTER 17.16 DEFINITIONS**

[...]

### **17.16.010 General and land use definitions.**

Words used in this Development Code have their normal dictionary meaning unless they are listed below. Words listed below have the specific meaning stated, unless the context clearly indicates another meaning.

The definition of words with specific meaning in the Development Code are as follows:

[...]

“Dwelling, auxiliary or accessory” means ~~a second dwelling unit added to a lot with a detached or attached single unit dwelling and occupied by no more than one person per 300 square feet of unit living area and in compliance with the requirements of Chapter 17.128 SHMC~~ an interior dwelling unit or attached or detached residential dwelling unit structure that is used in connection with, or that is accessory to, a detached single-family dwelling unit (principal dwelling) and is located on the same lot or parcel as the principal dwelling. Auxiliary Dwelling Units are subject to Chapter 17.128 SHMC.

[...]

“Shopping plaza” means a group (two to seven business units) of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements (also “mini mall”).

“Short-term rental” means the use of a dwelling unit or rooms within a dwelling unit by a person or groups of persons entitled to occupy for rent for a period of less than 31 consecutive days. Short-term rental does not include: (a) bed and breakfast, homestay, boarding house; (b) lodging facilities or rooming house; or (c) hotels and motels.

Side Lot Line. See “lot line – side.”

[...]

## **CHAPTER 17.24 PROCEDURES FOR DECISION-MAKING – QUASI-JUDICIAL**

[...]

#### **17.24.040 Preapplication conference.**

[...]

(4) The following applications are exempt from the preapplication requirement of this section:

- (a) Tree removal permit.
- (b) Accessory structure permit.
- ~~(c) Home occupation permit, Type I.~~
- ~~(d)~~ (c) Nonconforming determination.
- ~~(e)~~ (d) Sign permits.

[...]

#### **17.24.120 Notice of decision by the director.**

[...]

(1) Notice of the director's decision on an application pursuant to SHMC 17.24.090 shall be given by the director in the following manner:

[...]

(ii) All surrounding property owners of record of property within the applicable notice area of the property for the following types of director decisions:

- ~~(A) Home occupations — Type I, unlisted uses: abutting properties;~~
- ~~(B)~~ (A) Lot line adjustments, major site design reviews, minor modifications to conditional use permits, sensitive lands, temporary uses, accessory structures: 100 feet;
- ~~(C)~~ (B) Land partitions: 200 feet;
- ~~(D)~~ (C) Expedited land divisions: 300 feet;
- (iii) For home occupations — ~~Type II~~; see SHMC 17.120.060;

[...]

### **CHAPTER 17.32 ZONES AND USES**

[...]

#### **17.32.050 Suburban Residential Zone – R10**

[...]

(2) Uses Permitted Outright. In an R-10 zone, the following uses are permitted outright:

- (a) Auxiliary dwelling unit (per Chapter 17.128 SHMC).

- ~~(a)~~ (b) Home child care.
- ~~(b)~~ (c) Home occupation, ~~Types I and II (after compliance with per~~  
Chapter 17.120 SHMC).
- ~~(e)~~ (d) Public facilities, minor.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses (See Chapter 17.100 SHMC). In an R-10 zone, the following conditional uses may be permitted upon application:

- ~~(a) Auxiliary dwelling units.~~
- ~~(b)~~ (a) Children's day care or day nursery.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.060 Moderate Residential Zone – R7**

[...]

(2) Uses Permitted Outright. In an R-7 zone, the following uses are permitted outright:

- (a) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
- ~~(a)~~ (b) Home child care.
- ~~(b)~~ (c) Home occupation, ~~Types I and II (after compliance with per~~  
Chapter 17.120 SHMC).
- ~~(e)~~ (d) Public facilities, minor

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses (See Chapter 17.100 SHMC). In an R-7 zone, the following conditional uses may be permitted upon application:

- ~~(a) Auxiliary dwelling units.~~
- ~~(b)~~ (a) Bed and breakfast, homestay, boarding house.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.070 General Residential Zone – R5**

[...]

- (2) Uses Permitted Outright. In an R-5 zone, the following uses are permitted outright:
- ~~(a)~~ (a) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
  - ~~(b)~~ (b) Duplex dwelling units.
  - ~~(c)~~ (c) Home child care.
  - ~~(d)~~ (d) Home occupation, Types I and II (per Chapter 17.120 SHMC).
  - ~~(e)~~ (e) Public facility, minor.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses (See Chapter 17.100 SHMC). In an R-5 zone, the following conditional uses may be permitted upon application:

- ~~(a)~~ (a) Auxiliary dwelling units.
- ~~(b)~~ (a) Bed and breakfast, homestay, boarding house.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.080 Apartment Residential Zone – AR**

[...]

- (2) Uses Permitted Outright. In an AR zone, the following uses are permitted outright:
- ~~(a)~~ (a) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
  - ~~(b)~~ (b) Duplex dwelling units.
  - ~~(c)~~ (c) Home child care.
  - ~~(d)~~ (d) Home occupation, Types I and II (per Chapter 17.120 SHMC).
  - ~~(e)~~ (e) Multidwelling units residential facilities.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses (See Chapter 17.100 SHMC). In an AR zone, the following conditional uses may be permitted upon application:

- ~~(a)~~ (a) Auxiliary dwelling units.
- ~~(b)~~ (a) Bed and breakfast, homestay, boarding house.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.090 Mobile Home Residential Zone – MHR**

[...]

(2) Uses Permitted Outright. In the MHR zone, the following uses ~~and their accessory uses~~ are permitted outright:

- (a) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
- ~~(b)~~ (b) Home child care.
- ~~(c)~~ (c) Home occupation, ~~Types I and II~~ (per Chapter 17.120 SHMC).
- ~~(d)~~ (d) Mobile home parks.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses (See Chapter 17.100 SHMC). In the MHR zone, the following conditional uses may be permitted upon application ~~to the commission, subject to the provisions of Chapter 17.100 SHMC:~~

- ~~(a) Auxiliary dwelling units.~~
- ~~(b)~~ (a) Bed and breakfast, homestay, boarding house.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.095 Mixed Use Zone – MU**

[...]

(2) Uses Permitted Outright. In an MU zone, the following uses are permitted outright subject to the provisions of this code and especially the chapter on site development review (Chapter 17.96 SHMC):

- (a) Animal sales and services: grooming, kennels, retail and veterinary (small animals).
- (b) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
- ~~(c)~~ (c) Car washes.
- ~~(d)~~ (d) Congregate housing.
- ~~(e)~~ (e) Continuing care retirement community.
- ~~(f)~~ (f) Cultural and library services.
- ~~(g)~~ (g) Dwellings: single detached or attached, duplexes, and dwellings above permitted

uses.

