June 30, 2017

To: Washington County Board of Commissioners

From: Andy Back, Manager
Planning and Development Services

Subject: PROPOSED LAND USE ORDINANCE NO. 820 - An Ordinance Amending the Community Development Code Relating to Infill Development in R-5 and R-6 Land Use Districts

STAFF REPORT

For the July 11, 2017 Board of Commissioners Hearing
(The public hearing will begin no sooner than 10:00 a.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing for Ordinance No. 820. At the conclusion of the hearing, order engrossment of the ordinance to incorporate the proposed amendments shown in Attachment A of this staff report.

Continue the hearing for the engrossed ordinance to August 1 and August 22, 2017 and direct staff to provide mailed notice of the changes consistent with requirements of Chapter X of the County Charter.

II. PLANNING COMMISSION RECOMMENDATION

The Planning Commission (PC) conducted a public hearing on Ordinance No. 820 on June 21, 2017. On a vote of 5 in favor and 2 opposed, the PC recommended approval of Ordinance No. 820 with the following amendments:

1. Clarification of proposed Figure 1 in Community Development Code (CDC) Section 430-72; and
2. Amendments to Comprehensive Framework Plan for the Urban Area (CFP) Policy 19 (Infill), for consistency with the proposed amendments to CDC 430-72.
III. OVERVIEW

Ordinance No. 820 proposes to amend Community Development Code (CDC) Section 430-72, Infill. Section 430-72 applies to subdivisions and partitions, and to development review for attached units, on properties in the R-5 and R-6 Districts that are 2 acres or less in size. The proposed amendments remove subjective standards and replace them with clear and objective privacy enhancement requirements: a landscape buffer or a site-obscuring fence.

Ordinance No. 820 originated from a 2016 Long Range Planning Work Program request submitted by the Washington County Committee for Community Involvement (CCI). The CCI’s request arose out of a Hearing Officer’s finding in a 2013 decision that Section 430-72 standards may not be applied to land use decisions for “needed housing” because the standards are not “clear and objective,” and are thus prohibited by the state’s needed housing rule requirements (Oregon Revised Statutes 197.303 – 197.307). The CCI requested an update of Section 430-72 standards to make them clear and objective, based on a concern that the Hearings Officer’s finding invalidated the standards and prohibited staff from applying them to subsequent development applications.

IV. BACKGROUND

The Infill and Redevelopment Code Handbook, a 1999 publication funded by the Transportation and Growth Management Program, the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development, defines “infill” as the development of vacant or remnant lands passed over by previous development in urban areas. However, the term infill is used in a more specific, circumscribed way in the County’s Comprehensive Framework Plan for the Urban Area (CFP) and the CDC. CFP Policy 19 (Infill) and CDC Section 430-72 (Infill) both describe infill as development on R-5 and R-6 lands that are 2 acres or less in size.

CDC Section 430-72: History and Background
The standards of Section 430-72, Infill, were added to the CDC via C-Engrossed Ordinance No. 279 in 1984. Per the Intent and Purpose statement of Section 430-72, the standards are intended to provide a means of developing vacant, bypassed lands of 2 acres or less in areas designated R-5 and R-6, and to ensure that new development is compatible with existing developed areas, with a particular emphasis on privacy. Several of the development standards within the section make references to “providing maximum privacy” and “maintaining privacy” of surrounding existing dwellings.

Section 430-72 has been modified since its adoption. The most recent modifications were made in 2005, in response to a December 2004 request from the CCI for amendments to “…ensure that infill development is compatible with existing development.” A-Engrossed Ordinance No. 645 (2005) added the following requirements to Section 430-72:
• Submittal of additional information with the infill development application: a site plan showing the locations of setbacks of proposed dwelling units, a screening and buffering plan, and an off-site analysis; and
• Installation of all required landscaping and fencing between proposed infill units and adjacent dwelling units prior to building occupancy and/or final building inspection approval.

The “Needed Housing” Rule
The state’s needed housing rule, ORS 197.303 - 197.307, is a requirement for jurisdictions to meet the need for housing within the Urban Growth Boundary at particular price ranges and rent levels. The rule was added into state law to enact several policies, including linking a demonstration of need for housing to a requirement to allow the housing in zones with sufficient buildable land.

ORS 197.303(1)(a) defines needed housing as:
“…housing types determined to meet the need shown for housing within an urban growth boundary...including at least the following housing types: Attached and detached single family housing and multiple family housing for both owner and renter occupancy...”

The Department of Land Conservation and Development (DLCD) has interpreted this requirement to include all types of housing, from detached single family homes to government assisted housing, at all price ranges and rent levels.

The needed housing rule requires local governments to apply only clear and objective standards to the development of needed housing. ORS 197.307(4) states that:
“...a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing...The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

The meaning of the term clear and objective, as used in ORS 197.307, has been addressed in Oregon land use case law. Generally, standards for approval of needed housing are clear and objective in the meaning of ORS 197.307 if the local government demonstrates that they do not impose “subjective, value-laden analyses that are designed to balance or mitigate impacts.”

Rogue Valley Assoc. of Realtors v. City of Ashland, 35 Or LUBA (1998)(“Rogue Valley”).

On the other hand, provisions that grant a local government discretion to “impose conditions if it is deemed necessary to mitigate any potential negative impact caused by the development” have been found to be unclear or subjective, in violation of ORS 197.307. Home Builders Assoc. of Lane County v. City of Eugene, 41 Or LUBA (2002)(“HBA”). In addition, in a 2015 case before LUBA (Group B LLC v. City of Corvallis), LUBA found that “…if a standard is so ambiguous that it can be interpreted in two ways, then it is not clear and objective.”
2013 Hearing Officer Decision and CCI Work Program Requests
In 2013, the County’s Hearings Officer issued a decision for Casefile 13-082-S, a request for a subdivision approval in the R-5 District.

In his decision for Casefile 13-082-S, the Hearings Officer found that:

- The County may only apply clear and objective standards, conditions and procedures regulating the development on this site, because the single family detached housing proposed on the site constitutes needed housing as defined by ORS 197.303(1)(a).
- The infill development requirements of Section 430-72.3.A are not clear and objective criteria.
- Requirements that a development “consider the orientation, landscaping and buffering of proposed uses…” and “provide maximum privacy to surrounding existing and future residential structures” require the exercise of discretionary judgment and subjective determinations, and are not clear and objective. Therefore, the infill requirements of Section 430-72.3.A are prohibited by state law.
- Even if the County imposed clear and objective conditions to ensure compliance with these standards, the standards themselves are subjective and are therefore prohibited (35 Or LUBA at 160).

In 2014, the CCI submitted a 2015 Work Program request for the Section 430-72 standards to be updated to be clear and objective, and the Board designated this topic as a Tier 2 task in Long Range Planning’s Work Program. In November 2015, the CCI submitted a 2016 Work Program request in which they again asked for an update to the standards of Section 430-72, and it moved up to a Tier 1 task in Long Range Planning’s 2016 Work Program, with a commitment to complete an issue paper in 2016.

Issue Paper No. 2017-01: Updating the Standards of CDC Section 430-72 (Infill)
This paper was drafted as part of Long Range Planning’s 2016 Work Program, and was released on January 12, 2017 (Attachment B).

The issue paper noted that residential infill is a development type that the County, region and state want to encourage for the following reasons:

- Regional and state policies are designed to direct new residential infill development to less dense neighborhoods within the Urban Growth Boundary.
- Residential infill development within existing urban Washington County neighborhoods is desirable because it allows for more efficient and economic use of existing public facilities and services.
- Residential infill development on smaller land parcels in the urban area is an important element in helping the County implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan.

The issue paper included feedback from County Counsel on Section 430-72 standards and their compliance with the state’s needed housing rule. Counsel concurred with the Hearings Officer that the Section 430-72 standards are largely subjective and discretionary, rather than clear and...
objective. ORS 197.307(4) requires a local government to apply only clear and objective standards, conditions and procedures regarding the development of needed housing. Counsel noted that if the Section 430-72 standards were ever appealed based on non-compliance with the needed housing requirements, the standards would be unlikely to withstand the appeal. Based largely on this feedback, the issue paper concluded that an update of Section 430-72 was warranted to replace its subjective requirements with clear and objective requirements.

The issue paper recommended removing the subjective and discretionary language within Section 430-72 standards, and replacing it with clear and objective standards that comply with the requirements of ORS 197.307, the needed housing rule. Based on a review of other local jurisdictions’ infill development standards, the issue paper recommended limiting the required privacy measures in Section 430-72 to provision of one of the following clear and objective privacy enhancement measures along the side and/or rear lot lines adjacent to properties developed with existing homes: a landscape buffer (evergreen hedge) with a minimum height of 6 feet, or a site-obscuring fence with a minimum height of 6 feet.

At its April 4, 2017 meeting, the Board adopted the 2017 Long Range Planning Work Program, which authorized staff to file an ordinance to update Section 430-72 standards as recommended in Issue Paper No. 2017-01. Ordinance No. 820 was filed on May 12, 2017 to make amendments to update the Section 430-72 standards.

**Ordinance Notification**
Ordinance No. 820 and an accompanying summary were mailed May 19, 2017 to Community Participation Organizations (CPOs) and interested parties. A display advertisement regarding the proposed ordinance was published June 2, 2017 in The Oregonian newspaper. Individual Notice 2017-01 describing proposed Ordinance No. 820 was mailed May 19, 2017 to 327 people on the General Notification List. A copy of this notice was also mailed to the Planning Commission at that time.

**V. ANALYSIS**

The existing Section 430-72 standards state that building orientation, setbacks, landscaping, buffering and fencing will be considered as approaches to provide or maintain privacy. As currently written, these standards are subjective and discretionary, and do not provide clear and objective requirements for the provision of privacy.

For example, Section 430-72.3.A reads, “When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures.” This language is not clear and objective, because it does not state how the building orientation, landscaping and buffering of proposed uses will be considered, how maximum privacy will be provided, or what constitutes “maximum” privacy.

The proposed amendments in filed Ordinance No. 820 remove subjective and discretionary standards such as these, and add a requirement to provide at least one of the following clear and
objective privacy measures along all side and/or rear lot lines of adjacent properties with existing homes:

- A landscape buffer consisting of evergreen shrubs having a minimum height of 6 feet at maturity, planted in a line to form a continuous screen; or
- A site-obscuring fence with a minimum height of 6 feet.

These proposed clear and objective requirements are intended to promote privacy by screening views between the first floors of existing homes and infill homes. They appear unlikely to result in adverse impacts such as discouraging infill development or reducing the affordability of infill homes.

