

STAFF REPORT
TYPE IV HEARING - COMPREHENSIVE PLAN AMENDMENT

Subdivision Vesting Period

TO: Gresham Planning Commission
FROM: Ashley Miller, Interim Director, Urban Design & Planning
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HEARING DATE: April 10, 2023, 6:30 pm

REPORT DATE: March 31, 2023

FILE NUMBER: CWP 23-XXXX

PROPOSAL: To adopt Comprehensive Plan text amendments to Volume 3 (Development Code) to Modify Duration of Exemption from Subsequently Adopted Land Use Ordinances for Subdivisions (Subdivision Vesting Period).

- EXHIBITS:**
- A. Proposed Comprehensive Plan Text Amendments
 - 1. Draft Section 6.0200 Partitions and Subdivisions
 - a. Draft Section 6.0211 – Phased Subdivision
 - b. Draft Section 6.0212 – Duration of Exemption from Subsequently Adopted Land Use Ordinance

RECOMMENDATION: Staff recommends that the Planning Commission recommend **adoption** of the proposed Comprehensive Plan amendments as contained in the attached Exhibit ‘A’ and its attachment to the City Council.

SECTION I - EXECUTIVE SUMMARY

The proposed Comprehensive Plan Amendments will update Volume III (Development Code) to modify the duration of exemption from subsequently adopted land use ordinances for subdivisions (Subdivision Vesting Period). The proposed development code update will modify the length of time that construction on an approved subdivision lot is subject to the land use laws that were in effect on the date of the tentative subdivision plan application submittal, rather than the land use laws in effect at the time of the subsequent building permit application on the lot. This exemption period is frequently referred to as the subdivision vesting period. The intent of a vesting period is to provide predictability for developments while also ensuring that new land use policies are implemented in the built environment within a reasonable time frame from when they are adopted by Council. The current exemption, per Development Code Section 6.0212, is three years from the date of the tentative plan approval. The changes proposed to Volume III (Development Code) of the Comprehensive Plan would modify the vesting period to end three years after the recording of the final plat, rather than 3 years from the tentative plan approval. This change will apply to subdivisions either approved or in process of being developed (including subdivisions that have submitted applications for tentative plan approval or any review or approval stage thereafter).

Proposed Comprehensive Plan Amendments Overview

The overview provided below summarizes the changes proposed to the Community Development Plan. The full text of the proposed updates is provided in Exhibit 'A' (formatted as a ~~strikeout~~/underline).

Volume 3 – Development Code

Article 6 Land Divisions:

- Section 6.0211 Phased Subdivision: Edited to eliminate conflicting language with the proposed vesting period in Section 6.0212.
- Section 6.0212 Duration of Exemption from Subsequently Adopted Land Use Ordinance: Revised vesting period language; the three-year exemption period from subsequently adopted City of Gresham land use laws begins at recordation of final plat. Addition of language to clarify that the exemption period shall not extend beyond 10 years from the date of the tentative plan approval.

Public Outreach

The project included the following public meetings and outreach activities, see Exhibit B: Community Engagement and Outreach Report for the full list of project engagement and outreach methods:

Developer Advisory Group meeting: January 25, 2023, March 2, 2023, and April 6, 2023 (scheduled)

City Council: February 7, 2023 initiation. The public hearing is scheduled for April 18, 2023

Planning Commission: March 13, 2023. The public hearing is scheduled for April 10, 2023

Coalition of Gresham Neighborhood Associations: March 14, 2023

Other Engagement/Outreach: City calendar dates and public hearings notice in the Gresham Outlook.

Public feedback during these outreach activities has been supportive of the proposed code change. See Exhibit A. Proposed Comprehensive Plan Amendments for more details.

Public Comments

As of the date of this report no respondents to the public notice have reached out to staff with questions.