- ~~(h)~~ (h) Eating and drinking establishments.
- ~~(i)~~ (i) Equipment (small) sales, rental and repairs.
- ~~(j)~~ (j) Financial institutions.
- ~~(k)~~ (k) Hardware store, without outdoor storage.
- ~~(l)~~ (l) Home child care.
- ~~(m)~~ (m) Home occupation, ~~Types I and II~~ (per Chapter 17.120 SHMC).
- ~~(n)~~ (n) Hotels and motels.

*[editor's note – re-lettering to continue through list of permitted uses]*

(3) Conditional Uses. In the MU zone, the following conditional uses may be permitted upon application, subject to provision of Chapter 17.100 SHMC and other relevant sections of this code:

- ~~(a) Auxiliary dwelling units.~~
- ~~(b)~~ (a) Amusement services.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

### **17.32.100 Highway Commercial – HC**

[...]

(2) Uses Permitted Outright. In an HC zone, the following uses are permitted outright subject to the provisions of this code and in particular the chapter on site development review (Chapter 17.96 SHMC):

- (a) Animal sales and services: grooming, kennels, retail, veterinary (small animals), and veterinary (large animals).
- (b) Boat, trailer and recreational vehicle equipment sales, service and repair.
- (c) Building supply firms that conduct business completely within an enclosed building except for outdoor storage.
- (d) Bus and train stations/terminals.
- (e) Car washes.
- (f) Drive-up facilities (see specific requirements in Chapter 17.100 SHMC).
- (g) Eating and drinking establishments, including drive-up and carry-out.
- (h) Financial institutions, including drive-through (see specific requirements in Chapter 17.100 SHMC).

Chapter 17.100 SHMC).

- (i) Gasoline stations.
- (j) Home occupation (per Chapter 17.120 SHMC).
- ~~(j)~~ (k) Motels and hotels.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

(3) Conditional Uses. In the HC zone, the following conditional uses may be permitted upon application, subject to provision of Chapter 17.100 SHMC and other relevant sections of this code:

- (a) Amusement services.
- (b) Dry cleaners and laundromats.
- (c) Dwelling units above outright permitted uses.
- (d) Funeral homes.
- ~~(e) Home occupation in dwelling unit (per Chapter 17.120 SHMC).~~

⊕ (e) Hospitals.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### **17.32.110 General Commercial – GC**

[...]

(2) Uses Permitted Outright. In a GC zone, the following uses are permitted outright subject to the provisions of this code and especially the chapter on site development review (Chapter 17.96 SHMC):

[...]

(j) Home occupation ~~in dwelling unit~~ (per Chapter 17.120 SHMC).

[...]

#### **17.32.171 Riverfront District – RD, Marina**

[...]

(2) Uses Permitted Outright. In the marina subdistrict the following uses are permitted outright subject to the provisions of this code and especially the site development review chapter (Chapter 17.96 SHMC):

[...]

(f) Home occupation ~~in dwelling unit~~ (per Chapter 17.120 SHMC).

[...]

#### **17.32.172 Riverfront District – RD, Plaza**

[...]

(2) Uses Permitted Outright. In the plaza subdistrict, the following uses are permitted outright, subject to the modifications to development standards and conditions as specified herein and all other applicable provisions of this code as noted under additional requirements:

(a) Historic residential structures with or without any auxiliary dwelling unit per Chapter 17.128 SHMC. This is listed here separate from other residential uses given SHMC 17.32.172(5)(a)(i). This does not mean historic residential structures are prohibited in other zones per SHMC 17.32.040(3)(a).

(b) Residential above Nonresidential Permitted Uses.

Commented [JG1]: Note this.

- (i) Dwelling, single-family.
- (ii) Dwelling, duplex.
- (iii) Dwelling, townhouse.
- (iv) Dwelling, multifamily.
- (v) Other residential uses as per ORS Chapter 443.
- (c) Home occupation (per Chapter 17.120 SHMC).
- ~~(e)~~ (d) Public and institutional uses.

*[editor's note – re-lettering to continue through list of permitted uses]*

[...]

#### **17.32.173 Riverfront District – RD, Mill**

[...]

(2) Uses Permitted Outright. The following uses are permitted outright, subject to all provisions of the SHMC including specifically the modifications to development standards and conditions specified in this section. Moreover, the applicable provisions of Chapter 17.96 SHMC, Site Development Review, apply, except those modified by this chapter.

- (a) Residential.
  - (i) Single dwelling units, attached.
  - (ii) Multidwelling units.
  - (iii) Auxiliary dwelling unit (per Chapter 17.128 SHMC).

[...]

- (e) Commercial.

[...]

- (xxii) ~~Type I and II~~ Home occupation (per Chapter 17.120 SHMC).

[...]

#### **17.32.180 Houlton Business District – HBD**

[...]

(2) Uses Permitted Outright. In the HBD zone, the following uses are permitted outright, subject to the modifications to development standards and conditions as specified herein and all other applicable provisions of this code as noted under additional requirements:

- ~~(a) Historic residential structures (as listed in the comprehensive plan) with or without any auxiliary dwelling unit per Chapter 17.128 SHMC, and nonresidential historic structures (as listed in the comprehensive plan).~~
- ~~(b)~~ (a) Dwellings: single detached or attached, duplexes, and dwellings above permitted



uses.

- (b) Auxiliary dwelling unit (per Chapter 17.128 SHMC).
- (c) Public and institutional uses

[...]

- (mm) ~~Type I and II~~ Home occupation (per Chapter 17.120 SHMC).

[...]

(3) Conditional Uses. In the HBD zone, the following conditional uses may be permitted upon application, subject to provisions of Chapter 17.100 SHMC and other relevant sections of this code:

- (a) Animal sales and services: veterinary (small animals).
- (b) Auction sales, services and repairs.
- ~~(c) Auxiliary dwelling units.~~
- ~~(d) (c)~~ Broadcast facilities without dishes over 36 inches or transmitter/receiver towers.

*[editor's note – re-lettering to continue through list of conditional uses]*

[...]

#### CHAPTER 17.40 PROTECTIVE MEASURES FOR SIGNIFICANT WETLANDS, RIPARIAN CORRIDORS, AND PROTECTION ZONES

[...]

##### **17.40.015 Establishment of significant wetlands, riparian corridors and protection zones.**

[...]

(3) Protection Zone. There is hereby established a wetland/riparian protection zone (hereinafter “protection zone” or “PZ”) adjacent to all significant wetlands and all significant riparian corridors to protect their integrity, function and value. The protection zone shall be measured from the wetland edge, the riparian corridor edge, or the top of the bank of the waterway when no riparian area is included in the corridor. The width of the protection zone shall vary according to the type of wetland/riparian corridor as listed below:

(a) The required protection zone for Type I wetland shall extend 75 feet upland from the delineated wetland edge.

(b) The required protection zone for Type II wetland shall extend 50 feet upland from the delineated wetland edge.

