PUBLIC MEETING NOTICE
FOR THE
WASHINGTON COUNTY PLANNING COMMISSION

***SPECIAL MEETING LOCATION:**
WASHINGTON STREET CONFERENCE CENTER
(NORTH SIDE, FIRST FLOOR OF PARKING STRUCTURE; ENTRANCE FACING FIRST AVE)
102 SW WASHINGTON ST, ROOMS 103 & 109, HILLSBORO, OR 97123

WEDNESDAY, JUNE 27, 2018 PUBLIC MEETING 6:30 PM

Prior to scheduled public hearing items, the Planning Commission schedules time to receive briefings from county staff as work session items. These briefings provide the Planning Commission an opportunity to conduct informal communications with each other, review the agenda, and identify questions they may ask before taking action on the agenda items during the public meeting. No public testimony is taken on work session items.

Following work session briefings, the Planning Commission considers items published in their agenda, including scheduled public hearing items and consideration of minutes. The public is welcome to speak during the public hearing portions of the meeting. The public may also speak on any item not on the agenda during the Oral Communications section of the agenda.

Upon request, the county will endeavor to arrange provision of the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. If you need a sign language interpreter, assistive listening device, or a language interpreter, please call 503- 846-3519 (or 7-1-1 for Telecommunications Relay Service) by 5:00 p.m. on the Monday preceding the meeting date.

Andy Back
Planning and Development Services Division Manager

WASHINGTON COUNTY PLANNING COMMISSION

WASHINGTON STREET CONFERENCE CENTER AND PARKING STRUCTURE (SPECIAL MEETING LOCATION)

The Planning Commission welcomes your attendance at the Public Meeting. If you wish to speak on a public hearing agenda item or during Oral Communications, please feel free to do so. Time is generally limited to five minutes for individuals and 10 minutes for an authorized representative of a Citizen Participation Organization (CPO). The Chair may adjust the actual time limits. However, in fairness to others, we respectfully ask your cooperation on the following:

Please follow sign-in procedures located on the table by the entrance to the auditorium.

- When your name is announced, please be seated at the table in front and state your name and home or business address for the record.
- Groups or organizations wishing to make a presentation are asked to designate one spokesperson in the interest of time and to avoid repetition.
- When more than one citizen is heard on any matter, please avoid repetition in your comments. Careful attention to the previous speakers' remarks will be helpful in this regard.
- If you plan to present written testimony at the hearing, please bring 15 copies for distribution to Commission members and staff.

PUBLIC MEETING DATES

BOARD OF COMMISSIONERS WORK SESSIONS

8:30 a.m.	1st and 3rd Tuesdays
2:00 p.m.	4th Tuesday

BOARD OF COMMISSIONERS MEETINGS

10 a.m.	1st and 3rd Tuesdays
6:30 p.m.	4th Tuesday

PLANNING COMMISSION MEETINGS

1:30 p.m.	1st Wednesday
6:30 p.m.	3rd Wednesday

Note: Occasionally it may be necessary to cancel or add a meeting date.

WASHINGTON COUNTY
OREGON

PUBLIC MEETINGS BEFORE THE PLANNING COMMISSION
***SPECIAL MEETING LOCATION**
WASHINGTON STREET CONFERENCE CENTER
(NORTH SIDE, FIRST FLOOR OF PARKING STRUCTURE; ENTRANCE FACING FIRST AVE)
(ROOMS 103 & 109)

WEDNESDAY JUNE 27, 2018 6:30 PM

AGENDA

CHAIR: A. RICHARD VIAL
VICE-CHAIR: JEFF PETRILLO
COMMISSIONERS: ED BARTHOLEMY, IAN BEATY, TEGAN ENLOE, DEBORAH LOCKWOOD, ANTHONY MILLS, ERIC URSTADT, AND MATT WELLNER

PUBLIC MEETING

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **DIRECTOR'S REPORT**
4. **ORAL COMMUNICATIONS (Limited to items not on the agenda)**
5. **PUBLIC HEARING**
   a. **Ordinance No. 832 – Fair Housing and Group Care updates**
   An ordinance amending the Community Development Code, an element of the Comprehensive Plan, relating to Fair Housing and Group Care updates.

   b. **Ordinance No. 833 – Omnibus**
   An ordinance addressing minor amendments to the Community Development Code, an element of the Comprehensive Plan.
6. **CONSIDERATION OF MINUTES**
   a. **May 2, 2018**
7. **ADJOURN**

WASHINGTON COUNTY
OREGON

WASHINGTON COUNTY PLANNING COMMISSION
MINUTES OF WEDNESDAY, MAY 2, 2018

ALL PUBLIC MEETINGS ARE RECORDED

1. CALL TO ORDER: 1:30 P.M. Shirley Huffman Auditorium

The meeting was called to order by Chair Vial.

2. ROLL CALL

Planning Commission (PC) members present: A. Richard Vial, Jeff Petrillo (arrived at 1:46 p.m.), Tegan Enloe, Deborah Lockwood, Anthony Mills, Eric Urstadt, and Matter Wellner. PC absent member: Ian Beaty.

Staff present: Andy Back, Theresa Cherniak, Anne Kelly, Kim Armstrong, Bryan Robb, and Susan Aguilar, Long Range Planning (LRP); Jacquilyn Saito-Moore, County Counsel.

3. DIRECTOR'S REPORT

Andy Back, manager for Planning and Development Services (PDS), provided the PC with updates:

- The County is migrating to a new boards and commissions software program and will be sending reminder emails to all board and commission members to update information.
- Sambo Kirkman has accepted a position with the City of Beaverton. The County will be recruiting to fill her position. If you have questions, please contact Andy, Theresa or Susan until we assign a replacement PC Liaison.

Tentative future PC topics:

- <u>May meeting</u>
  - No agenda topics scheduled
- <u>June meeting</u>
  - June 6 - Potential work session items
  - June 20 – Ordinances: Housekeeping and Omnibus
- <u>July meeting</u>
  - Ordinances: TSP (Transportation System Plan) updates, Shackelford and Urban Planning Area Agreements (UPAAs)
- <u>August meeting</u>
  - Ordinances: North Bethany Urban Design Plan and Equitable Housing

DRAFT

Chair Vial moved to cancel the May 16, 2018 Planning Commission meeting. **Vote: 8 – 0. No objection-motion passed.**

4. WORK SESSION

a. Fair Housing Issue Paper No. 2018-2

Theresa Cherniak, principal planner and Kim Armstrong, senior planner with the Community Planning group of LRP presented a PowerPoint regarding Issue Paper No. 2018-2 on Fair Housing. Staff indicated the issue paper outlines amendments to sections of the Community Development Code (CDC) that are outdated and may not comply with state law and fair housing recommendations. Staff provided background about the Fair Housing Act, protected classes, fair housing issues, current group care CDC standards, temporary shelter issues, recommended changes and next steps.

<u>Next steps:</u>

- Proceed with ordinance filing
- PC hearings in June/July 2018
- Board of Commissioners (Board) hearings in August 2018

<u>Questions regarding:</u>

- Temporary Shelter option and appropriate land use application.
- Process for applying for a temporary land use approval.
- Cost of application and renewal for Temporary Use permits.
- Comparison with other permit requirements for temporary uses.

b. Equitable Housing Grant briefing

Kim Armstrong, and Anne Kelly, senior planners with the Community Planning group of LRP and Matt Hastie, project manager for Angelo Planning Group provided a briefing and a PowerPoint presentation on the Equitable Housing Grant. In 2017, Washington County received its first equitable housing grant from Metro. The grant objective is to recommend CDC amendments to encourage equitable housing. Staff shared project overview, potential barriers, recommendations, and anticipated 2018 and 2019 ordinance schedule information.

<u>Next steps:</u>

- Final report to be released – May 11
- Board work session – May 22
- Board acknowledgement – June 5
- 2018 ordinance filing – July 2018
- Ordinance hearings – August through October 2018
- Briefings on 2019 ordinances – beginning early or late 2018

<u>Questions regarding:</u>

- An explanation of the grant objective and equity housing definition.
- Sidewalk and driveway standards.
- Financial Analysis from Johnson Economics.

DRAFT

5. ORAL COMMUNICATIONS

None

6. CONSIDERATION OF MINUTES

Commissioner Urstadt moved to adopt the July 5, 2017 PC meeting minutes. Commissioner Wellner seconded motion. **Vote: 5 – 0. Motion passed.**

Commissioner	Vote
Bartholemy	Yes
Beaty	Absent
Enloe	Abstained
Lockwood	Abstained
Mills	Abstained
Petrillo	Yes
Urstadt	Yes
Vial	Yes
Wellner	Yes

8. ADJOURN: 3:33 P.M.

There being no further business to come before the Planning Commission, the meeting was adjourned.

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A. Richard Vial
Chairman, Washington County
Planning Commission

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Andrew Singelakis
Secretary, Washington County
Planning Commission

Minutes approved this __________ day of _________________________________, 2018

Submitted by Long Range Planning Staff

DRAFT

WASHINGTON COUNTY
OREGON

June 20, 2018

To: Washington County Planning Commission

From: Andy Back, Manager
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 832 - An Ordinance Amending the Community Development Code, an Element of the Comprehensive Plan, Relating to Fair Housing and Group Care Updates**

STAFF REPORT

For the June 27, 2018 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; recommend approval of Ordinance No. 832 to the Board of Commissioners (Board).

