



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

03/12/2013

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialis

SUBJECT: Linn County Plan Amendment
DLCD File Number 005-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, March 27, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged

Cc: Olivia Glantz, Linn County
Jon Jinings, DLCD Community Services Specialist
Ed Moore, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF

MAR 07 2013

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

This Form 2 must be mailed to DLCD within **20-Working Days after the Final**

Ordinance is signed by the public Official Designated by the jurisdiction
and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **LINN COUNTY**

Local file number: **BC12-0005**

Date of Adoption: **3/5/2013**

Date Mailed: **3/7/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 12/21/2012

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

BC12-0005; an application by Sandy McHenry for a Zoning Code Text amendment to add, "restaurant" as an allowed use in the Urban Development-I zoning district (UD-I). The UD-I zoned property is located on the east and west sides of Freeman Lane at its intersection with Highway 34, Corvallis. The applicable decision criteria are contained in Linn County Code (LCC) 921.824.

Does the Adoption differ from proposal? Yes, Please explain below:

The Board of Commissioners amended the applicants proposal to make "Cafés and restaurants" as a use permitted through a Type IIA conditional use review (LCC929.730(B)(6-7) as attached to Ordinance 2013-073.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved: **8**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☒	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☐ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD File No. 005-12 (19645) [17380]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

State Fire Marshal, Corvallis R/F, ODOT

Local Contact: **Olivia Glantz**

Phone: **(541) 967-3816** Extension: **2368**

Address: **PO BOX 100**

Fax Number: **541-926-2060**

City: **ALBANY**

Zip: **97322-**

E-mail Address: **OGLANTZ@co.linn.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS [197.615](#) and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON**

**IN THE MATTER OF AN ORDINANCE)
AMENDING THE LINN COUNTY)
LAND DEVELOPMENT CODE)
CODIFIED AT LINN COUNTY CODE)
CHAPTER 929)**

**ORDINANCE
NO. 2013-073
(Amending Code)
(BC12-0005)**

WHEREAS, Linn County adopted Ordinance No. 80-335, as amended by 99-190 *et al.*, adopting an ordinance now codified as LCC 929 (Rural Development Zone Code) and;

WHEREAS, The Board of County Commissioners for Linn County (Board) advertised notice that on February 27, 2013 it will consider proposed amendments to the Linn County Land Development Code (Code) text to be codified at Title 9, Chapter 929 – Rural Development Code;

WHEREAS, The proposed Code text amendments had been previously considered by the Linn County Planning Commission at a duly advertised meeting on February 12, 2013 and who voted to recommend approval to the Board;

WHEREAS, At 10:00 a.m., on February 27, 2013, the Board opened the meeting for public comment and after hearing such comments reached a consensus to direct that the amended text, as modified and approved by the Board and substantially set forth in Exhibit 1, attached hereto, be placed in ordinance format for formal adoption;

WHEREAS, Findings in support of the adopted Code text amendments are attached to Resolution and Order No. 2013-072 and entitled Exhibit 2 (Decision Criteria, Findings and Conclusions);

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and now, therefore, be it

Ordained by the Board of County Commissioners for Linn County, That:

Section 1. Amendment. LCC Chapter 929 (Rural Development Zone Code) is amended as set forth in Exhibit 1 (redline indicates text that has been added to the Code; ~~strikeout~~ indicates text that has been deleted from the Code).

Section 2. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 3. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption, February 27, 2013.

Section 4. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

Public reading held February 12, 2013, and February 27, 2013.

Adopted and passed February 27, 2013.

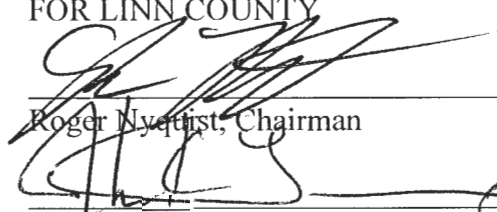
The effective date of this Ordinance shall be February 27, 2013.

