

**GLADSTONE PLANNING COMMISSION AGENDA
GLADSTONE CITY HALL, 525 PORTLAND AVENUE**

Tuesday, January 21, 2014

**7:00 P.M. CALL TO ORDER
ROLL CALL
FLAG SALUTE**

**OATH OF OFFICE TO NEW COMMISSIONER – KEVIN JOHNSON AND RE-APPOINTED
COMMISSIONER – TAMARA STEMPEL**

CONSENT AGENDA

All items listed below are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a commission member or person in the audience requests specific items to be removed from the Consent Agenda for discussion prior to the time the commission votes on the motion to adopt the Consent Agenda.

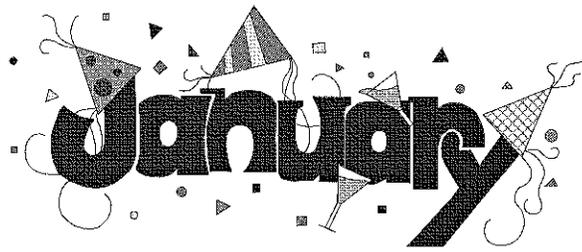
1. Minutes of November 19, 2013 Meeting and December 17, 2013 Work Session

REGULAR AGENDA

2. Election of Officers. *Pursuant to Chapter 2.28.050 – Chairman and Vice-Chairman. “. . . at its first meeting in January of each even-numbered year, thereafter, the commission shall elect a chairman and vice-chairman to serve two-year terms.”* Current Chair is Tamara Stempel and Vice-Chair is Kim Sieckmann. (no attachments)
3. Public Hearing:
 - Z0551-13-E; expansion of nonconforming use – addition to house that does not meet side-yard setbacks. Existing building is within 18” of property line. The proposal involves adding to house on that side, continuing existing 18” setback. The subject property is located at 345 Beatrice Avenue.
4. Work Session: Gladstone Code Review

BUSINESS FROM THE PLANNING COMMISSION

ADJOURN



CONSENT AGENDA

MINUTES OF PLANNING COMMISSION MEETING – November 19, 2013

Call to Order at 7:01 p.m.

Roll Call: The following Planning Commission members answered the roll call: Chair Tamara Stempel, Michele Kremers, Pat McMahon, Craig Seghers, Kim Sieckmann, and Kirk Stempel.

Staff: David Doughman, City Attorney; City Planner Clay Glasgow; and Jolene Morishita, Assistant City Administrator.

Chair Tamara Stempel lead the flag salute.

CONSENT AGENDA

1. Draft minutes of the July 16, 2013, September 17, 2013, and October 15, 2013.

Commissioner Kim Sieckmann moved and Commissioner Pat McMahon seconded a motion to approve the minutes of July 16, September 17, and October 15, 2013 as revised tonight.

Motion carried unanimously.

Regular Agenda:

Chair Tamara Stempel opened the hearing at 7:07 p.m. She explained the hearing format and asked if there were any ex-parte contacts or conflicts of interest to declare. Commissioner Kim Sieckmann reported he received and read an article from the World Health Organization on magnetic fields and public health. Commissioner Kim Sieckmann also received and read the email.

Chair Tamara Stempel reported she works for Adept Engineering which currently works for AT&T and Cascadia PM which are involved in this project. They are sole source to do AT&Ts environmental consulting, regulatory compliance, and engineering for the Pacific Northwest. They are not particularly working on this tower right now; however they have in the past. She is not sure they won't work on this tower in the future. City Attorney David Doughman explained a conflict of interest has to do with whether your role in tonight's hearing would be a financial benefit or detriment to you as a person or a member of your immediate family. If this project was approved or denied will there be an effect on your position with your company. Chair Tamara Stempel noted her company is not currently doing anything on this project. City Attorney Doughman feels this is a potential conflict of interest and as such it is the commissioner's choice to continue to serve. Other commissioners may question the chair and can challenge whether it is something that is appropriate. Bias is a separate issue that deals with your intimate knowledge or relationship with your employer and the applicant that you feel you can review the application without favoritism. Chair Tamara Stempel stated 90% of the work she does is related to telecommunication towers. She could not be objective on this one. City Attorney Doughman stated it would be appropriate for her to step down from this meeting and take a seat in the audience.

Chair Tamara Stempel stepped down and Vice Chair Sieckmann assumed control of the meeting.

The State law does not extend this bias to family members so Commissioner Kirk Stempel can continue to serve. Exparte contacts are not unlawful; it is unlawful to not declare them. Commissioner Seghers voiced his concerns about the commissioners receiving an email from Chair Tamara Stempel regarding cell towers.

Chair Tamara Stempel recused herself from this issue and turned over the Chair to Vice Chair Kim Sieckmann. Vice Chair Sieckmann asked if any commissioners visited the site. Commissioners Patrick McMahon visited the site; opened the email but not the attachment; Michele Kremers read the email and attachment and visited the site; Kirk Stempel visited the site and did not receive an email; Craig Seghers visited the site and read the email and attachment.

It was noted Chair Tamara Stempel sent the email and attachment on November 14 to Tami Bannick only; Ms. Bannick then distributed the email to the Planning Commissioners, City Administrator, and Assistant City Administrator. A copy of the email and attachment was entered into the record.

Vice Chair Sieckmann stated he visited the site, he did not receive the mass communication. He asked if any member of the audience wished to challenge the right for any commission member to hear this matter. A person in the audience asked if any commission member was associated with the water commission. None of the commissioners responded.

Staff Report: City Planner Clay Glasgow submitted a staff report for Commission review. He stated he has no conflict in this case. This is a request to replace an existing tower; either replace with a 10' under tower or if possible add 10' to the existing tower. The extension will be 4' above the height of the tower. Additional mount is included in this application expanding the size from 600 sqft to approximately 1300 sqft. The zone is R7.2, Single Family Residential. A large portion, besides the water facilities and the subject tower, of the site is undeveloped.

The way the code is written City Planner Glasgow is calling this a co-location facility. He finds that this proposal to extend its height by 10' either by replacement or adding 10' could meet applicable criteria.

Questions from the Commissioners: Question: Is it structurally feasible to add 10' to the existing pole. Answer: City Attorney Doughman explained cell towers and wireless communication facilities are regulated and Federal law governs a lot of placement. The Planning Commission may not consider any evidence with respect to RF issues as a base for denial.

Applicant Presentation: Noah Carlson, 5501 NE 109th Court, Suite 82, Vancouver, WA 98662 reported he has never worked with nor has he ever met Commissioner Tami Stempel prior to

this evening. He is surprised to hear about the email and attachment. They do work with Adapt Engineering but have never crossed paths with Commissioner Stempel. He submitted with this application as a response to code requirements, an RF engineering letter that states the facility would operate at the prescribed FCC standard levels and talks about distances from habitable structures and states that this facility intends to meet the FCC standards and not exceed them.

When they work on a proposal like this they don't just pick one spot. They looked at alternative locations in Gladstone, but there are no other existing cell towers like this in the area. This tower would provide coverage between Oatfield and Webster as well as beyond those boundaries. If they are unable to increase the structure by 10' they will replace the tower. The existing structure is not enclosed; if they replace the structure it will be enclosed.

Questions from the Commissioners: There were no further questions from the Commission.

Public Testimony in Favor: None.

Public Testimony in Opposition: Ken Yielding, 7000 Oakridge stated he lives about 150 yards from the existing tower. He asked if anyone else lived as close to the tower and what was the allowable distance between the tower and a residence. Answer: there is no specific distance set; however, the code does require there be a setback between the property lines adjoining a residential district no less than 2/3rds the height of the tower.

Mr. Yielding noted the existing tower is located on a residential piece of land and the public utility water source tank is located on the same piece of property. The code says there should not be any type of storage or anything above the utility. The applicant wants to expand the footprint of the cellular tower. Does that require they have a new permit issued for the tower. Answer: yes, whether they replace or add to the tower it will require a building permit.

If the Federal Government does not have any type of restriction on the amount or rate of frequency that residents are exposed to or electro-magnetic frequency, why aren't they located on houses? Telecommunication companies pay people that have cell towers thousands of dollars a month. He has small children and when he purchased his home he noticed the tower. Now the applicant wants to put a larger tower there with more far-reaching effect. He has pulled up studies on the internet that they have a three times more likelihood to develop cancer, just because of how close they live to the towers. Anything that is larger than 400 meters elevates the risk of cancer. There is a vigorous debate about frequencies that can be as small as a wireless router or the phones you carry in your pockets to communication towers. Answer: This body has no authority to say anything about RF frequencies as long as the applicant has evidence that say they are operating within government guidelines. He asked if someone could tell him how far the distance is from the existing tower to the closest property line. Answer: Two-thirds of the tower height would be 66 feet.

