

To: Planning Commission

From: Joshua Williams, Senior Planner

Memo Date: March 3, 2023

Meeting Date: March 13, 2023

Subject: Discussion of Draft Development Code Update to Modify Duration of Exemption from Subsequently Adopted Land Use Ordinances for Subdivisions (Subdivision Vesting Period)

Attachments: 1. Non-Phased Subdivision Approval (Current timeline)
2. Non-Phased Subdivision Approval (Proposed timeline)
3. Phased Subdivision Approval (Current timeline)
4. Phased Subdivision Approval (Proposed timeline)

This work session provides an opportunity for staff and members of the Planning Commission to discuss the Draft Development Code update for the Subdivision Vesting Period Project.

PROJECT DESCRIPTION

The proposed Type IV Comprehensive Plan Amendment will update Volume III - Development Code. The 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 current exemption, per Development Code Section 6.0212, is 3 years from the date of the tentative plan approval.

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.

BACKGROUND

The Oregon Revised Statutes (ORS) establish the ability for local jurisdictions to establish a vesting period and set a maximum period of 10 years from tentative subdivision plan approval (this maximum is also applicable to jurisdictions with no adopted vesting period).

- ORS 92.040(2) provides that after September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

- ORS 92.040(3) grants that a local government may establish a time period during which decisions on land use applications under subsection (2) of 92.040 apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government.

The Gresham Community Development Code, Section 6.0212 - Duration of Exemption from Subsequently Adopted Land Use Ordinance, states that, for the purposes of ORS 92.040(2) and (3), construction within an approved subdivision shall be subject to the City of Gresham land use laws that were in effect on the date of the tentative subdivision plan application submittal and shall not be subject to subsequently adopted City of Gresham land use laws. Per Section 6.0212 of the Development Code, this exemption **terminates 3 years from the date the City of Gresham land use decision on the tentative subdivision becomes final**. This means that the subdivision application is reviewed and approved under the development code policies that were in effect at the time the application was submitted, and that building permits for housing on those lots are also reviewed under those same policies for up to 3 years after the tentative plan approval.

This policy was first adopted in 2011, with a time period of “2 years from the date the City of Gresham land-use decision on the tentative subdivision becomes final.” In 2021 this was extended from 2 to 3 years.

Current Development Code Requirements

- There is a one-year time limit from the approval of a tentative plan to submit a final plat application, with possible extension of 1 year.
- There is a one-year time limit, from the date of submittal, for a final plat to be approved.
- There is a one-year time limit, from the date of the final plat approval, to have the subdivision final plat recorded.

SUMMARY OF PROPOSED COMPREHENSIVE PLAN AMENDMENT

The intent of this development code update is to provide reasonable certainty in subdivision development outcomes while not causing unreasonable delay in the implementation of new land use provisions. The vesting period can provide certainty in the development process by allowing an achievable timeline for housing developers to have the subdivision’s final map approved and recorded, and then to complete the buildout of the development within the parameters of the land use laws that the tentative subdivision plan was designed for and approved under.

The changes proposed to Volume III (Development Code) of the Comprehensive Plan, outlined below, 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 is proposed to accommodate certain processes and factors in the development climate including:

- With larger subdivisions, full buildout can take several years after the recording of the final plat.

- Changes in the development climate, and materials and labor shortages can further prolong development timelines.
- Staff has seen and encountered issues with the three-year exemption expiring during the middle of a construction period, causing some portions of subdivisions to become subject to new standards during the middle of build outs. This can result in delays in construction and additional costs to the developer due to needed redesigns to be in compliance with the current Development Code.

The draft code language proposes to modify two sections of code: Section 6.0211 - Phased Subdivision and Section 6.0212 - Duration of Exemption from Subsequently Adopted Land Use Ordinance, by:

- Eliminating language that contradicts the three-year timeline from final plat recording (in Section 6.0211); and
- Clarifying that the exemption shall terminate three years from recording of final plat, rather than tentative plan approval (in Section 6.0212). The clarification in Section 6.0212 will also state that the maximum duration of exemption from subsequently adopted land use ordinances shall not exceed 10 years from tentative plan approval, consistent with ORS 92.040(3).

Proposed Amendments

6.0211 PHASED SUBDIVISION

The approval authority may authorize a time schedule for platting a subdivision in phases. Each phase may be for a period of time in excess of one year but the total time period for all phases shall not be greater than five years without resubmission of the tentative plan. Each phase so platted and developed shall conform to the applicable requirements of this code. ~~Portions platted after the passage of one year shall be required to have modifications if necessary to avoid conflicts with a change in the Community Development Plan.~~

If a phased development or subdivision is proposed for a development that includes townhouses, the first phase shall conform to density requirements without consideration of subsequent phases. Later phases shall conform to density requirements in a cumulative fashion, taking into account previous phases and while continuing to meet density standards at each phase. This is calculated by adding the number of lots for the current phase and all previous phases and dividing by the acreage of the current phase (taking into account subtractions in the "Net Density" definition) and all previous phases. The result shall meet the applicable density standard.

6.0212 DURATION OF EXEMPTION FROM SUBSEQUENTLY ADOPTED LAND USE ORDINANCE

For the purposes of ORS 92.040(2) and (3), after September 9, 1995, construction within an approved subdivision shall at the Applicant's discretion be subject to the City of Gresham land use laws that were in effect on the date the tentative subdivision plan application was made and shall not be subject to subsequently adopted City of Gresham land use laws. This exemption from subsequently

adopted City of Gresham land use laws shall terminate 3 years ~~from the date the City of Gresham land use decision on the tentative subdivision becomes final~~ from the date of the recording of the final plat. In no instance shall this exemption extend beyond 10 years from tentative plan approval.

PUBLIC INVOLVEMENT

Public involvement efforts include or are planned to include:

- Meeting with the Coalition of Gresham Neighborhood Association
- Meetings with the Developer Advisory Group
- Planning Commission work session and public hearing
- Council public hearing
- Published notice of hearings

NEXT STEPS

A draft project timeline through adoption of the proposed code amendments is outlined below.

Schedule

Jan. 25, 2023	Developer Advisory Group meeting (complete)
Feb 7., 2023	Council Project initiation (complete)
Mar. 2, 2023	Developer Advisory Group meeting (complete)
Mar. 13, 2023	Planning Commission Work Session
Mar. 14, 2023	Coalition of Gresham Neighborhood Associations Meeting
April 10, 2023	Planning Commission Public Hearing
April 18, 2023	City Council Public Hearing with Emergency Enactment

FOR MORE INFORMATION

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