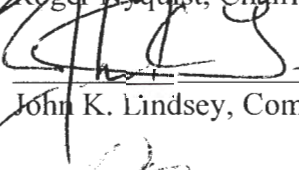
BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

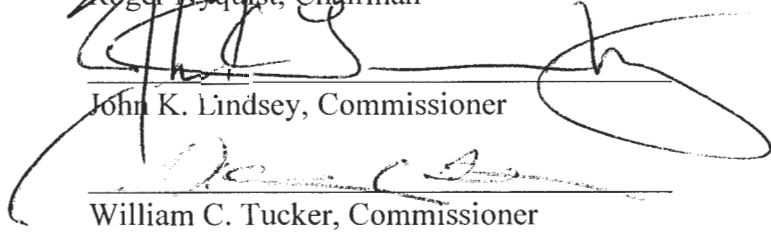
March 5

Signed ~~February 27~~, 2013

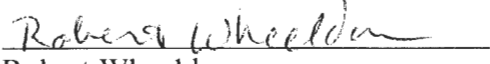
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Nyquist, Chairman


John K. Lindsey, Commissioner


William C. Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:

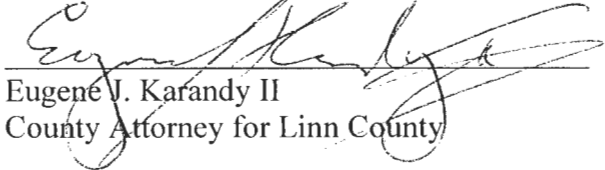

Eugene J. Karandy II
County Attorney for Linn County

EXHIBIT 1
ORDINANCE NO. 2013-073

VIII. URBAN DEVELOPMENT (UD-I) ZONING DISTRICT

929.710 Statement of purpose

(A) The purpose of the Urban Development (UD-I) zoning district is to recognize sites which are developed with urban types of commercial/industrial uses.

(B) The Urban Development-I (UD-I) zoning district may only be applied to those Highway 34 sites which have been approved through a Goal 14 developed or committed exception.

(C) It is the intent of the UD-I zoning district to permit the continuation and expansion of existing uses and their replacement with similar uses.

(D) The UD-I zoning district is applied to specific sites identified in the *Comprehensive Plan*.

(E) The UD-I zoning district and the UD-II zoning district s are not interchangeable; the respective UD zoning district can only be applied to an urban exception which is developed with the uses described in that zoning district.

[Adopted 98-002 §3 eff 3/4/98]

929.720 UD-I uses allowed outright

(A) All principle uses set forth in subsection (B) of this section and uses accessory to those principle uses are allowed outright in the UD-I zoning district provided all such uses, other than off-road parking and other activities which by necessity must be conducted in the open, are to be conducted entirely within an enclosed building.

(B) *Uses allowed outright.*

- (1) Professional and business offices.
- (2) Agricultural related uses such as:
 - (a) Agricultural supply store.
 - (b) Warehouses for agricultural products.
 - (c) Wholesale distribution or sales facilities.
 - (d) Commercial activity in conjunction with a farm use.
- (3) Warehousing and distribution of durable and non-durable goods.
- (4) Manufacturing or repair involving.
 - (a) Metal.
 - (b) Wood.
 - (c) Plastic.
- (5) Research laboratories.
- (6) Manufacture or repair of scientific, precision or electronic instruments.
- (7) Automotive repair, including the sales of parts as a secondary use.
- (8) Commercial sales and services integral to a use allowed in this section.
- (9) Utility facility necessary for public service.
- (10) Alteration, expansion or replacement of a lawfully established dwelling on an authorized unit of land prior to the establishment of the UD-1 zoning district.
- (11) Transportation improvements

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §10 eff 6/30/99]

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(C) It is the intent of the UD-I zoning district to permit the continuation and expansion of existing uses and their replacement with similar uses.

(D) The UD-I zoning district is applied to specific sites identified in the *Comprehensive Plan*.

(E) The UD-I zoning district and the UD-II zoning district s are not interchangeable; the respective UD zoning district can only be applied to an urban exception which is developed with the uses described in that zoning district.

[Adopted 98-002 §3 eff 3/4/98]

929.720 UD-I uses allowed outright

(A) All principle uses set forth in subsection (B) of this section and uses accessory to those principle uses are allowed outright in the UD-I zoning district provided all such uses, other than off-road parking and other activities which by necessity must be conducted in the open, are to be conducted entirely within an enclosed building.