Mr. Yielding stated he signed a petition and he does have reservations about having this kind of a tower being even more prominent. He asked that the Commission look at the health implications of people that live in the area. Will other carriers be putting in additional rays on this tower? Answer: the Gladstone code requires the location be considered when applying for a new use or new tower. So if this was a blank site and someone wanted to put up a new cell tower, before it is approved the applicant would have to provide information indicating they have exhausted all evidence of potential co-location on other existing towers in the vicinity. This is to limit potential impacts.

Mr. Yielding asked what residential zone law that is being used by the public utility that allows storage on that lot. Answer: speaking to this application, no outside storage is allowed which means all storage associated with the new use needs to be fully enclosed in the building.

Mr. Yielding asked how much revenue is Oak Lodge Water District gaining by having this tower on their property. Answer: don't know there are other towers on this site as well.

Harry Todd, 16710 SE Valley View Road stated his property is about 30 feet from the curb on the other side of the street (about 150' from the tower). The tower overshadows the play park where children play every day. They are more vulnerable than they are. He has lived at this location for 20 years. The tower went up and he was not noticed; tonight they were informed there was going to be a hearing. He has concerns about health issues. A larger tower would increase the probability of health issues. He asked the Commission to consider the health issues.

Donna Todd, 16710 SE Valley View Road stated she too would like the Commission to look into the health issues. There are a lot of children in the neighborhood and a lot of kids going to the park. If the tower is raised 10 feet up is it going to be less invasive on people than if it is lower and goes straight into the houses? If this is not considered in Commissioners decision, it should be considered in their conscience. If there is any health risk at all, they are against the increase in size of the tower.

Kathy Lewis, 6785 Park Way Drive stated she lives the closest to the tower; it is in her back yard. The plantings do not meet the criteria for landscaping. For the past two years the landscaping has not blocked the view of the base. Now they are going to expand the base by more than double. She asked who is responsible for enforcing the code. Oak Lodge cleaned out the underbrush two years ago which she feels was a travesty. It allowed them to see the older motor home, a mosquito breeding ground pool, and un-kept property. It is better now but there are other problems with code violations in respect to the cell tower. They don't follow the noise ordinances of the City as they have a semi-mounted crane running all night long. When she called the police, they said it wasn't in their jurisdiction. There is an alarm fixed to the tower and last summer it was on day and night weeks at a time. She is concerned the applicant is already not complying with code and doesn't know what will happen with an increase of the structure. If the structure is more than six feet, they are required to have a 6-foot plus hedge around the fence. The structure is an eyesore and will decrease her property value.

A commissioner asked if there are ordinances that deal with noise and a phone number that can be called if there are issues. Answer: The noise ordinance issues can be addressed by the City Administrator.

Applicant Rebuttal: Noah Carlson, 5501 NE 109th Court, Suite 82, Vancouver, WA 98662 stated there is no distance requirement for habitable structures in the Gladstone Code. The only local code he knows of is in Portland there is a 10' separation from antenna to the closest habitable structure. He did submit a letter that states the antennas will meet FCC requirements for distances from habitable structures. He cited the Gladstone Municipal Code, Telecommunication Section that says a 10' extension is allowed for co-locations. They are meeting the minimum requirements of the code for extending the towers. The FCC does have standards and the letter states that this application would meet those standards. The letter also states these antennas will not cause interference with any other electro-magnetic devices whether it is on the tower or in the general vicinity of the area. There are two carriers on the tower and he is not representing those carriers tonight. They are not proposing to do anything with those carriers. There will be no change to the frequencies. These antennas will be higher and instead of shooting down into the houses, they are going to shoot more around the area. There will be no change to the existing conditions other than positioning.

In regards to landscaping, it was not required around the equipment due to the existing conditions which is a heavily treed area. This is a compound inside of a compound. The water tank property is fenced. The equipment compound is inside the water tank property. There is property enclosed with a fence and inside that is an enclosed equipment compound and all of this is surrounded by a significant amount of trees and natural vegetation. Landscaping probably was not required because they did not feel at that time that it was needed. He does not feel a contact number applies to their application; however the American Tower Corporation has a website with phone numbers.

Commission Discussion:

Question: Commissioner Michele Kremers asked where the existing equipment is currently located. Answer: Mr. Carlson stated the proposed tower is owned by AT&T; he pointed out the location on a photo. It cannot be placed with the other equipment because there is not enough room. It was suggested to add a condition that would require landscaping.

Councilor Pat McMahan moved and Commissioner Kirk Stempel seconded a motion to close the public hearing.

Motion carried unanimously.

City Planner Clay Glasgow stated his guess when this screening was allowed in 2006 it was considered adequate screening along west distance and existing vegetation. Consideration can be given to additional screening. The noise ordinance does come into play; however it is not administered through Title 17 (land use element). It is still in play, just in a different spot in the City Code and applies to everyone, not just this use. The Commission can consider

additional landscaping to buffer this use. The health impacts cannot be considered in this application.

Donna Todd asked where the noise is coming from. Answer: It is an unmanned cabinet (building) covering the equipment that vibrates.

Question: The fencing around the structure right now is coming down at the corners. Should there be a condition that they maintain the fencing around the structure at all times. Answer: City Planner Glasgow state the Commission has the authority to enforce a condition to bring the current buffering/screening fencing into compliance and additional conditions requiring fast-growing, dense vegetation. A sign with an emergency contact number can also be conditioned on the fence at the entrance.

Question: Can anyone else come in and put a tower on this property. Answer: City Planner Glasgow stated there is a limit. There is a requirement in the code to consider co-location before the City can consider putting in a new tower.

Question: Would any code violation on this property fall within the jurisdiction of Gladstone? Answer: City Planner Glasgow said yes, they administer the enforcement of code.

Question: Can there be a conditioned timeline to complete the project? City Planner Glasgow stated there can be specific timelines on the plantings with the intent that it be six feet high within 12 or 24 months. Included should be the maintenance issue.

Commissioner Pat McMahon moved and Commissioner Craig Seghers seconded a motion to approve File Z0465-13-C Proposal to Remove Existing Communication Tower (100') Feet tall and replace with new 10' Taller Tower (110') Feet Larger Equipment Cabinet at Base. The Subject Property is Located at 16711 SE Valley View Road and is the Site of Storage Tanks for Oak Lodge Water District including the two conditions as stated in the staff report with the following three additional conditions:

- *Fencing around the facility shall be maintained at all times*
- *Vegetation buffering to be installed around the new facility should be sufficient to create a solid 6-foot hedge-wall within 24 months of installation of the new tower and building and submit a 5-year maintenance agreement with the City.*
- *Signage for contact information for the tower owner is to be placed on the water tower property fence line somewhere around the main gate on Valley View Drive.*

Roll: Commissioner Michele Kremers, **Yes**; Commissioner Pat McMahon, **Yes**; Commissioner Craig Seghers, **Yes**; and Vice Chair Kim Sieckmann, **Yes**.

Motion carried unanimously.

Brief break. Vice Chair Sieckmann stepped down and Chair Tamara Stempel resumed responsibility.

Chair Tammy Stempel stated the article she sent was about EMF frequencies for cell towers. Nothing that was to be considered in this application had to do with radio frequencies. That is something that is regulated by the FDC; it cannot be changed. More antennas do not change that frequency. What

1-6

she sent was not intended to sway anyone one way or the other; it was simply information that was irrelevant to anything that was to be considered tonight. The reason she sent it would was when the City Planner first told the Commission this was coming before them she was concerned because she cannot walk within 50 feet of another tower without being shocked. She started researching and found so many articles but all of them tracked back to special interest parties. This was done because of something she was concerned about and she wanted peace of mind. She felt she had to disclose the fact that she had done all of this research even though it was irrelevant to this issue. The reason she recused herself was because she is in opposition to cell towers. The reason she was being shocked was because the towers are directly in line with the KEX Radio tower and it was grounding on this tower. The KEX tower has been repositioned and she is no longer affected.

Discussion followed on exparte contacts and how to address issues that may affect the outcome of an application.

WORKSESSION

Chair Tamara Stempel opened the worksession at 9:20 p.m. to discuss identifying areas which may require modification of the Gladstone Municipal Code at the request of the Gladstone City Council. She presented a possible list of areas that flow for discussion. Things to look at included:

- Code analysis done in January 2012. It is current and has been reviewed by the City Attorney. There is not a lot to decide on; hopefully the Commission can quickly look at it and decide if there is anything that needs to be address.
- Winterbrook did an analysis in 2009 on how Gladstone's codes are related to development. This might be something to look at to see if they have identified things the Commission could look at to see if there is anything that should be adopted moving forward.
- The clear-vision codes were specifically requested by Council so they should be looked at first.
- Review the commercial, residential and other (habitat conservation, open space) districts to see if there are any changes.
- Division 4, breaking up into other divisions, buildings, sittings and design and landscaping.
- Off street parking and loading and circulation.
- Signs and billboards –A-frames need to be addressed
- Drainage, draining and fill – progressive storm water management strategies
- Utilities, wireless communication facilities
- Special uses, design standards, property line adjustments

Suggestions for additional subjects:

- Title II, Administration and Personnel
- Code enforcement officer response on clear-vision laws
- Each commissioner read the codes and voiced their concerns
- Next meeting commissioners come with a list of things they would like to cover that are not included in this list.
- How does Council want this presented; in sections to review, recommendation or a complete document at the end.
- Have the attorney represented to answer questions.