II. OVERVIEW

Ordinance No. 832 proposes amendments to the Community Development Code (CDC) to bring the code into better compliance with federal fair housing law and state law related to housing for persons who are members of protected classes, particularly as it relates to residential group care and temporary homeless shelters.

The proposed amendments will update and consolidate definitions and types of residential group care, modify land use districts where group care is an allowed use, and clarify the type of development review procedure needed to process group care development applications in order to better comply with fair housing best practices and state law. The proposed amendments will also add a process to allow temporary shelter operations in habitable nonresidential buildings, such as places of worship, schools and community centers as a temporary use.

This work was included as a Tier 1 task in the 2018 Long Range Planning (LRP) Work Program, and *Issue Paper No. 2018-02: Fair Housing Code Updates* was released and presented to the Board in April 2018. As noted in the issue paper, the proposed amendments are informed by fair housing guidance from the Federal Department of Housing and Urban Development (HUD), the Department of Justice (DOJ), and Fair Housing Council of Oregon (FHCO) recommendations, as

well as inquiries from several places of worship about potentially allowing temporary shelter operations for homeless households on their property.

III. BACKGROUND

During work on the Aloha-Reedville Study and Livable Community Plan, staff used recommendations from the federal Fair Housing Council of Oregon (FHCO) to identify County code issues that could impede fair housing access and development in Washington County. The 2013 final report for the Aloha-Reedville Study included a recommendation to update the CDC to better conform to federal fair housing law, state law and FHCO recommendations. This task was originally identified as an issue in 2011, and was added to the annual LRP work program as a Tier 2 task in 2014. "Group Care and Fair Housing updates" were included as a Tier 1 work program task in 2016, with the expectation that the work would likely occur over multiple years.

Fair Housing Act (FHA)
The Federal Fair Housing Act (FHA) was first enacted by Congress as Title VIII of the Civil Rights Act of 1968. Under this Act, discrimination based on protected class status in any housing situation is prohibited. Federal protected classes include:

- race,
- color,
- national origin,
- religion,
- gender,
- familial status, and
- disability.

Additional Oregon state protected classes include:

- marital status,
- source of income,
- sexual orientation including gender identity, and
- domestic violence victims.

Fair housing laws apply to sales, rentals, mortgage lending, building and construction, home insurance, appraisals and inspections for individual homes, and all types of housing, including detached dwellings, duplexes, townhomes, multifamily housing (apartments, condos), retirement housing, adult foster homes and long-term care facilities, homeless shelters and other housing types. Fair housing laws also apply to land use and zoning regulations that impact housing development, and neighbor-on-neighbor harassment.

Governmental entities such as Washington County that receive federal housing or community development funds are required to *affirmatively further fair housing*. This includes identifying local public and private sector impediments to housing choice and developing a plan to address them over time. The Federal Department of Housing and Urban Development (HUD) issued its

Final Rule regarding Affirmatively Furthering Fair Housing (AFFH) July 16, 2015.[1] The Final Rule clarifies government obligations to affirmatively further fair housing, and provides guidelines and data to assist in achieving these goals. AFFH also emphasizes the need to address fair housing barriers in local codes and regulations, including zoning regulations and development codes. The Federal Department of Justice (DOJ) and HUD also released updated FHA guidance on state and local land use laws Nov. 10, 2016.[2] This guidance covers information about how the Fair Housing Act applies to local land use and zoning.

The FHA applies to public entities, private businesses, nonprofits and individuals, and covers both intentional acts of discrimination and unequal treatment, as well as policies and practices which may not appear discriminatory but, in fact, have a discriminatory impact on one or more protected classes ("disparate impact"). Many fair housing issues with land use plans, development codes and practices fall into the "disparate impact" category.

Under the FHA, it is unlawful to:

- Use land use policies or actions to treat groups of persons in protected classes less favorably than groups of other persons;
- Take action against, or deny, a permit for a residence based on the fact that individuals who are members of a protected class live or would live there; and
- Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

Federal fair housing law states that housing serving people in protected classes may not be subject to additional process requirements or fees beyond those that are required for similar housing types serving any other type of resident. For example, a multifamily development that will house people with disabilities may not be subject to additional review or approval criteria than a similar multifamily development that will house members of the general population. **In order to comply with fair housing best practices, allowed land use districts, review processes and approval criteria for any residential development should be based on physical design, land use, and potential impacts of that use, *not* the characteristics of the people who will reside in the housing units.**

The Fair Housing Act defines persons with disabilities very broadly, including:

1) People with a physical or mental impairment that substantially limits one or more major life activities;
2) Individuals who are regarded as having such an impairment; and
3) Individuals with a record of such impairment.

[1] https://www.huduser.gov/portal/affht_pt.html#final-rule
[2] https://www.justice.gov/opa/file/912366/download

Physical or mental impairments include, but are not limited to, diseases and impairments, developmental disabilities, mental illness, drug addiction and alcoholism.[3] Any person who has a disability, is regarded as having a disability, or has a history of having a disability, is considered a member of a protected class for the purposes of fair housing laws.

The joint statement DOJ and HUD released in November 2016 regarding the application of the FHA to local land use laws and practices explicitly states that *discriminatory intent* is not necessary in order for a law or practice to have a *discriminatory impact* that violates fair housing law. The statement further asserts that enacting or applying land use laws based on “fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents’ protected characteristics” is a violation of fair housing laws.

The DOJ and HUD joint statement also discusses group homes. The term “group home,” like many other terms that have both general and land use implications, does not have a specifically defined legal meaning. “Group home” can refer to any dwelling that is occupied by unrelated persons with disabilities. Care, services, training, and treatment may or may not be provided, depending on the needs and desires of the residents. Group homes may also serve persons in recovery from alcohol or substance abuse issues, who are treated no differently than persons with other types of disability and are entitled by law to the same fair housing protections. The statement notes that “persons with disabilities have the same FHA protections whether or not their housing is considered a group home” and that governments “may not discriminate against persons with disabilities who live in group homes.”

In addition, the DOJ has advised that setting quotas or limits on the number of housing units that serve people with disabilities in a geographic area is a violation of fair housing law. Oregon Revised Statutes (ORS 197.665 and 197.667, discussed below) also requires local jurisdictions to allow housing for persons with disabilities in locations that allow housing for the general population.

Group care and specialized housing is not the only type of shelter that serves people who may be members of protected classes. People with disabilities and people who may be subject to discrimination based on sexual orientation and/or identity are particularly likely to be at increased risk of homelessness and in need of short-term emergency shelter, or short-term shelter included as part of a service program. Shelter, like other types of housing, is subject to fair housing laws and guidance. Providing a defined path for temporary homeless shelters may increase available shelter options and affirmatively further fair housing for Washington County residents.

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[3] It should be noted that addiction caused by current, illegal use of a controlled substance is not protected, and people in protected classes, including people with disabilities, must follow the rules and regulations that govern the population as a whole. However, joint DOJ and HUD guidance states that “the fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.”

Needed Housing
ORS Section 197.303 was updated in 2017 (via Senate Bill 1051) to define needed housing as:

> "*…all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a.*"

The definition of needed housing specifically includes a variety of housing types, such as attached and detached single-family housing and multiple family housing for owner and renter occupancy, government-assisted housing, mobile home parks, manufactured homes on individual lots, and housing for farmworkers. The Washington County Consolidated Plan[4] includes a Housing Needs Assessment that estimates housing needed by various populations in Washington County. The Consolidated Plan's analysis indicates that Washington County has a significant unmet need for housing units serving persons with disabilities, including people with mental and physical impairments and persons with substance issues. Housing that includes services and care, including various types of group care, can certainly be considered needed housing in Washington County.

Washington County is consistent with ORS 197.303 through land use plans (community plans) and land use districts (CDC) that provide for a variety of housing types, including single-family detached and attached, multifamily, mixed-use residential, cottage housing (currently only in allowed in the North Bethany Subarea) and a range of housing densities. These provisions allow for various types of needed housing that meet density requirements of land use districts.

ORS 197.307, which discusses standards, conditions and procedures regulating the development of housing, including needed housing, states that local governments may "adopt and apply only clear and objective standards." These standards may include provisions regulating density or height, but may not discourage needed housing through "unreasonable cost or delay." Washington County is consistent with ORS 197.307, offering at least one clear and objective path for housing development in land use districts that allow residential uses.

Other regulations governing housing and group care/definitions
Oregon state regulations governing residential care, foster homes, and similar uses are included in ORS Chapter 443. ORS 443 covers home health agencies, domiciliary care facilities, in-home care agencies, residential facilities and homes, community-based structured housing facilities, adult foster homes, developmental disability child foster homes, and hospice programs. All types of residential care under ORS 443 require licensing, certification, or registration through the Department of Human Services (DHS) or the Oregon Health Authority (OHA).

[4] https://www.co.washington.or.us/communitydevelopment/planning/2015-2020-consolidated-plan.cfm

ORS 443.400-443.455, Residential Facilities and Homes, includes definitions for residential homes and facilities. In general, *residential homes* provide services and/or care to five or fewer residents, and *residential facilities* provide services and/or care to six or more residents. In either case, services may be provided in one or more buildings on contiguous properties. "Residential care" is broadly defined to include assistance with daily tasks and activities. Residential facilities and homes may also provide training and/or treatment to residents.