(B) Uses allowed outright.

- (1) Professional and business offices.
- (2) Agricultural related uses such as:
 - (a) Agricultural supply store.
 - (b) Warehouses for agricultural products.
 - (c) Wholesale distribution or sales facilities.
 - (d) Commercial activity in conjunction with a farm use.
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- (6) Manufacture or repair of scientific, precision or electronic instruments.
- (7) Automotive repair, including the sales of parts as a secondary use.
- (8) Commercial sales and services integral to a use allowed in this section.
- (9) Utility facility necessary for public service.
- (10) Alteration, expansion or replacement of a lawfully established dwelling on an authorized unit of land prior to the establishment of the UD-I zoning district.
- (11) Transportation improvements

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §10 eff 6/30/99]

929.730 UD–I uses permitted through a Type IIA conditional use review

(A) All principle uses set forth in subsection (B) of this section and uses accessory to those principle uses are permitted in the UD–I zoning district through a Type IIA procedure and the decision criteria in LCC 933.200 and 933.220.

(B) *Uses permitted through conditional use review.*

- (1) One caretaker residence for a use permitted in LCC 929.720, subject to LCC 932.800 to 932.815
- (2) Accessory structures for uses permitted conditionally.
- (3) Public and semi-public buildings and uses.
- (4) Staging area, subject to LCC 932.700 to 932.770.
- (5) Alteration, restoration, or replacement of a lawfully established dwelling requiring that the Director make a decision based on a review of information not limited to the development permit application.
- (6) Cafés and restaurants, or expansion of existing cafés or restaurants, not to exceed 2,000 square feet in total floor area.
- (7) A change in the operational design or characteristics of an existing café or restaurant.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

**IN THE MATTER OF AMENDING THE)
LINN COUNTY LAND DEVELOPMENT)
CODE TEXT [CHAPTER 929] AND)
RECOGNIZING EXISTING USES)**

**RESOLUTION &
ORDER NO. 2013-072**
(Planning and Building Department)
(BC12-0005)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised meeting on February 27, 2013 for the purpose of considering the matter of proposed Land Development Code (Code) text amendments to be codified at Title 9, Chapter 929 – Rural Development Zone Code;

WHEREAS, The proposed Code text amendments had been previously considered by the Linn County Planning Commission at a duly advertised meeting on February 12, 2013 and who voted 4-0 to recommend approval to the Board;

WHEREAS, The Board opened the meeting for public comment and after hearing such comments reached a consensus to direct that the amended text, as modified and approved by the Board and substantially set forth in Exhibit 1, attached hereto, be placed in ordinance format for formal adoption;

WHEREAS, The Board Orders that affected facilities and uses within the Urban Development-I (UD-I) zone that are duly licensed by the Linn County Environmental Health Program on the effective date of this Resolution and Order be permitted uses under this Code, subject to compliance with all applicable development standards;

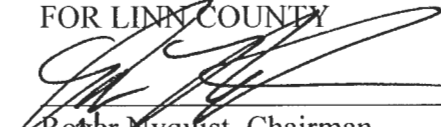
WHEREAS, The findings in support of the proposed Code text amendments are attached hereto as Exhibit 2 (Decision Criteria, Findings and Conclusions); and now, therefore, be it

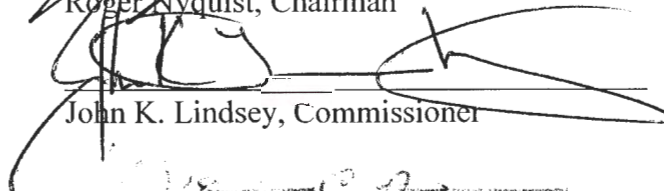
RESOLVED, That the Board of County Commissioners for Linn County approves the text set forth in Exhibit 1 showing the changes made by the Board of County Commissioners for Linn County; and

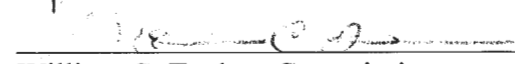
ORDERED, That the text set forth in Exhibit 1 be placed in ordinance format for formal adoption in compliance with ORS Chapter 215 by the Board of County Commissioners for Linn County.