Staff Report Organization

- Sections II and III identify those current Community Development Plan procedures and policies that apply to the proposal.
- Section IV identifies the Metro Urban Growth Management Functional Plan (UGMFP) titles that apply to the proposal.
- Section V identifies the Oregon Statewide Planning Goals that apply to the proposal.
- Section VI contains specific findings of fact that detail how the proposal is consistent with Sections II through V:
 - Subsection A is findings of fact for the Community Development Plan procedures.
 - Subsection B is findings of fact for the Community Development Plan goals and policies.
 - Subsection C is findings of fact for the Metro UGMFP titles.
 - Subsection D is findings of fact for the Oregon Statewide Planning Goals.
- Sections VII and VIII summarize staff conclusions and recommendations.
- Exhibit 'A' and its attachments include the proposed Comprehensive Plan amendments.

SECTION II - APPLICABLE COMMUNITY DEVELOPMENT CODE PROCEDURES

Section 11.0200 Initiation and Classification of Applications

Section 11.0600 Type IV Legislative Procedures

Section 11.1000 Public Hearings

SECTION III - APPLICABLE COMMUNITY DEVELOPMENT PLAN GOALS & POLICIES

Section 10.014 Land Use Policies and Regulations

Section 10.100 Citizen Involvement

Section 10.600 Housing**SECTION IV - APPLICABLE METRO URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN TITLES**

- Title 1:** Housing Capacity
Title 7: Housing Choice
Title 8: Compliance Procedures
Title 11: Planning for New Urban Areas

SECTION V - APPLICABLE OREGON STATEWIDE PLANNING GOALS

- Goal 1** Citizen Involvement
Goal 2 Land Use Planning
Goal 10 Housing

SECTION VI - FINDINGS OF FACT

The proposed Community Development Plan amendments included as Exhibit 'A' and its attachments are consistent with all applicable procedures, goals, and policies of the Community Development Plan, applicable titles of the Metro Urban Growth Management Functional Plan, and applicable Statewide Planning Goals as indicated in the following findings.

A. Community Development Code (Volume 3) Procedures***Section 11.0200 Initiation and Classification of Applications******Section 11.0201 Initiation of an Application.***

This section provides that the City Council may initiate a Type IV legislative application to amend Volume 1 (Findings) and Volume 2 (Policies) of the Community Development Plan. The Type IV Comprehensive Plan Amendments for the Subdivision Vesting Period were initiated by City Council at the Council Work Session of February 7, 2023. City Council will review the proposed amendments at a hearing on April 18, 2023.

Sections 11.0203 and 11.0204 Classification of Applications and Review Authorities.

These sections provide that Type IV procedures are legislative and typically involve the adoption, implementation or amendment of policy by ordinance and that it generally applies to a relatively large geographic area containing many property owners. They also state that the Planning Commission provide a recommendation on Community Development Plan Amendments and the City Council be the decision-making authority. This Type IV Comprehensive Plan Amendment project meets those conditions and is being processed under the Type IV procedures, including review and recommendation from the Planning Commission on April 10, 2023, and a City Council hearing on April 18, 2023.

Section 11.0600 Type IV Legislative Procedures.***11.0602(C) Application Initiation***

This section provides that the City Council may initiate a Type IV legislative application to amend the text of the Community Development Plan. This project was initiated by City Council at the Council Work Session, February 7, 2023.

11.0602(D)(1) Type IV Public Notice for Comprehensive Plan Amendments

(a) For a Type IV Comprehensive Plan Amendment this section requires a submittal to the DLCDC at least 35 days prior to the Planning Commission hearing date. Notice was submitted on March 6, 2023, which is 35 days prior to the hearing date of April 10, 2023.

(b) The section requires notice to owners of properties for which the application affects permissible uses of land be sent not more than 40 nor less than 20 days before the initial evidentiary hearing on the Type IV proposal. The Manager determined that this Type IV proposal will not affect the permissible uses of land for owners of property within the city; therefore, a notice under this provision was not sent.

(c) This section also requires that at least 10 days before the initial hearing, a notice be published in a newspaper of general circulation in the city and copies of the hearing notice made available in City Hall. Required notice of the initial public hearing for these proposed amendments will be published in the *Gresham Outlook* no later than March 31, 2023 and made available through City Hall as required by this section.