Residential facilities as defined in ORS 443 exclude schools, correctional and detention facilities, nursing homes, and places providing care and treatment on less than a 24-hour basis.[5]

ORS 197.660-197.670 establishes that "persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups," and that it is "the policy of this state to integrate residential facilities into the communities of this state." Oregon law generally requires that residential homes and facilities be permitted in any residential or commercial zone that allows residential uses. Residential homes must be allowed in districts that allow single-family dwellings; residential facilities must be allowed in any zone that permits multifamily dwellings. ORS 197.670 further prohibits denying an application for residential homes or facilities in locations that allow residential uses as described in ORS 197.665 and 197.667.

Fair Housing Council of Oregon (FHCO) Best Practices recommendations

The Fair Housing Council of Oregon developed a guide to assist land use planners to evaluate land use practices and codes to comply with fair housing law and affirmatively further fair housing. The 2016 guide titled "*Examining Local Land Use with a Fair Housing Lens*" includes discussion of fair housing, affordable housing and needed housing, and indicates areas where local regulations and practices could be changed in order to "both comply with fair housing law and affirmatively further fair housing through adopting best practices." This guide is an important tool for use in examining current CDC regulations in close association with the Fair Housing Act, ORS 197.303 and other applicable ORS provisions, and was used for staff analysis described below.

Washington County Community Development Code (CDC)

Residential group care is one type of housing that is likely to serve people who are members of protected classes, particularly persons with disabilities. Residential group care can be provided in a wide range of forms, including anything from homelike settings to separate living units for each resident. The County's CDC currently regulates group care through Section 430 (Special Use Standards). As a result, residential homes and facilities, as well as other types of housing that provide care and services, are subject to standards in CDC Section 430-53 (Group Care).

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[5] It should be noted that ORS 169.690 requires residential homes/facilities serving residents who are required to live in a secure home or facility as a condition of release to provide the local public safety coordinating council with relevant information prior to establishment.

The standards in Section 430-53 were first adopted in 1983 and revised in 1986 (via Ordinance Nos. 279, 293 and 308). Nonsubstantive updates have occurred, with a more substantive change occurring in 2000 with the addition of the Retirement Housing Community to the list of allowed Group Care uses (added via Ordinance No. 537). The Retirement Housing Community section was updated in 2017 (via Ordinance No. 823). With these exceptions, CDC descriptions and standards for Group Care types are substantially the same as first adopted. Current CDC language in this section uses outdated terminology and distinguishes between types of group care using resident characteristics, which may not comply to with fair housing law.

Issue Paper No. 2018-02: Fair Housing Code Updates

In response to preliminary review of the CDC and recommendations in the final report for the Aloha-Reedville Study, the Board directed staff to prepare an issue paper on proposed fair housing updates as part of the 2016 Long Range Planning (LRP) Work Program (Task 1.32). *Issue Paper 2018-02: Fair Housing Code Updates* outlined the need to amend the CDC to better comply with federal and state laws and fair housing best practices, surveyed regional regulations related to residential group care, and made recommendations regarding possible CDC amendments. These included the following proposed changes to the CDC:

- Amend Section 430-53 (Group Care) to update definitions of residential group care and consolidate residential group care types
- Add language to articulate that a residential development that is not a licensed Resident Care Facility is not classified or regulated as group care under the CDC
- Allow all types of residential group care in land use districts that allow residential uses
- Allow residential group care through a Type II procedure in most land use districts, and through a Type III procedure in R-5, R-6 and R-9 districts.
- Add a Type II Temporary Use for temporary shelter operations in institutional buildings not typically used as residences.

The issue paper was released April 6, 2018, presented to the Board at its April 17, 2018, work session and to the Planning Commission (PC) May 2, 2018. Based on the recommendations in the issue paper, the Board directed development and filing of an ordinance to implement recommended amendments to the CDC.

Ordinance Notification

Notice 2018-02 regarding proposed Ordinance No. 832 was mailed May 25, 2018, to parties on the General and Individual Notification Lists (community participation organizations, cities, special service districts and interested parties). A copy of the notice and ordinance was provided to the Planning Commission at that time. A display advertisement regarding the ordinance was published June 8, 2018, in *The Oregonian* newspaper.

IV. ANALYSIS

During preliminary review in 2013, staff identified some CDC provisions as potential barriers to affordable and special needs housing, based on the FHCO recommendations. These were further explored through the Aloha-Reedville Study, and the final report from the study included a recommendation to update the CDC to better conform with Fair Housing Council recommendations, in particular, Section 413 (Parking and Loading), Section 430 (Special Use Standards), and Section 435 (Variances and Hardship Relief). Parking and Loading standards were updated in 2017, and potential amendments to Section 435 (Variances and Hardship Relief) may be considered as part of future housing affordability work.

As noted, residential group care is one type of housing that is likely to serve people who are members of protected classes, particularly people with disabilities. Potential fair housing issues identified in the Special Use section for group care (Section 430-53) include, but are not necessarily limited to:

- Outdated or incomplete definitions and types of group care uses.
- Requiring a Type III land use review procedure (while attached/multifamily residential uses in many land use districts are permitted through the Type II procedure).
- Prohibition of Resident Care Facilities in most commercial districts and in Transit Oriented Districts.

Proposed CDC amendments to address these issues are shown in Exhibit 1 of the filed ordinance. These amendments are intended to remove barriers to developing group care facilities and other residential developments that serve protected classes, and improve consistency with state law, federal fair housing law, and recommendations from the Fair Housing Council of Oregon. The following discussion details the proposed changes.

Updates to Special Use Standards for Group Care (Section 430-53)

As noted above, current group care standards in the CDC date to the 1980s. New types of group care uses have evolved over time, as have state and federal guidelines and regulations. Outdated or incomplete definitions and descriptions of group care types can result in uncertainty about the classification of new facilities that serve populations with special needs and the appropriate land use process. Staff recommends updates to current definitions and the list of allowed group care uses to improve consistency with state law, and to better reflect current types of residential care facilities and/or homes. These revisions would also provide more clarity and certainty for developers and operators of housing serving persons with special needs, as well as the community in general.

Updates to Group Care Types and Standards

The types of group care currently allowed in most land use districts include:

- Convalescent (Nursing) Homes (Section 430-53.1) "… for the care of children, the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for surgical care or institutions for the care and treatment of mental illness, alcoholism or narcotics…"

- Detention Facilities (Halfway House) Mental and Remedial (Section 430-53.3) "licensed or certified by the state and operated with 24-hour supervision for the purpose of providing planned treatment and/or care to individuals who are criminal offenders, alcoholics, drug abusers, mentally ill or who require planned care while living together as a single housekeeping unit."

- Home for Aged (Retirement Home) (Section 430-53.4) "for the care of individuals who are not in need of hospital or nursing care but who are in need of assistance with everyday activities of living, in a protected environment."

- Resident Care Facility (Section 430-53.5) "licensed or certified by the state and operated with 24-hour supervision for the purpose of providing planned treatment and/or care for the aged, convalescent, mentally handicapped or retarded, and remedial service clientele and/or victims of domestic violence and their children, as a single housekeeping unit."

- Retirement Housing Community (Section 430-53.7) (updated in 2017) for persons "age 55 years and older that includes a variety of housing options and services. Private dwelling units, including apartments or single family attached/detached homes, may be provided for independent residents (independent living) and/or residents requiring a range of supportive personal and health services (assisted living). The community may also include a care facility licensed or certified by the state (as applicable) for the purpose of providing planned treatment and/or care."

The Group Care section also includes Section 430-53.2 Day Care Facility and Section 430-53.6 Family Day Care Provider (AF-10, AF-5 and RR-5), which are not residential group care and not addressed in Ordinance No. 832.

Currently, standards for several types of group care state that they serve residents with a specific set of characteristics ("aged" or "convalescent") and exclude others. In addition to using outdated and potentially offensive terminology to describe residents, using resident characteristics (including type of disability, mental illness, drug addiction and alcoholism) to determine how a development is regulated under the CDC may be in conflict with fair housing law. Further, grouping persons with disabilities with criminal offenders in Section 430-53.3 (Detention Facilities) encourages fears that persons with disabilities are dangerous or likely to engage in criminal activity, which is not supported by research.

In order to better comply with state and federal law, and to better conform standards of other jurisdictions (discussed in Issue Paper 2018-02), staff recommends expanding the definition of Resident Care Facility to include a wider range of residents and type/level of available residential care. Ordinance No. 832 proposes to expand the Resident Care Facility definition to include the following uses that are currently listed separately:

- Convalescent (Nursing) Homes,
- Home for Aged (Retirement Home),

- (portions of) Detention Facilities (Halfway House), and
- Resident Care Facilities.

This approach would consolidate most of the types of group care that require licensing or certification and include 24-hour care. The proposed consolidated list of residential group care types in Ordinance No. 832 would include:

- Resident Care Facilities,
- Secure Housing Facilities, and
- Retirement Housing Communities.

The proposed Resident Care Facility definition in Ordinance No. 832 includes the same residential group care activities and uses that are permitted under the current CDC. It includes licensed or certified residential establishments with 24-hour access to care, and requires facilities to meet and maintain all applicable county, state, and federal licenses and meet all applicable regulations and requirements.