Resolved and Ordered this 5th day of ~~February~~ ^{March}, 2013.

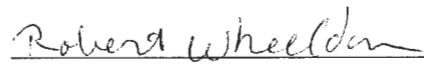
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Nyquist, Chairman

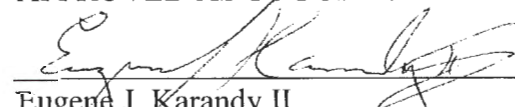

John K. Lindsey, Commissioner


William C. Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:


Eugene J. Karandy II
County Attorney for Linn County

WRITTEN STATEMENT

REQUESTS:	Text Amendment to Section 929.720(B) of the Linn County Code to allow a restaurant in the UD-1 zoning district.
DECISION CRITERIA:	LCC 921.824(A), OAR 660-012-0060(1)
APPLICANT:	Sandy McHenry dba Eats & Treats Cafe
OWNER:	Gregg Oberlin dba Eastgate LLC
PREPARED BY:	Rich Catlin, Reece & Associates Inc.
MAP / TAX LOT:	12s04w06BA / 100; 12s04w06A / 00311
AREA OF TAX LOT:	8.72 Acres

The Eastgate Business Center is a business center located on Highway 34 at the intersection of Freeman Lane, approximately 1.6 miles east of Corvallis. The site was initially developed in 1970 and expanded in 1982 and most recently this year. There are approximately 20 commercial and light industrial tenants in eight buildings containing approximately ??? square feet. In addition to the buildings, there is a large paved parking and circulation area. There are 121 parking spaces with front door accessibility and 27 additional parking spaces for employees and business vehicles on the south side of the complex.

The site was zoned for industrial use in 1972. On June 20, 1985, the Land Conservation and Development Commission acknowledged Linn County's comprehensive plan and implementing ordinances as complying with the statewide planning goals. Friends of Linn County appealed the acknowledgement, specifically the justification for some exception areas. On March 26, 1986, the Oregon Court of Appeals agreed with Friends that not only were the Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) exception documents inadequate, but that some exception areas contained industrial uses that were urban in nature and required a Goal 14 (Urbanization) exception. The Court remanded to Linn County for reconsideration. [78 Or App 270] The Eastgate Business Center was one of those exception areas.

On September 30, 1992, Linn County adopted Goal 14 exceptions for 273 acres at 14 sites. Most of the exception sites consisted of a single use and were zoned Limited Industrial ("LI") or Heavy Industrial ("HI"). Two exception sites with multiple uses were zoned Urban Development ("UD"), one of which included the Eastgate Business Center. The UD zone was created specifically for the two urban exception areas in recognition of the mixed use nature of the sites. The Eastgate Business Center was zoned UD-1, and UD-2 was applied to some industrial properties on the north side of Highway 34 between Oakville Road and Cushman Road. [Linn County Planning File No. CP-2-92/93]

Over the years, industrial and commercial uses have located along Highway 34 for three reasons: the proximity to both Albany and Corvallis markets, a supply of land with relatively low development costs, and direct access to an arterial that leads to the interstate highway system. The pool of tenants attracted to these features is fluid. The size and concentration of the center is fixed by the Goal 14 exception. The mix of tenants is allowed to fluctuate within the parameters of the Goal 14 exception:

The UD-1 district permits the replacement of the existing uses throughout the exception area. The replacement of the existing uses is justified because the business park and adjacent buildings are an urban type of facility with multiple tenants. This site has been developed with urban uses since 1970. Application of the UD-1 zone will not change the nature of the exception area. Rather, it will allow a business park complex to operate in a similar fashion as it has for the last twenty years by permitting replacement of existing uses with similar development. Because the site is fully developed with urban land uses, it meets the Goal 14 urban exception requirements. [Linn County Ordinance #92-622, Exhibit A, page 9]

The purpose of this text amendment is to add restaurant as a use to the list of permitted uses for the UD-1 zoning district. This narrative will demonstrate that a restaurant qualifies as a "similar use" in the context of the Eastgate Business Center.

Any changes to the text of the UD-1 zoning district would apply to all properties in that district. As noted in the Goal 14 exception ordinance, the UD-1 zoning district has been applied to only one location, comprised of two tax lots listed in Table 1.

