

Subcommittee members:

Paul Conte, Jefferson Westside Neighbors
David Kolb, Crest Drive Citizens Association
Steven Baker, West University Neighbors
Marilyn Mohr, River Road Community Organization

In brief

Based on the MiCAP subcommittee’s recommendation, the NLC’s ICS Committee unanimously recommended the full NLC approve the following advisory motion:

The Neighborhood Leaders Council (NLC) requests the Planning Commission select amendments for refinement and presentation to City Council from the attached list of “Highly Recommended” amendments.

The NLC further requests the Planning Commission eliminate from further consideration those amendments listed as “Recommended for Rejection.”

This advisory shall not become effective until twelve or more voting members of the NLC notify the NLC co-chairs in writing (including by e-mail) that they support the motion.

What is being proposed and why it matters

The proposal is for the NLC to request that approximately forty land use code amendments (or closely related sets of amendments) be developed through MiCAP and presented to City Council for adoption. Of these forty recommendations, a set of fifteen “top priority” proposals have also been identified. These amendments would help improve land use processes, protect neighborhoods against incompatible infill, and protect Eugene’s natural resources.

In addition, eight proposed amendments have been identified for the NLC to request the Planning Commission *reject* because of the potential harm the amendments may cause neighborhoods.

This proposal will ultimately help get City Council to revise Eugene’s land use code in a way that benefits neighborhoods.

The MiCAP committee has also grouped the remaining proposed amendments into several categories to help neighborhood residents and leaders formulate their own neighborhood association and individual recommendations to the Planning Commission and City Council. No NLC advisory is being proposed for these other amendments.

How the MiCAP subcommittee developed its recommendations

The four members of the subcommittee collaborated to screen all 230 proposed amendments and assign ratings to the approximately 120 that were not screened out.

First we screened out proposed amendments that had no clear benefit (or harm) to neighborhoods in one of the three areas the NLC has previously identified as MiCAP priorities: land use approval processes; infill compatibility, and protection of natural resources. So, for example, we eliminated amendments dealing with commercial or industrial issues from further consideration. We make no recommendation pro or con on

these amendments other than that we recommend they have a lower priority than proposed amendments that benefit neighborhoods in one of the three priority areas. (We anticipate that other interest groups will advocate for these amendments.)

Next, we screened out proposals that did not appear to present an identifiable land use code amendment. A number of items in the “amendment library” were very general or aspirational in nature; and while we may have understood and supported the sentiment, they were not specific enough to evaluate further as potential amendments. For these, we also made no recommendation pro or con.

During this initial cut, we also identified amendments that were duplicates or completely encompassed by another amendment.

For the remaining amendments, we assigned ratings for the following elements:

- *Potential benefit to neighborhood residents* – We limited our focus to the three priorities already established by the NLC: land use approval processes; infill compatibility, and protection of natural resources. (As noted above, we did not rate amendments that dealt with commercial development, for example.)

As a consequence of this rating, we also identified a set of proposed amendments that we believe would be *detrimental* to neighborhoods. We recommend the Planning Commission *reject* these from further MiCAP consideration.

- *Complexity* – The relative amount of effort required to fully develop the proposal into specific land use code. This is a factor in how much of the available MiCAP time and resources the amendment would require.
- *Potential contention over adoption of the amendment* – Our estimation of how strong the disagreement might be over adoption of the proposed amendment. We were not particularly concerned that there might be opposition to a proposal, but this measure was part of our attempt to estimate the relative amount of time and resource required to deal with a proposed amendment under MiCAP.

In general, our overall assessment of complexity and contention probably reflects a somewhat “optimistic” bias, in that we may have viewed amendments that would benefit neighborhoods as simpler and less contentious than would someone reflecting a developer or Planning staff perspective.

Using our preliminary screening and the three ratings, we categorized the amendments into the following groups:

- *Highly recommended* – Most of these forty or so amendments (or closely related sets of amendments) have a moderate to high benefit and relatively low complexity and potential contention. Note that, in our final recommendation, we also included some high-benefit amendments that had higher complexity and/or potential contention (see below).
- *Recommended* – There were another forty or so amendments that have potential benefit to neighborhoods and which would be manageable under MiCAP. However, these amendments have a lower benefit-to-resource-requirement ratio than the “highly recommended” amendments. If the MiCAP process can manage additional amendments beyond the “highly recommended” set, this is the pool from which we suggest additional amendments be drawn.