A benefit of this approach is that it eliminates resident characteristics from the County's development regulations, which conforms to fair housing best practices. It would also bring the CDC more in line with other local jurisdictions and defer to state and federal regulations, which may reduce instances of overlapping or conflicting standards.

This approach would also eliminate additional requirements currently in place for some types of group care, such as minimum lot size, additional yard and setback requirements, and lot coverage maximums. Additional standards proposed for deletion are shown in Table 2, attached. The CDC does not require other types of residential development to meet special lot size or setback standards, and requiring group care to do so may not comply with fair housing laws and best practices. Eliminating these additional standards for group care would mean that lot size, setback and yard requirements, and lot coverage standards of the underlying land use district would apply to group care, just as they apply to other types of development.

Ordinance No. 832 also updates the term "Detention Facilities (Halfway House)" to "Secure Housing Facilities." Secure Housing Facilities include housing for persons under judicial detainment (including those exiting institutional care) who require secure housing. Secure Housing Facilities would include licensed or certified establishments with 24-hour supervision and access to care, and require facilities to meet and maintain all applicable county, state, and federal licenses and meet applicable regulations and requirements. Notice would be provided for secure housing serving persons exiting institutional care, as required by Oregon law[6]. Staff recommends that Secure Housing Facilities be allowed through a Type III process in residential districts (see Table 1). Currently, they are allowed as a Type III use in R5 through R-25+ and INST districts, and a Type II R-9NB through R-25+NB and CBD districts.

[6] ORS 169.690

Clarification of Group Care
Residential development that serves persons who are engaged with care, treatment, training, or other types of supportive services is not automatically considered group care under Section 430-53. Much of the housing that serves persons with disabilities does not require licensing by OHA or DHS, and is therefore not considered a Resident Care Facility (or any type of group care) under the CDC. Programs like Stepping Stones (a CODA program that provides alcohol- and drug-free housing to women receiving outpatient treatment) provide supportive services and housing with a resident manager, but do not require licensing and are simply treated as residential uses under the CDC.

In order to comply with fair housing laws and best practices, development should not be classified or treated differently merely because it serves residents who are members of a protected class. Therefore, the determination that a more intensive development process or increased level of scrutiny is required should be based on an objective evaluation of likely impacts of the use on surrounding neighbors and the community.

In order to avoid violating fair housing law, staff recommends continuing to use applicable state or federal licensing or certification as the standard for determining if and when a residential use (that may or may not provide services) should be considered a Resident Care Facility. In addition, Ordinance No. 832 proposes adding language to clearly articulate that a residential development that is not a licensed facility should not be regulated as group care, even if there is some level of on-site management or care (that does not require state or federal licensing), regardless of the population being served.

Land Use Districts
There are two issues related to where group care facilities should be allowed: the specific land use districts where they are permitted and the approval procedure type required. An analysis of these two issues is inextricably linked, since fair housing law applies both to *where* these facilities are allowed and by *what process*. Fair housing law and state law require that group care and residential facilities must be allowed in land use districts that permit multifamily dwellings, and should not be subject to additional regulations based on type of resident. As noted earlier, allowed land use districts, review processes and approval criteria should be based on physical design, land use, and potential impacts of that use, *not* characteristics of the residents.

The following analysis discusses the land use districts where group care should be permitted, followed by a discussion of the required development process (in the next section).

Currently, the CDC allows *detached* housing in most residential districts, and *attached* housing in all residential districts (though some land use districts have additional requirements such as nonresidential uses on the ground floor).

Residential group care, on the other hand, is inconsistently allowed in districts that allow other residential development. Some districts allow one or two types of residential group care, but not others-- and some districts do not allow residential group care at all. Some types of group care (Convalescent Homes, Home for Aged and Retirement Housing Community) are allowed in

Transit-Oriented residential districts. Other types of group care (Detention Facility, Resident Care Facility) are not currently allowed in Transit-Oriented residential districts. Table 1 lists urban land use districts and compares where detached housing, attached housing and residential group care are currently allowed. The table also includes the changes to land use district allowances proposed as part of Ordinance No. 832.

State law (ORS 197.667) requires that residential facilities[7] (group care) be allowed in any district that permits multifamily dwellings, and states that residential facilities may be allowed in other residential districts, including single-family districts. Therefore, residential facilities should be allowed in all residential and most commercial and transit oriented districts, since these allow attached (multifamily) dwelling units. The current prohibition of some types of group care in land use districts such as Transit-Oriented residential may be in violation of this regulation. Excluding some types of group care from locations that allow other types of residential development may also violate fair housing laws.

In addition, excluding some group care uses from Transit-Oriented districts may result in a disproportionate impact on persons in protected classes, by effectively reducing access to pedestrian-friendly and transit-supportive areas as a result of disallowing housing that serves special-needs populations.

To affirmatively further fair housing, conform to best practice recommendations, and adhere to the spirit of state law encouraging the equitable distribution of housing, staff recommends allowing group care in all land use districts that allow residential development. This includes all urban residential land use districts in the County, including those in North Bethany and in transit oriented districts. It also includes CBD, TO:RC and TO:BUS. Table 1 contains the full list of land use districts where staff recommends residential group care be allowed under the revisions in Ordinance No. 832.

Development Review Procedure

In addition to fair housing and state law requirements related to *where* group care is allowed, state and federal law do not allow group care and residential facilities to be subject to more burdensome application processes and/or additional regulations based on type of resident. Housing that serves persons who are members of protected classes, including people with disabilities, should be subject to the same requirements and processes as other similar housing types. Oregon state law also requires jurisdictions to make residential facilities (group care) a permitted use in residential districts where multifamily dwellings are a permitted use, and either a conditional or permitted use in districts where multifamily dwellings are a conditional use. Washington County does not use permitted and conditional use procedures, but in general a permitted use is similar to a Type II procedure and a conditional use is similar to a Type III procedure.

Washington County development applications are processed under one of three primary procedure types:

[7] As defined in ORS 443.400

- Type I: Administrative
- Type II: Administrative with notice
- Type III: Quasi-Judicial

In general, Type I is the simplest process, with the lowest fees and least discretion, and Type III is the most complex, with the highest fees and greatest discretion. Decisions on Type I and II applications are issued by the LUT Director, with recommendations through the staff report, and decisions on Type III applications are issued by the Hearings Officer. Type III procedures also include longer public comment periods and can provide more opportunities for community members to address concerns about potential development. Regardless of procedure type, land use decisions must still be based on fact-based concerns and clear and objective standards to comply with fair housing law and state requirements for needed housing. The flow chart below provides more detail about Type II and Type III procedures.

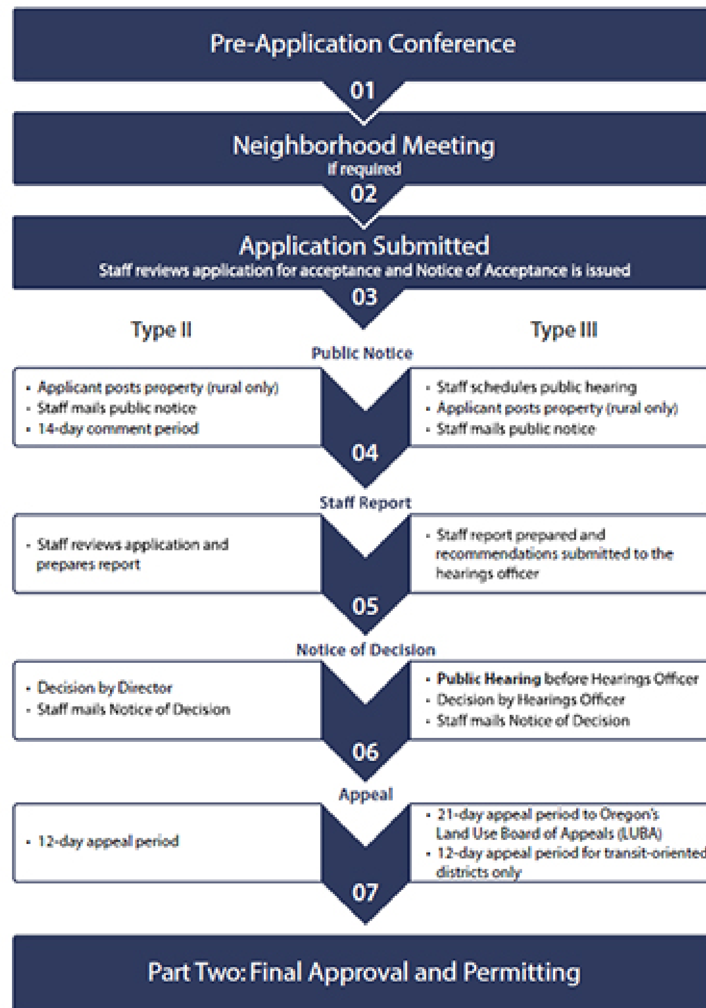

Figure 1

Currently, the CDC allows *detached* housing through a Type I or II process in most residential districts, and *attached* housing through a Type II process in all residential districts (except R-5.) These land use districts have residential density minimums and maximums, as well as minimum lot size requirements that apply to most development applications.