Table 1, Properties in the UD-1 Zoning District

Map / Tax Lot	Owner of Record	Acres
12S04W06BA / 00100	Eastgate LLC	6.13
12S04W06A / 00311	Mike & Shawn Properties LLC	1.91

This written statement is an attachment to the application for a Text Amendment to the provisions of the UD-1 zoning district found in Chapter 929 of the Linn County Code. This written statement constitutes the applicant's burden of proof explaining how the application satisfactorily meets the decision criteria set forth in Section 921.824 of the Linn County Development Code.

A. Text Amendment Criteria [LCC 921.824(A)]

Applicable criteria appear in *italics* followed by the applicant's response in regular font.

- (1) *The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code; and*

Response: The Statement of Purpose for the UD-1 zoning district as set forth in LCC 929.710 reads as follows:

- (A) *The purpose of the Urban Development (UD-I) zoning district is to recognize sites which are developed with urban types of commercial/industrial uses.*
(B) *The Urban Development-I (UD-I) zoning district may only be applied to those Highway 34 sites which have been approved through a Goal 14 developed or committed exception.*
(C) *It is the intent of the UD-I zoning district to permit the continuation and expansion of existing uses and their replacement with similar uses.*

(D) The UD-I zoning district is applied to specific sites identified in the Comprehensive Plan.

(E) The UD-I zoning district and the UD-II zoning districts are not interchangeable; the respective UD zoning district can only be applied to an urban exception which is developed with the uses described in that zoning district.

Responses: The proposed text amendment is consistent with the five intent and purpose statements of the UD-1 zoning district for the following reasons.

Regarding Subsection (A), there are three features about the proposed text amendment that are consistent with the purpose of the UD-1 zoning district:

- 1) The proposed text amendment would introduce an additional commercial use to the list of allowed uses in the UD-1 zoning district. A restaurant is an element of commerce in that it is a business that employs people to make a product for customers.
- 2) The UD-1 zoning district recognizes the mixed use nature of a business park. The commonality in a business park is participation in commerce at different levels. Some businesses are oriented toward sales and service (the traditional commercial sectors) and others are more industrial in nature, such as product manufacturing and repair.
- 3) The defining character of a business park is the concentration of businesses. In this way, the Goal 14 exception was warranted because Eastgate Business Center is an “urban type of facility with multiple tenants.” A restaurant in such a locale serves both the employment base of the business park as well as outside customers in a manner as it would in a city setting.

Regarding Subsections (B) and (D), the proposed text amendment is applicable to the specific site zoned as UD-1 on Highway 34 which has been approved through the Goal 14 developed exception as identified in the Comprehensive Plan.

Regarding Subsection (E), the proposed text amendment applies exclusively to the UD-1 zoning district. No amendment is proposed to the UD-2 zoning district, thus maintaining the distinction between UD-1 and UD-2.

Regarding Subsection (C), the threshold standard for this application is whether the proposed text amendment is for a “similar use” that could replace “existing uses”. Eats and Treats Café is a restaurant. This particular use is not contained in the list of uses allowed outright, so the question is whether it is a “similar use”. It has been established that a restaurant is a business and an element of commerce; that many different businesses can co-exist in a business park; and that the concentration of businesses is the primary reason for the Goal 14 exception that prompted the crafting of the UD-1 zoning district. These are contextual descriptions to which we will return in a moment. We turn first to an examination of the text in question.

Subsection (C) does not specify whether the “existing uses” are those that existed at the time of adoption of the UD-1 zoning district in 1992 or those that exist at the time a determination of similarity is made, in this case 2013.

There is no inventory of the uses in Eastgate Business Center as they existed at the time of the Goal 14 exception in 1992. However, the ordinance contains this description:

The Eastgate exception area includes about twenty businesses most of which are located in the Eastgate Center business park. ... Tenants in the Eastgate Center include: computer manufacturing; agricultural products and consulting; electronic controls manufacturing; car repair; print shop; communications equipment repair and sales; carpet cleaning; phototype equipment; professional offices (6); and a veterinary clinic.