11.0602(E) Type IV Decision Authority and 11.602(F) Type IV Notice of Decision

This section requires that the Planning Commission shall hold a public hearing and make a recommendation to the Council for an amendment to the Community Development Plan. The Council shall hold another public hearing and make a final decision. Interested persons may present evidence and testimony relevant to the proposal. The Planning Commission will make a recommendation during a public hearing on April 10, 2023 and the Council will make a decision at a public hearing on April 18, 2023 that will be based on findings of fact contained in this report and in the hearings record, and a decision will be sent to those who participated in the hearings. A decision shall be made accompanied by findings and an order.

Section 11.1000 - Public Hearings. This section provides for a hearing process consistent with Section 11.1000. Both the Planning Commission and the City Council, at public hearings in conformance with provisions of this section, will consider this proposal.

B. Community Development Plan Goals and Policies (Volume II)

This section identifies the applicable Community Development Plan goals and policies. The text (*italicized*) of the policy is followed by corresponding findings and conclusions.

Section 10.014 Land Use Policies and Regulations

Goal: Maintain an up-to-date Comprehensive Plan and implementing regulations as the legislative foundation of Gresham's land use program.

Policy 1: The City's land use program will be consistent with state and regional requirements but also shall serve the best interests of Gresham.

Policy 2: The City's land use regulations, actions and related plans shall be consistent with and implement the Comprehensive Plan.

Policy 8: The City shall require all development to conform to its land use regulations and standards.

Policy 20: The City shall periodically review and update the Comprehensive Plan text and the Community Development Plan Map(s) to ensure they remain current and responsive to community

needs; provide reliable information and dependable, factually based policy direction, and conform to applicable state law, administrative rules, and regional requirements.

Policy 21: *Council may, upon finding it is in the overall public interest, initiate legislative processes to change the Comprehensive Plan text and Community Development Plan Map(s) and Development Code.*

Action Measure 11: *Revise the Comprehensive Plan Text, Map and related findings as needed to maintain its reliability and timelines to ensure consistency among goals, policies, implementing measures; accuracy of findings and compliance with regional, state and federal laws and rules. This includes review by the Planning Commission every two years; a formal evaluation every five years and an overall update at least every ten years.*

Findings

Gresham's existing Community Development Plan is in compliance with state and regional requirements, and findings as described throughout this report show that the proposed amendments are in compliance with Gresham's Community Development Plan and State and regional requirements.

The project includes updates to the Community Development Plan. The updates modify the subdivision vesting period by modifying the length of time that construction on an approved subdivision lot is subject to the land use laws that were in effect on the date of the tentative subdivision plan application submittal. The changes would modify the vesting period to end three years after the recording of the final plat, rather than three years from the tentative plan approval. The project is necessary to accommodate certain processes and factors in subdivision development, including the length of buildout for larger subdivisions after the recording of final plat; and changes in the development climate, and materials and labor shortages that can prolong development timelines. The updates will continue to ensure conformance with State policies and updates to State laws, facilitate implementation of the City's Land Use goals, and allows for construction of housing with an achievable timeline that will balance the need for predictability for developments by making them exempt from land use code changes for a set period of time, while also ensuring that new land use policies are implemented in the built environment within a reasonable time frame, when they are adopted by the City Council.

As required by State and Metro regulations a draft of the proposed amendments were sent to the Oregon Department of Land Conservation and Development (DLCD) and to Metro at least 35 days prior to the scheduled April 10, 2023 Planning Commission hearing. As of the date of this report neither agency has contacted the City regarding this notice.

Conclusion

The Land Use and Policy Goal (10.014) and related policies and Action Measures are addressed through the notifications to DLCD and Metro and the changes to the Development Code. The proposal is consistent with the applicable goals, policies, and action measures listed in this section.