(c) The required protection zone for riparian corridor streams with an annual average stream flow greater than 1,000 cubic feet per second shall extend 75 feet upland from the top of bank. This provision concerns all portions of Scappoose Bay, Multnomah Channel, and the

**Commented [JG2]:** No changes proposed due to necessity of Goal 5 process to amend.

Columbia River.

(d) The required protection zone for riparian corridor streams with an average annual stream flow less than 1,000 cubic feet per second shall extend 50 feet upland from the top of bank or from the upland edge of the significant riparian area, whichever is greater. This provision concerns portions of Milton Creek, McNulty Creek and the North Fork of McNulty Creek as well as the following sections of streams and their associated riparian areas:

[...]

#### **CHAPTER 17.96 SITE DEVELOPMENT REVIEW**

[...]

##### **17.96.020 Applicability of provisions.**

Site development review shall be applicable to all new developments and major modification of existing developments, as provided in SHMC 17.96.070, except it shall not apply to:

[...]

- (6) Home child care;
- (7) Home occupations, ~~Type I and Type II~~;
- (8) Temporary use;

[...]

#### **CHAPTER 17.108 VARIANCE**

[...]

##### **17.108.050 Criteria for granting a variance.**

[...]

(4) The setback requirements in the applicable zone may be reduced up to 20 percent (a reduction of 20 percent of the required setback) and/or the lot coverage standards increased up to five percent (maximum specified lot coverage plus five percent) without a variance, provided the following standards are satisfied:

- (a) The reduction of the setback area or increase in lot coverage established by the applicable zoning district shall be necessary to allow for the enlargement or remodeling of an existing building, ~~or accessory structure~~, or Auxiliary Dwelling Unit;
- (b) The increase in lot coverage established by the applicable zoning district may also allow for new accessory structures, or Auxiliary Dwelling Unit;
- (c) The garage setback to the front property line satisfies the requirements of the

applicable zoning district;

(d) The standards of Chapter 17.76 SHMC, Visual Clearance Areas, shall be satisfied;

(e) The proposed building, accessory structure, ~~or addition~~, or Auxiliary Dwelling Unit shall not encroach upon any existing easements;

(f) When the proposed building or addition is within the rear yard, the setback adjacent to the rear property line shall be landscaped with sight-obscurer plantings in accordance with the standards set forth in SHMC 17.72.080, Buffering and screening requirements; and

(g) Setback, buffering and screening requirements that apply when commercial and industrial zones abut a residential zone shall be satisfied.

[...]

## **CHAPTER 17.120 HOME OCCUPATION**

Sections:

17.120.010 Purpose.

17.120.020 Applicability and exemptions.

17.120.040 ~~General~~ Approval criteria and standards.

17.120.050 ~~Type I and Type II home occupations defined~~ Prohibited home occupations and residential business ventures.

17.120.060 Permit procedures for ~~Type I and Type II~~ home occupations.

17.120.070 Submission requirements for ~~Type II~~ home occupation applications.

17.120.080 Conditions applicable to ~~Type II~~ home occupation approvals.

17.120.090 Revocation and expiration of home occupation permits.

17.120.100 Action regarding complaints and violation of standards.

17.120.110 Notice of decision and appeals.

17.120.120 Penalties.

[...]

### **17.120.020 Applicability and exemptions.**

(1) No person shall carry on a home occupation, or permit such use to occur, on property which that person owns or is in lawful control of, contrary to the provisions of this chapter.

(2) Exemptions from the provisions of this chapter are:

(a) Garage sales;

(b) For-profit production of produce or other food products grown on the premises. This may include temporary or seasonal sale of produce or other food products grown on the premises. Farming activities shall be consistent with the definition of farming contained in Chapter 17.16 SHMC (definitions);

(c) Hobbies which do not result in payment to those engaged in such activity; ~~and~~

(d) Business ventures that exhibit no evidence that a business is being conducted from the premises and comply with the following:

(i) There are no outside volunteers or employees to be engaged in the business activity other than the persons principally residing on the premises;

**Commented [JG3]:** Note that the Planning Commission recommended deleting: "There is no exterior storage of vehicles of any kind primarily used in the business that is obvious by advertising or other features" as vehicle signage can be a tough thing to regulate for home occupations. This has been removed from this draft here.

- (ii) There is no exterior signage which identifies the property as a business location, except for vehicle signs as defined by Chapter 17.88 SHMC;
- (iii) There are no clients or customers to visit the premises for any reason;
- (iv) There is no exterior storage of materials; and
- (v) The business venture does not exceed the provisions of SHMC 17.120.040(4); and
- ~~(d)~~ (e) Proven nonconforming home occupations as per SHMC 17.104.040(4)(e).
- (3) A home occupation permit and associated fee is required for each property on which a home occupation is undertaken.

**Commented [JG4]:** Added here, per the Associate Planner's recommendation. See the previous comment.

#### **17.120.040 General ~~a~~ Approval criteria and standards.**

All home occupations except those that have proven nonconforming status shall ~~observe the following criteria in addition to the standards established for Type I and Type II uses described in SHMC 17.120.050~~ comply with the following.

- (1) Home occupations may be undertaken only by the principal occupant(s) of a residential property;
- (2) There shall be no more than three deliveries per week to the residence by suppliers;
- (3) There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line resulting from the operation. Home occupations shall observe the provisions of Chapter 17.52 SHMC, Environmental Performance Standards;
- (4) The home occupation shall be operated entirely within the dwelling unit and any conforming accessory structure. The total area which may be used in the accessory building for either material product storage and/or the business activity shall not exceed 600 square feet. Otherwise, the home occupation and associated storage of materials and products shall not occupy more than 25 percent of the combined residence and accessory structure gross floor area. The indoor storage of materials or products shall not exceed the limitations imposed by the provisions of the building, fire, health, and housing codes;
- (5) A home occupation shall not make necessary a change in the applicable building code (as administered by the building official) use classification of a dwelling unit. Any accessory building that is used must meet the applicable building code requirements and be in conformance with Chapter 17.124 SHMC;
- (6) More than one business activity constituting two or more home occupations shall be allowed on one property only if the combined floor space of the business activities does not exceed 25 percent of the combined gross floor area of the residence and accessory structure. Each home occupation shall apply for a separate home occupation permit, if required as per this chapter, and each shall also have separate business licenses;
- (7) There shall be no storage and/or distribution of toxic or flammable materials, nor spray-painting or spray-finishing operations that involve toxic or flammable materials which in the judgment of the fire marshal pose a dangerous risk to the residence, its occupants, and/or surrounding properties. Those individuals which are engaged in home occupations shall make available to the fire marshal for review the Material Safety Data Sheets which pertain to all potentially toxic and/or flammable materials associated with the use;
- (8) No home occupation shall require any on- or off-street parking other than that normally required for a residence;
- ~~(9) The following uses are not allowed as home occupations:~~
  - ~~(a) Auto body repair and painting;~~