In contrast, most types of group care are currently allowed through a Type III process in most residential districts. However, the procedure type for residential group care is inconsistent. Some types of group care are allowed as a Type II in some districts and a Type III in others, and some are allowed in certain residential districts but not permitted in others. The process type required for detached and attached housing and group care in different land use districts is summarized in Table 1.

Requiring group care to go through a more costly[8] Type III process (with additional noticing and public hearing requirements) when other similar types of residential development are subject to a Type II process may not comply with fair housing best practice recommendations. Fair housing best practices suggest that group care and other housing types that serve protected classes should ideally be evaluated using the same process as any other residential development with the same physical characteristics.

In addition, Type III projects within the Urban Growth Boundary are currently subject to subjective denial criteria found in Section 403-3.1. These criteria, as applied to residential group care, may not conform to state requirements for clear and objective standards for needed housing. Denying a development application for group care using criteria in CDC 403-3.1 may also violate ORS 197.670, which prohibits denying an application for residential homes or facilities in locations that allow residential uses.

To comply with federal fair housing laws and state law requirements, justification for requiring a Type III process and the approval criteria for group care should be based on reasonable, fact-based, and objective concerns about impacts of the development on the surrounding community.

Ordinance No. 832 proposes to reduce development barriers to group care by allowing these uses through a Type II procedure in most areas designated for higher-intensity uses. This will more effectively affirmatively further fair housing and may increase housing options for Washington County residents that need housing and services, and better comply with state and federal law.

Group care developments that provide housing and 24-hour care can exist in a wide variety of housing types, from buildings that look very similar to detached single-family homes, to small complexes, to large multifamily developments with a variety of on-site care and services. Some group care facilities provide shared kitchens instead of complete in-unit kitchens. In these cases, resident rooms are not considered complete dwelling units, and are not counted as dwelling units when calculating residential density. Small and midsized group care developments that include some amount of accessory uses may not have a significantly greater impact on neighbors and the surrounding community than other types of multifamily residential development. Larger

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[8] Special Use Type II application fee $2,803, Special Use Type III application fee $6,092

facilities that serve residents who require more services, or that have a high number of residents, may have a more substantial impact. Because group care can be so varied, it is difficult to make an accurate generalization about the level of impact these uses are likely to have.

In order to mitigate the potential impact of more intensive use as a result of 24-hour care and service provision for larger group care facilities, staff recommends allowing group care in lower-density residential districts (R-5, R-6, R-6 NB, R-9 and R-9 NB) through a Type III review process that allows more consideration of potential community impacts. However, to comply with state law requiring clear and objective standards for needed housing, these development applications are recommended to be exempt from the additional denial criteria in CDC 403-3.1.

Temporary Shelter Operations
Group care and specialized housing is not the only type of shelter that serves people who may be members of protected classes. In Washington County, as in most other locations, persons who are members of protected classes are disproportionately homeless. People with disabilities and people who may be subject to discrimination based on sexual orientation and/or identity are particularly likely to be at increased risk of homelessness.

Places of worship and other institutions occasionally wish to provide temporary shelter for homeless persons during inclement weather or on a short-term basis as part of a service program. However, Washington County's CDC does not offer a clearly-defined process for establishing short-term or temporary shelters for homeless persons in locations that are not primarily intended for residential use.

Absent clear direction in the CDC, staff suggested that it may be possible to allow permanent shelter operations as a Day Care Facility (Group Care 430-53.2). However, this would require a Type II process, including a 120-day approval timeline and applicable fees (currently over $4,000). Requiring a Type II process for intermittent and temporary shelter operations could be a major obstacle to organizations (especially not-for-profit or volunteer organizations) who wish to provide shelter. Establishing a simpler process for explicitly allowing short-term shelter operations as a temporary use could increase safe shelter options for homeless households or persons impacted by emergencies, and affirmatively further fair housing options in Washington County.

The type of temporary use currently allowed by the CDC that most closely aligns with intermittent and/or temporary shelter operations is the Type II temporary living accommodations where there is a finding of health hardship (CDC 430-135.2). While health hardship living accommodations are not exactly similar, this section does demonstrate that the County is occasionally willing to allow use of nonresidential structures as temporary dwelling units. CDC Section 430-135.2 A. (5)(b) states that converted existing structures may be used as temporary housing when the applicant demonstrates that there is "no reasonable housing alternative," and the granting of the permit will not be incompatible with adjacent properties.

Based on Point-In-Time reports, Washington County does not have sufficient shelter capacity to prevent households from becoming unsheltered. The 2017 Point-in-Time Sheltered and

Unsheltered Count[9] included 268 unsheltered households (369 persons, including 75 children), with 109 households (175 persons) sheltered in emergency, transitional or Safe Haven shelters. The need for additional shelter, including temporary shelter operations, is clear.

County staff has received questions about temporary shelter operations from religious institutions, including inquiries from members of the Planning Commission and the Board of Commissioners. Shelter operators have indicated a desire for an option that allows the County to explicitly recognize these operations through a less challenging process than a full Type II land use development application.

Ordinance No. 832 proposes allowing temporary shelter operations through a Type II Temporary Use process that permits shelter operations for a limited period of time (less than 12 weeks total per year, for up to two years). Temporary shelters would be permitted in habitable buildings, such as schools, places of worship, or community buildings owned or operated by a:

- Nonprofit
- Religious organization
- School district
- Parks provider
- Community services provider

The Type II Temporary Use would require that temporary residents have access to necessary amenities and provide public notice and the opportunity for public comment, with a simpler application process and lower cost for the applicant. Current fees for a Type II Temporary Use are about $1600 (versus over $4,000 for a Type II development review). Renewals for Type II Temporary Use permits are about $500. This process will require shelter operators to provide reasonable access to necessary amenities such as ADA accessible restrooms, and safety features such as emergency exits. Allowing temporary shelter activities through a Type II Temporary Use process may increase protection and certainty for shelter operators, homeless families and neighbors, and provide additional shelter options for homeless households in Washington County.

Summary of Proposed Changes

Ordinance No. 832 proposes amendments to the Community Development Code (CDC) to bring the code into better compliance with federal fair housing law and state law related to housing for persons with disabilities, and to allow a temporary use process for temporary homeless shelters. Specifically, the ordinance:

- Amends Section 430-53 (Group Care) to:
    - Make general updates and remove outdated terminology

[9] https://www.co.washington.or.us/Housing/EndHomelessness/upload/2017-PIT-Federal-Sheltered-and-Unsheltered-PIT-2017_All-Populations.pdf

  - Expand the definition of Resident Care Facility to include all types of group care that require licensing or certification, and include 24-hour care
  - Amend Detention Facilities as Secure Housing Facilities for persons under judicial detainment with 24-hour supervision
  - Add language to articulate that a residential development that is not a licensed Resident Care Facility is not classified or regulated as group care under the CDC
- Allows all types of residential group care in land use districts that allow residential uses
- Allows residential group care through a Type II procedure in most land use districts, and through a Type III procedure in R-5, R-6 and R-9 districts.
- Amends Section 430-135 (Temporary Use) to add a new Type II process to allow temporary shelter operations in habitable nonresidential buildings, such as places of worship, schools, and community centers as a temporary use.

List of Attachments
The following attachments identified in this staff report are provided:

Attachment A: Table 1 - Comparison of Allowed Uses by Land Use District (Residential and Group Care)

Attachment B: Table 2 - Overview of Other Current CDC Group Care Requirements

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Table 1. Comparision of Allowed Uses by Land Use District (Residential and Group Care)

Land Use Districts	Detached	Attached	**CURRENT** USES IN SECTION 430-53 GROUP CARE					**PROPOSED** USES IN SECTION 430-53 GROUP CARE		
			Convalescent Homes 430-53.1	Detention Facility 430-53.3	Home for Aged (Retirement Home) 430-53.4	Resident Care Facility 430-53.5	Retirement Housing Community 430-53.7	Secure Housing Facility	Resident Care Facility	Retirement Housing Community
RESIDENTIAL										
R-5	I	III	III	III	III	III		III	III	
R-6	I	II	III	III	III	III		III	III	
R-9	I	II	III	III	III	III	III	III	III	III
R-15	I	II	III	III	III	III	III	III	II	III
R-24	I or II	II	III	III	III	III	III	III	II	III
R-25+	I or II	II	III	III	III	III	III	III	II	III
TO: R9-12	II	II/N	II		II		II	III	II	II
TO: R12-18	II	II/N	II		II		II	III	II	II
TO: R18-24	II	II*	II		II		II	III	II	II
TO: R24-40		II*	II		II		II or III	III	II	II or III
TO: R40-80		II*	II		II		II	III	II	II
TO: R80-120		II*	II		II		II	III	II	II
R-6 NB	I or II	II						III	III	
R-9 NB	I or II	II	II	II	II	II	II	III	III	II
R-15 NB		II	III	II	III	II	II	III	II	II
R-24 NB		II	III	II	III	II	II	III	II	II
R-25+ NB		II	III	II	III	II	II	III	II	II
COMMERCIAL										
NC		II*								
OC										
CBD		II*	II	II	II	II	II	II	II	II
GC										
NCC-NB		II*							II*	
NCMU-NB		II*							II*	
TO: RC		II*	II		II			II*	II*	II*
TO:BUS		II*	II		II			II*	II*	II*
INSTITUTION										
INST			III	III	III	III	III	III	III	III
INST-NB								III	III	III
INDUSTRIAL & EMPLOYMENT										
IND										
TO: EMP										