The corresponding list of uses allowed outright in the UD-1 zoning district is found in LCC 929.720. In this list, it is not clear how "print shop", "carpet cleaning", or "veterinary clinic" in the 1992 ordinance would have been categorized; however, these may have been considered "similar uses" and granted the full legal status as conforming uses like the list of uses allowed outright in the zone.

929.720 UD-I uses allowed outright

(A) All principle uses set forth in subsection (B) of this section and uses accessory to those principle uses are allowed outright in the UD-I zoning district provided all such uses, other than off-road parking and other activities which by necessity must be conducted in the open, are to be conducted entirely within an enclosed building.

(B) Uses allowed outright.

- (1) Professional and business offices.
- (2) Agricultural related uses such as:
 - (a) Agricultural supply store.
 - (b) Warehouses for agricultural products.
 - (c) Wholesale distribution or sales facilities.
 - (d) Commercial activity in conjunction with a farm use.
- (3) Warehousing and distribution of durable and non-durable goods.

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- (10) Alteration, expansion or replacement of a lawfully established dwelling on an authorized unit of land prior to the establishment of the UD-1 zoning district.
- (11) Transportation improvements.

LCC 921.625 authorizes the Director to determine whether a requested use is "of the same general type and is similar to uses permitted in the subject zoning district". Taking note of this provision, it is significant that the County's code includes not one but two provisions that authorize the County to approve a use that are not permitted in the UD-1 zoning district, if the requested use is found to be "similar" to uses permitted in the zone. This strongly suggests that the County is not concerned with maintaining bright lines between use categories. In particular it suggests that the County did not intend to preclude the possibility of approving the requested use. Taken together, these provisions support the premise that the County as a matter of policy does not intend to limit the UD-1 zoning district to those specific uses allowed outright as listed in LCC 929.720, but to allow unlisted uses, as a matter of intent for UD-1 set forth in LCC 929.710 and as a matter of procedure in LCC 921.625, that are determined to be "similar".

Having laid out the policy framework for allowing similar uses, as a practical matter, the Linn County Development Code does not define the word “similar” in Chapter 920 (General Provisions, including definitions) nor in Chapter 921 (Code Administration).

Lacking a legislatively-imposed definition, attention is turned to the Oxford Dictionary that defines the word “similar” as “having a resemblance in appearance, character, or quantity, without being identical.” Applying this definition, a requested use would share some characteristics with allowed uses but would differ in others. There would be commonalities as well as distinctions.

In terms of appearance, all leased space in Eastgate Business Center has the same external look. Some businesses have signs and most have windows. There is a mix of one- and two-story buildings. They share common access and parking.

In terms of floor area, leased space in Eastgate Business Center ranges from 200 square feet (Willamette Home Builders Association, Double Eagle Construction) to 11,286 square feet (MegaTech). The attached plan shows the address and floor area for each space. Eats and Treats Café is a restaurant that currently occupies 864 square feet and would like to expand by approximately 1,000 total square feet.

In terms of operating characteristics, Eats and Treats Café is open to customers 10 a.m. to 8 p.m. Tuesday to Friday and 8 a.m. to 2 p.m. on Saturday. The showroom for Hendrix Heating is open 8 a.m. to 5 p.m. weekdays. The tasting room for 2Towns Cider is open 12-6 p.m. Tuesday to Saturday. Jefferson Mint is open 10 a.m. to 4 p.m. weekdays. Other businesses such as Double Eagle Construction, MegaTech, HyTEK Plastics, and AGAE Technologies do not have on-site customers.

In terms of staffing, Eats and Treats Café employs up to three persons per shift. No other comparables were available but estimates range from one or two people on an occasional basis for Nectar Creek Honeywine and New Visions West to MegaTech which may have more than a dozen staff on-site at any one time. Most of the businesses have an office that is staffed part- of full-time.

In terms of product type, Blue Monkey bakes goods for off-site sales. Pacific Coffee supplies coffee and advises coffee shops. 2Towns Cider offers on-site tastings and sales and off-site distribution. Nectar Creek Honeywine produces honey mead on-site for off-site distribution. Eats and Treats Café serves meals prepared on-site.

In terms of longevity, MegaTech was founded in 1988, Hendrix Heating in 1952, and HyTEK Plastics in 1990. Some businesses are start ups, and some businesses move here.