Hopefully the Commission will be able to come up with a plan of action to submit to Council by January.

Other Business: None.

Upcoming Commission Considerations:

- A non-conforming use will be discussed at the next Commission meeting.

Business from the Commission: None.

Adjourn:

*Commissioner Kim Sieckmann moved to adjourn the Planning Commission meeting. Commissioner Pat McMahon seconded the motion.
Motion carried unanimously.*

Chair Tamara Stempel closed the Planning Commission meeting of November 19, 2013.

Minutes approved by the Planning Commission this ____ day of _____, 2014.

_____, Tamara Stempel, Chair

MINUTES OF PLANNING COMMISSION WORKSESSION – December 17, 2013

Call to Order at 7:02 p.m.

Roll Call: The following Planning Commission members answered the roll call: Chair Tamara Stempel, Michele Kremers, Pat McMahon, Craig Seghers, Kim Sieckmann, and Kirk Stempel.

Absent: Craig Seghers

Staff: Jolene Morishita, Assistant City Administrator; David Doughman, City Attorney.

Chair Tamara Stempel lead the flag salute.

Regular Agenda:

1. Chair Tamara Stempel explained this meeting is an informal worksession to discuss identifying areas which may require modification of the Gladstone Zoning Code at the request of the Gladstone City Council. At the last Planning Commission meeting they reviewed a rough outline and talked about additions and changes which have been made. Commissioners received a revised outline and were asked to review it for further changes, additions or deletions.

Commissioner Sieckmann suggested changing Chapter 8.12.070.1i, Health and Safety (Nuisances, Exceptions and Variances), "Sounds produced by stage entertainment and music performances between 10 a.m. and 12:30 a.m. local time as part of the annual Chautauqua Festival." The Chautauqua Festival is no longer in existence and that term should be deleted and the noise portion of the statement should go under Chapter 5, Nuisances.

Commissioner Sieckmann questioned Chapter 17, Division I (17.06.501, Signs, Electronic Message Centers) in the definitions section. It was decided to add this to Chapter 12, Division 4, Signs and Billboards.

There were no further changes from the Commission.

It was suggested that a timeline be included with the proposed areas of modification; possibly a quarterly update of what codes have been discussed. The Assistant City Administrator Morishita was asked to put the plan of action on the agenda for Council.

Information that the Commissioners want to be included in the packet (such as codes from other jurisdictions) should be emailed or given to Jolene Morishita or Tami Bannick.

Commissioner Sieckman moved and Commissioner Michele Kremers seconded a motion to endorse and adopt the amended plan of action and forward it to City Council for review and comments.

Motion carried unanimously.

Other Business: None.

Upcoming Commission Considerations: None.

Business from the Commission: None.

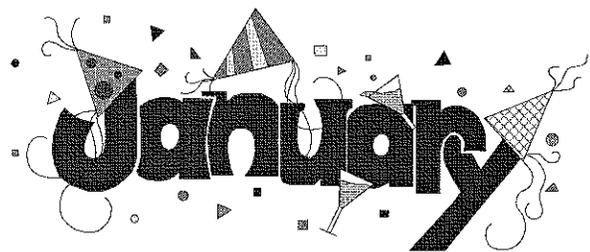
Adjourn:

*Commissioner Kim Sieckmann moved to adjourn the December 17, 2012 Planning Commission meeting. Commissioner Pat McMahon seconded the motion.
Motion carried unanimously.*

Chair Tamara Stempel closed the Planning Commission meeting.

Minutes approved by the Planning Commission this ____ day of _____, 2014.

_____, Tamara Stempel, Chair



REGULAR AGENDA

City of GLADSTONE

STAFF REPORT EXPANSION OF NONCONFORMING USE

FILE NUMBER: Z0551-13-E
APPLICANT: Connie Emerson
DATE: January 9, 2014

City Hall
525 Portland Avenue
Gladstone, OR 97027
(503) 656-5223
FAX: (503) 650-8938
E-Mail: (last name)@
ci.gladstone.or.us
Website:
www.ci.gladstone.or.us

Municipal Court
525 Portland Avenue
Gladstone, OR 97027
(503) 656-5224 ext. 1
E-Mail: municourt@
ci.gladstone.or.us

Police Department
535 Portland Avenue
Gladstone, OR 97027
(503) 655-8211
Website:
www.ci.gladstone.or.us

Fire Department
555 Portland Avenue
Gladstone, OR 97027
(503) 557-2776
Website:
www.ci.gladstone.or.us

Public Library
135 E. Dartmouth
Gladstone, OR 97027
(503) 656-2411
FAX: (503) 655-2438
E-Mail: qiref@lincc.lib.or.us

Senior Center
1050 Portland Avenue
Gladstone, OR 97027
(503) 655-7701
FAX: (503) 650-4840

City Shop
18595 Portland Avenue
Gladstone, OR 97027
(503) 656-7957
FAX: (503) 722-9078

I. GENERAL INFORMATION

- A. PROPOSAL: This is a request to add to a house that does not meet side-yard setbacks. Current building is within 18" of side property line. This proposal involves adding to house on that side, toward the back of the house, essentially "squaring-off" the building and continuing the 18" setback the full length of the house. The home is also non-conforming with respect to front-yard setback minimum of 20' but that portion of the building is not involved in this request. Total addition not conforming to side-yard setback is shown as fifty (50) square feet.
- B. LEGAL DESCRIPTION: T2S, R2E, Section 20CB, Tax Lot 9200
- C. SITE ADDRESS: 345 Beatrice Avenue
- D. LOCATION: east side of Beatrice Avenue, between W. Berkeley Street and W. Clarendon Street.
- E. ZONING DISTRICT: R-5; Single-Family Residential
- F. COMPREHENSIVE PLAN DESIGNATION: Low Density Residential
- G. SITE INFORMATION: The subject property is approximately 4050 square feet in size with a single family residence in place.
- H. VICINITY DESCRIPTION: land use in the area is generally residential, mostly single-family with scattered duplexes.

II. FINDINGS AND CONCLUSIONS

This application is subject to Chapter 17.12, R-5 – Single-Family Residential District; Chapter 17.76, Exceptions; and Division VII, Administrative Procedures of Title 17 of the Gladstone Municipal Code (GMC).

Planning staff has reviewed this request relative to the applicable provisions of the GMC. Based on this review, staff makes the following findings and conclusions:

- A. Chapter 17.12 of the GMC identifies allowed uses, dimensional standards etc. of the R-5, Single Family Residential zone. The residential use in place is allowed outright in the R-5 zone. Subsection 17.12.050 of the GMC identifies the dimensional standards of the R-5 zoning district. This is an undersized, legal lot in the R-5 Zoning District. The residential use on site is non-conforming with respect to side-yard setbacks along the north property line (and front-yard as noted previously.) The R-5 Zone requires five (5) feet side-yard setback - existing setback is approximately eighteen inches (18"). In this case the applicant proposes to add to the house along the north side towards the rear, continuing the 18" setback. Submitted site plan illustrates the proposal. Other uses and dimensional standards will be applied upon residential development.

As modified by the existing non-conforming setbacks and property size, criteria from the underlying R-5 Zone are satisfied with this request.

- B. Chapter 17.76 of the GMC deals with Exceptions, including both non-conforming uses and non-conforming developments. In this case the applicant proposes to alter a non-conforming use by adding to a building that does not meet setback requirements. The addition shown will not increase non-compliance with setback standards. At 17.76.020(5), Alterations Not Required by Law, the Gladstone Municipal Code lays out criteria to be applied when considering alterations such as proposed. *The alteration, expansion or change of use will, after the imposition of conditions as authorized, have no greater adverse impact on the neighborhood than the existing use.* The applicant has responded to this criterion through submitted application materials: "the existing house has been in place since 1945. The new addition will simply enlarge an existing room and will follow the walls/lines of the existing house. The room will add to an existing laundry/storage/office room and will have zero impact on traffic, noise, vibration, smoke, dust, fumes, or visual uses. I want to build on to my home, following the existing lines of my home that place the structure of my home less than 5 feet from property lines."