Section 10.100 Citizen Involvement

Goal: *The City shall provide opportunities for citizens to participate in all phases of the planning process by coordinating citizen involvement functions; effectively communicating information; and facilitating opportunities for input.*

Policies

- 1:** *The City shall ensure the opportunity for citizen participation and input when preparing and revising policies, plans and implementing regulations.*
- 2:** *The City shall consider the interests of the entire community and the goals and policies of the Comprehensive Plan when making decisions.*
- 5:** *The City shall keep citizens informed of issues confronting the City.*
- 6:** *The City shall ensure that technical information necessary to make policy decisions is readily available.*
- 7:** *The City shall facilitate involvement of citizens in the planning process, including data collection, plan preparation, adoption, implementation, evaluation and revision.*
- 9:** *The City shall ensure that citizen involvement plans and activities incorporate Gresham's diverse constituencies regardless of age, sex, religion, social or business affiliation.*
- 10:** *The City shall ensure the opportunity for the public to be involved in all phases of planning projects and issues.*

Action Measures

- 2:** *Ensure that the input, information, factual contributions and expertise provided by citizens is considered when making decisions about land use issues by:*
 - a. Accurately relaying pre-hearing public comment and other information to the Planning Commission, and*
 - b. Reflecting public testimony in the relevant hearing record and findings.*
- 4:** *Keep the public informed of opportunities for involvement in all phases of land use planning issues by:*
 - a. Providing adequate notice for all citizen involvement activities. This includes contact with citizens:*
 - i. As early as possible of pending land use actions, and*
 - ii. Throughout the land use processes including informational meetings, work sessions, and public hearings.*
 - b. Keeping the public informed of opportunities for involvement in land use planning using a range of available media including the Internet, newspaper notices, mailings, newsletters, television and meetings. The special needs of Gresham's diverse citizenry (i.e., language, literacy skills) shall be considered.*
 - c. Providing timely and accurate follow-up to citizen inquires and requests for information.*
- 5:** *Provide citizens timely access to all public information related to land use matters under consideration by:*
 - a. Ensuring that planning information is available at City Hall,*
 - b. Making available copies of all technical information, planning documents and staff reports through the Urban Design and Planning Department and other locations, as appropriate, and*
 - c. Having UDP staff available to interpret information and provide consultation to citizens.*
- 6:** *Communicate information clearly and effectively by:*

- a. Producing summaries of important documents that are long or complex.*
 - b. Producing informational documents describing City processes.*
 - c. Making documents such as the Comprehensive Plan and Community Development Code readily available.*
 - d. Maintaining current information on electronic information systems and using these mediums to solicit public input.*
 - e. Translating, when appropriate, summary minutes, flyers or other information into languages prominent in Gresham.*
- 7:** *Engage in outreach activities to inform and encourage public involvement by:*
- a. Providing a Speakers Bureau consisting of planners, local officials or others willing to speak to neighborhood associations, civic clubs and classes about planning and related issues.*
 - b. Holding community meeting in areas where development activity or other circumstances have resulted in public interest and concern.*
 - c. Considering times, days and locations to maximize potential public participation*
- 8:** *Facilitate citizen input into the process for revising local land use plans and ordinances by:*
- a. Ensuring that the public has the opportunity to participate in the formulation of plan policies and review of measures to implement local planning objectives.*
 - b. Ensuring that the public has the opportunity to review and comment on proposed changes to the Gresham Comprehensive Plan and Community Development Code prior to public hearings on the proposed plan amendments.*
 - c. Utilizing existing advisory committees to review and make recommendations on revisions to the Comprehensive Plan and Community Development Code, which are intended to change the meaning or purpose of goals, policies or regulation.*
 - d. Appointing special purpose advisory bodies to aid in the development and implementation of Comprehensive Plan and Community Development Code elements.*
- 9:** *Make public participation processes user-friendly by:*
- a. Holding widely advertised public hearings in accessible meeting rooms,*
 - b. Providing public comment periods at all public meetings to allow citizens to speak on topics not necessarily on the agenda,*
 - c. Publicizing comments, ideas and recommendations obtained at community meetings and through the planning process, and*
 - d. Considering times, days and locations to maximize potential public participation.*
- 10:** *Encourage broadly based public participation including all geographic area and diverse interests by:*
- a. Emphasizing open communication between developers and neighbors about compatibility issues,*
 - b. Seeking citizen input through service organizations, interest groups and individuals, as well as through neighborhood associations, and*

c. Ensuring prospective developers comply with City requirements for early neighborhood involvement with affected neighborhoods.