Ordinance No. 820 contains two proposed exemptions from the privacy enhancement requirements, which are illustrated in Figure 1 of the ordinance:

- The privacy enhancement measure (landscape buffer or fence) is not required to extend into an infill lot front yard that abuts an existing public or private street. This exemption is provided because requiring a 6-foot fence or hedge to extend all the way to the front property line could compromise safety and visibility for cars backing out of driveways on the infill site or on adjacent properties.
- If the infill lot is a flag lot, the privacy enhancement measure is not required to extend into the portion of the flag lot access pole that is within 15 feet of an existing public or private street. This exemption is provided to ensure adequate sight distance and visibility for cars entering the street from a flag lot access pole.

**PC Testimony and Staff Response**
The following items of testimony were provided to the PC at or before to their June 21, 2017 hearing. The written testimony items are included as Attachment C to this report:

- Letter dated June 16, 2017 from the Secretary of CPO 3
- Letter dated June 16, 2017 from the CCI Code and Ordinance Subcommittee
- Letter dated June 20, 2017 from the CCI
- Letter dated June 21, 2017 from the CPO 7 Steering Committee
- Oral testimony from a CCI member at the hearing

The letter from CPO 3 stated that the CPO did not support Ordinance No. 820. The letter referenced an attached memo dated January 18, 2017 from Mary Manseau, and affirmed the content of that memo. The letters from the CCI and the CPO 7 Steering Committee expressed agreement with the June 16, 2017 letter from the CCI Code and Ordinance Subcommittee.

At the PC hearing, a CCI member provided oral testimony on behalf of the CCI Code and Ordinance Subcommittee. Her testimony reiterated requests contained in the CCI Code and Ordinance Subcommittee letter dated June 16, 2017.

The CCI Code and Ordinance Subcommittee letter asserted that Ordinance No. 820 doesn’t comply with the intent of CFP Policy 19 (Infill), which is: “...to ensure that new development is… compatible with the character of existing developments by establishing a review process and
criteria which emphasize building orientation, privacy, lot size, buffering, access and circulation.”

**Staff Response:** CFP Policy 19 is a discussion of all CDC regulations that apply to infill development, not just the standards of CDC 430-72. All of the elements listed in the intent statement are addressed in various sections of the CDC, with the exception of building orientation. Staff considered building orientation when proposing amendments to CDC 430-72, but concluded that it should not be included as part of the infill standards. The county wants to encourage infill development, and building orientation requirements could preclude infill development. Therefore, staff believes that CFP Policy 19 should also be amended to remove references to building orientation, and the PC concurred. The proposed amendment to CFP Policy 19 is shown in Attachment A.

The CCI Code and Ordinance Subcommittee letter and oral testimony requested that the clear and objective standards in Ordinance No. 820 be amended to include the following additional standards:

a) Replace the requirement for a site-obscuring fence with a requirement for one of the following specific fence types: A wood good neighbor fence, a solid wood fence with its structural side facing the infill development, or a masonry wall.

**Staff Response:** In oral testimony at the Planning Commission hearing, the CCI representative stated that the specific fence types above were requested so that the privacy enhancement fencing would be more aesthetically pleasing for the adjacent existing development. In a telephone conversation with staff, the CCI representative noted that a wood good-neighbor fence has the same appearance on both sides, because its vertical slats alternate on each side of the fence’s horizontal members.

Ordinance No. 820’s less-specific requirement for a site-obscuring fence would allow all of the above fence types. (Staff notes that in order for a good-neighbor fence to be site-obscuring, its alternating vertical slats would need to be wide enough to overlap on either side of the fence.) However, a requirement for a site-obscuring fence would also allow other fence types, including a chain link fence with slats. Therefore, the CCI Code and Ordinance Subcommittee request, if adopted, would narrow the proposed fencing options for privacy enhancement of infill development.

The PC did not take a position on the CCI Code and Ordinance Subcommittee’s request for specific fence types in their deliberations, and did not recommend engrossing the ordinance to add this proposed requirement.

Staff is not opposed to the requested change, with the exception of including a masonry wall in the list. Staff does not support the inclusion of a masonry wall because encouraging the use of such walls could result in a heavier, more bunker-like separation between infill developments and existing homes.
Staff asks for Board direction on whether to leave the existing requirement for a site-obscuring fence in place, or to narrow the fencing options to a solid wood fence or wood good-neighbor fence with vertical slats that alternate and overlap on either side of the fence.

If the Board concludes that it is appropriate to narrow the fencing options, the Board could direct staff to:

- Engross Ordinance No. 820 to replace the term “site-obscuring fence” in proposed CDC 430-72.3.B(2) and CDC 430-72.3.D with “solid wood fence with its structural side facing the infill development, or wood good-neighbor fence with vertical slats that alternate and overlap on either side of the fence.”

b) For new infill homes with side yards adjacent to existing neighborhoods, increase the side yard setback from 5 feet to a 10 foot minimum for one-story homes, and a 15 foot minimum for two-story homes.

**Staff Response:** Staff believes that a requirement to increase side yard setbacks above what is required by the R-5 and R-6 district standards could discourage infill development or make it unfeasible. Staff recommends against this request.

c) For new infill homes with rear yards adjacent to existing neighborhoods, increase the rear yard setback from 15 feet to a 30 foot minimum.

**Staff Response:** Staff believes that a requirement to increase rear yard setbacks above what is required by the R-5 and R-6 district standards could discourage infill development or make it unfeasible. Staff recommends against this request.

d) For the side and rear yards of infill lots adjacent to existing neighborhoods, retain all existing trees that are 6 inches in diameter at breast height (DBH) or larger.

**Staff Response:** Staff believes that requiring tree preservation within existing setbacks is not feasible due to the size of the setbacks and potential future size of the trees. In addition, per CDC 201-2.6, the county does not currently require tree preservation or regulate tree cutting unless the site is designated as a significant natural resource area in an urban Community Plan, designated for preservation through the master planning process for a development, designated for preservation in a prior development action or when inside the UGB, located within a flood plain or drainage hazard area. Staff recommends against this request.

e) Construction of infill homes to be limited to homes for individuals with incomes that are 80 to 120% of area median income
Staff Response: Staff believes that there are legal issues with this request, and that it may constitute a form of mandatory inclusionary zoning. Staff recommends against this request.

**PC Deliberations and Recommendation**

The PC deliberations are included as Attachment D.

During their deliberations, PC members noted the following points in support of Ordinance No. 820:

- Infill is a development type that should be encouraged.
- R-5 and R-6 infill sites are among the most difficult to develop.
- Clear and objective standards will provide more certainty and less ambiguity, and will better withstand legal challenge.

One PC member also noted the following points in consideration or opposition to Ordinance No. 820:

- There are two public policy issues in conflict: needed housing, and infill compatibility with existing neighborhoods.
- Infill development is highly individualized and is not standard by nature.
- It would be preferable to retain the existing CDC 430-72 standards, to allow for flexibility.

In a 5 to 2 vote, the PC recommended approval of Ordinance No. 820 with the following amendments:

1. Clarification of proposed Figure 1 in Community Development Code (CDC) Section 430-72; and
2. Amendments to Comprehensive Framework Plan for the Urban Area (CFP) Policy 19 (Infill), for consistency with the proposed amendments to CDC 430-72.

These amendments to Ordinance No. 820 are included in Attachment A.

**Staff Recommendation**

The staff recommendation is based on the PC recommendation, testimony submitted to the PC, and further review after the PC hearing.

Additional review subsequent to the PC hearing identified an additional circumstance in which privacy enhancement measures should not be required – the circumstance in which the infill development includes a tract located along the side and/or rear lot line of adjacent, developed properties. An infill development may include a tract for a variety of reasons, including provision of: a private street for access to the infill lots; an open space for protection of a significant natural resource, drainage hazard area or floodplain; and/or an area for stormwater management.

Staff recommends against requiring a privacy enhancement measure alongside a tract because such a requirement could interfere with the functionality of the tract or potentially reduce the
feasibility of the infill development. As one example, a private street tract is required to have a paved width of at least 15 feet; if privacy enhancement measures were required on one or both sides of the tract, the overall required width of the private street tract could increase to an amount that could reduce the feasibility of development. As another example, if a privacy enhancement measure were required along one or more sides of a stormwater management tract, this could interfere with the required access to the tract by Clean Water Services.

Staff recommends an amendment clarifying that the privacy enhancement measure is not required along the boundary lines of tracts associated with the infill development.

Staff recommends the engrossments to Ordinance No. 820 noted below. These proposed engrossments are shown in Attachment A:

- Amendments to CFP Policy 19, to remove references to building orientation.
- Clarifying amendments to proposed Figure 1 in CDC 430-72.
- Amendment to proposed CDC 430-72.3.B, stating that the privacy enhancement measure is not required along the boundary lines of tracts associated with the infill development.
- Amendment to proposed CDC 430-72.3.C, to state that landscape buffer shrubs shall be a minimum of 6 feet in height at time of planting.

Additionally, staff asks for Board direction on whether to leave the existing requirement for a site-obscuring fence in place, or to narrow the fencing options to a solid wood fence or wood good-neighbor fence with vertical slats that alternate and overlap on either side of the fence. If the Board concludes that it is appropriate to narrow the fencing options, the Board could direct staff to:

- Engross Ordinance No. 820 to replace the term “site-obscuring fence” in proposed CDC 430-72.3.B(2) and CDC 430-72.3.D with “solid wood fence with its structural side facing the infill development, or wood good-neighbor fence with vertical slats that alternate and overlap on either side of the fence.”

**Attachment A – Key Provisions**

Key Provisions:

- Removes references to building orientation from CFP Policy 19.
- Removes subjective and discretionary standards from Section 430-72.
- Adds a requirement to provide at least one of the following clear and objective privacy measures along all side and/or rear lot lines of adjacent properties with existing homes: A minimum 6-foot evergreen landscape buffer, or a minimum 6-foot site-obscuring fence.
- Clarifies the relationship between the new privacy enhancement measures proposed in CDC 430-72, and the Section 411 standards that require screening and buffering (landscaping and fencing) between new development and existing development in the urban unincorporated land use districts.
List of Attachments
The following attachments identified in this staff report are provided:

Attachment A: Proposed Amendments to Ordinance No. 820
Attachment B: Issue Paper 2017-01, Updating the Standards of CDC Section 430-72 (Infill)
Attachment C: Testimony Submitted to Planning Commission
Attachment D: Planning Commission Deliberations from June 21, 2017 Hearing

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Section 430-72 (Infill) of the COMMUNITY DEVELOPMENT CODE is amended to reflect the following:

**SECTION 430 - SPECIAL USE STANDARDS**

In addition to the requirements of Sections 400 through 425, the following special use standards are provided for specific uses. Additional or amended special use standards that are applicable in the North Bethany Subarea of the Bethany Community Plan are located in Section 390, North Bethany Subarea Overlay District.