The applicant proposes an addition to an existing home – essentially finishing-off the northern side of the building (see plot plan.) The building has been in place, with 18" setbacks since the 1940's. Other buildings on area properties also have non-conforming setbacks, including on the property adjacent to the north of the subject property boundary. This proposal involves a minor addition to a building that already does not meet the five (5) foot setback requirement. There is nothing in the record to indicate the non-conforming setback has had undue adverse impacts, nor is there anything to suggest the addition as proposed will increase adverse impacts. Staff is able to find the addition as proposed will not have greater adverse impact on adjoining properties or the neighborhood than the existing use.

This criterion is satisfied.

- C. Division VII, Chapter 17.90 of the GMC, Administrative Procedures sets forth general provisions for processing applications. Chapter 17.94 (.060) provides detail on proposals which require review at public hearing. Applicant has satisfied application process, public hearing notice has gone out as required.

III. Discussion

This is a relatively simple proposal, involving minor addition to an existing residence which does not meet setback requirements. The non-conforming setback will not be increased by the addition, e.g. the building will remain 18' from the property line. Staff is unaware of any evidence to indicate any increase in adverse impact.

Comments received in response to notice:

No responses received.

IV. RECOMMENDATION

Staff recommends the Planning Commission approved File Z0551-13-E, subject to the following conditions of approval:

1. Necessary building permits to be received from the Clackamas County Building Division prior to construction.
2. Other conditions as deemed appropriate by the Planning Commission

2E 20CC

BERKELEY STREET

CLARENDON STREET

DARTMOUTH STREET

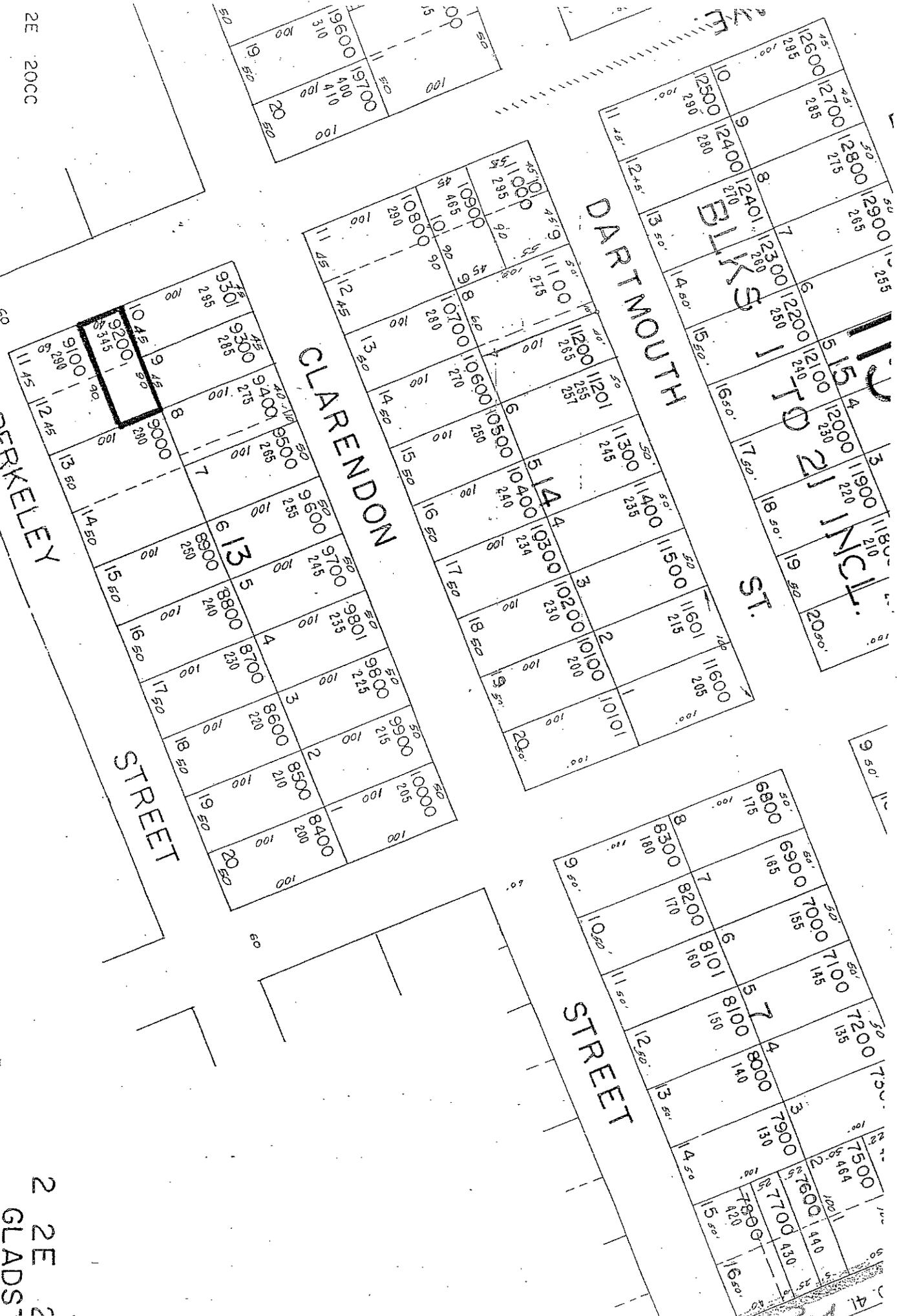
BLKS

ST.

15 TO 21 INCL.

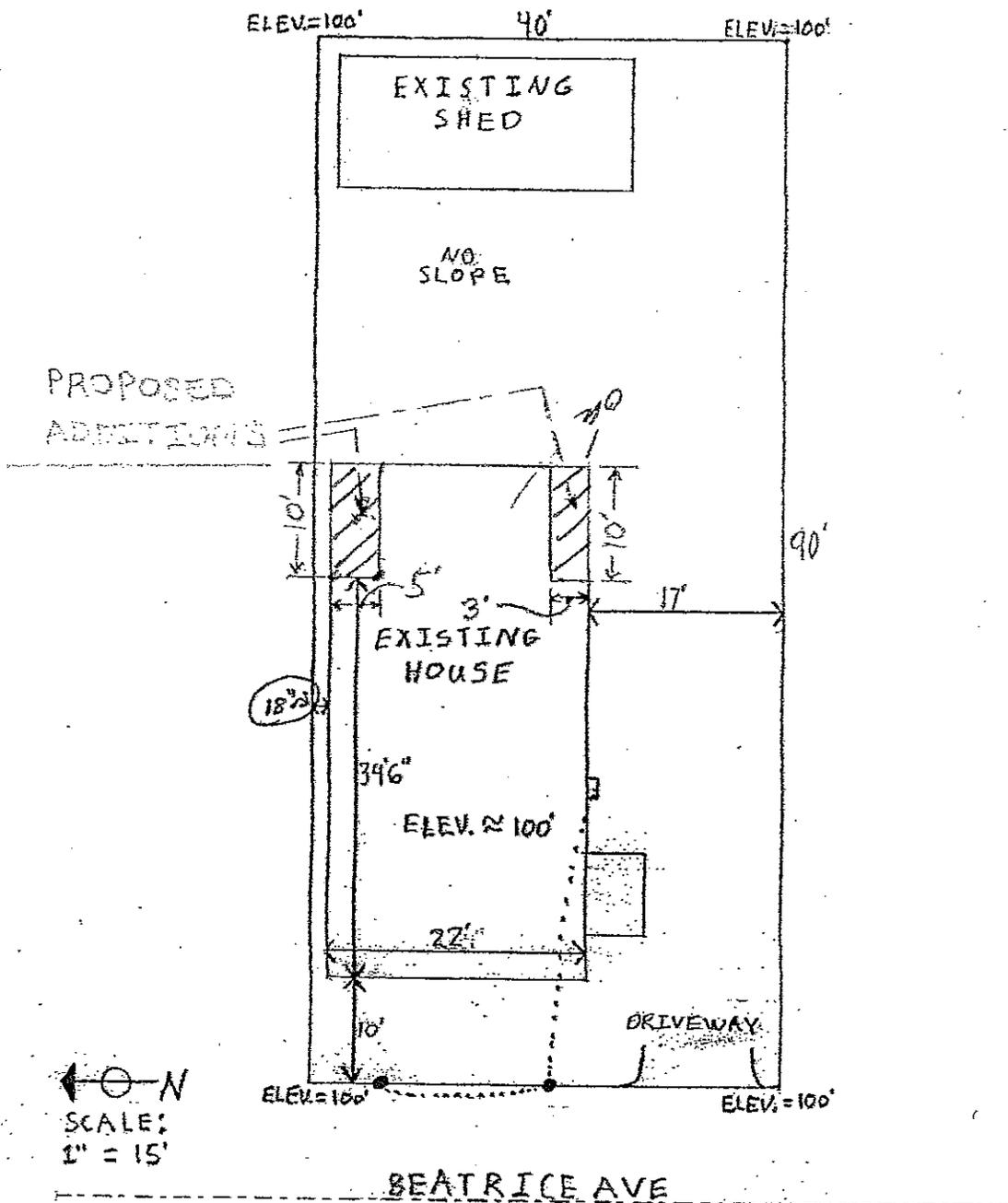
2 2E GLADSTON

BOOK



PLOT PLAN

Township 2 Range 2E Section 20CB Tax Lot 9200
Address: 345 BEATRICE AVE GLADSTONE OR 97027
Name: CONNIE EMERSON