- ~~(b) Ongoing mechanical repair conducted outside of an entirely enclosed building;~~
- ~~(c) Junk and salvage operations; and~~
- ~~(d) Storage and/or sale of fireworks;~~

~~(40) (9) There shall be no exterior storage of vehicles of any kind used for the business except that one commercially licensed vehicle of not longer than 25 feet or taller than 12 feet may be parked outside of a structure or screened area;~~

~~(10) No more than one nonilluminated sign, not exceeding one and one-half square feet, which shall be attached to the residence or accessory structure or placed in a window shall be allowed;~~

~~(11) No more than one outside volunteer or employee who is not a principal resident of the premises shall be allowed;~~

~~(12) No more than six daily customers or clients. Customers and clients shall not visit the business between the hours of 10:00 p.m. and 8:00 a.m. and shall not generate excessive traffic or monopolize on-street parking;~~

~~(13) Any exterior storage of materials, goods, and equipment shall be screened entirely from view by a solid fence. Storage shall not exceed five percent of the total lot area and shall not occur within the front yard or the required side yard setback. If not proposed, exterior storage shall not be allowed. A new home occupation permit would be required; and~~

~~(14) Home occupation shall be listed as a permitted use in the applicable zoning district and the dwelling unit shall be legally established.~~

#### **17.120.050 Type I and Type II home occupations defined Prohibited home occupations and residential business ventures.**

Home occupations shall be administered as either Type I or Type II uses. A separate home occupation permit and/or fee is required for each property on which a Type II home occupation is undertaken. In addition to the general criteria outlined in SHMC 17.120.040, home occupations shall observe the following additional standards:

(1) Type I Home Occupations. A Type I home occupation shall exhibit no evidence that a business is being conducted from the premises. A Type I home occupation shall not permit:

- ~~(a) Outside volunteers or employees to be engaged in the business activity other than the persons principally residing on the premises;~~
- ~~(b) Exterior signage which identifies the property as a business location;~~
- ~~(c) Clients or customers to visit the premises for any reason;~~
- ~~(d) Exterior storage of materials; or~~
- ~~(e) Exterior storage of vehicles of any kind primarily used in the business that is obvious by advertising or other features.~~

(2) Type II Home Occupations. Property on which a Type II home occupation is located may show evidence that a business is being conducted from the premises. Therefore, the following is allowed for Type II home occupations:

- ~~(a) One nonilluminated sign, not exceeding one and one-half square feet, which shall be attached to the residence or accessory structure or placed in a window;~~
- ~~(b) No more than one outside volunteer or employee who is not a principal resident of the premises;~~
- ~~(c) No more than six daily customers or clients. Customers and clients may not visit the business between the hours of 10:00 p.m. and 8:00 a.m. and shall not generate excessive traffic~~

or monopolize on street parking;

(d) ~~Storage of materials, goods, and equipment which is screened entirely from view by a solid fence. Storage shall not exceed five percent of the total lot area and shall not occur within the front yard or the required side yard setback.~~

The following uses are not allowed as home occupations or business ventures in or associated with dwelling units:

- (1) Auto body repair and painting;
- (2) Ongoing mechanical repair conducted outside of an entirely enclosed building;
- (3) Junk and salvage operations; and
- (4) Storage and/or sale of fireworks.

#### **17.120.060 Permit procedures for ~~Type I and Type II~~ home occupations.**

(1) ~~Type I and II Home Occupations.~~ A person wishing to engage in a ~~Type I or Type II~~ home occupation must be a principal occupant of the property, pay a one-time review fee to the city, agree to abide by the provisions of this chapter, and acquire an annual business license.

(2) ~~Additional Permit Procedures for Type II Home Occupations.~~ A person wishing to engage in a ~~Type II~~ home occupation is required to have a preapplication conference with city staff in accordance with SHMC 17.24.040 and is also required to submit an application and a fee.

(a) The decision to approve, approve with conditions, or deny an application for a ~~Type II~~ home occupation permit shall be made by the director upon findings of whether or not the proposed use:

- (i) Is in conformance with the standards contained in this chapter;
- (ii) Will be subordinate to the residential use of the property; and
- (iii) Is undertaken in a manner that is not detrimental nor disruptive in terms of

appearance or operation to neighboring properties and residents;

(b) The director's decision to deny an application or approve it with conditions may be appealed to the planning commission; and

(c) Upon approval of a ~~Type II~~ home occupation application, the director shall issue a preliminary notice of approval and provide notice of the same to the applicant and to property owners within 300 feet of the property line of the proposed use. The decision shall be final within 20 days following the day of mailing of notice unless appealed to the planning commission.

(3) Appeals shall be made in accordance with SHMC 17.24.310(1) at a cost equal to 60 percent of the city's standard appeal fee.

#### **17.120.070 Submission requirements for ~~Type II~~ home occupation applications.**

An application for a ~~Type II~~ home occupation shall be made on forms provided by the director and shall be accompanied by:

(1) One copy of the applicant's statement or narrative which explains how the proposal conforms to the approval criteria in SHMC 17.120.040 ~~and 17.120.050~~;

(2) The required fee;

(3) A site plan of the property drawn to scale with a north arrow indicated. The site plan shall show all major features of the property including buildings, major vegetation, access for public

streets, sidewalks, any proposed exterior storage related to the home occupation per SHMC 17.120.040(13), etc.;

- (4) One floor plan of all structures on the property which are to be used for the home occupation(s);
- (5) One title transfer instrument; and
- (6) Property owner's signature(s) or written authorization.

#### **17.120.080 Conditions applicable to ~~Type-H~~ home occupation approvals.**

The director may impose conditions upon the approval of a ~~Type-H~~ home occupation permit to ensure the requirements of this chapter are complied with. These conditions may include, but are not limited to, the following:

[...]

- (13) Limiting the type and number of vehicles or equipment to be parked or stored on the site; ~~and~~

~~(14) Requirements to minimize public health and safety impacts of any hazardous materials used; and~~

- ~~(14) (15) Any other limitations which the director considers to be necessary or desirable to make the use comply with the purposes stated in SHMC 17.120.040 and 17.120.050~~ this chapter.

[...]

### **CHAPTER 17.128 AUXILIARY DWELLING UNITS**

Sections:

- 17.128.010 Purpose.
- 17.128.020 Applicability.
- 17.128.030 Design standards.
- 17.128.040 Addressing of auxiliary dwelling units.
- 17.128.050 Prohibited areas for auxiliary dwelling units.
- 17.128.060 Prohibited uses of auxiliary dwelling units.
- 17.128.070 Permit procedures for auxiliary dwelling units.