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430-72 Infill

430-72.1 Intent and Purpose

The intent of this Section is to provide a means of developing vacant or underdeveloped, bypassed lands of two (2) acres or less in areas designated R-5 and R-6 by the applicable Community Plans of the Washington County Comprehensive Plan. This Section is intended to ensure, to the extent practicable, considering the allowed density of each district, that new development is compatible with existing developed areas through Development Review that emphasizes building orientation, privacy, and buffering, access and circulation and provides for notification to adjacent property owners. Application of the requirements of this Section shall not preclude development to the density allowed by each district.

430-72.2 Applicability

The requirements of this Section shall apply to subdivisions, partitions, and development review for attached units on all properties designated by the applicable Community Plan as R-5 or R-6 which contain two (2) acres or less (excluding existing rights-of-way).

430-72.3 Development of land required to be processed through the infill provisions shall meet the following:

A. When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures; or

B. For all other development (i.e., partitions, development review for attached units) the following standards shall apply:

1. Complies with the intent and purpose of this Section;

2. The applicant shall provide a plan of complete development of the subject property and potential development of adjacent vacant parcels to the density allowed by the district;

3. Parcelization or placement of dwellings shall not preclude development of the subject site and surrounding properties to the density allowed by the district. Consideration shall include but not be limited to:
(a) Access;
(b) Circulation; and
(c) Building location;

(4) Buildings shall be oriented to provide maximum privacy to surrounding existing and future residential structures;

(5) Maintain the setback requirements of the primary district unless the Review Authority determines, as part of the initial approval, that it is necessary to modify the setbacks to provide more privacy to existing and proposed structures; and

(6) Landscaping and fencing may be required to maintain the privacy of existing dwellings on adjacent properties.

A. Complies with the intent and purpose of this Section;

B. Provides at least one (1) of the following privacy enhancement measures along all side and/or rear lot lines of adjacent properties developed with existing homes (for illustration, see Figure 1). The privacy enhancement measure is not required along the boundary lines of tracts associated with the infill development. The privacy enhancement measure is not required to extend into an infill lot front yard that abuts an existing public or private street. If an infill lot is a flag lot, the privacy enhancement measure is not required to extend into the portion of the flag lot access pole that is within fifteen (15) feet of an existing public or private street:

(1) A landscape buffer consisting of evergreen shrubs having a minimum height of six (6) feet at maturity, planted in a line to form a continuous screen; or,

(2) A site-obscuring fence with a minimum height of six (6) feet.
REVISIED FIGURE 1:

Figure 1

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REVISED Figure 1.

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Figure 1.
C. All required landscaping and fencing between the proposed infill dwelling units and adjacent existing dwelling units shall be installed in accordance with the approved development plans prior to building occupancy and/or final building inspection approval. Landscape buffer shrubs shall be a minimum of five (5) to six (6) feet in height at time of planting.

D. The privacy enhancement measures shall be applied in addition to any screening and buffering required per Section 411. Where a landscape buffer is utilized as a privacy enhancement measure, it can also be used to satisfy requirements for understory trees and shrubs per Section 411-6. Where a site-obscuring fence is utilized as a privacy enhancement measure, it can also be used to satisfy requirements for a S-1 or S-2 fence per Section 411-7.

430-72.4 Submittal Requirements

In addition to all other submittal requirements, applications shall include:

A. Site plans showing locations and setbacks of each dwelling unit and, if applicable, detached garage on each new lot or parcel;

B. A screening and buffering plan showing all existing landscaping and buffering and any additional landscaping and buffering, including fencing, needed to maintain the privacy of existing dwellings on adjacent parcels. The screening and buffering plan may be incorporated into the individual site plans described under Section 430-72.4 A. above; and

C. An Off-Site Analysis as required by Section 404-1 that includes setbacks of the proposed dwelling units on the subject property from existing dwelling units on adjacent parcels.
Policy 19 (Infill) of the COMPREHENSIVE FRAMEWORK PLAN FOR THE URBAN AREA is amended to reflect the following:

**POLICY 19, INFILL**

It is the policy of Washington County to provide regulations for developing vacant bypassed lands of two acres or less in areas designated R-5 and R-6. The intent of such regulations shall be to ensure that new development is consistent with the density requirements of each district, and is compatible with the character of existing developments by establishing a review process and criteria which emphasize building orientation, privacy, lot size, buffering, access, and circulation. Application of the review criteria shall not preclude development to the density allowed by each district.

Implementing Strategies

The County will:

a. Prepare development regulations with respect to the infill policy, which addresses the following considerations:

1. Notification of surrounding properties,
2. Full parcelization of the subject property,
3. Access, including private access drives built to standards appropriate to the needs of the infill development,
4. Creation of flag lots,
5. Lot area,
6. Development design, particularly with regard to privacy, and buffering, and building orientation,

7. Density requirements of each of district.

Summary Findings and Conclusions

Urban unincorporated Washington County is a varied physical landscape ranging from mature suburban neighborhoods on rolling hills in the eastern portion of the county to newer urban and suburban-level development clustered on the flat Tualatin Valley floor. The countywide development concept discussed earlier recognizes this pattern.

Within more urbanized areas developable land still remains. Where such land is found in the midst of existing low density neighborhoods, particularly on small lots, the prospect of future "infill" development raises concerns among surrounding residents and challenges to the community-at-large. Infilling on bypassed land is desirable because existing public facilities such as sewers can be more fully utilized and
public services such as police patrol and public transit can be provided more efficiently and economically. Infilling on smaller land parcels is also an important element in helping the County to implement the housing and density requirements of Metro's Urban Growth Management Functional Plan that are applicable to the county, including the minimum density requirement. Infilling is undesirable when existing residents lose privacy, access to and from infill developments is haphazard, and the concerns of affected residents are not sought before the development takes place. The challenge, then, is to establish a process through which the density requirements are met while addressing design, access, and other concerns of affected neighbors.
LONG RANGE PLANNING
ISSUE PAPER NO. 2017-01

Updating the Standards of CDC Section 430-72 (Infill)

For Presentation at the January 24, 2017 Board Work Session

Issue
The Washington County Committee for Community Involvement (CCI) submitted a 2016 Long Range Planning Work Program request for an update of Community Development Code (CDC) Section 430-72, Infill.

The request arose out of a Hearings Officer’s decision for Casefile 13-082-S. The Hearings Officer found that the single family detached housing proposed on the development site for Casefile 13-082-S constituted “needed housing” as defined in state law. The Hearings Officer found that, in his opinion, the CDC 430-72 standards may not be applied to land use decisions for “needed housing,” because the standards are not “clear and objective” and are thus prohibited by the “needed housing” requirements of state law. The CCI requested an update of the CDC 430-72 standards to make them “clear and objective,” based on a concern that the Hearings Officer’s finding for Casefile 13-082-S invalidated the standards and prohibited staff from applying them to subsequent applications.

Staff has continued to apply the standards to infill development proposals since the decision was issued for Casefile 13-082-S, and County Counsel has noted that a Hearings Officer’s decision on a specific casefile does not have the effect of invalidating a CDC provision. County Counsel, however, concurs with the Hearings Officer’s finding that the existing CDC 430-72 standards do not appear to be clear and objective. The state’s “needed housing” rule, ORS 197.303 - 197.307, is a requirement for jurisdictions to meet the need for housing within the Urban Growth Boundary at particular price ranges and rent levels. The Department of Land Conservation and Development (DLCD) has interpreted this requirement to include all types of housing, from detached single family homes to government assisted housing, at all price ranges and rent levels. The rule was added into state law to enact several policies, including linking a demonstration of need for housing to a requirement to allow the housing in zones with sufficient buildable land. The “needed housing” rule requires local governments to apply only clear and objective standards to the development of needed housing. County Counsel expressed the opinion that if the CDC 430-72 standards were ever appealed based on non-compliance with the “needed housing” rule, the standards would be unlikely to withstand that appeal.
Staff met with the CCI Code Subcommittee at their regular meeting on May 13, 2016, and asked if the subcommittee had additional concerns about CDC 430-72. The subcommittee members expressed concerns about the privacy impacts of infill development on existing, surrounding homes. The subcommittee members requested that CDC 430-72 be amended to add specific measures to mitigate for potential privacy impacts.

**Recommendation**

Staff recommends that CDC 430-72 be amended to:

- Remove subjective and discretionary language from the standards so they will comply with the state’s “needed housing” rule; and,
- Add a requirement for infill development to provide one of the following clear and objective privacy enhancement measures along the side and/or rear lot lines adjacent to properties developed with existing homes:
  - A landscape buffer (evergreen hedge with a minimum height of 6 feet); or,
  - A sight-obscuring fence with a minimum height of 6 feet.

**Background**

The Infill and Redevelopment Code Handbook, a 1999 publication funded by the Transportation and Growth Management Program, the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development, defines “infill” as the development of vacant or remnant lands passed over by previous development in urban areas.

However, the term “infill” is used in a more specific, circumscribed way in the County’s Comprehensive Framework Plan for the Urban Area (CFP) and the CDC. CFP Policy 19 (Infill) and CDC Section 430-72 (Infill) both describe infill as development on R-5 and R-6 lands that are 2 acres or less in size.

Washington County appears to be one of only three local area jurisdictions that have specific residential infill development standards. The other two jurisdictions are the city of Gresham and the city of Vancouver, Washington. The city of Portland is currently evaluating draft proposals for the development of residential infill standards.

The current text of CDC Section 430-72 is shown in Attachment A.

I. **CDC Section 430-72: History and Background**

The standards of CDC Section 430-72, Infill, were added to the CDC via C-Engrossed Ordinance No. 279 in 1984. Per the “Intent and Purpose” statement of CDC Section 430-72, the standards are intended to provide a means of developing vacant, bypassed lands of 2 acres or less in areas designated R-5 and R-6, and to ensure that new development is compatible with existing developed areas, with a particular emphasis on privacy. Several of the development standards within the section make references to “providing maximum privacy” and “maintaining privacy” of surrounding existing dwellings.

CDC Section 430-72 has been modified since its adoption. The most recent modifications were made in 2005, in response to a December 2004 request from the CCI for amendments to
“...ensure that infill development is compatible with existing development.” A-Engrossed Ordinance No. 645 (2005) added the following requirements to CDC 430-72:

- Submittal of additional information with the infill development application: a site plan showing the locations of setbacks of proposed dwelling units, a screening and buffering plan, and an off-site analysis; and,
- Installation of all required landscaping and fencing between proposed infill units and adjacent dwelling units prior to building occupancy and/or final building inspection approval.

