

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Public Hearing: An Ordinance Concerning Prohibited Uses and Special Use Limitations in the /ND Nodal Development Overlay Zone in Downtown; and Amending Section 9.4280 of the Eugene Code, 1971 (City File CA 12-3)

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Meeting Date: January 22, 2013  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 2  
Staff Contact: Nan Laurence  
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### **ISSUE STATEMENT**

This is a public hearing to consider a land use code amendment to allow drive-through facilities in the /ND Nodal Development Overlay Zone within the boundaries of the Downtown Plan.

### **BACKGROUND**

Last year, as part of Envision Eugene, the City Council initiated code amendments to facilitate desired mixed-use development for downtown and along transit corridors. Consistent with several strategies in the Envision Eugene proposal, the purpose of these amendments is to make compact urban development easier in the downtown, on key transit corridors, and in core commercial areas by removing regulatory barriers. These amendments are also necessary as part of the City's strategy to accommodate the City's 20-year need for commercial and multi-family housing inside the current urban growth boundary (UGB).

A number of amendments addressing these Envision Eugene strategies are being developed; however, the /ND code amendment subject to this hearing has been pulled forward to be considered on its own with a shorter timeframe for resolution. Earlier this fall, a development opportunity surfaced for one of the five sites downtown within the /ND overlay. In late October 2012, the City Council agreed to sell property in the Downtown Plan area for the development of Northwest Community Credit Union's regional headquarters. This development proposes a use that follows the goals and policies for downtown development, including strengthening downtown as a regional center and increasing commercial activity between the core of downtown and the river. This development requires a drive-through facility, which currently is not allowed in the /ND overlay even as an ancillary use for a multi-story structure. Given the council's action and terms of the sale agreement, it is necessary to consider a code amendment to the /ND overlay in an expedited fashion. The remaining code amendments related to mixed-use development for downtown and transit corridors will be considered as a package at a later date.

The proposed code amendment would allow a drive-through facility as an ancillary use in association with a multi-story structure, and to allow the adjustment review process to be used to consider a drive-through facility as an ancillary use in association with a single-story structure that provides financial, pharmaceutical or government services. The proposed code language is provided in the attached draft ordinance (Attachment A).

On December 11, 2012, the Planning Commission held a public hearing on the code amendment to the /ND overlay. As part of the public hearing process, two individuals submitted written testimony and four individuals testified at the hearing. Five of the six individuals recommended support for the code amendment, and the fifth provided general comments on the Envision Eugene process and priorities. Subsequently, the Planning Commission conducted deliberations and recommended approval of the code amendment to the /ND overlay. The Planning Commission limited its recommendation to the proposed Northwest Community Credit Union site based on the limited analysis regarding the impacts of the code amendment on the other properties in the downtown area within the /ND overlay zone. Further details regarding the Planning Commission's discussion, along with a complete set of record materials, are available for review in a binder located at the City Council Office, and at [www.eugeneor.gov/codeamendments](http://www.eugeneor.gov/codeamendments).

Findings in support of the proposal are included as Exhibit A to the ordinance (Attachment A). The ordinance and findings, with any directed changes, will be used in the event that the council votes to approve the proposal upon finding that it complies with the applicable approval criteria.

### **RELATED CITY POLICIES**

Findings addressing consistency with related City policies, including provisions of the Metro Plan and Downtown Plan, are included as an exhibit to the draft ordinance (Exhibit A of Attachment A).

### **COUNCIL OPTIONS**

No action is required at this time; however, options will be provided at the time of City Council deliberations and action scheduled for February 11, 2013.

### **CITY MANAGER'S RECOMMENDATION**

This item is scheduled for a public hearing only.

### **SUGGESTED MOTION**

No motion is proposed as this item is scheduled for a public hearing only. Following the City's receipt of all testimony, the City Manager will make a recommendation and associated motion to be included in the council packet for action on February 11, 2013.

### **ATTACHMENTS**

#### **A. Draft Ordinance and Findings**

*As noted above, a complete set of record materials is available for review in a binder located at the City Council Office. This information is also available via [www.eugene-or.gov/codeamendments](http://www.eugene-or.gov/codeamendments).*

### **FOR MORE INFORMATION**

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING SPECIAL USE LIMITATIONS AND  
AMENDING SECTION 9.4280 OF THE EUGENE CODE, 1971.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Subsection (2) of Section 9.4280 of the Eugene Code, 1971, is amended to provide as follows:

**9.4280 Prohibited Uses and Special Use Limitations.**

**(1) Prohibited Uses.**

(a) Motor Vehicle Related Uses.