#### **17.128.010 Purpose.**

Auxiliary dwelling units are allowed in certain situations to:

- (1) Create new housing units while respecting the look and scale of single-dwelling neighborhoods;
- (2) Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- (3) Allow more efficient use of existing housing stock and infrastructure;
- (4) Provide a mix of housing that responds to changing household needs, sizes and compositions;

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07242018 revision

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**Commented [JG5]:** This was added by the Planning Commission. Note that “hazardous materials” is defined by Chapter 17.16 SHMC.

(5) Provide a means for new homeowners to defray some of the costs associated with the purchase of a first home;

(6) Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods and obtain extra income, security, companionship and services; ~~and~~

(7) Provide a broader range of suitable and affordable housing; ~~and~~

~~(8) Create additional long-term family living situations, while avoiding the exploitation of this housing type through their use as short term living and other related business.~~

**Commented [JG6]:** The Planning Commission is concerned about short term rentals in ADUs. Many communities are regulating short term rentals because they are displacing long term units compounding affordable housing issues. Since ADUs are supposed to be a tool for affordable housing, the Commission felt ADUs and short term rentals (<30 days) is a poor mix. If the Council disagrees, we will need to delete this line.

#### 17.128.020 Applicability.

(1) An auxiliary dwelling unit may be added to ~~or constructed or installed on the same lot or parcel as a house, attached house~~ detached single-dwelling unit, or manufactured home in any zone where the existing principal use is permitted ~~and where auxiliary dwelling unit is listed as a permitted use.~~

(2) Only one auxiliary dwelling unit is allowed per lot or parcel developed with a detached single-family dwelling or manufactured home.

#### 17.128.030 Design standards.

(1) Standards for creating auxiliary dwelling units address the following purposes:

(a) Ensure that auxiliary dwelling units are compatible with the desired character and livability of St. Helens residential zones;

(b) Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;

(c) Ensure that auxiliary dwelling units are ~~smaller in size than houses, attached houses~~ detached single-family dwellings, or manufactured homes;

(d) Provide adequate flexibility to site buildings so that they fit the topography of sites; and

(e) The design standards for auxiliary dwelling units are stated ~~above~~ herein. If not addressed in this section, the base zone development standards apply.

(2) Requirements for All Auxiliary Dwelling Units. All auxiliary dwelling units must meet the following standards:

(a) Creation. An auxiliary dwelling unit may only be created through the following methods:

(i) Converting existing living area, attic, basement or attached garage of the detached single-family dwelling or manufactured home;

(ii) Adding floor area to the detached single-family dwelling or manufactured home;

(iii) Constructing a detached auxiliary dwelling unit on a developed site; ~~or~~

(iv) Constructing a new ~~house, attached house~~ detached single-family dwelling, or manufactured home with an internal or detached auxiliary dwelling unit; or

(v) Converting a lawfully existing accessory structure;

**Commented [JG7]:** When the Commission made their recommendation to the Council in regards to maximum size allowed, this wasn't taken into consideration. This is relevant for that issue.

(b) Entrances. Only one entrance to the house may be located on the front facade of the ~~house, attached house~~ detached single-family dwelling, or manufactured home facing the street, unless the ~~house, attached house~~ detached single-family dwelling, or manufactured home contained additional front door entrances before the conversion to an auxiliary dwelling unit was

**Commented [JG8]:** Added by the Planning Commission.



created. An exception to this regulation is entrances that do not have access from the ground, such as entrances from balconies or decks;

~~(c) Owner Occupancy. The owner of the property must occupy either the primary residence or the auxiliary dwelling unit;~~

~~(d) (c) Heated/Air-conditioned Floor Area. The heated/air-conditioned floor area of the auxiliary dwelling shall be 100 percent of the floor area of the auxiliary dwelling unit;~~

~~(e) (d) Parking. The parking requirements balance the need to provide adequate parking with maintaining the character of single-dwelling neighborhoods and reducing the amount of impervious surface on a site. More parking is required when a vacant lot is being developed because, generally, the site can more easily be designed to accommodate two parking spaces while minimizing impervious surface. In situations where an auxiliary dwelling unit is being added to a site with an existing dwelling unit, it is appropriate to not require additional impervious surface if adequate on-street parking is available:~~

~~(i) The following parking requirements apply to auxiliary dwelling units:~~

~~(A) No Additional Parking Space Required. No additional parking space is required for the auxiliary dwelling unit if it is created on a site with an existing house, attached house detached single-family dwelling, or manufactured home and the roadway of at least one abutting street is at least 20 feet wide and allows on-street parking;~~

~~(B) One Additional Parking Space Required. One additional off-street parking space is required for the auxiliary dwelling unit as follows:~~

~~1. When none of the roadways in abutting streets are at least 20 feet wide; or~~

~~2. When none of the abutting streets allow on-street parking; or~~

~~2. 3. When the auxiliary dwelling unit is created at the same time as the house, attached house detached single-family dwelling, or manufactured home. An auxiliary dwelling unit is considered created at the same time of the principle dwelling even if a permit per this Chapter is applied for within one year from the date of Certificate of Occupancy of the principal dwelling.~~

~~(ii) When an additional off-street parking space is required it shall comply with the Development Code and shall be independently functional. Independently functional means the vehicle in the parking space is not dependent on another vehicle moving to get to the street from the parking space. For example, a two-vehicle garage with a garage door and driveway both 20' in width only, can only count as two parking spaces (not four), since the vehicles in the garage cannot get to the street without the ones in the driveway moving out of the way. In this instance, a new (additional) parking area would need to be created to the side of the garage or elsewhere while still complying with the Development Code (e.g., parking and access standards).~~

~~(f) Size.~~

~~(i) Minimum Size. The size of the auxiliary dwelling unit may shall be no less than 220 square feet as allowed by the Building Code;~~

~~(ii) Maximum Size. The size of the auxiliary dwelling unit may shall be no more than 30 75 percent of the living area of the house, attached house detached single-family dwelling, or manufactured home or 1,000 square feet, whichever is less. Living area means all areas subject to heat/air conditioning inclusive of walls. This does not include non-heated/non-air conditioned areas including but not limited to porches, garages, carports, balconies, hot tub/pool enclosure/rooms, etc.~~

~~(iii) Building Height. The maximum building height of a detached auxiliary dwelling unit shall not exceed the height allowed by the zoning district or the height of the detached~~

**Commented [JG9]:** The Planning Commission recommended deletion of this. Kept for this version in case it comes up in discussion with the Council.

If Council approved as recommended by the Commission, we will delete this for the final version for adoption.

**Commented [JG10]:** The Commission recommended a maximum size of 1,200 square feet with no % rule so there is more flexibility in size to meet ADA design. Because ADUs are supposed to be secondary to the principle dwelling unit and smaller as discussed above, staff recommends using 75% of the living area of the principle dwelling unit or 1,200 square feet, whichever is less. Otherwise, it's possible for an ADU to be larger than the principle dwelling.

Note that the 50% rule originally proposed came from the City of Scappoose's ADU provisions.