The CCI’s 2004 requested amendments were to:

1. Require infill development applications to include preliminary building and site plans;
2. Require infill development applications to provide on-site screening and buffering;
3. Require infill development applications to address building orientation and other attributes, including the location of front, side and back yards, building height, deck height, and window placement;
4. Limit the allowed building height, building footprint size, building square footage, and garage square footage of the proposed infill development, based upon the existing development patterns in the neighborhood in which the infill is planned; and,
5. Require infill development applications to provide on- and off-site traffic calming measures.

In response to the CCI’s request, Long Range Planning staff completed Issue Paper No. 8, Enhancement of Design Standards, in February 2005. The issue paper recommended:

- Making limited changes to the submittal requirements for infill development, consistent with Item 1 in the above list of the CCI’s requested amendments.
- Not making the more prescriptive changes recommended by the CCI in Items 2 through 5 above. Such changes appeared to be too restrictive, given the role that residential infill development plays in the County’s planning program.
  - Infill within the R-5 and R-6 districts is a development type that the County and region want to encourage, because it makes more efficient and economic use of existing public facilities and services, and helps the County implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan.
  - Issues pertaining to traffic calming are more appropriately handled through the review of the transportation impacts of the development, and not through the standards of CDC Section 430-72.

The Board directed staff to file an ordinance addressing staff’s recommended changes in Issue Paper No. 8. A-Engrossed Ordinance No. 645, adopted in October 2005, made those recommended changes. There have been no further changes to CDC Section 430-72.
II. 2013 Hearings Officer Decision and CCI Work Program Requests
In 2013, the County’s Hearings Officer issued a decision for Casefile 13-082-S, a request for a subdivision approval in the R-5 District. In his decision on this case, the Hearings Officer found that single family detached housing proposed on the development site constitutes “needed housing” as defined by ORS 197.303(1)(a).

ORS 197.303(1)(a) defines “needed housing” as:
“...housing types determined to meet the need shown for housing within an urban growth boundary...including at least the following housing types: Attached and detached single family housing and multiple family housing for both owner and renter occupancy...”

Furthermore, ORS 197.307(4) states that:
“...a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing...The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

Therefore, in his decision for Casefile 13-082-S, the Hearings Officer found that:
- The County may only apply clear and objective standards, conditions and procedures regulating development on this site.
- The infill development requirements of CDC Section 430-72.3.A are not “clear and objective” criteria.
- Requirements that a development “consider the orientation, landscaping and buffering of proposed uses...” and “provide maximum privacy to surrounding existing and future residential structures” require the exercise of discretionary judgment and subjective determinations. Therefore the infill requirements of CDC Section 430-72.3.A are prohibited by state law.
- Even if the County imposed clear and objective conditions to ensure compliance with these standards, the standards themselves are subjective and are therefore prohibited (35 Or LUBA at 160).

In 2014, the CCI submitted a Work Program request in which they expressed concern that the Hearings Officer’s finding in Casefile 13-082-S invalidated the CDC Section 430-72 standards, and prohibited the County from applying them to infill development proposals. Since the Hearings Officer’s finding stated that the CDC Section 430-72 standards could not be applied because they were not “clear and objective,” the CCI requested that the CDC Section 430-72 standards be updated to be “clear and objective.” The Board designated this topic as a Tier 2 issue in Long Range Planning’s 2015 Work Program. In November 2015, the CCI submitted a 2016 Work Program request in which they again asked for an update to the standards of CDC Section 430-72, and it moved up to a Tier 1 issue in Long Range Planning’s 2016 Work Program, with a commitment to complete an issue paper in 2016 about this topic.
During the development of this issue paper, research revealed that Current Planning staff has continued to apply the standards of CDC 430-72 to infill development proposals since the issuance of the Hearings Officer’s decision on Casefile 13-082-S.

Staff asked County Counsel the following questions about CDC 430-72:

1. Did the Hearings Officer’s findings about CDC 430-72 in Casefile 13-082-S prohibit the County from continuing to apply those standards to subsequent land use applications?

   *Counsel Response: The Hearings Officer’s decision on Casefile 13-082-S relates only to that casefile, and does not make binding law or invalidate CDC 430-72. The decision bodies having the ability to invalidate the County’s CDC are limited to the Land Use Board of Appeals (LUBA), the Court of Appeals, and the Supreme Court. Therefore, the Hearings Officer’s decision in Casefile 13-082-S does not prohibit the county from continuing to apply the standards of CDC 430-72 to subsequent applications.*

2. Does CDC 430-72 comply with the “needed housing” requirements of ORS 197.303 and 197.307?

   *Counsel Response: The CDC 430-72 standards are largely subjective and discretionary, rather than clear and objective. ORS 197.307(4) requires a local government to apply only clear and objective standards, conditions and procedures regulating the development of needed housing. Therefore, if the CDC 430-72 standards were ever appealed based on non-compliance with the “needed housing” requirements, the standards would be unlikely to withstand the appeal.*

Based on Counsel’s feedback, staff recommends that the CDC 430-72 standards be amended because they do not appear to comply with the “needed housing” requirements of ORS 197.307. Staff’s recommended amendments are discussed in the Analysis section of this issue paper.

III. CCI Code Subcommittee Feedback
On May 13, 2016, staff met with the members of the CCI Code Subcommittee at their regularly scheduled meeting and reported that an issue paper was being developed about the CCI’s work program request for CDC Section 430-72.

Staff asked the subcommittee members if they had additional concerns about the infill standards of CDC 430-72. The subcommittee members expressed concerns about the privacy impacts of infill development on existing, surrounding homes, and requested that the following requirements be added to CDC 430-72 in order to mitigate for potential privacy impacts:

- Evaluation of window placement on infill dwellings;
- Restrictions on the building height of infill dwellings; and,
• Inclusion of building elevations as part of the infill development application submittal.

It is unclear to staff whether existing property owners adjacent to proposed infill development share the privacy concerns expressed by CCI Code Subcommittee members. A review of the approximately 26 infill development applications approved in 2015 found only one application in which an adjacent property owner submitted a comment letter expressing a privacy concern. This sample suggests that adjacent property owner concerns about the privacy impacts of infill development are fairly uncommon.

For reasons explained in more detail below, staff recommends against adding requirements for evaluation of infill dwellings’ window placement, restrictions on infill dwelling height, and inclusion of building elevations as part of the infill development application. These requirements would make the standards more restrictive and could potentially result in one or more of the following adverse impacts:

• An increase in the complexity of the application review process;
• A reduction in the likelihood that infill development will occur;
• A reduction in the affordability of infill homes; and/or,
• Noncompliance with ORS 197.307(4), a subsection of the state’s “needed housing” rule, which states that standards, conditions and procedures applied to needed housing may not have the effect of discouraging needed housing through unreasonable cost or delay.

CCI Code Subcommittee members also expressed an interest in applying the CDC 430-72 standards to R-5 and R-6 properties that are larger than 2 acres in size, and to development sites in higher density residential districts. For reasons explained in more detail below, staff recommends against applying these standards to a broader array of development sites. However, if the Board wishes to take a broader look at infill requirements in the unincorporated urban area, all of the CCI Code Subcommittee’s concerns and requests could be part of that discussion.

Staff notes, however, that infill is a development type that the County, region and state want to encourage for the following reasons:

• Regional and state policies are designed to direct new residential infill development to less dense neighborhoods within the Urban Growth Boundary.
• Residential infill development within existing urban Washington County neighborhoods is desirable because it allows for more efficient and economic use of existing public facilities and services.
• Residential infill development on smaller land parcels in the urban area is an important element in helping the county implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan.
Therefore, staff believes that if any new restrictions on infill development are proposed, they would need to be balanced by the relaxation of other infill standards, so that infill development within the county continues to be encouraged.

The CCI Code Subcommittee’s specific requests and concerns regarding CDC 430-72 are described below, followed by staff responses:

a) Interest in requiring an evaluation of the window placement on new infill homes, to prevent the windows of new homes from having direct views into the windows of adjacent existing homes.

Staff Response: This request and those in Items b) and c) below, reflect concern about potential privacy impacts of infill development and its compatibility with surrounding, existing homes. While understanding this concern, staff recognizes that imposing requirements for window placement, building height restrictions or submittal of building elevations as part of single family residential infill development applications could result in adverse impacts. These include increasing the complexity of Current Planning’s application review process, reducing the likelihood that infill development will occur, and/or reducing the affordability of infill homes.

As noted earlier in the Background section, the CCI made a request in December 2004 for changes to the infill standards, including regulation of window placement, limiting the building height of infill homes, and requiring infill development applications to include preliminary building plans. Staff recommended against those proposed changes in a February 2005 issue paper, concluding that they appeared to be too restrictive given the role that residential infill plays in helping the County implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan. The Board concurred and did not move forward with those types of changes. Staff continues to believe that such proposed changes are too restrictive.

Staff recommends against amending the CDC 430-72 standards to require an evaluation of window placement on new infill homes for the following reasons:

- Such evaluation would require an applicant to submit information about the window placement of adjacent, existing homes as part of a development application. This could potentially result in a more complex development application submittal, the need for a more expensive house plan, and/or the need for a more customized house, which could potentially increase home construction costs and home prices. Given current housing affordability issues in the region, these are not desired outcomes.

- An evaluation of infill homes’ window placement could result in a more complex staff verification and review process. Given limitations on Current Planning staff resources and the relatively large number of applications subject to CDC Section 430-72 that are processed by Current Planning each year, increasing the
complexity of the staff verification and review process for these applications would likely add time and costs to the process.

b) Interest in requiring a maximum building height for new infill homes that is less than the maximum building height allowed in the development site’s land use district. The CCI Code Subcommittee was of the opinion that new infill developments do not nestle their homes within the existing site grades, but typically re-grade sites and locate new homes on the highest grade. In their opinion, the first story of the new infill home is often at the same level or higher than the tallest story of the existing homes on adjacent properties, which results in privacy impacts.

Staff Response: Staff recommends against amending the CDC 430-72 standards to limit the building height of new infill homes to less than the maximum height allowed in the R-5 and R-6 districts for the following reason:

- A height restriction on infill homes below the 35-foot maximum allowed in the R-5 and R-6 land use districts could limit infill homes to less than 2 stories, and this could have a negative effect on infill development. A CCI Code Subcommittee member with a real estate background expressed the opinion that the lot sizes required to comply with the CDC’s minimum density requirements in the R-5 and R-6 land use districts are too small to allow for a one-story home that has sufficient floor area to be marketable.

c) Interest in requiring infill development applications to include building elevations of future infill homes.