- *Recommended for separate initiatives* – We identified about thirty amendments that have potential benefit to neighborhoods, but which are likely to be well beyond the available MiCAP resources due to complexity or a potentially high degree of contention. We suggest these be addressed in separate initiatives, including ongoing processes, such as the Infill Compatibility Process, or new initiatives.

Note that we are not suggesting that items that may be difficult or contentious should in general be put off. In fact, as explained below, we included several potentially difficult or contentious amendments in our final set of “highly recommended” amendments. But the reality is that such amendments require more time and resources, which could displace other, simpler, less contentious, amendments that also have potentially high benefit. Our strategy was to maximize the overall benefit that could be accomplished within the limitations of MiCAP process.

- *Amendments that should be rejected* – There are eight amendments we believe would be detrimental to neighborhoods and which should be rejected outright.
- *Duplicates* – About fifteen amendments were identified as duplicates or encompassed by other amendments.
- *No recommendation* – We made no recommendations on about ninety amendments for the reasons explained above (i.e., ones that have no apparent benefit or detriment to neighborhoods in the three NLC priority areas).

After the initial categorizations based on ratings, we reviewed all the assignments to categories and made a few adjustments based on our collective judgment as to the appropriate category for an amendment.

At this point, we received the MiCAP consultant’s own ratings and “A, B, C” categorizations. We added this information to the amendments in the “highly recommended” set. We then rated these forty amendments or sets of amendments as to their relative priority *within* the set of highly recommended amendments. Through this final assessment, we identified the fifteen “top priority” proposals within the “highly recommended” set.

Comments

It was a challenge to assess 230 proposed amendments, especially since the descriptions of the proposals varied significantly, and we didn’t have time to seek clarification from the submitter.

Our goal was not to get a “perfect” prioritization of all the amendments. Given the limited number of amendments that are likely to be implemented through MiCAP, our primary goal was to identify a set of amendments that could reasonably be expected to be managed through MiCAP and that would, in aggregate, provide maximal benefit to neighborhoods in the three areas identified as NLC priorities.

We encourage NLC members to consider the set we’ve identified as “highly recommended” in this light. While we anticipate people may disagree with some of our choices, we hope NLC members will see the overall benefit that can come from unified support for the identified set of “highly recommended” amendments.

**NLC RECOMMENDATIONS FOR
HIGHLY RECOMMENDED
AND
REJECTED
MICAP AMENDMENTS**

NOTES

The columns in each table are:

Item Nbr	Amendment topic	Top Priority
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Green shading and an “*” in the “Priority” column indicate the amendment (or set of amendments) is one of the fifteen “top priority” items.

Some amendments must be considered as an “integrated” set. For example, there may be an amendment to revise a definition and another amendment to revise a closely related standard, and both must be adopted to achieve the intended purpose. These are noted below.

HIGHLY RECOMMENDED AMENDMENTS – SUMMARY
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PROCESS AND FEES

Approval processes

140	Close "2-step" loophole	*
223	Limit successive partitions	*
136	Fix application evidence & notification	
137	Applicant burden of proof	
139	Require Metro Plan consistency	
143	Explicit requirement for Refinement Plan policies	

Adjustments

227	Define & limit "adjustment"
104	Clarify distances for adjustments

Fees

123	Refund appeals fees
195	Limit appeal & other fees for Neighborhood Associations

LOT STANDARDS

Definitions (integrated set)

14	"Front/Interior Yard Setback"
26	"Setback"
31	"Yard"

Alley access (integrated set)

7	Fix "Alley Access Lot" definition	*
111	Prohibit alley-access-only lots	
135	Remove prohibition of street access from multifamily standards	

Frontage (integrated set)

17	Define "Lot Frontage"	*
108	Lot frontage requirement	

Buildable area and access corridor (integrated set)

16	Eliminate "Lot depth/width" definitions	*
98	Define "Buildable Area"	
66	Define "Vehicle Access Corridor"	
107	Require Access Corridor & Buildable Area	