These characteristics are typical for spec space where businesses large and small co-mingle. Eastgate Business Center offers flex space from 200 to 10,000 square feet. There is an optional shared workspace that includes use of a conference room and kitchenette as well as an on-site business consultant. Office, manufacturing, and/or warehouse space are available.

For these reasons, a restaurant would be similar in scale, hours of operation, staffing, and appearance to existing uses that are allowed in the UD-1 zoning district. Three businesses prepare food products. Some businesses have retail customers, some rely on direct sales or wholesale distribution, and some businesses provide on-site or off-site services.

(2) The amendment is consistent with the intent of the policies within the applicable section(s) of the Comprehensive Plan.

Response: Goals and policies for industrial lands are applicable to the proposed text amendment because the UD-1 zoning district implements the Industrial designation on the Comprehensive Plan Map.

Before launching into applicable goals and policies, it is informative to examine the pertinent background information to the Comprehensive Plan to understand the context for the goals and policies.

905.550 Industrial Land; Background

Some existing industrial uses cannot be classified as rural. Under the context of the Statewide Goals, uses which are not rural must be labeled "urban" and planned for in a different manner. In many cases, urban types of development in areas outside of an urban growth boundary require an exception to Goal 14 (Urbanization). This is what has been done for about 320 acres which are already developed or committed to urban uses. The area which is developed or committed to urban types of development has been established in the exception. In both the LI and HI zones there are several existing urban uses which are specifically identified and permitted as outright uses. The expansion of these uses is permitted on land which is already committed or developed to the listed use. [LCC 905.550(O)]

As previously described, properties adjacent to Highway 34 are developed with numerous industries. Most of this development is located within two clusters; one near Oakville Road and the other near Peoria Road. The diversity of these two areas is recognized by an Urban Development (UD) zoning designation which has been applied only to these two areas. The purpose of the UD zone is to permit the continuation and expansion of existing uses and their replacement with similar uses. The UD zoning district will be restricted to two intensively developed areas on Highway 34. A description of the areas zoned UD is found in the Highway 34 exception. [LCC 905.550(T)]

Other industrially zoned land on Highway 34 will be limited to rural types of industrial development. This is because the county considers state Highway 34, between the Interstate Freeway (I-5) and the Willamette River, as an area of special concern. This area is characterized by a mixture of agricultural, residential, industrial and commercial uses. Further development along this corridor is likely to be proposed because of the proximity to Corvallis, Albany, Tangent and the freeway; the presence of a five lane state highway; visibility to a high volume of traffic; and the nature of existing development. [LCC 905.550(U)]

The following goals and policies of the Linn County Comprehensive Plan are applicable to the proposed text amendment.

905.560 Goals for industrial lands

- (A) Provide for the orderly development of land for rural industrial uses.*
- (B) Recognize identified industrial operations as viable county land uses.*
- (C) Provide opportunities for diverse rural economic development.*
- (D) Facilitate the identification and development of qualifying abandoned or diminished mill sites where development permits and rezoning, as needed, may be obtained without taking exceptions to land use planning goals regarding agricultural lands, forestlands, public facilities and urbanization.*

Responses: Goals (A) and (B) do not apply because the UD-1 site is a small scale, mixed use, commercial and industrial site, not simply industrial land. Goal (D) does not apply because the UD-1 site is not a qualifying abandoned or diminished mill site. The proposed text amendment is consistent with Goal (C) in that the opportunity for a diverse ex-urban economy will grow incrementally with the addition of another use in the UD-1 zoning district.

Policy 1: The Urban Development district may be applied to property with an Industrial Plan designation when a zone amendment and Goal 14 exception are approved. The two Urban Development district sub-zones are intended for two specific existing exception sites on Highway 34 which are identified in a separate exception document. No other sites have been considered as suitable for the Urban Development designation. Any future application of the UD district will require a Land Development Code text amendment to establish uses appropriate for the site. Additionally, a Goal 14 exception is required prior to application of the UD district.

Response: The proposed map amendment complies with Policy 1 because it expands the list of allowed uses on a site approved for the UD-1 zoning district and Goal 14 exception.