Staff Response: The majority of development applications subject to the infill standards of CDC 430-72 are land divisions (subdivisions or partitions). Typically, land division applications do not require building elevations or address building design. Building elevations are not required until prior to the approval of a building permit, which occurs after a land division application has been approved and the subdivision plat has been recorded.

Staff believes that the CCI subcommittee’s interest in requiring building elevations as part of infill development applications is to give adjacent property owners information about future infill homes’ height and window placement. With that information, adjacent property owners could decide whether they wished to submit comments about potential privacy impacts during the application’s public comment period.

Staff recommends against amending the CDC 430-72 standards to require submittal of building elevations for the following reasons:

- At the time that an infill application (land division) is submitted, an applicant may not have determined the specific plans or elevations for future homes on the proposed lots. Requiring an applicant to commit to building elevations of future infill homes at that point in the process may not be reasonable.
• If building elevations were included as part of the infill application submittal and adjacent property owners expressed privacy concerns on the basis of infill homes’ building height or window placement, it is not clear what Current Planning could do with that information.
  o As noted in Item D, staff recommends against across-the-board or case-by-case height restrictions on infill homes below the 35-foot maximum allowed in the R-5 and R-6 land use districts, because such height restrictions could have a chilling effect on infill development.
  o As noted in Item C, staff recommends against requiring an evaluation of infill homes’ window placement, because such evaluation could potentially increase home construction costs and home prices, and could increase the complexity of the staff verification and review process for infill development applications.

d) Concern that CDC 430-72 is applicable only to development on sites of 2 acres or less, and interest in expanding its applicability to larger development sites.

Staff Response: The Infill standards’ applicability to sites of 2 acres or less in the R-5 and R-6 districts was part of the standards when they were initially adopted in 1984 via C-Engrossed Ordinance No. 279. Although staff was unable to locate a description of the 1984 legislative intent for the Infill standards, staff’s assumption is that the standards’ applicability was limited to sites of 2 acres or less within the R-5 and R-6 districts for the following reasons:

• A proposed development is considered “infill” if the size of the development site is relatively small, and is surrounded by existing development.

• The R-5 and R-6 districts have the county’s lowest developed urban residential densities. Newer infill development is more likely to differ from the developed character of these lower-density areas than from areas with higher-density urban residential designations.

• The Infill standards were applied to the R-5 and R-6 districts to allow the opportunity to mitigate potential differences in character between new infill development and existing development in these two lower-density residential districts.

Staff recommends against applying the Infill standards to development sites larger than 2 acres for the following reasons:

• The Infill standards’ maximum 2-acre size threshold for “infill development” may be somewhat arbitrary, but staff has no factual basis upon which to conclude that it is unreasonably small.

• As the size of a development site increases, at some point it ceases to be “infill development” and instead becomes simply “new development.”

• As the size of a development site increases, there is more opportunity for subdivision lots to be laid out in a manner that is compatible with the pattern of
adjacent existing development, and less need for regulations, such as the Infill standards, to promote such compatibility.

e) Concern that CDC 430-72 is applicable only to sites in the R-5 and R-6 districts, and interest in expanding its applicability to higher density urban residential districts (R-9 and above).

**Staff Response:** Staff recommends against applying the Infill standards to higher-density residential districts (R-9 and above) for the following reasons:

- The higher-density residential districts have higher minimum densities than the R-5 and R-6 districts, so the size and development potential of individual subdivision lots in these higher-density districts is already more constrained.
- Subjecting the subdivision of land in higher-density residential districts to the additional requirements of the Infill standards would further constrain the development of homes on these lands.

IV. **Problematic Infill Application Examples from the CCI**

At the CCI Code Subcommittee’s May 13, 2016 meeting, staff requested examples of development applications that were subject to the standards of CDC Section 430-72 and were problematic when developed.

A CCI Code Subcommittee member provided two 2015 examples of problematic applications at the meeting. One application proposed development on a site larger than 2 acres, so the infill standards of CDC Section 430-72 did not apply. For the reasons discussed previously in the staff response for Item III.d, staff recommends against expanding the applicability of CDC 430-72 to include sites larger than 2 acres. The other application proposed development on a site with an R-24 land use designation, so the infill standards of CDC Section 430-72 did not apply. For the reasons discussed previously in the staff response for Item III.e, staff recommends against expanding the applicability of CDC 430-72 to include sites having higher density residential land use designations.

On May 20, 2016, the CPO 3 Chair submitted two letters to staff that described three approved applications that the Chair considered to be problematic. However, the Chair’s stated concerns with these applications are not related to the standards of CDC 430-72 (Infill), and are instead related to parking and access requirements, which are addressed by other CDC standards.

V. **Background Summary**

The key information covered in the Background section of this paper is summarized below.

The CCI’s Work Program request, and staff’s recommended response:

- The CCI requested an update of the CDC 430-72 standards to make them “clear and objective,” based on a concern that the Hearings Officer’s finding for Casefile 13-082-S invalidated the standards and prohibited staff from applying them to subsequent applications.
• Current Planning has continued to apply the standards to infill development proposals since the issuance of the 2013 decision containing the Hearings Officer’s finding.

• County Counsel has noted that the Hearings Officer’s decision relates only to that casefile and does not invalidate CDC 430-72, but concurs that several portions of the CDC 430-72 standards are discretionary and subjective.

• County Counsel has expressed the opinion that if these standards were ever appealed based on non-compliance with the “needed housing” rule (ORS 197.307), the standards would be unlikely to withstand the appeal.

• Based on Counsel’s feedback, staff recommends that the CDC 430-72 standards be amended because they do not appear to comply with the “needed housing” requirements of ORS 197.307.

The CCI Subcommittee’s concerns and requests, and staff’s recommended response:

• Concern about privacy impacts of infill development on existing, surrounding homes.

• Request for the addition of the following requirements to CDC 430-72:
  o Evaluation of window placement on infill dwellings;
  o Restrictions on the building height of infill dwellings; and,
  o Inclusion of building elevations as part of the infill development application submittal.

• Staff recommends against making the additions requested by the CCI Subcommittee, because they could result in the following potential adverse impacts:
  o Increase in the complexity of Current Planning’s application review process;
  o Reduction in the likelihood that infill development will occur;
  o Reduction in the affordability of infill homes; and/or,
  o Noncompliance with ORS 197.307(4), a subsection of the state’s “needed housing” rule, which states that standards, conditions and procedures applied to needed housing may not have the effect of discouraging needed housing through unreasonable cost or delay.

Although staff recommends against the CCI Subcommittee’s requested additions, staff agrees that specific privacy promotion measures need to be added to CDC 430-72. Such measures should be clear and objective, and should not result in any of the potential adverse impacts noted above. Staff recommends the addition of two clear and objective measures to promote privacy between infill development and existing homes, and these are discussed in the Analysis section below.

Analysis
The existing CDC 430-72 standards are shown in Attachment A. The standards state that building orientation, setbacks, landscaping and fencing will be considered as approaches to provide or maintain privacy. However, these standards are subjective and discretionary, and do not provide clear and objective requirements for the provision of privacy. For example, CDC 430-72.3.A reads,
“When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures.”

This language is not clear and objective, because it does not state how the building orientation, landscaping and buffering of proposed uses will be considered, or how maximum privacy will be provided.

Staff recommends removing this language and other subjective language within the CDC 430-72 standards, and replacing it with clear and objective standards that will comply with the requirements of ORS 197.307, the “needed housing” rule. Based on a review of other local jurisdictions’ infill development standards, staff recommends limiting the required privacy measures in CDC 430-72 to specific requirements for landscaping and fencing, described further below. These measures can be written as clear and objective requirements, and appear unlikely to result in adverse impacts such as discouraging infill development or reducing the affordability of infill homes.

I. Require landscape buffers between infill development and adjacent existing homes.

The existing standards of CDC 430-72 allow for the consideration of landscape buffers as a privacy measure, but do not require them. CDC Section 411 (Screening and Buffering) contains landscape buffer requirements for new development, but does not require proposed R-5 and R-6 infill development to provide landscape buffering if the development is adjacent to existing developed or vacant R-5 and R-6 lands.

However, staff believes that a landscape buffer requirement for infill development could promote privacy by screening views between infill properties and adjacent existing homes. A landscape buffer requirement has the additional advantage of being a clear and objective standard, thus providing certainty to infill development applicants and adjacent property owners.

The CDC Section 411 buffer types consist of a combination of canopy trees and shrubs. Staff does not recommend these buffer types as a landscape buffer requirement for R-5 and R-6 infill development because:

- The canopy trees required by CDC Section 411 would have insufficient room to thrive in the R-5 and R-6 districts’ 5-foot side yard setbacks.
- Canopy trees placed in side or rear yard setbacks could negatively impact adjacent properties by excessively shading neighbors’ yards.
- Canopy trees are generally deciduous and do not provide visual screening during the winter months after their leaves have dropped.

Instead, staff recommends a buffer of evergreen shrubs with a minimum height at maturity of 6 feet, spaced to form a continuous screen, as the appropriate landscape buffer type to promote privacy between R-5 and R-6 infill development and adjacent properties.
II. Require sight-obscuring fencing between infill development and adjacent existing homes.

The existing standards of CDC 430-72 allow for the consideration of fencing as a privacy measure, but do not require it. CDC Section 411 contains fencing requirements for new development, but does not require proposed R-5 and R-6 infill development to provide sight-obscuring fencing along shared property lines if the development is adjacent to existing developed or vacant R-5 and R-6 lands.

However, staff believes that a requirement for a minimum 6-foot tall sight-obscuring fence could promote privacy by screening views between infill properties and adjacent existing homes. A fencing requirement has the additional advantage of being a clear and objective standard, thus providing certainty to infill development applicants and adjacent property owners. Another advantage is that this screening method takes up very little room on an infill development site.

Each of the above measures would promote privacy by screening views between the first floors of existing homes and infill homes, and would be much less onerous for infill developers than other potential privacy enhancement measures such as limiting the height of infill dwellings below the maximum building height for the district.

Summary and Staff Recommendation

Residential infill is a development type that the County, region and state want to encourage. Regional and state policies are designed to direct new residential infill development to less dense neighborhoods within the Urban Growth Boundary. Residential infill development within existing urban Washington County neighborhoods is desirable because it allows for more efficient and economic use of existing public facilities and services. Residential infill development on smaller land parcels in the urban area is an important element in helping the County implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan.

The CDC 430-72 standards apply to the infill development of properties that are 2 acres or less in size within the R-5 and R-6 districts. The standards’ intent is to ensure to the extent practicable that new development is compatible with existing developed areas, with a particular emphasis on privacy. However, the standards do not include specific measures to promote privacy. The CCI Code Subcommittee expressed concerns about the privacy impacts of residential infill on adjacent, existing homes and requested the addition of specific measures to promote privacy.