← ⊙ N
SCALE:
1" = 15'

3-5

Building Permit or Building Permit Application Number: _____



Gladstone planning services are provided by Clackamas County. Submit all land use applications and correspondence to: Clackamas County Planning Division, 150 Beaver Creek Road, Oregon City, OR 97045
Phone: 503-742-4520 Fax: 503-742-4550 E-Mail: clayg@co.clackamas.or.us

ALTERATION/EXPANSION/CHANGE OF USE OF A NONCONFORMING USE SUPPLEMENTAL APPLICATION

When were the existing use, structure(s) and/or physical improvements established (provide specific dates if possible)? Describe the buildings, vehicles, equipment and materials used, days and hours of operation, number of employees and other operational and physical information. Submit land use, building, septic or other permit documents; utility records, dated photographs, tax appraisal information, dated aerial photographs, tax records, receipts, licenses, notarized affidavits, etc. to document the date of establishment of the use, structure(s) and/or physical improvements and the continuity of the use since established.

Current home built in 1945
Addition with permits added 2007

Describe in detail the proposed alteration/expansion/change of use, including new or modified structure(s) and/or physical improvements. Describe all structural and operational changes proposed.

I would like to add on to a room on my house.
I want to add a total of 80 sq. feet. 3x10 ft. on 1 end
and 5x10 on the other. The new room will then follow the
exact lines of the existing house. The existing house does not
set back 5 ft. from property line. Existing house built in
1945.

Describe in detail how the alteration/ expansion/change of use will have no greater adverse impact on the neighborhood than the existing use. At a minimum, address traffic generation, noise, vibration, smoke, dust, fumes, glare and visual compatibility with surrounding uses:

The existing house has been in place since 1945. The new addition will simply enlarge an existing room and will follow the walls/lines of the existing house.

The room will added to an existing laundry/ storage / office room and will have zero impact on traffic, noise, vibration, smoke, dust, fumes, or visual uses.

I want to build onto my home, following the existing lines of my home that place the structure of my home less than 5ft from property lines.

(Use additional sheets to answer questions if necessary)

WORK SESSION

GLADSTONE CODE REVIEW
Suggested Review Procedure
Adopted by the Planning Commission
At the December 17, 2013 Work Session

INTENT

As Planning Commission, our intent is to review the current Gladstone Municipal Code in the order outlined below. We will add a work session to each scheduled Planning Commission meeting to address this review. If a meeting is not planned due to lack of agenda items, we will instead have a work session to continue the process.

For all Titles other than 17, we will provide notice to the City Council of our recommendations at the time that particular review is complete.

For all Title 17 recommendations, due to the required noticing procedures, we will provide quarterly updates to the City Council of our progress, and then present the complete Title 17 review at one time to be considered. Our hope is that this will save time and a considerable amount of money.

As the review progresses, if there is documentation a Planning Commission member would like to introduce as informational or examples, we will submit this information to Tami Bannick at least one week prior to our meeting in order for it to be included in the formal packet.

- I Code Analysis Ordinance Review January 2012**
- After review, this is mostly housekeeping and we should recommend our codes be updated per the suggestions listed in this document.

- II Review Completed Approximately a Year Ago**
-The city hired a firm approximately a year ago to review our codes to see if there were any issues stopping development. We should look at their suggestions to see what barriers there are for encouraging development in our commercial zones.

- III Title 2 Administration & Personnel**
Specifically Chapter 2.28 Planning Commission

- IV Title 17 Zoning & Development**
Division 4 Section 17.54 Clear Vision Codes
-Since this was a specific area directed from the City Council for improvement, we should start with Division 4 Section 17.54.

- V Title 8 Health & Safety**
Section 8.04 Nuisances
-This topic took up most of the work session, so I feel we should start by looking at this section for clarification and application.

Section 8.12 Noise Control

- VI Title 8 Health & Safety**
Section 8.06 Chronic Nuisances
 -As with Section 8.04, this was the main topic of the work session, so we should address this section for clarification and application.
- VII Title 17 Zoning & Development**
Division 2 Zoning Districts - Commercial
 -To continue looking at encouraging development, we should start with the commercial zoning districts C1, C2, C3 + OP and L1. Clackamas County is combining some of their commercial and industrial districts to make it easier to navigate. Is this something we should consider since our commercial zones are so small?
- VIII Title 17 Zoning & Development**
Division 2 Zoning Districts – Residential
 -Review of residential zones R7.2, R5 and MR. What do we want these zones to look like considering what we will most likely see in the future is redevelopment and in-fill. How can we integrate sustainability into these zones? How about storm water management strategies? Heritage Trees? Seattle’s Green Factor concept?
- IX Title 17 Zoning & Development**
Division 2 Zoning Districts – Other
 -HCAD/Habitat Conservation Area, OS/Open Space, WQ/Water Quality Resource Area, FM/Flood Management. Are these up to current state/federal requirements? How can we ensure these areas are protected yet maximized?
- X Title 17 Zoning & Development**
Division 4
 17.42 General Provisions
 17.44 Building Siting and Design
 17.46 Landscaping
- XI Title 17 Zoning & Development**
Division 4
 17.48 Off-Street Parking and Loading
 -What have other cities done to allow for an active commercial zone while minimizing parking...encourage pedestrian/bicycles? Our downtown core cannot allow for new development because of our parking requirements.
 17.50 Vehicular and Pedestrian Circulation
- XII Title 17 Zoning & Development**
Division 4
 17.52 Signs
 17.53 Billboards

- XIII Title 17 Zoning & Development
 - Division 4
 - 17.56 Drainage
 - Progressive storm water management strategies
 - 17.58 Grading and Fill

- XIV Title 17 Zoning & Development
 - Division 4
 - 17.60 Utilities
 - 17.61 Wireless Telecommunication Facility

- XV Title 17 Zoning & Development
 - Division 4
 - 17.62 Special Uses
 - 17.64 Design Standards and Property Line Adjustments

- XVI Title 9 Public Peace, Morals & Welfare
 - Title 10 Vehicles & Traffic
 - Title 12 Streets, Sidewalks & Public Places
 - Recommend we engage the police department on where this section could be changed to support their enforcement needs.

- 1 High Priority
- 2 mid-level priority
- 3 Low Priority

CODE ANALYSIS
ORDINANCE REVIEW
FOR THE
CITY
OF
GLADSTONE, OREGON

January 2012

Introduction

This Code Analysis and Ordinance Review has been prepared by Dan R. Olsen, Attorney at Law, and published by Quality Code Publishing Company. The Gladstone Municipal Code is abbreviated as "GMC" throughout this report.

All titles, chapters, and sections in this report refer to provisions of the Gladstone Municipal Code. If a title is not listed, although thoroughly reviewed, the preparer found no issues of note warranting comment.

Chapter 1.08 General Penalty

Note that the ORS now uses the term "violation" rather than "infraction". This probably is not a problem as 1.08.020 (1) defines "city infraction" as a violation.

3 Note that ORS 153.110 through 120 and 153.150 through 310, cited as part of the authority for this Code chapter, were repealed by 1999 Oregon laws 1051. The provisions relating to violations were substantially rewritten. Although no clear inconsistencies are noted, it is recommended that the city review the new provisions to determine whether any amendments are necessary or desired.

2 2011 Oregon laws Chapter 597 (HB 2712) substantially revised the fines and distribution of fines for violations. It adds a "presumptive fine". Section 111 states that the new amounts and presumptive fines are not mandated for cities; but the city may wish to review these provisions and make such changes as it deems appropriate. The statute continues to provide that the city may not exceed the statutory maximum fines. The bill also labels some city code violations as misdemeanors and converts some statutory fine provisions to violation categories. See, for example, Sections 198 and 248. It adopts administrative provisions and deadlines for fund transfers to the state from municipal court. See, generally, Section 50. A comprehensive review of whether any city code violation fine amounts impermissibly exceed these revisions is beyond the scope of this review. At a minimum, it is likely that the municipal court will have to modify its practices to conform to various provisions of this bill. (MUNE CT)

3 §1.08.080
Note that 1999 Oregon Laws Chapter 788, as further revised by 2001 Oregon Laws Chapter 249 and 2003 Oregon Laws Chapter 576 substantially revised the provisions relating to enforcement of judgments, including those in municipal court. Although the GMC does not contain detailed provisions relating to such enforcement, it is suggested that these new provisions be reviewed for any code changes or additions, or revisions to current practices.