11: *When appropriate, provide culturally sensitive participation opportunities, which may include language translation and interpretation.*

Findings

The project included the following public meetings and outreach activities:

- Developer Advisory Group meeting: January 25, 2023, March 2, 2023, and April 6, 2023 (scheduled)
- City Council: February 7, 2023 initiation. The public hearing is scheduled for April 18, 2023
- Planning Commission: March 13, 2023. The public hearing is scheduled for April 10, 2023
- Coalition of Gresham Neighborhood Associations: March 14, 2023
- Other Engagement/Outreach: City calendar dates and public hearings notice in the Gresham Outlook.

Public feedback received through these outreach activities was supportive of the proposed modification to the subdivision vesting period. The feedback, primarily from the development community, was supportive of the predictability in the development process that would result from the change in the code language by allowing an adequate period of time to complete the subdivision build out, while also respecting the City's desire to see adopted policies reflected in the built environment within a timely manner.

Conclusion

The Citizen Involvement Goal (10.100) and related policies were addressed through meetings with the Developer Advisory Group and Coalition of Gresham Neighborhood Associations, presentations at work sessions and public hearings with City Council and Planning Commission, and published public notice. The proposal is consistent with the applicable citizen involvement goals and policies listed in this section.

Section 10.600 - Housing

Housing Opportunities Goal: *Gresham will have a full range of quality housing for its current and future residents.*

Housing Opportunities Policy 1: *Provide a full range of housing types and sizes that reflect the needs Gresham's citizens through all life stages and circumstances.*

Livability Goal: *Gresham will provide for a variety of livable neighborhoods.*

Livability Policy 5: *Ensure that new housing developments complement or enhance the character of existing quality neighborhood development.*

Livability Action Measure 1: *Review the Development Code to determine if there are barriers to the permissibility of desired housing types within new housing developments within Gresham.*

Findings

The proposed Comprehensive Plan Amendment provides predictability for the development community during the construction of housing, potentially resulting in reduced timelines and costs associated with delays that arise when plans must be modified to address development code changes during the middle of a subdivision build out. The resulting housing development may be constructed efficiently, allowing for more housing to be available at a lower price point. The amendment will also allow housing within the same subdivision to be congruous in appearance and site design.

Conclusion

The proposal is consistent with the applicable Housing goals, policies, and action measures listed in this section.

C. Metro Urban Growth Management Functional Plan

Metro's 2020 Compliance Report concludes that Gresham is in compliance for the City's Title 1, 7, and 8 responsibilities (detailed below). Staff has identified the following Metro provisions as not applicable to the proposed amendments: Title 2: Regional Parking Policy (repealed); Title 3: Water Quality and Flood Management; Title 4: Industrial and Other Employment Areas, Title 5: Neighbor Cities and Rural Reserves (repealed), Title 6: Centers, Corridor, Station Communities, and Main Streets; Title 9: Performance Measures (repealed), Title 10: Definitions; Title 11: Planning for New Urban Areas; Title 12: Protection of Residential neighborhoods; Title 13: Nature in Neighborhoods; and Title 14: Urban Growth Boundary. The following summarizes compliance with applicable Titles 1, 7, and 8.

Title 1: Housing Capacity

Section 3.07.110 of this section states that *"The Regional Framework Plan calls for a compact urban form and a "fair-share" approach to meeting regional housing needs. It is the purpose of Title 1 to accomplish these policies by requiring each city and county to maintain or increase its housing capacity except as provided in section 3.07.120."*

Findings

Minimum zone district residential densities and allowances for accessory dwellings units for single detached dwellings will not be reduced. The proposed amendments will allow the continued development of a mix of housing types and will provide continued opportunity for development of housing by reducing potential barriers to new development.

Conclusion

The proposed amendments will not reduce zoned housing capacity. The proposal is consistent with Title 1.

Title 7: Housing Choice

Title 7 of Metro's Urban Growth Management Functional Plan is designed to ensure the production of affordable housing in the Metro UGB. Each city and county within the Metro region is encouraged to voluntarily adopt an affordable housing production goal and is required to ensure that their comprehensive plans and implementing ordinances include strategies to:

- Ensure the production of a diverse range of housing types;
- Maintain the existing supply of affordable housing, increase opportunities for new affordable housing dispersed throughout their boundaries; and
- Increase opportunities for households of all income levels to live in affordable housing (3.07.730).