Several of the CDC 430-72 standards are subjective and discretionary, but the state’s “needed housing” rule, ORS 197.307, states that standards applied to “needed housing” must be clear and objective.

For the above reasons, staff recommends that CDC 430-72 be amended to:

- Remove subjective and discretionary language from the standards so they will comply with the state’s “needed housing” rule; and,
• Add a requirement for infill development to provide one of the following clear and objective privacy enhancement measures along the side and/or rear lot lines adjacent to properties developed with existing homes:
  o A landscape buffer (evergreen hedge with a minimum height of 6 feet); or,
  o A sight-obscuring fence with a minimum height of 6 feet.
430-72  Infill

430-72.1  Intent and Purpose

The intent of this Section is to provide a means of developing vacant or underdeveloped, bypassed lands of two (2) acres or less in areas designated R-5 and R-6 by the applicable Community Plans of the Washington County Comprehensive Plan. This Section is intended to ensure, to the extent practicable, considering the allowed density of each district, that new development is compatible with existing developed areas through Development Review that emphasizes building orientation, privacy, buffering, access and circulation and provides for notification to adjacent property owners. Application of the requirements of this Section shall not preclude development to the density allowed by each district.

430-72.2  Applicability

The requirements of this Section shall apply to all properties designated by the applicable Community Plan as R-5 or R-6 which contain two (2) acres or less (excluding existing rights-of-way).

430-72.3  Development of land required to be processed through the infill provisions shall meet the following:

A. When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures; or

B. For all other development (i.e., partitions, development review for attached units) the following standards shall apply:

   (1) Complies with the intent and purpose of this Section;

   (2) The applicant shall provide a plan of complete development of the subject property and potential development of adjacent vacant parcels to the density allowed by the district;

   (3) Parcelization or placement of dwellings shall not preclude development of the subject site and surrounding properties to the density allowed by the district. Consideration shall include but not be limited to:

      (a) Access;

      (b) Circulation; and

      (c) Building location;

   (4) Buildings shall be oriented to provide maximum privacy to surrounding existing and future residential structures;

   (5) Maintain the setback requirements of the primary district unless the Review Authority determines, as part of the initial approval, that it is necessary to modify the setbacks to provide more privacy to existing and proposed structures; and

   (6) Landscaping and fencing may be required to maintain the privacy of existing dwellings on adjacent properties.
C. All required landscaping and fencing between the proposed infill dwelling units and adjacent existing dwelling units shall be installed in accordance with the approved development plans prior to building occupancy and/or final building inspection approval.

430-72.4 Submittal Requirements

In addition to all other submittal requirements, applications shall include:

A. Site plans showing locations and setbacks of each dwelling unit and, if applicable, detached garage on each new lot or parcel;

B. A screening and buffering plan showing all existing landscaping and buffering and any additional landscaping and buffering, including fencing, needed to maintain the privacy of existing dwellings on adjacent parcels. The screening and buffering plan may be incorporated into the individual site plans described under Section 430-72.4 A. above; and

C. An Off-Site Analysis as required by Section 404-1 that includes setbacks of the proposed dwelling units on the subject property from existing dwelling units on adjacent parcels.
June 21, 2017

Washington County Planning Commissioners
DLUT, Planning and Development Services, Long Range Planning
155 N. First Street
Hillsboro, OR 97229

Subject: Ordinance 820

Dear Chair Vial and Commissioners,

The CPO 7 Steering Committee has reviewed and discussed the June 16, 2017 letter from the CCI Code and Ordinance Subcommittee commenting on Ordinance 820. We support the recommendations of the subcommittee to engross Ordinance 820 to include enhanced fencing, increases in minimum side and back yards adjacent to existing R-5 and R-6 residential development, retention of existing trees 6"DBH or greater, and provisions for Work Force Housing.

Sincerely,

Cindy Thackery

Cindy Thackery, CPO 7 Chair

Vote:
6 Ayes
0 Nays
1 Abstentions
Washington County Committee for Community Involvement
Office of Community Involvement
254 N First Avenue
Hillsboro, OR 97124

June 20, 2017

Washington County Planning Commissioners
DLUT, Planning and Development Services, Long Range Planning
155 N. First Street
Hillsboro, OR 97229

Dear Chair Vial and Commissioners,

PROPOSED ORDINANCE 820 IS NOT IN COMPLIANCE WITH WASHINGTON COUNTY COMPREHENSIVE FRAMEWORK PLAN (CFP) POLICY 19

The proposed changes may address the Needed Housing Statute, however, they do not meet the spirit or intent of the CFP Policy 10. The intent of Policy 10 is to provide regulations "to ensure that new development ... is compatible with the character of existing developments by establishing a review process and criteria which emphasize building orientation, privacy, lot size, buffering, access, and circulation." As proposed, only privacy is minimally addressed through a six-foot fence or vegetated buffer.

Policy 19 goes on to state, "Infilling on bypassed land is desirable because existing public facilities such as sewers can be more fully utilized and public services such as police patrol and public transit can be provided more efficiently and economically. Infilling on smaller land parcels is also an important element in helping the County to implement the housing and density requirements of Metro’s Urban Growth Management Functional Plan that are applicable to the county, including the minimum density requirement. Infilling is undesirable when existing residents lose privacy, access to and from infill developments is haphazard, and the concerns of affected residents are not sought before the development takes place." A six-foot fence or vegetated buffer will not address the concerns of affected residents.
THE CCI REQUEST FOR CHANGES TO CDC 430-72 INFILL

Proposed Ordinance 820 does not address the CCI request. The CCI request for changes to the Infill Standards was for clear and objective standard that would comply with the Needed Housing Statute. The CCI request for changes to the Infill standards was not to gut the existing standards.

ORS 197.307, THE NEEDED HOUSING STATUTE

The Needed Housing Statue requires a process for approval that applies only clear and objective standards. The Needed Housing Statute, however, also allows for an optional alternative approval process using approval criteria that are not clear and objective (ORS 197.307(6)). A jurisdiction is not prohibited from offering a discretionary process for approval of a proposal for needed housing as long as the non-disciplinary process remains available to an applicant. An applicant may agree to be bound by discretionary standards without running afoul of the statute.

NEED FOR WORK FORCE HOUSING IN WASHINGTON COUNTY

There is an identified need for additional work force housing. Not everyone wants or needs a 4-bedroom house with a 3-car garage. Building on smaller footprints can provide for better buffering between existing development and infill development. Infill development with homes with smaller footprints should be looked at as an opportunity to provide mitigation required by Policy 19, Infill and additional affordable housing stock through Policy 21, Housing Affordability.

OUR REQUEST

Allow the existing *infill* standards to remain as the optional subjective standards. Create new clear and objective standards. These new clear and objective standards should include requirements for:

- Fencing/vegetation screen at 6 feet as proposed in Ordinance 820 with the addition of a requirement for a wooden good-neighbor fence or with structural side of the fence facing new development or a masonry wall.
- New homes to be constructed
  - minimum side yard of 10' for one-story homes and minimum of 15' for two-story homes with yards adjacent to existing neighborhoods
  - minimum backyards of 30' for yards adjacent to existing neighborhoods.
- Retention of all existing trees 6" DBH or greater within the side and back yards adjacent to existing neighborhoods.
- Construction of homes for households earning 80% to 120% of area median income.

Sincerely,

Kathy Stallkamp
CCI Co-Chair
Attachment C

CCl Code and Ordinance Subcommittee
Washington County Committee for Community Involvement
Office of Community Involvement
254 N First Avenue
Hillsboro, OR 97124

June 16, 2017

Washington County Planning Commissioners
DLUT, Planning and Development Services, Long Range Planning
155 N. First Street
Hillsboro, OR 97229

Dear Chair Vial and Commissioners,

PROPOSED ORDINANCE 820 IS NOT IN COMPLIANCE WITH WASHINGTON COUNTY COMPREHENSIVE FRAMEWORK PLAN (CFP) POLICY 19

The proposed changes may address the Needed Housing Statute, however, they do not meet the spirit or intent of the CFP Policy 10. The intent of Policy 10 is to provide regulations "to ensure that new development ... is compatible with the character of existing developments by establishing a review process and criteria which emphasize building orientation, privacy, lot size, buffering, access, and circulation." As proposed, only privacy is minimally addressed through a six-foot fence or vegetated buffer.

Policy 19 goes on to state, "Infilling on bypassed land is desirable because existing public facilities such as sewers can be more fully utilized and public services such as police patrol and public transit can be provided more efficiently and economically. Infilling on smaller land parcels is also an important element in helping the County to implement the housing and density requirements of Metro's Urban Growth Management Functional Plan that are applicable to the county, including the minimum density requirement. Infilling is undesirable when existing residents lose privacy, access to and from infill developments is haphazard, and the concerns of affected residents are not sought before the development takes place." A six-foot fence or vegetated buffer will not address the concerns of affected residents.
THE CCI REQUEST FOR CHANGES TO CDC 430-72 INFILL

Proposed Ordinance 820 does not address the CCI request. The CCI request for changes to the Infill Standards was for clear and objective standard that would comply with the Needed Housing Statute. The CCI request for changes to the Infill standards was not to gut the existing standards.

ORS 197.307, THE NEEDED HOUSING STATUTE

The Needed Housing Statue requires a process for approval that applies only clear and objective standards. The Needed Housing Statute, however, also allows for an optional alternative approval process using approval criteria that are not clear and objective (ORS 197.307(6)). A jurisdiction is not prohibited from offering a discretionary process for approval of a proposal for needed housing as long as the non-discretionary process remains available to an applicant. An applicant may agree to be bound by discretionary standards without running afoul of the statute.

NEED FOR WORK FORCE HOUSING IN WASHINGTON COUNTY
There is an identified need for additional work force housing. Not everyone wants or needs a 4-bedroom house with a 3-car garage. Building on smaller footprints can provide for better buffering between existing development and infill development. Infill development with homes with smaller footprints should be looked at as an opportunity to provide mitigation required by Policy 19, Infill and additional affordable housing stock through Policy 21, Housing Affordability.

OUR REQUEST
Allow the existing standards to remain as the optional subjective standards. Create new clear and objective standards. These new clear and objective standards should include requirements for:

- Fencing/vegetation screen at 6 feet as proposed in Ordinance 820 with the addition of a requirement for a wooden good-neighbor fence or with structural side of the fence facing new development or a masonry wall.
- New homes to be constructed
  - minimum side yard of 10' for one-story homes and minimum of 15' for two-story homes with yards adjacent to existing neighborhoods
  - minimum backyards of 30' for yards adjacent to existing neighborhoods.
- Retention of all existing trees 6" DBH or greater within the side and back yards adjacent to existing neighborhoods.
- Construction of homes for households earning 80% to 120% of area median income.