**Commented [JG11]:** This was added after the July 10, 2018 Planning Commission hearing based on staff's observance of height regulations for ADUs. Some City's like Bend and Portland cap the height to 25' and 20', respectively. Others like Creswell state that the ADU cannot exceed 110% of the principle dwelling's height.

single-family dwelling or manufactured home, whichever is less. This provision does not apply when converting a lawfully existing accessory structure in its entirety or a portion thereof to an auxiliary dwelling unit provided the conversion does not increase the accessory structure's footprint or height.

(3) Additional requirements for detached auxiliary dwelling units or for auxiliary dwelling units created through the addition of floor area to the detached single-family dwelling or manufactured home:

(a) Exterior Finish Materials. The exterior finish material must be the same, or visually match in type, size and placement, the exterior finish material of the ~~house, attached house,~~ detached single-family dwelling or manufactured home;

(b) Roof Pitch. The roof pitch must be the same as the predominant roof pitch of the ~~house, attached house,~~ detached single-family dwelling or manufactured home;

(c) Trim. Trim on edges of elements on the addition or detached unit must be the same in type, size, and location as the trim used on the rest of the ~~house, attached house,~~ detached single-family dwelling or manufactured home;

(d) Windows. Windows must match those in the ~~house, attached house,~~ detached single-family dwelling or manufactured home in proportion (relationship of width to height) and orientation (horizontal or vertical);

(e) Eaves. Eaves must project from the building walls the same distance as the eaves on the rest of the ~~house, attached house,~~ detached single-family dwelling or manufactured home;

(f) Setbacks. The auxiliary dwelling unit must meet the same setback requirements as principal dwelling units in the zone or as otherwise allowed by the Development Code; and

(g) Lot Coverage. The detached auxiliary dwelling unit may not have a larger footprint than the footprint of the ~~house, attached house,~~ detached single-family dwelling or manufactured home, and the combined footprint of all detached structures ~~may~~ shall not exceed the lot coverage restriction of the zone or as otherwise allowed by the Development Code.

~~(h) The provisions of SHMC 17.128.030(3)(a) - (f) do not apply when converting a lawfully existing accessory structure in its entirety or a portion thereof to an auxiliary dwelling unit provided the conversion does not increase the accessory structure's footprint or height.~~

**Commented [JG12]:** Added by the Planning Commission in concept.

#### **17.128.040 Addressing of auxiliary dwelling units.**

(1) Auxiliary dwelling units shall use the same address number as the principle dwelling, but with a unit or similar number. For example, an Auxiliary dwelling units for a principal dwelling addressed as 101 Anystreet, would have an address of 101B Anystreet.

~~(2) The applicant for or the owner of the auxiliary dwelling unit shall coordinate with the Postmaster for its mailbox location.~~

**Commented [JG13]:** Checked with the Postmaster on this to make sure its ok. They were ok and didn't want 101 ½ to be used. In other words "B" is ok "½" is not.

**Commented [JG14]:** The local Postmaster requested we add something to at least make people aware that they need to inquire with the Post Office about this. Their objective is to make sure the mailbox for the principle dwelling and ADU are practically close to each other for the mail carrier.

#### **17.128.050 Prohibited areas for auxiliary dwelling units.**

(1) In addition to zoning regulations, auxiliary dwelling units are prohibited in the following areas:

(a) Resource or resources per Chapter 17.40 SHMC;

(b) Protection zones Chapter 17.40 SHMC; and

(c) Area of special flood hazard per Chapter 17.46 SHMC.

#### **17.128.060 Prohibited uses of auxiliary dwelling units.**

(1) Given the purpose of auxiliary dwelling units per SHMC 17.128.010 and because they are not considered principal uses, the following uses are prohibited for them:

(a) Short-term rentals;

(b) bed and breakfast, homestay, boarding house; and

(c) lodging facilities or rooming house.

(2) Home occupations may be allowed in auxiliary dwelling units given compliance with Chapter 17.120 SHMC.

**17.128.070 Permit procedures for auxiliary dwelling units.**

Notice and process for auxiliary dwelling units shall follow the same as for site development review, major, except for criteria and standards, which shall comply with this Chapter.

## ORDINANCE NO. 2890

AN ORDINANCE TO AMEND THE ST HELENS COMMUNITY DEVELOPMENT CODE (Ord No. 2875)  
TO DELETE PORTIONS OF CHAPTER 1.092 AND TO ADD A NEW CHAPTER 1.091 FOR  
WETLAND/RIPARIAN CORRIDOR PROTECTION.

WHEREAS, the City of St. Helens is in Periodic Review and Work Task #6 is to  
comply with Statewide Planning Goal 5; and

WHEREAS, the Planning Commission has spent over two years developing a  
Significant Wetland/Riparian Corridor Protection Plan and implementing ordinances; and

WHEREAS, the St. Helens Planning Commission did hold a duly noticed public  
hearing and did conclude to recommend a protection program and implementing ordinance  
amendments for the protection of St. Helens significant wetlands and significant riparian corridor  
resources in accordance with Oregon Administrative Rules 660-023 and Oregon Revised  
Statute 197 to the City Council; and

WHEREAS, the City Council did hold a duly noticed public hearing and did find  
that after due consideration of all the evidence in the record compared to the criteria that they  
agreed with the recommendation of the St. Helens Planning Commission to amend the St. Helens  
Community Development Code as stated in Attachment A; and

WHEREAS, the Council has considered findings of compliance with criteria and  
law applicable to the proposal;

NOW THEREFORE, THE CITY OF ST. HELENS DOES ORDAIN AS  
FOLLOWS:

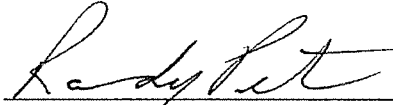
1. The above recitations are true and correct and are incorporated herein by this  
reference.
2. The St. Helens Community Development Code is herein amended as stated in  
Attachment A.
3. In support of the above amendment the Council hereby adopts the Periodic  
Review Work Task #6 Findings of Fact and Conclusions of Law attached here  
within.
4. The effective date of this ordinance shall be December 1, 2003.

Read the first time:	October 1, 2003
Read the second time:	October 1, 2003
Read the third time:	October 15, 2003
Approved by the Mayor	October 15, 2003

Attested by:



Brian D. Little, City Recorder



Randall Peterson, Mayor

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PROTECTION RULES FOR SIGNIFICANT WETLANDS AND RIPARIAN  
CORRIDORS  
COMPLETION OF PERIODIC REVIEW WORK TASK #6

**PURPOSE:**

Complete Periodic Review Work Task # 6 on Goal 5.

**PUBLIC HEARING AND AGENCY COORDINATION:**

Public Hearings were held March 11, 2003 and continued to April 8 and May 13 and again on July 16 with the record left open to August 15, 2003.