Chapter 2.16 Trial by Jury

/ §2.16.010
The statutory authority reference now should be ORS 221.354.

/ §2.16.040
ORS 10.040 was repealed and replaced with ORS 10.050.

/ §2.16.080
The statutory authority reference now should be ORS 221.354.

/ §2.16.090
The statutory authority reference now should be ORS 10.061. The only significant change is that jurors are to get \$25.00 for each day over two.

/ §2.16.095
ORS 136.603 now requires witness fees only for those who are indigent or from out of state.

/ §2.16.100
ORS 10.660, cited as authority for this provision has been repealed. ORS 221.349 was renumbered ORS 221.354.

The City should consider a reference to the mandatory state assessments, ORS 137.290 through .309, similar to that found in GMC §1.08.090.

Chapter 2.28 Planning Commission

2 §2.28.080
ORS 227.030 also limits membership to no more than two city officers.

2 §2.28.110
The correct authority reference now is ORS 244.135

Chapter 2.35 Personnel System

(w/ HB Changes) / §2.36.030
ORS 659A.030 added sexual orientation and those who have had a juvenile record expunged to those protected against discrimination.

/ §2.36.050(2)(b) references "confidential personnel files" in relation to criminal background checks. Oregon law does not provide a general exemption from disclosure for personnel files. Rather, it is an issue of whether release would constitute an unreasonable invasion of privacy. The reference to confidential personnel files may give rise to an unfounded expectation of confidentiality and should be considered for revision. See, generally, ORS 192.502.

Chapter 2.40 Unclaimed Property

w §2.40.010
There is a typo in the authority listed; it should be ORS 98.302 through 98.436.

Chapter 2.48 Historic Preservation Policy

Ⓟ The policy should be revised to reflect ORS 197.772 which now prohibits designating a property for historic preservation without the property owner’s consent and permits an owner to withdraw prior consent.

Chapter 2.52 Liquor License Review

Ⓟ The correct statutory authority reference now is ORS 471.155-.166.

Ⓟ §2.52.050

The cross-reference in subsection (2)(b) should be to Section 2.52.090.

Chapter 2.58 Measure 37 Claims Procedure

✓ Measure 37 and the implementing statutes were repealed and replaced by Measure 49. See ORS 195.300 to 195.336 (2010 ORS Law Chapter 8.) Also see 2011 Oregon Laws Ch. 612.

Chapter 3.12 Special Assessments

✓ §3.12.050

Subsection (1) provides for abandonment or delay if remonstrances are received from owners representing two-thirds of the area to be assessed. This appears to be inconsistent with Charter Chapter IX, Section 38, which provides for suspension if remonstrances are received from three-fifths of the owners.

✓ §3.12.070

Subsection (1) provides for assessment prior to completion of the improvements. This may subject the assessment to classification as a property tax pursuant to Oregon Constitution Article XI, Section 11(b) (Ballot Measure 5). ORS 310.040(12) purports to define a single assessment as both a pre and post construction assessment to avoid Ballot Measure 5, but some question whether that is permissible.

✓ §3.12.190

The correct reference to the Bancroft Bonding Act is ORS 223.205 and 223.210 to 223.295.

Chapter 5.04 Business Licenses Generally

✓ §5.04.025

ORS 701.055 was renumbered to ORS 701.026. The relevant definitions now are at ORS 701.005 and refer to a “residential contractor” rather than a “residential builder.”

✓ ORS 701.013-.020 has added to the list of contractors exempt from city licensure if licensed by Metro unless the contractor has a principal place of business in the city or derives \$250,000 or more in gross receipts from within the city. Other exemptions apply.

✓ See also ORS 671.750-.755, containing similar exemptions for landscape contractors and ORS 696.365 prohibiting a business license on certain real estate agents.

Chapter 5.06 Adult Businesses

/ The Oregon Supreme Court has ruled essentially that adult businesses may not be regulated differently from other businesses. See, *City of Nyssa v. Dufloth*, 121 P.3d 639, 339 Oregon. 330 (2005) and *State v. Ciancanelli*, 121 P.3d 613, 339 Oregon. 282 (2005). This chapter should be considered for repeal or substantial revision.

Chapter 5.12 Bingo

- 2 §5.12.010(4)
ORS 167.117, relating to bingo, now references the Internal Revenue Code of 1986, as amended.
- 2 ORS 464.420 permits a city to ban bingo, but if it does not, such games shall be regulated only as provided under state law. The city should review whether this preempts the regulations in this chapter.
- 2 Note that the Department of Justice now regulates bingo, and a license from the DOJ is required. ORS 464.250.

Chapter 5.16 Cable Television Franchise Application

2 The Cable Communications Policy Act of 1984, as amended, substantially impacted the scope of regulatory authority of local governments. This is a very complex, specialized area and an analysis for conformance is beyond the scope of this review. The city should consider whether an update is needed.

Chapter 5.32 Transient Merchants

As noted previously, the Oregon Supreme Court has held that Article I, Section 8 of the Oregon Constitution essentially prohibits any content based regulation of speech. It has declined to permit more regulation of commercial speech than other speech, as would be permitted under the U.S. Constitution. No cases directly on point could be found, but the city attorney should consider whether these regulations are improperly content based. See generally, *City of Eugene v. Miller*, 871 P.2d 454, 318 Oregon. 480 (1994); *Hillsboro v Purcell*, 306 Oregon 547, 761 P2d 510 (1988).

Chapter 5.44 Erotic Dance Studios

The discussion under Chapter 5.06, Adult Businesses, applies here as well.

Chapter 6.04 Dogs

3 ORS 609.010, cited as part of the authority for this chapter, was repealed. No substantive impact is apparent.

Handwritten notes in a circle: "5 #10", "5 #11", "5 #12", "5 #13", "5 #14", "5 #15", "5 #16", "5 #17", "5 #18", "5 #19", "5 #20", "5 #21", "5 #22", "5 #23", "5 #24", "5 #25", "5 #26", "5 #27", "5 #28", "5 #29", "5 #30", "5 #31", "5 #32", "5 #33", "5 #34", "5 #35", "5 #36", "5 #37", "5 #38", "5 #39", "5 #40", "5 #41", "5 #42", "5 #43", "5 #44", "5 #45", "5 #46", "5 #47", "5 #48", "5 #49", "5 #50", "5 #51", "5 #52", "5 #53", "5 #54", "5 #55", "5 #56", "5 #57", "5 #58", "5 #59", "5 #60", "5 #61", "5 #62", "5 #63", "5 #64", "5 #65", "5 #66", "5 #67", "5 #68", "5 #69", "5 #70", "5 #71", "5 #72", "5 #73", "5 #74", "5 #75", "5 #76", "5 #77", "5 #78", "5 #79", "5 #80", "5 #81", "5 #82", "5 #83", "5 #84", "5 #85", "5 #86", "5 #87", "5 #88", "5 #89", "5 #90", "5 #91", "5 #92", "5 #93", "5 #94", "5 #95", "5 #96", "5 #97", "5 #98", "5 #99", "5 #100".

Chapter 8.04 Nuisances

- R §8.04.010 (3)
Use of the term and/or is confusing here. It appears that "or" is intended.
- R §8.04.010 (4)
The definition of owner differs from the generally applicable definition at GMC §1.04.010(9)
- R §8.04.140 (2)(b)
The most current version of the AASHTO Policy on Geometric Design is dated 2011 (6th edition).
- R §8.04.146 (2)
Prohibiting any person from distributing placards or advertising may violate Article I, Section 8 of the Oregon Constitution and the First Amendment. See, *Klein v City of Clemente* 584 F3d 1196 (9th Cir., 2009); *City Council v Taxpayers for Vincent* 466 US 789 (1984); *City of Eugene v Miller* 318 Oregon 480, 871 P2d 254 (1994)

Chapter 8.06 Chronic Nuisance Property

- R §8.06.020
In subsection(3)(c) the reference to ORS 475.940 through ORS 475.995 should be reviewed to consider what statutes the city desires to incorporate as the statutory numbering has changed substantially and additional provisions have been added.
- R At subsection (3)(n), note that there also is a slightly different definition of "controlled substance" at ORS 475.924 that the city may want to include.
- R Subsection (3)(q) references a definition of "unlawful drinking" at GMC Chapter 9.52, but no such definition was found.
- R §8.06.090
ORCP 68 refers only to "costs" as those are defined in the ORCP, e.g. filing fees and related items. It is questionable whether it may be recovered in the manner provided for in this section. Rather, they may need to be pled as part of the judgment of forfeiture.
- R §8.06.100
The correct statutory reference now is ORS 90.100(43).
- R §8.06.130
The correct cross reference is to 8.06.020(4)

Chapter 8.12 Noise Control

- W §8.12.030(2)(a)
There may be an updated ANSI standard. An ANSI access license is needed to confirm.
- W §8.12.050(3)
ORS 483.449 was repealed and replaced with ORS 467.025 through 467.035.
- W §8.12.060(1)(e)
Same as above.
- W §8.12.060(1)(f)
The cross-referenced (5) does not exist.