Subdivisions

92	Don't count private roads in subdivisions' lot area	*
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Flag lot

12	Definition of "Flag Lot"	*
109	Create flag lot standards for all zones [where allowed]	
102	Increase flag lot setbacks	
110	Restrict flag lots to a single new lot	
221	Infill flag lot site review	
222	Prohibit flag lots in new infill subdivisions	
226	Prohibit flag lot except in subdivisions > 10 lots	

DEVELOPMENT STANDARDS

Max density (integrated set)

68	Recalibrate "max density"	*
100	Use tables, new limits for max density	

Building height (integrated set)

8	Definition of "Building Height"	*
101	Max building height standard	

Vehicle Use Area (integrated set)

30	Define "Vehicle Use Area"
103	Add Vehicle Use Area standards

Parking

192	Offsite parking in RPP zones	*
193	Offsite parking in RPP zones	*
229	Prohibit front yard parking R-3 & R-4	

Open space

191	Clarify distance for Open Space credit	*
21	Exclude Vehicle Use Areas from open space	

NATURAL RESOURCE PROTECTION**Drainage & storm water**

206	Onsite filtration	*
209	Protect drainage ways	*

Pollution control

205	Eliminate exemptions from pollution control standards	
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Hillside development

166	Strengthen requirements for geotechnical, engineering, & safety analysis on sloped sites	*
118	Require erosion permits	
168	Correct South Hills Study language inversion	
170	Clarify the prohibition on subdivisions above 900'	
172	Tighten South Hills Study criteria to protect forests & slopes 700-900'	

Trees

124	Redefine "Tree protection"	
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REJECTED AMENDMENTS – SUMMARY**Rejected amendments**

5	R-1: Permit alley access, reduce min lot size
49	Allow alley access lots
50	Allow smaller original lots for flag lot
197	R-1: Allow more than one "secondary unit"
198	R-1: Allow smaller original lots for flag lot, reduce min flag lot size
199	Remove restrictions on partitioning a duplex lot
201	R-1: Allow above ground utilities for new secondary dwellings
202	Allow partition of lots that will create a non-conforming condition

HIGHLY RECOMMENDED AMENDMENTS – DETAILS

PROCESS AND FEES

FIX LOOPHOLES AND GAPS IN APPROVAL PROCESSES

What do these amendments do?

Fix serious loopholes and gaps in the code that defines the processes and approval criteria for land use actions (e.g., zone changes, subdivisions, etc.).

- Close loopholes that allow an applicant to circumvent local refinement plan policies because potential development is ignored during the approval process.
- Close loopholes that allow an applicant to submit evidence that public has no chance to address before the decision.
- Close loopholes that allow an applicant to use successive lot partitions to circumvent the approval criteria for subdivisions.
- Clarify that the applicant bears the burden of proof in all approval processes.
- Clarify that all land use actions must comply with the Metro Plan.
- Clarify which set of refinement plan polices apply for each land use action. (E.g., all relevant policies in the adopted refinement plan or just those codified in Eugene Code sections beginning at 9.9500.)

Why are these amendments important?

The current poorly crafted code (and staff interpretations of the code) are allowing applicants to circumvent the intent of the code and/or a fair public process. These amendments will remove several critical loopholes and ambiguities that are creating serious problems.

Approval processes

140	Close "2-step" loophole	*
223	Limit successive partitions	*
136	Fix application evidence & notification	
137	Applicant burden of proof	
139	Require Metro Plan consistency	
143	Explicit requirement for Refinement Plan policies	

PREVENT MISUSE OF “ADJUSTMENTS” TO REQUIRED STANDARDS

What do these amendments do?

Fix flawed code that allows a provision for an “adjustment” to a standard to be misused as a complete “waiver”. This also clarifies how threshold distances are measured

- Limits “adjustments” to quantitative standards to a maximum percentage, unless otherwise provided.
- Clarify how threshold distances for granting an adjustment are measured. (E.g., distance from multi-family dwelling to a public park.)

Why are these amendments important?