* with certain limitations

Legend:
- Type I Use
- Type II Use
- Type III Use
- Prohibited Use

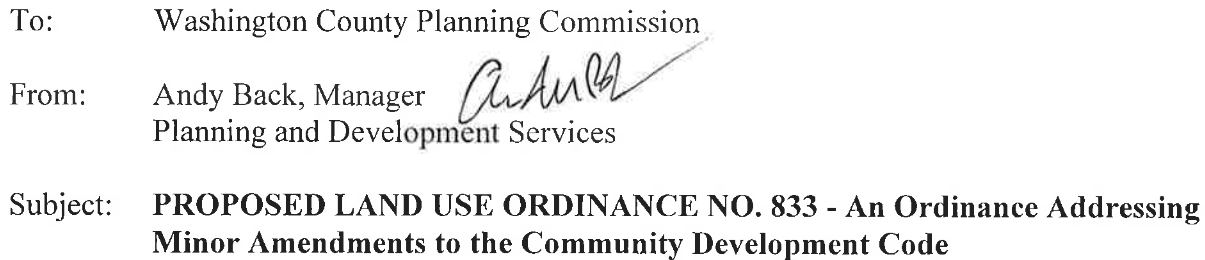
Table 2. Other Current CDC Group Care Requirements

Group Care Use Types	**Convalescent Homes 430-53.1**	**Detention Facility 430-53.3**	**Home for Aged (Retirement Home) 430-53.4**	**Resident Care Facility 430-53.5**	**Retirement Housing Community 430-53.7**
Standards proposed for deletion in Ordinance No. 832					
Minimum lot size	15,000 sq. ft. + 1000 sq. ft. for each bed over 15	20,000 sq. ft.	15,000 sq. ft. + 1000 sq. ft. for each bed over 15	15,000 sq. ft.	*Not specifically listed**
Front & Rear yards	30 feet	*Not specifically listed**	30 feet	*Not specifically listed**	*Not specifically listed**
Side yard	20 feet	*Not specifically listed**	20 feet	*Not specifically listed**	*Not specifically listed**
Maximum lot coverage	40%	*Not specifically listed**	40%	*Not specifically listed**	*Not specifically listed**
Standards retained in Ordinance No. 832					
Parking	*Not specifically listed**	*Not specifically listed**	1 space/4 beds, + 1 space per employee on maximum working shift	*Not specifically listed**	*by individual uses*

* Underlying land use district standards would apply

WASHINGTON COUNTY
OREGON

June 20, 2018



To: Washington County Planning Commission

From: Andy Back, Manager
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 833 - An Ordinance Addressing Minor Amendments to the Community Development Code**

STAFF REPORT

For the June 27, 2018 Planning Commission Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Conduct the public hearing; recommend approval of Ordinance No. 833 to the Board of Commissioners (Board), to include the proposed amendments as described in the staff report.

II. OVERVIEW

Ordinance No. 833 is an omnibus ordinance proposing minor amendments to the Community Development Code (CDC), an element of the Washington County Comprehensive Plan. The proposed amendments address recent revisions to state law, correct inconsistences in the CDC and clarify existing language to provide efficiency in the development review process for staff, agencies, developers and the public. The Board authorized this ordinance as part of the 2018 Long Range Planning Work Program.

III. BACKGROUND

Ordinance No. 833 proposes 11 minor updates to multiple sections of the CDC.
The proposed CDC amendments provide consistency with state and local regulations and improve clarity for citizens, staff, agencies and developers. The background for each change is included in the Analysis section for ease of presentation.

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Ordinance Notification
Notice 2018-03 regarding proposed Ordinance No. 833 was mailed May 25, 2018, to parties on the General and Individual Notification Lists (community participation organizations, cities, special service districts and interested parties). A copy of the notice and ordinance was provided to the Planning Commission at that time. A display advertisement regarding the ordinance was published June 1, 2018, in *The Oregonian* newspaper.

IV. ANALYSIS

This ordinance addresses the following minor revisions to the Community Development Code as described below.

1. Lot of Record and Residential Yard Definitions

a. Lot of record

Oregon Revised Statutes (ORS) 92.017 provides that a lot or parcel that was lawfully created may continue to be a legal lot or parcel, unless the property lines are vacated or further divided. The CDC defines a lot of record in Section 106-117 as any lot or parcel created by a lawful sales contract or deed at the effective date of the Community Development Code, and includes an additional sentence that describes that if two or more lots were contiguous and under identical ownership on or before the effective date of the code, the lots were automatically consolidated. However, ORS 92.017 prevents the County from consolidating these types of lots automatically, as provided in the County's definition. After review of the state provision and recent case law, staff determined that the sentence with the consolidation provision was inconsistent with state law, and recommends that it be removed from the definition. County Counsel concurs with this recommendation.

b. Yard (setback)

Staff also recommends minor changes to the definition of yard setback. The definition for yard (setback) includes sub-definitions for front, rear and side yards. Both the rear and side yard definition address a special situation where the primary access to a single-family dwelling's main outdoor area is oriented to a side lot line, and not the rear lot line. In this situation, the current wording of the definition *requires* that the corresponding setback be reversed, so that the original side yard becomes the rear yard and vice versa.

This provision is commonly applied to irregular or corner single-family lots. Under these conditions, staff currently provides an applicant the option to reverse the rear and side yard setbacks in order to maximize the lot's rear yard outdoor space. The subject lot would continue to retain at least the side yard setback distance to all adjoining properties. Since the current definition mandates this reversal, staff recommends a minor wording change to allow but not require the side and rear yards to be reversed to reflect this practice.

On the other hand, staff recommends retaining the requirement to ensure that individual yard space is maximized for the greatest number of units, as illustrated in Figure 106-5.

The proposed changes include updating and adding a new figure for clarity and accuracy.

2. *Internal Building Setback Requirements for a Development Site*

Section 406 (Building, Siting and Architectural Design) addresses development review standards for structures and site plans for compliance with setbacks, dimensional standards and lot coverage requirements of the underlying land use district. Additionally, under Section 406-2.1, if a site plan contains multiple structures, there must be "…a distance between the primary structures on a single lot of no less than the sum of the required setbacks."

This provision has been difficult to administer for a number of reasons. The requirement does not specify which setback or setbacks are to be added together to achieve the correct separation between multiple structures. For example, should the sum of the required setbacks apply only to the two side yard setbacks of the nearest two structures on a large lot or does it intend to apply to the sum of the front, side and rear yard setbacks of every structure on-site. Second, there is no standard for identifying what constitutes a "primary structure" versus a secondary or accessory structure that is on the same lot. Finally, it can be challenging to comply with all of the internal setback distance requirements and also the perimeter setbacks requirements along the property lines of relatively smaller sites.

For these reasons, staff recommends removing this provision entirely and deferring to the building code to regulate internal setbacks between the individual structures. This provision has been in the CDC since 1984 and its original purpose is unclear and may be out of date with current common site design principles and practices. Creating large distances between on-site structures does not result in the most efficient use of land or infrastructure. Staff believes a more objective and clear approach would be to defer to the building code to provide appropriate building separation based on safety related factors. After land use approval, the development project must obtain building permits, and the Building Services Section will review the development based on the structure's materials, use and proximity to property lines to determine the appropriate setbacks.

3. *Mixed-Use and other Parking Related Definitions*

In 2017, the Board adopted A-Engrossed Ordinance No. 827, which made a number of amendments to the CDC parking and loading standards based on recommendations in *Issue Paper No. 2017-04: Rightsizing the Parking Code*. The changes included updates to minimum parking requirements and provisions for parking reductions based on a number of factors.

The updated parking and loading standards adopted last year describe the requirements development projects must meet to reduce the minimum parking requirements for mixed-use developments or projects with a shared parking agreement. Some of the technical terms used in the section were not defined, and staff now recommends adding definitions for clarification and to assist in reviewing the shared parking agreements.

Section 413-8.4 (Reduction to Minimum Off-Street Automobile Parking Based on Mixed-Use or Shared Parking Agreement) allows "mixed-use" developments with two or more uses to reduce the number of parking spaces required. Staff recommends adding a definition of "mixed-use" to clarify the appropriate sites eligible for shared parking agreements and as a reference for other provisions in the CDC. This definition is recommended to be added to

Section 106 (Definitions), since it is a term used more generally in other sections of the CDC, but not yet defined.

Staff also recommends adding several technical, parking related definitions for clarification within Section 413 (Parking and Loading). Those terms include "parking demand," "peak hour of parking demand," "concurrent peak hour uses," and "offset peak hour uses." These new definitions are intended to provide guidance for applicants and staff during development review and are consistent with the Institute of Transportation Engineers Parking Generation report, a reference manual used for gathering information for parking studies.

4. ***Bicycle Parking***
This amendment proposes to modify Section 413-8.3 (Reduction of Minimum Off-Street Automobile Parking Based on Bicycle Parking) to clarify and further describe the type of bicycle parking a development must provide in order to receive a reduction in on-site vehicle parking spaces. This change is in response to staff's concern that without specifying that bicycle parking must be "secured, long-term" the result could be an oversupply of short-term, unsecured bicycle parking, which was not the intent of the original ordinance.