1. Car washes.
2. Parts stores.
3. Recreational vehicle and heavy truck, sales/rental/service.
4. Motor vehicle and motorcycle sales/rental/service.
5. Service stations, includes quick servicing.
6. Tires, sales/service.
7. Transit park and ride, major or minor, except under a shared parking arrangement with another permitted use.
8. Parking areas, where the entire lot is exclusively used for parking and does not provide shared parking for more than one development site.

(b) Trade (Retail and Wholesale).

1. Agricultural machinery rental/sales/service.
2. Boats and watercraft sales and service.
3. Equipment, heavy, rental/sales/service.
4. Manufactured dwelling sales/service/repair.

**(2) Special Use Limitations.**

(a) ***Except for the Downtown Plan Area as shown on Map 9.2161(6)***

***Downtown Plan Map, [N]no use may include a drive-through facility, unless explicitly permitted in a refinement plan. **Within the Downtown Plan Area:*****

1. ***Drive-through only establishments are not permitted.***
2. ***For a structure that has two or more functional floors, a drive-through facility is permitted.***
3. ***For a structure that has only one functional floor, a drive-through facility to provide financial services, pharmaceutical prescription dispensing, or government services may be permitted subject to an adjustment based on the criteria at EC 9.8030(16).***

- (b) No new building designed to be occupied by retail uses may exceed 50,000 square feet of building area on the ground floor and only one such new building may contain 50,000 square feet of building area on the ground floor.

**Section 2.** The findings set forth in Exhibit A attached to this Ordinance are adopted as findings in support of this Ordinance.

**Section 3.** The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Passed by the City Council this**  
\_\_\_ day of \_\_\_\_\_, 2013

**Approved by the Mayor this**  
\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**

EXHIBIT A  
**Findings of Consistency**

**Drive-Through Facilities in the /ND Nodal Development Overlay Zone  
within the Downtown Plan**

**(City File CA 12-3)**

**Code Amendment** Eugene Code Section 9.8065 requires that the following approval criteria (in bold and *italics*) be applied to a code amendment:

***(1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

*Goal 1 - Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement which ensure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The process for adopting this amendment was consistent with the City's requirements and provided numerous additional opportunities for interested parties to participate in development of the amendments.

The Planning Commission public hearing on the proposal was duly noticed to all neighborhood organizations, community groups and individuals who have requested notice, as well as to the City of Springfield and Lane County. In addition, notice of the public hearing was also published in the Register Guard. The City Council will hold a duly noticed public hearing to consider approval, modification, or denial of the code amendments. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the proposed ordinance is consistent with Statewide Planning Goal 1.

*Goal 2 - Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The Eugene Land Use Code specifies the procedure and criteria that are to be used in considering this amendment to the code. The record for this amendment includes substantial factual information supporting the proposed ordinance. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit. To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of this amendment with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to Lane County, Springfield and the Department of Land Conservation and Development. There are no Goal 2 Exceptions required for these amendments. Therefore, the amendment is consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. *To preserve agricultural lands.*

The amendment is for property located within the urban growth boundary and does not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. *To conserve forest lands.*

The amendment is for property located within the urban growth boundary and does not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. *To conserve open space and protect natural and scenic resources.*

*OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The amendment does not create or amend the city's list of Goal 5 resources, does not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, does not allow new uses that could be conflicting uses with a significant Goal 5 resource site and does not amend the acknowledged UGB. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and Land Resource Quality. *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendment does not affect the City's ability to provide for clean air, water or land resources. Therefore, the amendment is consistent with Statewide Planning Goal 6.

Goal 7 - Areas Subject to Natural Disasters and Hazards. *To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, land slides, earthquakes and related hazards, tsunamis and wildfires. Goal 7 prohibits a development in natural hazard areas without appropriate safeguards. The amendment does not affect the City's restrictions on development in

areas subject to natural disasters and hazards. Further, the amendment does not allow for new development that could result in a natural hazard. Therefore, the amendment is consistent with Statewide Planning Goal 7.

*Goal 8 - Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The code amendment does not affect the city's provisions for recreation areas, facilities or recreational opportunities. Therefore, the amendment is consistent with Statewide Planning Goal 8.

*Goal 9 - Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Land Study (October 1992) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 9 and its Administrative Rule. The amendment does not impact the supply of industrial or commercial lands.

The amendment modifies the list of allowable uses for the /ND overlay zone, which increases the possibility for development or redevelopment of properties within this overlay zone for commercial uses. Therefore, the amendment is consistent with Statewide Planning Goal 9.

*Goal 10 - Housing. To provide for the housing needs of citizens of the state.*

Goal 10 requires that communities plan for and maintain an inventory of buildable residential land for needed housing units. The amendment does not impact the supply of residential lands. Therefore, the amendment is consistent with Statewide Planning Goal 10.