Policy 17: It is the intent of the Plan to maintain existing LI zoning along Highway 34 between the Willamette River and the Interstate Freeway and to discourage the conversion of agricultural, residential and commercial land to industrial zoning. The intent of the Plan is to discourage more industrial zoning because it will create traffic conflicts on the highway and will be inconsistent with planning efforts of Albany, Tangent and Corvallis. Highway 34 has been designed to move a high volume of traffic at fast speeds. As an "Access Oregon Highway," it is intended to be a limited access, high volume arterial. Additional highway based industrial development will create more turning movements on and off the highway. Because industrial land is available nearby in Corvallis, Tangent and Albany, there is little need to provide for additional industrial zoning designations on Highway 34.

Response: The proposed text amendment complies with Policy 17 in that it would have no effect on the zoning of property along the Highway 34 corridor and all zoning boundaries would remain intact.

B. Transportation Planning Rule [OAR 660-012-0060(1)]

The Transportation Planning Rule ("TPR") as set forth in OAR 660-012-0060(1) states that:

If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule.

Response: The proposed text amendment is an amendment to a land use regulation. Therefore OAR 660-012-0060(1) is applicable to this request.

For reasons that will be set out in the following discussion, the proposed text amendment would not significantly affect an existing or planned transportation facility under the terms of Section (9) of the TPR:

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

In response to Subsection (a), the existing UD-1 zoning district is a compatible zone with the Industrial designation on the Comprehensive Plan Map, according to the Implementation Matrix in Appendix at the end of LCC Chapter 905. No change is proposed to the existing Comprehensive Plan Map designation. For reasons described earlier in response to LCC 921.824(A)(1), the proposed text amendment is consistent with the intent and purpose statement of the UD-1 zoning district. Those findings and conclusions are hereby incorporated by reference to address Subsection (a).

Regarding Subsection (b), the Linn County Transportation Plan was adopted in 1980 as Chapter 907 in Subtitle 1 (Comprehensive Plan) of the Linn County Code. It was amended in 1999 as a periodic review work product to address several issues, including the 1992 adoption of the UD zoning district. The Transportation Plan calls out the UD zoning district in the following sections:

907.230 Transportation Plan Implementation

(D) Land development projects. ... In zones that permit intense development, such as Freeway Interchange Commercial and Urban Development, the combination of already intensely developed parcels, the small amount of available undeveloped parcels, and the size restrictions imposed on all development in these zones will preclude significant transportation impacts from occurring.

907.380 State Highways

(A) Background

(2) Highway 34 between I-5 and the Willamette River

(d) *Industrial.* Most of the County's light industrial uses are located close to Albany and Corvallis. One of the most intensive areas of industrial development occurs on Highway 34 between Corvallis and Oakville Road. Properties adjacent to Highway 34 are developed with numerous industries. Most of this development is located within two clusters; one near Oakville Road and the other near Peoria Road. The diversity of these two areas is recognized by an Urban Development (UD) zoning designation which has been applied only to these two areas. The purpose of the UD zone is to permit the continuation and expansion of existing uses and their replacement with similar uses. The UD zoning district is restricted to these two intensively developed areas on Highway 34. Other industrially zoned land on Highway 34 is limited to rural types of industrial development (LI - Limited Industrial).

At the conclusion of periodic review, the Land Conservation and Development Commission acknowledged Linn County amendments of Subtitle 1 (Comprehensive Plan), including the Transportation Plan set forth in Chapter 907, as complying with the Statewide Planning Goals, thereby establishing compliance with the first part of Subsection (b) under Section (9) of the TPR. The second part of Subsection (b), consistency of the proposed zoning with the Transportation Plan, is established by the language of LCC 907.230(D): [the provisions of the UD zone] "...will preclude significant transportation impacts from occurring." [Emphasis added]

Subsection (c) under Section (9) of the TPR does not apply because the properties zoned UD-1 have not been the subject of an urban growth boundary amendment nor been exempted from the TPR.

Therefore, the proposed text amendment does not significantly affect an existing or planned transportation facility because the proposed text amendment is consistent with the existing Comprehensive Plan Map designation of Industrial; no change is proposed to that designation; and the proposed text amendment is consistent with the acknowledged Linn County Transportation Plan; in accordance with OAR 660-012-0060(9).

///R&a 12/20/12

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