Short-term bike parking is primarily used for bicyclists making a quick visit and in need of a convenient location to park and lock their bike for a short period of time. The bicyclist may not need additional incentives or amenities for this short-term visit to the site. In contrast, "secured, long-term" bike parking serves the all day or overnight user to better meet the need of residents or employees to achieve the goal of reducing the number of required vehicular parking spaces. This clarification seeks to confirm that long-term bicycle parking and associated facilities (such as locker rooms, showers or other amenities) are the type of bike parking intended to incentivize and encourage multimodal transportation options that ultimately reduce the number of on-site vehicular parking spaces needed to serve a development site.

5. ***Open Balconies in Required Yard Setbacks***
This proposed amendment applies to the setback standards for open balconies under Section 418-1.2, (Setbacks, Obstructions in Required Yards). This section allows open balconies or stairways without a roof or canopy to extend a certain distance into the front and/or rear yard setback. The minor change removes two words that do not correspond to the terms used in the beginning of the sentence, clarifying the intention of this narrow exception to the setback requirement.

6. ***Type I Process for Sanitary Sewer Facility Maintenance Projects in Floodplain***
As part of the 2018 Work Program, CWS requested changes to Section 421 (Flood Plain and Drainage Hazard Development) that would streamline the County process for specific types of routine maintenance projects for sanitary sewer lines originally constructed within, across or adjacent to stream corridors. Each year, CWS inspects many sanitary lines within the flood plain and identifies necessary repairs to the lines or a need to re-establish cover over the pipes due to erosion or stream meandering over time. Often CWS cannot identify the necessary maintenance projects until late spring or summer when the water flow in the stream bed is

lower. This is the same timeframe when repairs to CWS facilities can be made within the floodplain.

Currently, these types of minor maintenance projects fall under the broader category of general construction, major improvement or alteration of underground pipes and are processed as a Type II development action by the County. A Type II process provides for on-site posting and public notice with a 120-day staff review period. This typically does not leave enough time to develop the site plans, receive permit approvals and complete the projects within the Oregon Department of Fish and Wildlife approved annual in-water work period of July 15 to September 30. This often results in delaying projects to the following year, possibly exacerbating the maintenance need and making the problem worse.

To address this issue while still ensuring review, staff recommends changing the current Type II requirement for CWS minor maintenance projects under Section 422-4.10 to a Type I process, with specific requirements and provisions. The change would allow certain sanitary sewer maintenance, preservation, and repair projects if the maintenance is limited to work located within the right-of-way or easement, does not upsize a facility and requires CWS improve the on-site vegetation or restore the site to its original condition. The submittal requirements include both an existing conditions and grade restoration plan in compliance with CWS' Design and Construction standards, along with applicable permits from U.S. Army Corps of Engineers (Corps) and Oregon Department of State Lands (DSL).

The Type I process will allow these minor projects to be completed within the in-water work window period, while providing the information necessary to field any inquiries from the public. It also allows staff to review the essential materials and issue the permit more quickly.

7. ***Submittal Requirements for Clean Water Services Enhancement Projects in Degraded Riparian Corridors, Water Areas and Wetlands***

CWS requested minor changes to the submittal requirements for wetland enhancement projects described in CDC Section 422 (Significant Natural Resources) in order to streamline the application process to the County. CWS works to improve degraded riparian corridors and wetland areas within the Tualatin River Watershed with habitat enhancement, riparian plantings and wetland and urban stream enhancement projects. Wetland enhancement projects often fall under the regulatory purview of the Corps, DSL and CDC Section 422.

Section 422-3.4 (Enhancement of a Degraded Riparian Corridor, Water Areas and Wetlands) requires submittal information about the condition of the significant natural resources, the enhancement plan and post-project monitoring for enhancement projects. These materials are similar to the submittal materials required by the Corps and DSL for the same enhancement projects done in wetlands and water. When applicable, CWS must obtain permits from all three governmental agencies before beginning its enhancement project.

Staff recommends amendments to Section 422 -3.4 (Submittal and Follow-up Requirements) to allow CWS the alternative to provide the applicable Corps or DSL permit documentation and monitoring reports and/or a CWS Service Provider Letter to demonstrate compliance. The

proposed changes allow CWS the alternative of providing the information necessary to show that they have satisfied the other agencies' permit requirements and satisfy the County's standards under the same Type II process.

8. Accessory Uses and Structures

Staff recommends several minor changes to Section 430-1.1, (Accessory Uses and Structures – Residential) to clarify the setback standards for accessory buildings on residential properties. The primary change is to clarify that an accessory structure less than 120 square feet must be placed at least 3 feet from the rear or side property. The simplified wording clarifies the intent of the language and makes the requirements easier to understand and interpret.

9. Marijuana Processing Facilities Change

The Board of Commissioners included a potential minor change to the County's marijuana regulations as part of the 2018 Work Program based on a request from Mr. Anthony Stuart, representing Western Oregon Dispensary (WOD), a marijuana business. WOD requested amendments to the CDC, to allow more than one marijuana processor licensee such as edible or topical marijuana processor licensees, to share marijuana processor facilities with another edible, topical or concentrates marijuana processor licensee at the same location.

In 2016, the County adopted B-Engrossed Ordinance No. 810, approving local recreational marijuana related land use regulations. Section 430-80 (Marijuana Facilities and Marijuana Production) lists the five recreational marijuana related OLCC license types: marijuana production, marijuana processing facility, wholesale marijuana facility, retail marijuana facility, and marijuana research and testing facility. Section 430-80.1 currently allows just one licensee for each of these types of marijuana businesses to be established on the same individual lot of record. The original intent was to limit multiple production (grow) licensees to locate on one lot of record.

The OLCC adopted new regulations (OAR 845-025-3200 to 3255) in 2017 that allowed edible or topical marijuana processors to share facilities with another edible, topical or concentrates processor, with some restrictions. The OLCC based these rules on specific feedback from recreational marijuana processors of edibles and topical marijuana products, recognizing that these processors frequently cannot afford their own independent "commercial kitchen" to make or process marijuana products because they operate on a much smaller scale to meet current demand. Many have requested the ability to share a location to save on the initial capital and leasing costs involved in procuring and maintaining the expensive machinery and equipment.

OAR (845-025-3255) added the term "alternating proprietors" and describes them as marijuana edible or topical processors who share a food establishment with another edible or topical processor, or a concentrates processor. The OARs require that the edible or topical processors have alternating schedules posted, a designated separate area to secure products, on-site security measures and other site specific requirements as directed by the OLCC.

The proposed amendments to the CDC provide a definition of "alternating proprietor" and allow one or more alternating proprietors with a marijuana processor license to use the processing facility on the same lot of record on an alternate basis with another approved edible or topical processor. These amendments reflect the changes approved by the OLCC.

Two other minor changes are recommended to the odor control provisions for marijuana processing and production facilities. The first clarifies that the proposed air filtration system must be certified by a mechanical engineer to formalize and document that the odor control system will operate to mitigate odors as intended. This minor change will assist Code Compliance when addressing neighbors' concerns that the odor control system does not adequately mitigate marijuana odor. The second change clarifies that when considering an alternative odor control system, the alternative system must be comparable to a carbon filtration system.

10. ***Clarification regarding nonconforming access***

CDC Section 440 (Nonconforming Uses and Structures) provides regulations for structures or uses of land that were lawfully established, but are no longer now in conformance with applicable provisions of the CDC. Section 440-10, (Alteration or Expansion of Uses Not Conforming to the Access Requirements to Public or County Roads) addresses the circumstance when an applicant wishes to expand or alter a site, but the site has a nonconforming *access* to a County roadway. A nonconforming access is when an access to a County roadway does not meet current County standards. For example, a site's driveway may not meet the County's requirement for a minimum spacing distance from the nearest intersection or the driveway's location may not meet the site distance requirements for the roadway's posted speed.

Both the title and text of Section 440-10 confuse the intent of this section which is to address a nonconforming *access*, not a nonconforming *use*. Applicants may believe that this provision does not apply to their project as the site or use may be conforming to the Code, but the site has a nonconforming *access* issue.

Additionally, the current wording only applies to a Type II alteration or expansion of use. This is confusing in the context of the entire sentence, since the threshold for applying this standard is a 25 percent or greater increase in the Average Daily Trips (ADT) caused by the expansion or alteration. The type of land use process is immaterial, and Type III applications may also be subject to this provision if the proposed expansion would be shown to result in a 25 percent or greater increase in ADT. The minor amendments proposed are consistent with staff's understanding and implementation of this section.

11. ***Survey and Monumentation Requirements***

At the request of the County Surveyor, minor changes are proposed to the survey documentation and submittal materials required for property line adjustments under Section 602-11 to reflect current practice. After receiving land use approval, property line adjustments are required to be recorded with the County Surveyor and the Department of Assessment & Taxation Recording Division. Frequently, applicants record only the survey

documents for the property line adjustment and fail to update the deed describing the new boundaries. However, property line adjustments are not valid until the deed is also recorded.