A notice of this Public Hearing on this work task on Goal 5 was sent to property owners that would be directly impacted by the proposed rules February 19, 2003 by first class mail. Notice was published in The Chronicle February 22 and March 1, 2003. Notice was also sent to the Department of Land Conservation and Development on March 11, 2003.

REFERRALS were sent to the following:

1. St Helens City Engineer, Police, Parks, Building Official, Waste Water Treatment Plant Superintendent, and Public Works Manager.
2. Columbia County Land Development Services, Public Health Authority, Roadmaster, Planning Commission, and Board of Commissioners and County Surveyor.
3. St. Helens Rural Fire District.
4. St. Helens Rural School District
5. Columbia 911
6. Columbia River PUD, Qwest, PGE, and NW Natural
7. ODOT Region 1, Michael Ray
8. FEMA
9. Oregon Division of State Lands
10. Oregon Dept. Of Fish and Wildlife
11. Oregon Dept. Of Environmental Quality
12. Scappoose Bay Watershed Council

No adverse comments were received from any local, state or federal agency.

## REVIEW CRITERIA

The recommendation by the Commission was and the decision by the Council shall be based on consideration of the following factors:

- A. Oregon Statewide Planning Goal 5 as implemented by OAR Chapter 660, Division 23.
- B. Applicable policies of the St. Helens Comprehensive Plan.

## EVALUATION AND COUNCIL FINDINGS:

### *A. Oregon Statewide Planning Goal 5 and the Goal 5 Rule (OAR Chapter 660, Division 23).*

#### **Council Findings:**

1. The City has inventoried wetlands and riparian resources. The City first conducted a Local Wetlands Inventory (LWI) and then determined which wetlands are locally significant following methods prescribed in Division of State Lands administrative rules. The City's riparian corridors inventory was based on methodology that was developed by Pacific Habitat Resources (PHS) and approved by the DSL. The City has adopted a list of significant wetland and riparian corridor resource sites, as required by OAR 660-023-030. The Council has adopted this resource site list of significant wetlands and riparian corridors as part of the St. Helen's Comprehensive Plan.
2. As required by OAR 660-023-040, the City has identified land uses that may conflict with the preservation of significant wetland and riparian corridor resource sites. Conflicting uses include public facilities, transportation improvements, excavation and vegetation removal, new construction, residential uses and public/semi-public uses allowed in the City's residential zones, commercial uses allowed in the city's commercial zones, and industrial uses allowed in the City's industrial zones.
3. The proposed amendments to Chapter 1.092 are intended to limit land use and development activities in a manner similar to the "safe harbor" provisions of OAR 660-023-090(8) and OAR 660-023-100 (4)(b), except that protection zones of 50-75 feet are proposed for locally significant wetlands.
  - (a) The Commission has received copies of ordinances from the cities of West Linn, Astoria, Tigard, Tualatin, Reedsport, Lincoln City, Eugene, Talent in Oregon; Camas, Washington, Martin County, Florida, and the Portland-Vancouver metropolitan area, and a Willamette Study.

- (b) The Commission read many articles from Division of State Lands, Environmental Protection Agency, National Marine Fisheries Services, Oregon Department of Forestry, and Oregon Department of Environmental Quality.
- (c) A review of 11 wetland/riparian resource protection plans from other governments showed that the range of protection by buffer is 0 feet in Astoria to 200 feet by Metro. All required proof of boundaries and proof that no or minimum harm to the resource would result in the conflicting use.
- (d) In addition, some members of the Planning Commission have participated in workshops with interested parties and various consultants/experts to discuss the many aspects of functions, values, conflicts, ESEE and Safe Harbor as regards wetlands and riparian corridors.

4. Based on the consideration of ESEE consequences, the City has decided to protect significant wetlands and riparian corridors on a limited basis, consistent with OAR 660-023-050 (standard Goal 5 process for wetlands outside of riparian corridors) and 660-023-090 (safe harbor provisions for riparian corridors). The proposed amendment creates "protection zones" around/adjacent to the significant wetland or riparian corridor resource. The proposed amendment limits or prohibits land uses and development activities within the protection zone (buffer) and significant resource. The limited protection program is based on clear and objective standards that have been adopted as **Chapter 1.091 of the St. Helen's Community Development Code, "Protective Measures for Significant Wetlands, Riparian Corridors, and Protection Zones."**

5. Chapter 1.091 provides "safe harbor" protection for significant riparian corridors and associated wetlands, and establishes protection zones ranging from 50-75 feet, depending on the average annual stream flows, consistent with OAR 660-023-090. Chapter 1.091 imposes limitations on development activities as required by OAR 660-023-090(8). This chapter has been applied to Milton Creek, Multnomah Channel and Columbia River adjacent to St. Helens, which are listed by the National Marine Fisheries Service under the Endangered Species Act (ESA) as having "endangered and threatened" species of fish. The Oregon Department of Fish and Wildlife has listed McNulty Creek, the north fork of McNulty Creek, Milton Creek, Multnomah Channel and Columbia River as "fish bearing" waterways.

6. Chapter 1.091 also provides protection zones of 50-75 feet for locally significant wetlands, depending on the relative quality of the wetland. Because the "safe harbor" provisions of OAR 660-023-100 do not specify buffers or protection zones, the ESEE consequences of requiring such buffers must be considered.

7. The record of these proceedings shows that the City considered the ESEE (economic, social, environmental and energy) consequences of alternative courses of action, including full resource protection, no resource protection, and limited resource protection. Such consideration is required by OAR 660-023-040. In addition to assessing ESEE consequences, the Planning Commission and City Council considered the



following issues during the public hearing process, as required by OAR 660-023-060 (Landowner involvement).

8. The following ESEE issues were raised and mostly addressed at the hearing or in the ordinance:

- (a) Variance procedure was raised. As required by OAR 660-023-090, the procedure and criteria for variance approval is well stated in the proposed ordinance.
- (b) Should vegetation be kept in the protection zone. The ordinance includes requirements to keep riparian vegetation as part of the Protection Zone. This environmental consequence was considered. The Council decided to protect riparian vegetation from most conflicting uses within the riparian protection zone.
- (c) Keep protection zones to offset dry years and wet years for hydrological function of wetlands. This wetland function is maintained by proposed wetland protection zones.
- (d) Takings concerns were raised several times. It has been fully addressed at the hearings and in the ordinance. The variance provisions of Chapter 1.091 is intended to address variance requirements.
- (e) Cost of delineations and EA's was raised in the hearing as an economic consequence. The Council determined that wetland delineations and environmental assessments are a normal part of the business of development.
- (f) To address social consequences, the Council recognized the need for more training of the land owners about their rights and obligations to regarding wetlands and stream corridors.
- (g) To further address social and economic consequences, trigger limits were discussed and the revised rules address this issue by having options for when an EA/delineation is required or exempt and lower cost methods of dealing with this requirement.
- (h) To address social and economic consequences for developed properties near wetland and riparian resource sites, urban conflicts in particular in existing neighborhoods where houses and developments are very close to significant wetlands and riparian corridors. Extra exceptions and special processes were included in the rules to mitigate this conflict while still keeping some protection of the resource.
- (i) To address social consequences related to "one size does not fit all" situations, the proposed limited protection regulations include several options to provide for additional flexibility.
- (j) The environmental and economic consequences of requiring protection zone widths of 50-75 feet was raised. The City considered a wide range of protection zones required by differing governments and studies to support the option ultimately chosen by decision makers.
- (k) To address economic consequences raised by Longview Fibre, the Council explicitly considered Washington's experience at having to increase their buffer to 240 feet, and rejected this option.