Title 9

W Note regarding Title 9, relating to criminal procedure and offenses: In *City of Portland v. Dollarhide*, 714 P.2d 220, 300 Oregon. 490 (1986), the Court held that, "in determining whether the defining and prohibiting provisions of a city criminal ordinance conflict with a state criminal statute, the test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits." Similarly, the penalty provided by a city ordinance may be "lighter" than provided by state law but not greater.

In some cases, the conflict is evident. In others it depends on the facts or on the legislative history of the statute at issue. Cf. *City of Portland v. Jackson*, 850 P.2d 1093, 316 Oregon. 143 (1993) (Indecent exposure ordinance upheld.); *City of Portland v. Lodi*, 308 Oregon. 468, 474, 782 P.2d 415 (1989)(Ordinance regarding carrying a knife held preempted.) Accordingly, a comprehensive analysis of whether a portion of the GMC impermissibly conflicts with state law is beyond the scope of this review. It is recommended that the city review changes in state law for potential conflicts and amend code provisions if necessary.

Also see the discussion of 2011 Oregon Laws Ch. 597 (HB 2712) under Chapter 108 above, as it substantially revised statutory fines and revised some statutory violation classifications.

Chapter 9.08 Alcoholic Beverages

- 2 W General Note: The statutes governing liquor have been revised significantly since the adoption of this Chapter. See e.g. 1995 Oregon laws Ch. 301, 2010 Oregon Laws Ch. 33. It is recommended that the city conduct a thorough review and comparison. Following are some of the more significant changes.
§9.08.010(1)
The statutory definition now includes solids. ORS 471.001(1)
- 2 W §9.08.010(3)
"Hard liquor" is not defined or referenced in state law.

R
§9.08.010(8)
Chapter 472 was repealed. Although it is still referenced at places in the ORS, there no longer is an "Oregon Distilled Liquor Control Act", demarcated as such.

R
§9.08.020
ORS 471.410 contains several new exceptions to the prohibitions and restrictions on providing alcohol to minors. This likely raises a Dollarhide issue.

R
§9.08.707
State law has expanded the opportunities for minors to be permitted on premises serving alcohol. See, for example, OAR 845-006-0335-0340.

R
§9.08.110
The correct authority citation appears to be ORS 471.360 through .390 and 471.403 through .406.

R
§9.08.150
There is a typo in the authority; it should be ORS 471.385.

Chapter 9.12 Cruelty to Animals

R
§9.12.090
Several new provisions regarding securing and forfeiting animals have been added to state law. ORS 167.347-.350.

Chapter 9.20 Disorderly Conduct

R
§9.20.010
ORS 166.023-.025 now establish disorderly conduct in the first and second degree. Further, they require "intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk thereof". They do not include the acts set forth in subsection (8) or (9).

R
§9.20.020
State law does not expressly address "rude, indecent, vulgar or profane words." It is likely that criminalizing such speech in this manner is unconstitutional under the Article I, Section 8 analysis discussed above.

Chapter 9.25 Graffiti

J
Note that ORS 164.388 expressly provides that state statutes regarding graffiti do not preempt local ordinances, so there should be no Dollarhide issue

S
§9.25.040
2009 Oregon Laws Chapter 15 repealed the requirement that certain community service be under the supervision of community corrections.

Chapter 9.28 Criminal Mischief

- 3 §9.28.020
ORS 164.354 defines criminal mischief in the second degree as involving an amount exceeding \$500. This may be a Dollarhide issue.

Chapter 9.32 Offenses Against Government

- 2 §9.32.070
ORS 162.255 has been amended to exempt the media. It classifies this as a Class B violation rather than a Class A. This may be a Dollarhide issue.
- 2 §9.32.080
ORS 133.045,.050,.075,.077, and .080 have been repealed. It appears that the correct statutory references now should be ORS 133.055 through .076 and ORS 153.042 through.064.
- 2 §9.32.090
The definition and elements of failure to appear have been changed. ORS 162.195.
- 2 §9.32.100
The statute relating to false information has been revised although the GMC provision does not appear to conflict. ORS 162.385.
- 2 §9.32.110
ORS 163.208 is limited to public safety employees, the GMC provision applying it to other city employees raises a Dollarhide issue.

Chapter 9.36 Offenses Against Decency

- 3 §9.32.040
Although there are no cases directly on point, prohibiting nude massage may be inconsistent with City of Nyssa v. Dufloth, 121 P.3d 639, 339 Oregon. 330 (2005) and State v. Ciancanelli, 121 P.3d 613, 339 Oregon. 282 (2005). Note, however, that the state requires a license for masseurs. ORS 698.021.

Chapter 9.40 Possession and Delivery of Drugs

- 3 §9.32.010
The reference to the Board of Pharmacy schedule should be updated to the current OAR 855 through 80 et. seq.
- 3 §9.40.020(1)
The statutes have been revised and renumbered to ORS 475.840 through .980.

3 §9.40.020(2)

The prohibition on Cannabis may not be consistent with the Oregon Medical Marijuana Act, ORS 475.300 through .346. This may be a Dollarhide issue.

Chapter 9.44 Theft

/ §9.40.020

Theft in the third degree must be property less than \$100. ORS 164.043.

/ §9.40.030

Theft in the first degree must be property of \$100 or more and less than \$1,000. ORS 164.055.

/ §9.40.040

ORS 164.170 has been rewritten substantially and requires an amount in excess of \$100 but less than \$1,000 to constitute a Class A misdemeanor.

Chapter 9.45 Civil Forfeiture

3 Article XV, Section 10 of the Oregon Constitution adopted the Oregon Property Protection Act of 2000. This prompted adoption of ORS chapter 131A. The primary purpose of these provisions is to govern civil forfeiture for drug offenses, but it is not limited to such offenses. See generally, ORS 131A.010 (2) (The Legislative Assembly adopts the provisions of this chapter as the sole and exclusive law of the state governing civil forfeiture of real and personal property based on prohibited conduct. This chapter supersedes all charter provisions, ordinances, regulations and other enactments adopted by cities and counties relating to civil forfeitures. All forfeitures under the provisions of this chapter are subject to the limitations of section 10, Article XV of the Oregon Constitution)

Note that ORS 809.698 through .735 provides specific provisions for impoundment and, in limited cases, forfeiture of vehicles for the driving offenses listed therein. These statutes were adopted or amended after adoption of Chapter 9.45. ORS 809.735 (1) provides that, "The seizure and forfeiture provisions of ORS 809.730 do not preempt a city or county ordinance enacted and in effect on June 22, 1999, relating to forfeiture of a motor vehicle operated by a person described in ORS 809.730". Nevertheless, ORS 809.735 (2) requires that all vehicle forfeiture provisions conform to the procedures set forth in ORS Chapter 131A.

It is recommended that the city review these provisions and consider conforming amendments. 2011 Oregon Laws Ch. (SB 430) added certain crimes to those eligible for civil forfeiture.

§9.45.030

Numerous statutory references have changed:

Subsection (1): The reference to the 1983 version of ORS 475.005(6) is outdated.

Subsection (4): Gambling now is defined at ORS 167.114(7)

Subsection (6): Manufacture now is defined at ORS 475.005 (15)

Subsection (7): Marijuana now is defined at ORS 475.005 (16)

Subsection (8): 21 USC 841(a) does not actually define possession with intent to distribute, nor could an ORS reference be found.

Subsection (9): Production now is defined at ORS 475.005(20)

§9.45.040

Subsection (1): "Gambling" is defined at ORS 167.117(7), the reference in the GMC is to the crime of unlawful gambling in the first degree.

Subsection (2): The reference to the 1983 ORS should be updated or removed.

§9.45.050(3)

The reference to the 1983 ORS should be updated or removed.

Chapter 9.48 Trespass

§9.48.030

P The definition of trespass in the first degree appears to be broader than that in ORS 164.255. This may be a Dollarhide issue.

Chapter 9.49 City Parks and City Property Exclusion

W Two recent cases addressed the due process requirements for exclusion. *Koenig v Washington County*, 238 Oregon App 297, 242 P3d. 649 (2010), *State v Barnes*, 232 Oregon App 70, 220 P3d 1195 (2009). The GMC provisions appear to substantially conform to these cases but counsel for the city may wish to review them.

Chapter 9.50 Vehicular Trespass

W §9.50.040

ORS 164.245 makes vehicular trespass a Class C misdemeanor. This may be Dollarhide issue.

Chapter 9.58 Fish and Game

W §9.58.010

The statutory reference probably should extend to ORS 486.018.

W §9.58.020

The references to the 1983 ORS should be updated or removed.