*Goal 11- Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The amendment does not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

*Goal 12- Transportation. To provide and encourage a safe, convenient and economic transportation system.*

Statewide Planning Goal 12 is implemented through the Transportation Planning Rule (TPR), as defined in Oregon Administrative Rule OAR 660-012-0000, et seq. The Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan) provides the regional policy framework through which the TPR is implemented at the local level.

The Transportation Planning Rule (OAR 660-012-0060) contains the following requirement:

- (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility....*
- (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
  - (a) *Changes the functional classification of an existing or planned transportation facility;*
  - (b) *Changes standards implementing a functional classification system;*
  - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
  - (d) *Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP*

The proposed amendment does not change the functional classification of an existing or planned transportation facility, does not change the standards implementing a functional classification, does not allow types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility and will not reduce the performance standards of a facility below the minimal acceptable level identified in the TSP. The level of development currently permitted through existing code and zoning regulations will remain the same as a result of this amendment. Therefore, the amendment is consistent with Statewide Planning Goal 12.

*Goal 13 - Energy Conservation.* *To conserve energy.*

Statewide Planning Goal 13 calls for land uses to be managed and controlled “so as to maximize the conservation of all forms of energy, based upon sound economic principles.” Goal 13 is directed at the development of local energy policies and implementing provisions and does not state requirements with respect to other types of land use decisions. The amendment does not affect any of the City’s energy conservation measures or programs. Therefore, Statewide Planning Goal 13 does not apply.

*Goal 14 - Urbanization.* *To provide for an orderly and efficient transition from rural to urban land use.*

The amendment does not affect the City’s provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

*Goal 15 - Willamette River Greenway.* *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The amendment does not contain any changes that affect the regulation of areas within the Willamette River Greenway. Therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

There is no coastal, ocean, estuarine, or beach and dune resources related to the properties affected by the amendment. Therefore, these goals are not relevant and the amendment will not affect compliance with Statewide Planning Goals 16 through 19.

**(2) *The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***

**Applicable Metro Plan Policies**

The following policies from the *Metro Plan* (identified below in *italics*) are applicable to these code amendments. Based on the findings provided below, the proposal is consistent with and supported by the applicable provisions of the *Metro Plan*.

**B. Economic Element**

*B.11 Encourage economic activities, which strengthen the metropolitan area's position as a regional distribution trade, health, and service center.*

The amendment will increase the permitted commercial uses with the /ND Nodal Development Overlay Zone within the Downtown Plan area. The amendment will allow for increased development and economic activity and is therefore consistent with this policy.

*B.14 Continue efforts to keep the Eugene and Springfield central business districts as vital centers of the metropolitan area.*

The amendment applies specifically to the Downtown Plan area. The amendment will encourage economic activities by increasing the flexibility of the /ND Nodal Development Overlay Zone to increase permitted commercial uses within downtown, Eugene's central business district and is therefore consistent with this policy.

**F. Transportation Element**

*F.3 Provide for transit-supportive land use patterns and development, including higher intensity, transit-oriented development along major transit corridors and near transit stations; medium-and high-density residential development within ¼ mile of transit stations, major transit corridors, employment centers, and downtown areas; and development and redevelopment in designated areas that are or could be well served by existing or planned transit.*

By increasing the permitted commercial uses in the /ND Nodal Development Overlay Zone the amendment will allow for increased development and economic activity within downtown.

Increased commercial development in downtown supports a transit-supportive land use pattern because of the location and the existing and planned transit routes within downtown.

**Applicable Adopted Refinement Plans**

The Eugene Downtown Plan is the applicable adopted refinement plan and contains policies that are applicable to this code amendment.

The applicable policies from the Eugene Downtown Plan (in *italics*) are addressed below. Based on the findings, the proposal is consistent with and supported by the applicable provisions of this plan.

Eugene Downtown Plan

*Strong Regional Center Policy 1: Build upon downtown’s role as the center for government, commerce, education and culture in the city and the region.*

Consistent with this policy, the amendment will allow additional commercial development in downtown to support downtown’s role as the center for commercial activity in the region.

*Strong Regional Center Policy 2: Downtown development shall support the urban qualities of density, vitality, livability and diversity to create a downtown, urban environment.*

Consistent with this policy, the amendment will allow additional commercial development in downtown to increase the density of development within the core area of Eugene.

*Downtown Riverfront Policy 4: Facilitate dense development in the Courthouse area and other sites between the core of downtown and the river.*

Properties where the /ND overlay zone currently apply are in close proximity to the river. The proposed code amendment will support commercial development adding to the density of development between downtown and the river.

**(3) *The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The amendment does not establish a special area zone. Therefore, this criterion does not apply.