Findings

The proposed Comprehensive Plan Amendment will further the City's compliance with Title 7 by reducing barriers (specifically cost and time) to development, which will contribute to the production of new housing in the city. The amendment will support the strategy to ensure a diverse range of housing types can be constructed in an efficient manner.

Conclusion

The proposal is consistent with Title 7.

Title 8 - Compliance Procedures

Section 3.07.820 of this title requires that at least 35 days prior to the first evidentiary hearing on an amendment to a comprehensive plan, or land use regulation, that the City submit the proposed amendments to Metro. Metro may review the amendments and can request that the City provide an analysis of compliance with the Functional Plan.

Findings

The City submitted the proposed amendments to Metro on March 6, 2023, which was 35 days prior to the first evidentiary hearing of April 10, 2023. As of the date of this report Metro has not contacted the City regarding this notice.

Conclusion

The City has submitted the proposed amendments to Metro at least 35 days prior to the first evidentiary hearing. The proposal is consistent with Titles 8.

D. Oregon Statewide Planning Goals

Staff has identified the following Statewide Planning Goals as not applicable to the proposed amendments: Goal 6 Air, Water and Land Resources Quality, Goal 8 Recreational Needs, Goal 15 Willamette River Greenway, Goal 16 Estuarine Resources, Goal 17 Coastal Shorelands, Goal 18 Beaches and Dunes, and Goal 19 Ocean Resources. The following summarizing compliance with the applicable Statewide Planning Goals.

Statewide Planning Goal 1 for Citizen Involvement

Goal 1 requires that cities "*insure the opportunity for citizens to be involved in all phases of the planning process.*"

Findings:

The public process was provided through public meetings and the published notices posted in the Gresham Outlook in advance of both the Planning Commission and City Council hearings. See Section I of this report for an overview of engagement activities.

Statewide Planning Goal 2 for Land Use Planning

Goal 2 requires cities to "*establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. This shall result in land use plans and implementation measures that are consistent with the land use plans.*"

Findings:

The City has a state-acknowledged Comprehensive Plan. Section VI of this report describes findings and conclusions that the proposed Comprehensive Plan Amendment are consistent with applicable procedures and applicable goals and policies of the City's Comprehensive Plan.

In addition, the amendment will be consistent with State regulations ORS 92.040(3), which provides that local governments may establish a time period during which decisions on land use applications under subsection (2) of 92.040 apply, but in no event shall the time period exceed 10 years.

Statewide Planning Goal 10 for Housing

Goal 10 specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

Findings:

The proposed amendment will support Goal 10 by reducing potential deterrents to housing production in the City's development code. The amendment will provide predictability in the development process, allowing for the development of new housing in a subdivision, when done expeditiously, to be regulated by one set of standards, thereby reducing cost and time associated with delays required to update building and site plans.

Statewide Planning Goal 14 for Urbanization

Goal 14 requires cities to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Findings:

The proposed amendments support Goal 14 by supporting the efficient and timely development of land inside the UGB. This incentivizes continued development of housing and infrastructure within these lands.

Conclusion

The proposed amendments comply with the applicable Statewide Planning Goals 1, 2, 10, and 14. As of the date of this report DLCD has not contacted the City regarding the notice for these amendments.

SECTION VII - CONCLUSION

The proposed comprehensive plan amendments attached as Exhibit 'A' and its attachments are consistent with applicable criteria and policies of the Community Development Plan, the applicable Development Code of the Community Development Plan, applicable Metro UGMFP Titles, and the applicable Oregon Statewide Planning Goals as indicated by findings contained or referenced in Section VI of this report.

SECTION VIII - RECOMMENDATION

Staff recommends that the Planning Commission recommend **adoption** of the proposed Comprehensive Plan amendments as contained in the attached Exhibit 'A' and its attachment to the City Council.

End of Staff Report