3 §9.58.030
The reference to the 1989 ORS should be updated or removed.

Chapter 9.60 Camping Prohibited in Certain Places

2 No statutory conflicts found, but note that ORS 203.077 requires all cities to have a camping by homeless policy.

Chapter 9.70 Unlawful Carrying of Loaded Firearm

2 §9.70.020
ORS 166.370 has a slightly expanded list of persons entitled to carry a firearm in a public building.

Chapter 10.04 Vehicles and Traffic

2 §10.04.030
Several terms defined in the GMC now have statutory definitions that may not be entirely consistent.

- Subsection (1): Bicycle ORS 801.150.
- Subsection (6): Motor Vehicle ORS 801.360.
- Subsection (7): Park or parking ORS 801.380.
- Subsection (9): Stand or standing ORS 801.505.
- Subsection (11): Stop ORS 801.510;
- Subsection (14): Traffic control device ORS 801.540.
- Subsection (16): Vehicle ORS 801.590. The definition of "mobile home" at paragraph (c) was repealed and the vehicle code no longer has a definition. Cf. ORS 446.003. The term mobile home used in paragraph (d) now is a reference to "motor home."

2 §10.04.040
The general statutory authority of cities to adopt special provisions in ORS 801.040 has been revised substantially. Since many provisions in this chapter rely on that authority, it is recommended that the city attorney review ORS 801.040.

2 §10.04.230(1)(f)
ORS 767.815 is now ORS 825.470.

2 §10.04.270
The authority cited, ORS 811.430 does not relate to leaving keys in the ignition. No statutory authority or prohibition on this topic could be found.

4-15

§10.04.340

↳ ORS 814.430 regarding bicycles in travel lanes has been substantially revised and contains exceptions to the requirement to stay to the right.

§10.04.400

↳ The statutes relating to funeral processions have been revised although there appears to be no significant conflict.

§10.04.430

↳ The statutes regarding "implied consent" have been revised substantially. ORS 813.100 now provides that refusal to submit to a test to result in a suspension of driving privileges. ORS 813.310 permits refusal to take a test to be used in evidence. It is recommended that the city attorney or law enforcement personnel review this section for amendment.

Chapter 10.08 Traffic Control Devices

§10.08.010

↳ It appears that the most current edition of the UTCDC is the 2009 edition.

Chapter 10.16 Abandoned and Hazardous Vehicles

↳ The sanction for violation of these provisions is not clear. Abandoning a car is not expressly labeled an offense. Cf. ORS 819.100 The driver or owner commits an "offense" by placing a hazardous vehicle, but the offense is not categorized, apparently becoming a misdemeanor by default pursuant to GMC §1.08.110.

Chapter 10.18 Impounding Vehicles

§10.18.010(1)(f)

↳ Language appears permissible, but see, State v. Gonzales A138187 (Oregon. App., 2010); Miranda v. City of Cornelius, 429 F3d 858 (9th Cir 2005) re limits on authority to tow in certain situations.

§10.18.020(3)(d)

↳ Although ORS 801.040 permits the city to modify state provisions on impoundment, note that ORS 819.190 excludes Sundays and holidays in calculating the five day period to request a hearing.

§10.18.030(1)(2)

↳ Same comment as above, also note that state law requires the hearing to be held within 72 hours.

§10.18.050

↳ ORS 819.220 has been repealed. ORS 819.215 sets the value at \$500. Again, it appears to be permissible to modify this per ORS 801.040.

Chapter 10.20.010 Off-Road Vehicles

W §10.20.070
ORS 105.655-.670..675,.677 and.680 have been repealed. The recreational immunity statutes were substantially revised by 2010 ORS Law 52.

Chapter 12.08 Sidewalk Benches

/ §12.080.010
The content provisions probably are invalid. See e.g., Outdoor Media Dimensions v. Dept. of Transportation, 340 Oregon. 275, 132 P.3d 5 (2006)

/ §12.08.090
It is not clear whether the insurance requirement is intended to mirror the Oregon Tort Claims Act, but if so, the amount should be updated.

Chapter 12.12 Park Regulation

/ §12.12.030
Concealed handgun permittees may carry firearms in parks. ORS 166.173

Chapter 13.14 Industrial Waste Regulations

R Note: Due to the specialized nature of this Chapter and any NPDES or other permits issued to the city, this review is limited to checking cross-references and citations.

P §13.14.030(2)(p)
It appears this OAR now is at 333-100-0001 et. seq.

P §13.14.090
It appears the reference to LOG 13.13 should be to GMC.

Chapter 13.15 Surface Water Management

R Note: Due to the specialized nature of this Chapter and any NPDES or other permits issued to the city, this review is limited to checking cross-references and citations.

Chapter 13.16. System Development Charges

R §13.16.030(7)
The ORS 223.304(4) definition of qualified public improvement has been modified to require that the improvement be built larger than that necessary to serve the development.

R §13.16.050
ORS 223.304(1) now contains additional methodology factors.

Title 17 Zoning and Development

3

Note: Oregon's land use planning system is extensively regulated by state statutes, administrative rules and court/LUBA decisions and is perhaps the most complex in the nation. Accordingly, a comprehensive legal analysis is beyond the scope of this review.

§17.06.115

ORS 657A.250 (5) has a somewhat different definition of child care facility that includes children under 18 with special needs. The city may want to consider conforming the definition.

§17.06.175

Zoning code definitions of "family" have been the subject of much legal controversy. This includes, for example, possible conflict with the Fair Housing Act amendments of 1988 relating to persons with disabilities. See generally, http://www.housingrights.org/pdfs/def_family.pdf; *City of Edmonds v. Oxford House, Inc.* (94-23), 514 U.S. 725 (1995). The city attorney may wish to review this definition.

§17.06.215

State statutes regarding how local governments may zone a "residential facility" have been revised including what may be permissible depending on the type of facility. See ORS 197.660 et seq. The city may wish to review its land use regulations regarding all such congregate dwellings.

§17.06.247

The statutory definition of "land use decision" has been amended. ORS 197.015(10).

§17.06.328

Several statutes relating to the definition of "manufactured dwelling," "mobile home," "mobile home parks" and related terms have been adopted. The city may wish to update its provisions regarding such topics. See, for example, ORS 446.003.

§17.06.400

The definition should be updated to reflect statutory amendments to ORS 92.010.

§17.06.400

See the statutory definition of residential home at ORS 197.660.

§17.22.020

It appears that the correct reference for CERCLA definitions is 42 USC 103, sec. 9601.

§17.22.070(4)

These sign provisions contain content based distinctions that may be contrary to *Outdoor Media Dimensions v. Dept. of Transportation*, 340 Oregon. 275, 132 P.3d 5 (2006).

§17.25.090E(1) Metro now has a 2004 Wetlands Inventory Map, adopted as part of Metro Title 13. There does not appear to be a more recent Clackamas County map, but the city may wish to confirm.

Chapter 17.29 Flood Management Area District

3 These provisions were last updated in 2002. FEMA periodically updates its requirements for eligibility for flood insurance. The city may wish to review with FEMA whether any changes have been adopted.

§17.54.020(2)

AASHTO has adopted a 2011 edition of this policy.

Chapter 17.61 Wireless Telecommunications Facility

Although these provisions were adopted after the Telecommunications Act of 1996, there has been a great deal of litigation regarding zoning regulations and wireless facilities. See the following article for a fairly recent overview: http://assets.openers.com/rpts/RS20783_20080904.pdf

5 §17.62.070(1)

Jurisdiction over mobile home parks now appears to reside with the Department of Consumer and Business Services. ORS 446.062.

2 §17.62.100(3)

No OAR relating to Class A mobile home parks could be found.

1 §17.78.010(9)

This content based restriction may be contrary to *Outdoor Media Dimensions v. Dept. of Transportation*, 340 Oregon. 275, 132 P.3d 5 (2006) as discussed earlier.

Note regarding Division VII, General Provisions, Hearings and Appeals. Many of these provisions were adopted in the 1990's with some revisions in 2002. Since that time numerous statutory revisions have occurred. In general, these procedural provisions are much less detailed than those found in many other codes. It may be that the city addresses the details through administrative policies and procedures not expressly referenced in the GMC. It may be prudent, however, to thoroughly review and update these sections. A good source for recent procedural law is the 2011 Land Use Bar Book, Chapter 14: <https://www.osbar.org/secured/barbooks/viewbook.asp?bid=60>

3 §17.90.010

Consider expanding this to include through ORS 215.437 re permits, mandamus, etc.

3 §17.90.060

Consider expanding this provision. See ORS 215.427(2) regarding completeness review provisions and deadlines.

1 §17.92.030

This may not be permissible. *Schatz v. City of Jacksonville*, LUBA No. 90-126, 20 Oregon LUBA 546, 548 (1991)

1 §17.94.040

See also 227.180(3) regarding ex parte contacts.