The current poorly crafted code (and staff interpretations of the code) are allowing complete waivers of basic standards (e.g., minimum lot frontage) using the code’s provision for “adjustments”. The “trick” being used is to allow a 100% “adjustment”. This tactic essentially negates enforcement of many of the code’s standards.

Some adjustments have a condition that states a distance. For example, the minimum “open space” requirement for a multi-family development can be reduced if there’s a public park within a certain distance. Current code doesn’t state how these distances are measured, leading to unreasonable interpretations. For example, staff has interpreted the distance from a multi-family dwelling to a public park “as the crow flies,” rather than along public sidewalks. The proposed amendment (104) would correct this gap.

Adjustments

227	Define & limit "adjustment"
104	Clarify distances for adjustments

SET APPROPRIATE LAND USE FEES

What do these amendments do?

Adjust land use fees to be fairer.

- Refund entire appeal fee when the original decision is not upheld.
- Set reasonable maximum fees for appeals and other land use actions initiated by active, city-chartered neighborhood associations.

Why are these amendments important?

Currently, even when an appeal determines that the Planning Director or Hearings Official erred in his or her original decision, the appellant incurs the cost of the appeal fee. Since the City’s original error was the reason for the cost incurred to correct the error, the appellant should not be responsible for any appeal fee, and should receive a full refund.

The City recognizes neighborhood associations as an important way for citizens to participate in public processes, including land use processes. Many current fees, however, are prohibitively high and effectively prevent neighborhood associations (especially from lower income areas of the City) from fully participating in land use processes. The fees

should set so that neighborhood associations are not locked out of the process because of financial limitations.

Note.

The Eugene Budget Committee is considering action to address these two proposals, and may take action prior to Planning Commission consideration.

Fees

123	Refund appeals fees
195	Limit appeal & other fees for Neighborhood Associations

LOT STANDARDS

CLARIFY BASIC LOT STANDARD DEFINITIONS

What do these amendments do?

Fix flawed code that doesn't clearly define basic terms used in lot standards.

- Clarify various definitions related to “setback” and “yard”.

Why are these amendments important?

These terms are used in many standards, and the existing ambiguities provide loopholes for circumventing the standards. Clarifying these will close the loopholes.

Definitions (integrated set)

14	"Front/Interior Yard Setback"
26	"Setback"
31	"Yard"

PREVENT ALLEY-ACCESS-ONLY LOTS

What do these amendments do?

Fix flawed code that allows alley-access-only lots in conflict with City Council prohibition against such lots.

- Fix the “alley access lot” standard and explicitly prohibit lots that have their only vehicle access from an alley.
- Remove a conflicting provision of the multi-family standards that prohibit street access.

Why are these amendments important?

City Council voted to prohibit alley access lots because of the negative impacts on nearby residents. The current poorly crafted code (and staff interpretations of the code) are allowing new to be created lots that have their only vehicle access from an alley. These amendments implement Council’s action.

Alley access (integrated set)

7	Fix “Alley Access Lot” definition	*
111	Prohibit alley-access-only lots	
135	Remove prohibition of street access from multifamily standards	

PREVENT “GERRYMANDERED” LOTS

What do these amendments do?

Fix flawed code that allows “gerrymandered” lots in conflict with code’s intent.

- Clarifies and strengthens the “lot frontage” standard.
- Replaces unworkable “lot width minimum” standard with simpler and more effective “buildable area” and “access corridor” standards.

Why are these amendments important?

Street and lot configurations are fundamental determinants of neighborhood character. The current poorly crafted code (and staff interpretations of the code) are allowing incompatible lot partitions and subdivisions. These gerrymandered lot divisions frequently allow poorly sited dwelling and vehicle access that have significant negative impacts on nearby residents.

Frontage (integrated set)

17	Define "Lot Frontage"	*
108	Lot frontage requirement	

Buildable area and access corridor (integrated set)

16	Eliminate "Lot depth/width" definitions	*
98	Define "Buildable Area"	
66	Define “Vehicle Access Corridor”	
107	Require Access Corridor & Buildable Area	

DON'T COUNT PRIVATE ROADS IN "LOT SIZE"

What does this amendment do?

Fix flawed code that allows the area encompassed by a private subdivision road to be counted towards the "minimum lot size" standard.