In order to ensure both recordings take place, the proposed amendments require that the deed recording number is shown on the survey to demonstrate that the deed reflects the property line adjustment and is properly recorded. The applicant, therefore, has to record the deed before submitting the survey to the County Surveyor. This ensures that the property line adjustment has been recorded both on the deed *and* the record of survey.

Public Comment

Mr. Anthony Stuart on behalf of his client, WOD, submitted a letter June 12, 2018, requesting additional amendments to the proposed marijuana related amendments in Ordinance No. 833. Mr. Stuart requested that the County consider allowing recreational marijuana processors of edibles to operate in the Transit-Oriented: Retail-Commercial (TO:RC) District. His client owns property in the TO:RC District. Mr. Stuart's comments are included as Attachment A.

When marijuana regulations were first adopted by the County, the Board considered the appropriate land districts for the five recreational marijuana facility license types. As adopted, the CDC treats all marijuana processors the same and considers marijuana processing to be similar to and therefore allowed in the same districts as industrial uses. At the time the County adopted the marijuana regulations, the OLCC had yet to make a distinction between edible or topical processors and other types of marijuana processing (for example, concentrates and extracts that work directly with the cannabis plants). WOD would like the County to now consider creating a new land use category for recreational marijuana processing facilities for edibles, and specifically, to allow them in one additional land use district, TO:RC.

While it may appear this is a simple change, it is not. Although the request is limited to one particular use in one specific land use district, there are issues requiring research and analysis beyond the scope approved by the Board of Commissioners in the 2018 Work Program. The requested change would entail adding new definitions for categories of processing (edibles, topicals, concentrates and extracts) and reassessing the land use districts where the different types would be allowed. There are substantive policy and planning considerations when altering the allowed uses in any land use district. The evaluation would entail considering all of the various land use districts and not just limiting the issue to edible processing in one of the Transit-Oriented Districts. Such a change is also not appropriate as an engrossment, since additional notice should be provided for changes to the allowances for land use districts.

Staff therefore does not recommend the amendment offered by Mr. Stuart as part of this omnibus ordinance. Based on this and several other potential issues raised by staff, it may however be an appropriate time to provide a status update to the Planning Commission (PC) and Board of Commissioners on implementation of the County's marijuana regulations over the nearly two years they have been in place. The report would be presented in the fall and could include numbers, types and locations of facilities that have been approved and outline issues that have arisen. The PC and Board would then have the opportunity to direct any additional revisions during consideration of the 2019 Work Program.

Summary of Proposed Changes

Ordinance No. 833 proposes the following changes to the CDC:

- Clarifies definitions for residential yard and lot of record.
- Removes internal setback requirements for multiple buildings on a development site.
- Adds mixed-use and parking related definitions.
- Clarifies that bicycle parking spaces must be “secured, long-term” when used to reduce minimum parking requirements.
- Clarifies setbacks for open balconies and accessory structures in required yards.
- Allows Type I process for maintenance of sanitary sewer facilities in the floodplain.
- Provides alternative submittal and follow-up requirements for Clean Water Services enhancement projects in degraded riparian corridors, water areas and wetlands.
- Adds definition of alternating proprietor and allows marijuana processors to share facilities in limited circumstances as regulated by the Oregon Liquor Control Commission.
- Clarification of nonconforming access.
- Updates survey and monumentation requirements.

Attachments:
Attachment A: Letter of testimony from Anthony Stuart, A.W. Stuart Law, dated June 12, 2018

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A.W. STUART LAW
11450 NE KUEHNE RD CARLTON OR 97111
BAR: OREGON #151888 • FLORIDA #104822 • M.D. FLORIDA

DATE: June 12, 2018

TO: Theresa Cherniak
Washington County Land Use and Planning Department
155 North First Ave. Suite 350, Hillsboro, OR 97124
via Email (Theresa_Cherniak@co.washington.or.us)

CC: Michelle Miller
155 North First Ave. Suite 350, Hillsboro, OR 97124
via Email (Michelle_Miller@co.washington.or.us)

FROM: Anthony W. Stuart
Attorney for Western Oregon Dispensary, Inc.

RE: Request for Amendment to WA Co. CDC Art. 3 § 375-7 & Table A

Dear Ms. Cherniak:

I hope this letter finds you and your colleagues well. As you know, I represent Western Oregon Dispensary, Inc. (WOD), including in its present efforts to amend the CDC Article 3 (and related) concerning permitting a limited subtype of recreational/adult-use marijuana development. I am submitting this correspondence for inclusion in your staff report for the Planning Commission meeting of June 27, 2018, at which the proposed Ordinance 833 will be reviewed and considered for amendment, passage, or other action.

Request to Allow Limited Marijuana Processing in TO:RC District

Since Washington County's planners completed the 2015 review of adult-use marijuana and its application to the county's land use districts, many changes have occurred in marijuana regulation. At the time, the County chose to allow marijuana processing in TO:EMP districts exclusively, without reference to the distinctions between the four processing license endorsements of edibles, extracts, concentrates or topicals. Each of the different endorsements has unique prerequisites for licensing and envision varied products and processing methods. Along with OLCC licensing and a specific edibles endorsement, all marijuana edibles processors must have a premises approved by the Oregon Department of Agriculture and meet the same or greater health standards as any licensed food production or service facility. As of the timing of writing, marijuana processing remains only permitted in TO:EMP districts in Washington County, however marijuana retail facilities are presently permitted in TO:RC, TO:EMP, and TO:BUS zones.

WOD requests that the Planning Commission revise the permitted zones for marijuana processing facilities and allow marijuana processing facilities with an endorsement for edibles in the TO:RC district. WOD is not asking for any other processing endorsements or activities in the TO:RC district. The type of food processing activity contemplated by the adult-use marijuana processing endorsement for edibles is exclusively kitchen- and food preparation-oriented. The types of facilities that support such operations are multi-use professional cook surfaces, pre-plumbed features and other features traditionally associated with kitchens and food preparation. The premises that would be used for adult-use marijuana edibles processing are not permitted to sublease to any non-OLCC licensee and must not permit the production of *non*-cannabis related products or edible items. Many of these suitable food preparation facilities are found in TO:RC districts, including a facility that WOD owns that will host a licensed marijuana retail facility. That

specific facility has been retrofitted to ensure the highest levels of security and safety to meet and surpass all state and local regulations, yet the facility cannot be put to its more valuable purpose due to the restrictions on the permissible locations for any marijuana processing of any kind.

The TO:RC and TO:EMP share the same district goals as outlined at § 375-1. WOD recognizes that the fuller range of OLCC-regulated marijuana processing activities is not well-suited for TO:RC zoning, but asserts that a nuanced amendment to allow for a the limited endorsement for the processing of marijuana edibles in the TO:RC zone is appropriate and well-suited to the zone.

	DISTRICT								
USE	TO:RC	TO:BUS	TO:EMP	TO:R9-12	TO:R12-18	TO:R18-24	TO:R24-40	TO:R40-80	TO:R80-120
Marijuana Processing Facility (35)	N*	N	II	N	N	N	N	N	N

* II: Marijuana Processing Limited to Marijuana Edibles Endorsement will require a Type II Application

WOD respectfully requests that the additional zoning district of TO:RC (Transit Oriented Retail Commercial) be added to the permissible zones for the limited sub-type of recreational marijuana processing exclusively with the OLCC endorsement for edible products intended for human consumption. This request is only for OLCC-licensed businesses which will limit their marijuana processing to only marijuana edibles and will not include processing endorsements for cannabinoid extracts, cannabinoid concentrates or cannabinoid topicals. The pro forma figure above shows the requested change to § 375 "Table A. Permitted and Prohibited Uses in Transit Oriented Districts" that reflects the requested amendment.

Other Jurisdictions

Other similarly situated Oregon counties have reviewed and addressed this matter previously, each approving limited co-location of retailing and processing licensees on the same tax lot in land use districts organized for commercial uses:

- Multnomah County (§ 39.8500 [36.0560])
  - RMJ retail and processing both allowed in commercial and commercial industrial zones.
- Clackamas County (ZDO § 841)
  - RMJ retail and processing both allowed in commercial and mixed use zones.
- Lane County (LC § 16.420 *et seq.*)
  - RMJ retail and processing both allowed in commercial and industrial zones.
- Deschutes County (§ 18.116)
  - RMJ retail and processing both allowed in commercial, industrial and business park zones.

Attachment A

In the specific case of WOD's request, the approval of this amendment would allow for the addition of a marijuana edibles processing facility on the same lot of record as WOD's approved adult-use marijuana retail facility. The inclusion of a separate marijuana edibles processing facility in the same building (segregated into distinct and wholly divided work spaces) would allow for the sharing of the extensive investment in security infrastructure and a host of other efficiency and productivity benefits. Further, the concentration of the two complementary businesses will allow the building to achieve among the highest and best lawful uses available. Given the physical layout of WOD's premises and the licensing preparation for the retail dispensary, it is a turnkey opportunity and ready for immediate use as an edibles processing facility upon the county's amendment.

On behalf of WOD, I respectfully request that the Planning Commission consider the proposed amendment to CDC § 375-7 & Table A to permit licensed OLCC processors holding only an edibles endorsement to operate in Washington County zoning districts designated TO:RC.

Please do not hesitate to contact me if you have any questions concerning this request.

Thank you for your time.

Kindest regards,

Anthony W. Stuart