Sincerely,
Code and Ordinance Subcommittee
June 16, 2017  TESTIMONY

To: Planning Commission & Board

Washington County, Department of Land Use & Transportation . Planning and Developmmt Servisces, Long Range Planning . 155 N First Ave, Suite 250, MS14, Hillsboro, OR 97124-3072

Email: lutplan@co.washington.or.us, Attn Suzanne Savin, Senior Planner, 503-846-3963

From: Joy Patterson, CPO3 Secretary (former Chair) 7195 SW Lara St Portland 97223 506-961-5906,

REGARDING: Ordinance 820, Individual Notice No 2017-01 proposing to amend Community Development Code (CDC) Section 43-72, INFILL, which applies to subdivisions, partitions and development review for attached units on properties in the R-5 and R-6 Districts that are 2 acres or less in size. The proposed amendments remove subjective standards and replace them with clear and objective privacy enhancement requirements: a landscape buffer or a site-obscurring fence. Residents in urban unincorporated areas of Washington County will be affected. It removes subjective and discretionary standards from DCD 430-72. It adds a requirement to provide at least one of the following clear and objective privacy measures along all side and/or rear lot lines of adjacent properties with existing homes: A minimum 6ft evergreen landscape buffer, or a minimum 6-foot site-obscurring fence.

Dear Hearings Officer,

Last night, during our CPO3 Monthly meeting, I was asked without objection, to testify regarding Ordinance 820 on behalf of myself and 16 citizens attending the meeting. As the former CPO3 Chair, I experienced time and again, the frustration and anger of the residents being affected by INFILL. It has been especially taxing on this exact size of available property to develop: two acres or less.

My objection has always been with the claimed hardship and variances requested by developers to make the land fit their development plan. I believe the opposite is true. I have watched designated “Area of Special Concern” be developed and continues to INFILL into the water plain at Metzger. I have seen at least 10- foot retaining walls, manmade boulders, trees cut all in the name of making the land fit the design. All of this on a hillside above many homes.
Attachment C

Jamming more homes on an acre has also created several parking problems in the new developments. One development doesn’t allow parking in front of six of the 11 planned homes. Another development of five homes where four should have been built creates a no parking zone in front of three homes bordering a busy and active intersection of SW 74th & SW Alden.

Improvement to the roadways impacted by the development continues to be avoided by developers. Therefore, we have little road improvement through neighborhoods without sidewalks in most cases.

In addition, and most importantly, I am voicing an affirmative of the January 18, 2017 memo from Mary Manseau regarding her comments on Issue Paper 2017-01; Updating Standards of CDC Section 430-72 (Infill) and let it be recorded that we support her observations and concerns. Her memo follows.

CPO3 does not support Ordinance 820.

Respectfully submitted, Joy Patterson, CPO3 Secretary

Attachment: M. Manseau comments, Cc: R. Peterson, CPO3 Chair

Attachment copy:

January 18, 2017 Mary Manseau Comments on Issue Paper 2017-01 Updating Standards of CDC Section 430-72 (Infill)

1. The need for improved compatibility standards was demonstrated though the 2004 CCI request and reinforced by the 2016 CCI request. • Changes proposed by staff in 2005 were for NOT making prescriptive changes. • Today we are having a discussion because prescriptive changes were not made in 2005 and are needed to meet the requirements of the Needed Housing Rule. • Rather than making the needed prescriptive changes, staff is recommending the infill standards be limited to a 6-foot fence or hedge. 2. As a CPO leader, I have observed that the #1 issue raised by citizens is the negative impact of new development on the adjacent community. 3. The current provisions in CDC430-72 severely limit the ability of the public to raise the compatibility issue of infill development. Although staff has still been applying CDC430-72, the Needed Housing Rule effectively prevents citizens from asking for a higher level of mitigation through an appeal • Since the 2013 Hearing Officer's decision, CPO3 has not raised the issue or filed an appeal at the county with regard to CDC430-72 because an appeal would be a waste of county resources as verified by county counsel's opinion within this Issue Paper. • An appeal to LUBA would be a similar waste of everyone's time and resources. 4. Neither CDC430-72 or the CCI request are just about "privacy." Both are about compatibility of new development within and/or adjacent to existing development. Although protection of privacy is important, other considerations such as building orientation, noise, site access, light trespass, traffic calming, site circulation, drainage, impacts to existing vegetation are just as important in mitigating impact. 5. With Regional and State policies designed to direct new development into less dense neighborhoods, impacts to these established neighborhoods are a concern of residents regardless of whether the site is R-Sor R-6, is a 1/2 acre parcel or a 5 acre parcel. • Infill development can have a greater impact on an existing neighborhood built at R-5 or less, but zoned at R-9 or R-1S. • Staff states that as the development site increases in size there is more opportunity for the lotting pattern to be compatible with existing development. Without prescriptive code to protect the existing neighborhood, nothing is in place to require a development to be laid out to minimize the impacts to the existing neighborhood.
neighbors. 6. Staff states that traffic calming is best addressed during review of transportation impacts. Traffic engineering's policy is to NOT make provisions for traffic calming until projects are built and a problem can be demonstrated.

7. Rather than requiring submittal of building plans during development review, why can't a standard be created requiring a condition of approval to prevent windows in any side yard only after a minimum depth requirement has been met? This standard should not add any complexity to the application review process. 8. Too many concerns are being raised about potential adverse impacts with added complexity of the review process and affordability of infill homes discouraging infill development. Not enough attention is being paid to the efficiencies and economies that will come from developing where public facilities and services already exist. The review process does not need to be more complex. Any additional costs for mitigation could be made up for savings in reduced costs of extending infrastructure. 9. There is a need for all housing types in Washington County. Not everything built needs to be 4 bedroom, 3-car garage mega mansions. Isn't it time we take steps to encourage more affordable housing by building smaller homes? Isn't it time we encourage single level homes—both for our aging populations and as homes on the edge of infill development—to act as a buffer for established neighborhoods? 10. Staff's proposed changes will gut the intent of CDC430-72 and does not address the CCI2004 or the CCI2016 requests.

--

Best wishes,
Joy C Patterson
Proposed Ordinance No. 820 - An Ordinance Amending the Community Development Code Relating to Infill Development in R-5 and R-6 Land Use Districts

Draft Deliberations


Staff present: Andy Back, Theresa Cherniak, Suzanne Savin, Sambo Kirkman, John Floyd and Susan Aguilar, Long Range Planning (LRP); Jacquilyn Saito-Moore, County Counsel.

Summary

a. Ordinance No. 820 - Infill

Suzanne Savin, senior planner from the Community Planning group of LRP provided a PowerPoint presentation regarding Ordinance No. 820 – Infill, and distributed information on the Comprehensive Framework Plan for the Urban Area (CFP) Policy 19. The request that prompted this ordinance originated from the 2016 LRP Work Program and was brought forth by the Washington County Committee for Community Involvement (CCI). This ordinance proposes to amend section 430-72 of the Community Development Code (CDC). Section 430-72 applies to the development review of attached units, partitions, and subdivisions on R5 and R6 properties that are two acres or less in size. The amendments to this section remove subjective standards and replace them with clear and objective privacy enhancement requirements: a landscape buffer or site obscuring fence. Staff provided an overview of the request from CCI, and the state’s “Needed Housing” rule that requires clear and objective standards for needed housing, and summarized the intent of the ordinance and testimony received.

Oral Testimony received in Ordinance No. 820

Oral Testimony including comments from the following:

- Mary Manseau – CCI Code and Ordinance Subcommittee - summarized the intent of the letters submitted as testimony and indicated a revision to one of the letters submitted. Manseau indicated Washington County’s review procedures do not provide a strong design review process and therefore the infill standards are important to provide promised protection. Infill standards for established neighborhoods was a concern. Manseau provided a summary of the City of Lake Oswego’s 2010 adopted infill standards as an example of standards to emulate.

- Laura Grosso – expressed concern regarding clear and objective standards. She also commented on having enough personal space with reference to buffers; more privacy is appealing. Grosso also indicated that imposing more regulations would provide less opportunity for developers regarding R5 and R6 development.
Written Testimony received for Ordinance No. 820
Written testimony included comments from the following parties:
• June 21, 2017 letter from Kathy Stallkamp - CCI
• June 21, 2017 letter from Cindy Thackery - CPO 7
• June 16, 2017 letter from Joy Patterson - CPO 3
• June 16, 2017 letter from the CCI Code and Ordinance Subcommittee

Discussion
• Discussed the need for clarification and refinements to Figure 1 of the ordinance.
• Discussion regarding flag lots, division of lots, and partition plats.
• Comment regarding infill sites and properties zoned R5 and R6 not having enough lot space for frontage or storm water improvements. More requirements impose more limits on development.
• Question regarding whether the developer could research the surroundings setbacks of existing development rather than defaulting to the R5 and R6 setback requirements for infill requirements?
• Discussion that infill development is not standard by nature, plus retaining the existing standards for flexibility may be preferable.
• Discussion that there are two public policy issues in conflict: Need housing and infill compatibility with existing neighborhoods.

Final Vote
Commissioner Wellner moved to recommend to the Board of Commissioners (Board) approval of Ordinance No. 820 with refinements to Figure 1 and CFP Policy 19. Commissioner Mills seconded motion.

Vote: 5 – 2. Motion passes.

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End of deliberations.
Individual Notice No. 2017-01

At your request, Long Range Planning is providing you with Individual Notice No. 2017-01 which describes proposed Land Use Ordinance No. 820.

<table>
<thead>
<tr>
<th>Ordinance Purpose and Summary</th>
<th>Ordinance No. 820 proposes to amend Community Development Code (CDC) Section 430-72, Infill, which applies to subdivisions, partitions and development review for attached units on properties in the R-5 and R-6 Districts that are 2 acres or less in size. The proposed amendments remove subjective standards and replace them with clear and objective privacy enhancement requirements: a landscape buffer or a site-obscuring fence.</th>
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<tr>
<td>Who is Affected</td>
<td>Residents in urban unincorporated areas of Washington County will be affected.</td>
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<tr>
<td>What Land is Affected</td>
<td>Urban unincorporated areas of Washington County will be affected.</td>
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</table>
| Key Provisions | - Removes subjective and discretionary standards from CDC 430-72.  
- Adds a requirement to provide at least one of the following clear and objective privacy measures along all side and/or rear lot lines of adjacent properties with existing homes: A minimum 6-foot evergreen landscape buffer, or a minimum 6-foot site-obscuring fence. |
| Initial Public Hearings Time and Place | Planning Commission  

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| 6:30 p.m.  
June 21, 2017 |
| Board of Commissioners |

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<th>Time and Place</th>
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| 10:00 a.m.  
July 11, 2017 |

**NOTE new hearing location**: Hillsboro Civic Center Shirley Huffman Auditorium, 150 E. Main St., Hillsboro, Oregon.

On July 11, 2017 the Board of Commissioners (Board) may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If it is adopted on July 11, 2017, the ordinance would become effective on November 24, 2017.

| Community Development Code Standards Amended | Section 430-72 (Infill) |
How to Submit Comments

- Submit oral or written testimony to the Planning Commission and/or the Board at one of the public hearings.
- Written testimony, including email, may be sent to the Planning Commission or Board in advance of the public hearings in care of Long Range Planning.
- Include the author’s name and address with any public testimony.