- Clarifies and strengthens the "lot size" standard by eliminating any area that is part of a private subdivision road.

Why is this amendment important?

Counting areas of a private road as part of an adjoining lot's size allows lots that are effectively smaller than the code's established minimums. Substandard lots increase the impacts on adjacent development.

Subdivisions

92	Don't count private roads in subdivisions' lot area	*
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MITIGATE IMPACTS OF FLAG LOTS

What do these amendments do?

Fix and improve code to reduce the impact of incompatible flag lot development.

- See notes, below.

Why are these amendments important?

Flag lot development often has high negative impacts because it breaks up the established lot pattern and allows development in locations (e.g., adjacent to backyards) that was not anticipated when an established neighborhood was originally developed.

Notes:

Fixing the definition (12) and including the missing standards for zones where flag lots are allowed (109) are a top priority.

The remaining five amendments provide several alternatives to address current problems with flag lots:

- Limit situations where flag lots are allowed: Only allow in non-infill subdivisions (222) or only allow in subdivisions with more than 10 lots (226).
- Restrict the creation of new flag lots so only one can be created from the original lot (110).
- Where flag lots are allowed, increase setbacks (102) and/or require site review (221).

Flag lot

12	Definition of "Flag Lot"	*
109	Create flag lot standards for all zones [where allowed]	
102	Increase flag lot setbacks	
110	Restrict flag lots to a single new lot	
221	Infill flag lot site review	
222	Prohibit flag lots in new infill subdivisions	
226	Prohibit Flag lot except in subdivisions > 10 lots	

DEVELOPMENT STANDARDS

MAKE MAX DENSITY STANDARD CONSISTENT WITH POLICY AND MORE TRANSPARENT

What do these amendments do?

Correct calculations for maximum density (i.e., dwellings allowed on a lot) so they produce results consistent with adopted land use policy and are more transparent.

- Replace “round up calculation” with properly-calibrated table.

Why are these amendments important?

The current “maximum density” calculation has a provision to “round up” results, so that if a lot allows 1.00001 dwellings, the developer is allowed to build 2 dwellings. This substantially increases the effective density, especially in R-2 and higher zones. Analysis of infill development in the Jefferson and Westside neighborhoods indicates the result is to allow densities substantially higher than the maximum allowed by the Metro Plan land use designation.

The proposed amendments would correct this conflict and make the code easier to understand and apply.

Max density (integrated set)

68	Recalibrate "max density"	*
100	Use tables, new limits for max density	

PREVENT EXCESSIVE BUILDING HEIGHT

What do these amendments do?

Close a loophole that allows excessively high structures and makes the maximum building height more transparent.

- Revise definition of “building height”.
- Revise maximum building height standard.

Why are these amendments important?

The current definition of building height is obscure and difficult to apply, and may allow buildings to be considerably taller than the code intends.

Current code measures building height for a sloped roof only to the *midpoint* of the eaves. This allows building heights substantially higher than the specified “maximum building height.” For example, in the R-2 zone, the maximum height is specified as 35 feet, but actual structures can be 45 feet (or higher) to the ridge of the roof. By manipulating the lower edge of a sloped roof, a developer can create excessively high structures.

These amendments redefine building height to the top of the roof and provide separate maximums for flat and sloped roofs.

Building height (integrated set)

8	Definition of "Building Height"	*
101	Max building height standard	

LIMIT IMPACTS FROM VEHICLE USE AREAS

What do these amendments do?

Limit how much of a lot may be covered by vehicle use areas (e.g., parking and driveways).

- Define “Vehicle Use Area”.
- Establish maximum vehicle use area standards.

Why are these amendments important?

Excessive coverage of a lot by vehicle use areas has significant negative impacts on storm water and on the character of surrounding development. These amendments limit those impacts.

Vehicle Use Area (integrated set)

30	Define "Vehicle Use Area"
103	Add Vehicle Use Area standards

MITIGATE IMPACTS OF PARKING

What do these amendments do?

Mitigate the impacts of parking, particularly from multi-family development in established neighborhoods.