(l) To address social consequences, the Council considered the idea of education and enforcement in lieu of standards, protection zones, and rules, but in the end determined there was history to show that education and enforcement are not stand alone solutions, and must be buttressed by effective regulations.

(m) To further address social consequences, the Council determined that educational signs on and/or next to wetlands is a good idea, but did not make a rule or requirement outright.

→ (n) To address environmental consequences, evidence in the record in written form and testimony from experts has indicated that to control or reduce sediment flowing into wetlands and waterways it is necessary to have a vegetated protection zone of between 50 feet and 150 feet. The same source (Table 1 Johnson and Ryba, 1992 Policy Analysis and Scientific Literature Review) indicates that to control excess nutrient and metals an area between 33 and 130 feet is necessary and to moderate water temperature that a buffer between 36 feet and 141 feet is needed. Stream/channel stability requires from 67 to 98 feet and for recruitment of woody debris about 102 feet is required.

(o) Testimony has been received in public hearings addressing environmental consequences from interested persons. Much of this testimony recommended increasing the proposed protection program with larger protection zones around the significant resources to property owners who advocate smaller or no protection zones around significant resources. Although the Council considered this testimony, it was persuaded to adopt the more moderate protection zones proposed in CDC 1.091.

(p) To address economic and environmental consequences, some testimony has suggested various degrees of permitted uses and/or activities within the protection areas. Once again, the Council adopted the more moderate position that allows a limited range of uses within protection zones (e.g., noxious vegetation removal, expansions of non-conforming uses), but does not allow most types of new residential, commercial or industrial development.


(q) To address social and environmental consequences, all protection plans require some form of education, enforcement and proof that no or minimum harm would result in development near a protected resource.

(r) In response to environmental consequences, some testimony suggested that isolated wetlands do not need the same amount of protection as connected wetlands. To address this concern, the Council has adopted a two-tiered protection zone system.

(s) Some environmental testimony recommended full protection of significant wetlands, arguing that wetlands are not replaceable and that even island wetlands serve several important functions. However, the Council decided to adopt a limited protection program to achieve an appropriate balance among ESEE objectives.

(t) Based on economic consequences, some testimony suggests that it is not "fair" for residents in the Urban Growth Area to be treated differently from those inside the adjoining or nearby city limits. Some feel that there should be conformity between the rules to protect Goal 5 resources in the City with those in the

adjoining County. The St. Helen's Comprehensive Plan controls land development activities both inside and outside the City Limits. The Council finds that there are significant differences between the urban and rural land use impacts, and that a comprehensive wetland and riparian corridor protection program is appropriate for all land within the St. Helens UGB.



**Conclusion:** For the above stated reasons, and based on information found in the record of these proceedings, the Council finds that the proposed wetland and riparian corridor program complies with Goal 5 and its implementing rule. The program consists of inventories of significant wetlands and riparian corridors, comprehensive plan policies that commit the City to a limited protection program embodied in CDC Chapter 1.091, "Protective Measures for Significant Wetlands, Riparian Corridors and Protection Zones." The City has adopted safe harbor regulations for riparian corridors and associated wetlands, consistent with OAR 660-023-090, and has adopted a limited protection program for locally significant wetlands outside of riparian corridors, consistent with OAR 660-023-040.

***B. Consistency with the St. Helens Comprehensive Plan.***

1. The lists for St. Helens' Significant Wetlands and Riparian Corridor Resources were adopted as amendments to the St. Helens Comprehensive Plan.
2. The proposed implementation program is consistent with and adequate to carry out Goals and Policies in the St. Helen's Comprehensive Plan:
  - Goal#1) To maintain and, where possible, enhance the air, water, and land resources of the St. Helens' area; and
  - Goal #4) To ensure the conservation of substantial fish and wildlife habitats."
  - Policy #17) Comply with applicable State and Federal Environmental Regulations."

**Conclusion: The Council finds that the proposed wetland and riparian corridor program complies with applicable St. Helen's Comprehensive Plan Goals and Policies. The program consists of inventories of significant wetlands and riparian corridors. Conflicts between protection of locally significant wetlands and riparian corridors are resolved through the adoption and implementation of CDC Chapter 1.091, "Protective Measures for Significant Wetlands, Riparian Corridors and Protection Zones."**

## **OVERALL COUNCIL CONCLUSIONS**

- 1) List of St. Helens Significant Wetlands and Riparian Corridor Resources has been completed and submitted to the State.
- 2) Oregon Statewide Planning Goal 5 is met with the completion of this action.
- 3) St. Helens Comprehensive Plan policies have been met as regards Goal 5 natural resources with the completion of this action.
- 4) Any federal or state statutes or guidelines found applicable have been complied with as is applicable and/or possible with the completion of this action.
- 5) St. Helens 1999 Community Development Code has been repealed and replaced with the 2003 Community Development Code and it has been fulfilled as regards sensitive lands with the completion of this action.
- 6) Oregon Revised Statute Chapter 197 and Oregon Administrative Rules Chapter 660, Division 023 has been fulfilled as regards Goal 5 natural resources with the completion of this action.
- 7) Testimony and evidence in the record supports the recommendation of the Planning Commission and the final decision of the City Council.
- 8) OAR 660-023 only requires that the listed significant resources must be protected.

- 9) The proposed implementing rules incorporate OAR 660-023-100.(4).(b). requirements for Wetlands and OAR 660-023-090.(8) requirements for Riparian Corridors.
- 10) The proposed protection zones are justified by testimony and evidence in the record but are not absolutes.
- 11) Conformity of regulations between a County and City are normally accomplished in agreements called Urban Growth Management Agreements. The St. Helens Planning Commission has recommended adoption of the new Chapter 1.091 and other amendments to the existing St. Helens Community Development Code.

The St. Helens City Council deliberated after a thorough review of the recommendation of the Planning Commission and of the testimony in the record and concluded that the following amendments should be made to the St. Helens Community Development Code:

**Chapter 1.091 as attached is to be added to the Code and all references to protection of significant wetlands and riparian corridors shall be removed or shall reference Chapter 1.091 as applicable.**

Attest to: Brian D. Little  
Brian D. Little, City Recorder

Randy Peterson  
Randy Peterson, Mayor