Washington County, Department of Land Use & Transportation Planning and Development Services, Long Range Planning
155 N. First Ave., Suite 350, MS14, Hillsboro, OR 97124-3072
Telephone: 503-846-3519 Fax: 503-846-4412
Email: lutplan@co.washington.or.us

Staff Contact
Suzanne Savin, Senior Planner
Telephone: 503-846-3963
Email: Suzanne_Savin@co.washington.or.us

Proposed ordinance is available at the following locations:

- Department of Land Use & Transportation at the address listed above
- www.co.washington.or.us/landuseordinances
- Cedar Mill Community Library and Tigard Public Library
- Community Participation Organizations (CPOs); Call 503-846-6288 for a directory of CPOs.
May 19, 2017

To: Community Participation Organizations, Cities, Service Districts, Interested Parties

From: Andy Back, Manager Planning and Development Services

Subject: PROPOSED LAND USE ORDINANCE NO. 820

The Washington County Planning Commission and Board of Commissioners (Board) will soon consider proposed Ordinance No. 820. Listed below is a description of the ordinance, hearing dates, and other relevant information. If you have any questions about the ordinance, or if you would like additional information, please contact Long Range Planning at 503-846-3519. This ordinance is available on the Washington County website at:

www.co.washington.or.us/landuseordinances

Ordinance Purpose and Summary
Ordinance No. 820 proposes to amend Community Development Code (CDC) Section 430-72, Infill, which applies to subdivisions, partitions and development review for attached units on properties in the R-5 and R-6 Districts that are 2 acres or less in size. The proposed amendments remove subjective standards and replace them with clear and objective privacy enhancement requirements: a landscape buffer or a site-obscuring fence.

Who is Affected
Residents in urban unincorporated areas of Washington County will be affected.

What Land is Affected
Urban unincorporated areas of Washington County will be affected.

Initial Meeting and Public Hearings

Planning Commission
6:30 p.m.
June 21, 2017

Board of Commissioners
10:00 a.m.
July 11, 2017

NOTE new hearing location: Hillsboro Civic Center Shirley Huffman Auditorium, 150 E. Main St., Hillsboro, Oregon.

On July 11, 2017, the Board may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If adopted July 11, 2017, it would become effective November 24, 2017.
Key Provisions

- Removes subjective and discretionary standards from CDC 430-72.
- Adds a requirement to provide at least one of the following clear and objective privacy measures along all side and/or rear lot lines of adjacent properties with existing homes: A minimum 6-foot evergreen landscape buffer, or a minimum 6-foot site-obscuring fence.

Community Development Code Standards Amended

How to Submit Comments

- Submit oral or written testimony to the Planning Commission and/or the Board at one of the public hearings.
- Written testimony, including email, may be sent to the Planning Commission or Board in advance of the public hearings in care of Long Range Planning.
- Include the author’s name and address with any public testimony.

Staff Contact

Suzanne Savin, Senior Planner
Telephone: 503-846-3963
Email: Suzanne_Savin@co.washington.or.us

Proposed ordinance is available at the following locations:

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BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR WASHINGTON COUNTY, OREGON

ORDINANCE 820

An Ordinance Amending the Community Development Code Relating to Infill Development in R-5 and R-6 Land Use Districts

The Board of County Commissioners of Washington County, Oregon ("Board") ordains as follows:

SECTION 1


B. As part of its ongoing planning efforts, Washington County staff has identified necessary amendments to the Community Development Code to provide clear and objective standards related to infill development in R-5 and R-6 land use districts. The Board recognizes
that such changes are necessary from time to time for the benefit and welfare of the residents of
Washington County, Oregon.

C. Under the provisions of Washington County Charter Chapter X, the Department of
Land Use and Transportation has carried out its responsibilities, including preparation of notices,
and the County Planning Commission has conducted one or more public hearings on the proposed
amendments and has submitted its recommendations to the Board. The Board finds that this
Ordinance is based on those recommendations and any modifications made by the Board are a
result of the public hearings process.

D. The Board finds and takes public notice that it is in receipt of all matters and
information necessary to consider this Ordinance in an adequate manner, and finds that this
Ordinance complies with the Statewide Planning Goals, the standards for legislative plan adoption
as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the Washington County
Charter, the Washington County Community Development Code, and the Washington County
Comprehensive Plan.

SECTION 2

The following Exhibit, attached and incorporated herein by reference, is hereby adopted as
amendments to the Community Development Code as follows:

Exhibit 1 (3 pages) – Amends Section 430-72, Infill.

SECTION 3

All other Comprehensive Plan provisions that have been adopted by prior ordinance, which
are not expressly amended or repealed herein, shall remain in full force and effect.
SECTION 4

All applications received prior to the effective date shall be processed in accordance with ORS 215.427.

SECTION 5

If any portion of this Ordinance, including the exhibits, shall for any reason be held invalid or unconstitutional by a body of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

SECTION 6

The Office of County Counsel and Department of Land Use and Transportation are authorized to prepare planning documents to reflect the changes adopted under Section 2 of this Ordinance, including deleting and adding textual material and maps, renumbering pages or sections, and making any technical changes not affecting the substance of these amendments as necessary to conform to the Washington County Comprehensive Plan format.

///
///

Page 3 – ORDINANCE 820
SECTION 7

This Ordinance shall take effect on November 24, 2017.

ENACTED this ___ day of __________, 2017, being the ______ reading and
___ public hearing before the Board of County Commissioners of Washington County, Oregon.

BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

__________________________
CHAIRMAN

__________________________
RECORDING SECRETARY

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VOTE: Aye: ____________________________

Nay: ____________________________

Recording Secretary: ______________

Date: ____________________________

Page 4 - ORDINANCE 820
Section 430-72 (Infill) of the COMMUNITY DEVELOPMENT CODE is amended to reflect the following:

SECTION 430 - SPECIAL USE STANDARDS

In addition to the requirements of Sections 400 through 425, the following special use standards are provided for specific uses. Additional or amended special use standards that are applicable in the North Bethany Subarea of the Bethany Community Plan are located in Section 390, North Bethany Subarea Overlay District.

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430-72 Infill

430-72.1 Intent and Purpose

The intent of this Section is to provide a means of developing vacant or underdeveloped, bypassed lands of two (2) acres or less in areas designated R-5 and R-6 by the applicable Community Plans of the Washington County Comprehensive Plan. This Section is intended to ensure, to the extent practicable, considering the allowed density of each district, that new development is compatible with existing developed areas through Development Review that emphasizes building orientation, privacy, and buffering, access and circulation and provides for notification to adjacent property owners. Application of the requirements of this Section shall not preclude development to the density allowed by each district.

430-72.2 Applicability

The requirements of this Section shall apply to subdivisions, partitions, and development review for attached units on all properties designated by the applicable Community Plan as R-5 or R-6 which contain two (2) acres or less (excluding existing rights-of-way).

430-72.3 Development of land required to be processed through the infill provisions shall meet the following:

A. When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures; or

B. For all other development (i.e., partitions, development review for attached units) the following standards shall apply:

   (1) Complies with the intent and purpose of this Section;

   (2) The applicant shall provide a plan of complete development of the subject property and potential development of adjacent vacant parcels to the density allowed by the district;

   (3) Parcelization or placement of dwellings shall not preclude development of the subject site and surrounding properties to the density allowed by the district. Consideration shall include but not be limited to:

      (a) Access;

---

abcdef Proposed additions
abcdef Proposed deletions
(b) Circulation; and

(c) Building location;

(4) Buildings shall be oriented to provide maximum privacy to surrounding existing and future residential structures;

(5) Maintain the setback requirements of the primary district unless the Review Authority determines, as part of the initial approval, that it is necessary to modify the setbacks to provide more privacy to existing and proposed structures; and

(6) Landscaping and fencing may be required to maintain the privacy of existing dwellings on adjacent properties.

A. Complies with the intent and purpose of this Section;

B. Provides at least one (1) of the following privacy enhancement measures along all side and/or rear lot lines of adjacent properties developed with existing homes (for illustration, see Figure 1). The privacy enhancement measure is not required to extend into an infill lot front yard that abuts an existing public or private street. If an infill lot is a flag lot, the privacy enhancement measure is not required to extend into the portion of the flag lot access pole that is within fifteen (15) feet of an existing public or private street:

1. A landscape buffer consisting of evergreen shrubs having a minimum height of six (6) feet at maturity, planted in a line to form a continuous screen; or,

2. A site-obscuring fence with a minimum height of six (6) feet.

Figure 1.
C. All required landscaping and fencing between the proposed infill dwelling units and adjacent existing dwelling units shall be installed in accordance with the approved development plans prior to building occupancy and/or final building inspection approval. Landscape buffer shrubs shall be a minimum of five (5) to six (6) feet in height at time of planting.

D. The privacy enhancement measures shall be applied in addition to any screening and buffering required per Section 411. Where a landscape buffer is utilized as a privacy enhancement measure, it can also be used to satisfy requirements for understory trees and shrubs per Section 411-6. Where a site-obscuring fence is utilized as a privacy enhancement measure, it can also be used to satisfy requirements for a S-1 or S-2 fence per Section 411-7.

430-72.4 Submittal Requirements

In addition to all other submittal requirements, applications shall include:

A. Site plans showing locations and setbacks of each dwelling unit and, if applicable, detached garage on each new lot or parcel;

B. A screening and buffering plan showing all existing landscaping and buffering and any additional landscaping and buffering, including fencing, needed to maintain the privacy of existing dwellings on adjacent parcels. The screening and buffering plan may be incorporated into the individual site plans described under Section 430-72.4 A. above; and

C. An Off-Site Analysis as required by Section 404-1 that includes setbacks of the proposed dwelling units on the subject property from existing dwelling units on adjacent parcels.