- Limit impacts of offsite parking in “Residential Parking Permit” (RPP) areas.
- Prohibit parking in front yards in R-3 and R-4 zones

Why are these amendments important?

When multi-family development generates parking that exceeds the on-site capacity, the spillover impacts nearby residents. Parking in front yards seriously degrades the character of residential neighborhoods. These amendments mitigate those problems.

Parking

192	Offsite parking in RPP zones	*
193	Offsite parking in RPP zones	*
229	Prohibit front yard parking R-3 & R-4	

**ASSURE MULTI-FAMILY DEVELOPMENTS
PROVIDE ADEQUATE OPEN SPACE**

What do these amendments do?

Fix gaps in the current code that allow less than the intended amount of open space to be provided for multi-family developments.

- Use reasonable calculation for distance to public park in order to get open space credit.
- Exclude Vehicle Use Areas from “open space”.

Why are these amendments important?

Adequate on-site or close-by open space is essential to maintain livability in multi-family developments and surrounding neighborhoods. These amendments help assure the intended minimum open space is provided.

Open space

191	Clarify distance for Open Space credit	*
21	Exclude Vehicle Use Areas from open space	

NATURAL RESOURCE PROTECTION

PROTECT NATURAL STORMWATER DRAINAGES

What do these amendments do?

Protect natural storm water drainages and promote onsite filtration.

- Make on-site filtration preferred storm water destination.
- Control development within natural drainage ways.

Why are these amendments important?

Large areas of Eugene, including in River Road and Santa Clara, depend on natural storm water drainages and filtration. These amendments help prevent development that would degrade those natural systems.

Drainage & storm water

206	Onsite filtration	*
209	Protect drainage ways	*

STRENGTHEN POLLUTION CONTROL

What does this amendment do?

Closes gap in code regarding pollution control.

- Remove pollution control exemptions for one- and two-family dwellings.

Why is this amendment important?

As the city is increasingly careful about pollution control, developers (and home owners) should be held to the best standards in the code, regardless of the size of development.

Pollution control

205	Eliminate exemptions from pollution control standards
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ASSURE SAFE AND ENVIRONMENTALLY-SOUND HILLSIDE DEVELOPMENT

What do these amendments do?

Fix deficiencies and strengthen code related to residential development on hillsides.

- Strengthen safety requirements.
- Require erosion permits
- Clarify language of South Hills Study and prohibition on subdivisions above 900'.
- Strengthen language to protect forests and slopes within 700-900' elevation range.

Why are these amendments important?

As the city is increasingly careful about development on sloped sites, developers should be held to the best standards in the code, and should be required to show in sufficient scientific detail the safety of their plans.

The existing prohibition against subdivisions above the 900' line will become increasingly important with the plans for the ridge line trail, and as South Hills open spaces come under increasing development pressure in south and west Eugene. So the existing prohibition should be worded as clearly as possible.

Hillside development

166	Strengthen requirements for geotechnical, engineering, & safety analysis on sloped sites	*
118	Require erosion permits	
168	Correct South Hills Study language inversion	
170	Clarify the prohibition on subdivisions above 900'	
172	Tighten South Hills Study criteria to protect forests & slopes 700-900'	

STRENGTHEN TREE PROTECTION

What does this amendment do?

Strengthen tree protection.

- Strengthen code to assure protection, not mitigation

Why is this amendment important?

The urban forest, including larger tracts and street trees, is an essential element of Eugene's livability. This amendment will help assure the preservation of that asset.

Trees

124	Redefine "Tree protection"	
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REJECTED AMENDMENTS – DETAILS

What do these amendments do?

Weaken lot and development standards, which will allow an increase in detrimental infill or an exacerbation of negative impacts from incompatible development.

Why is it important to reject these amendments?

If approved, they would worsen the residential infill problem.

Rejected amendments

5	R-1: Permit alley access, reduce min lot size
49	Allow alley access lots
50	Allow smaller original lots for flag lot
197	R-1: Allow more than one "secondary unit"
198	R-1: Allow smaller original lots for flag lot, reduce min flag lot size
199	Remove restrictions on partitioning a duplex lot
201	R-1: Allow above ground utilities for new secondary dwellings
202	Allow partition of lots that will create a non-conforming condition