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LONG RANGE PLANNING
ISSUE PAPER NO. 2

Limitations on Hours of Operation for Drive-thru Facilities

Issue

Citizen Participation Organization (CPO) 7 submitted a Work Program request on December 19, 2012 asking the county to consider limiting the hours of operation of 24-hour drive-thru commercial uses adjacent to residential areas. CPO 7 requested that the Community Development Code (CDC) be amended to allow for the limitation on hours of operation for drive-thru facilities in any land use district located near residential areas between the hours of 10 p.m. and 7 a.m. Limiting hours, CPO 7 believes, is necessary to ensure compliance with Section 8.24.040 B. of Chapter 8.24-Noise Control as set forth in the county's Health and Safety Code.

Recommendation

Following a work session discussion on this issue, staff requests direction from the Board of County Commissioners (Board) regarding the following two options:

Option 1: Retain the existing CDC standards, which do not limit the hours of operation of drive-thru facilities, except for those uses located in the Office Commercial (OC) District.

OR

Option 2: Authorize the filing of an ordinance that would amend CDC Section 430-41 to allow the limitation of hours of operation of new drive-thru facilities when developed on land abutting residentially-designated land.

Background

CDC Section 430-41.4 limits hours of operations of drive-in or drive-up uses (drive-thru facilities) only in the OC District to normal hours of operation, with "normal hours of operation" defined as being between 7:00 a.m. and 6:00 p.m. Hours of operation of these uses are not limited in other commercial districts.

Drive-thru facilities are generally considered as an accessory to the primary use. A fast food restaurant may or may not be built with a drive-thru facility. Regulations limiting hours of operation do not necessarily need to preclude a primary retail use (fast food restaurant, bank, etc.) from including a drive-thru facility, as only the hours that the drive-thru facility may operate would be affected.

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CPO 7's request asked that the Board consider amending the CDC to *allow the limitation* of hours of operation for drive-thru facilities when located near residential areas. Such a CDC amendment would allow staff or a Hearings Officer to impose a restriction on hours of operation through conditions of approval established through development review of new drive-thru uses. The Board directed staff to develop an issue paper on this request as part of its approval of the 2013 Work Program on March 26, 2013.

CPO 7 stated that this change is needed to ensure compliance with Chapter 8 of the county's Health and Safety Code. The Washington County Solid Waste and Recycling Program, conducted through the county's Health and Human Services Department, serves as an enforcement agent of the county's Health and Safety Code. HHS staff routinely respond to complaints, including noise. Washington County's Department of Land Use & Transportation (LUT) does not investigate or enforce noise issues.

Analysis

The analysis contained herein will answer the following questions in order to better understand the proposed changes and the ramifications of implementing any changes, should the Board authorize amendments to the CDC.

- 1. What are the existing legal and/or regulatory requirements governing the limitations of hours of operation?** The primary reason for asking and answering the first question is to know if limiting hours of operation of certain retail uses is legal. If, for instance, state or federal regulations exist that prohibit limiting hours of operation for drive-thru facilities, staff would recommend against pursuing any changes to the CDC standards. Staff found no legal or regulatory prohibitions against limiting hours of operation of drive-thru facilities within the context of CPO 7's request.

The Board has the authority to impose regulations to ensure the peace, safety, and well-being of its citizens. This authority allows for the imposition of hours of operation for uses when deemed necessary by the Board. The Board may authorize land use ordinance amendments to the CDC that allow for limits on hours of operation. The determination of whether to require these limitations will be made by the Board's designated Review Authority – either county staff (through a Type II procedure) or by a Hearings Officer (Type III procedure) – based on impacts to adjacent residential uses. If adopted, these CDC standards would be enforceable by LUT staff and would be unrelated to the process for addressing noise concerns that is handled by the county's HHS Department.

- 2. What is the historical context for limiting hours of operation of drive-thru facilities near residential areas?** The county does not historically regulate hours of operation based on location of a proposed use in relation to residential districts. The current limitation of drive-thru facilities in the OC District applies to all OC lands, not just those near residential districts. The OC designation has historically been applied to lands along major transportation corridors (e.g., 185th Avenue, Beaverton-Hillsdale Highway) and utilized to provide a less-intensive non-residential land use buffer between transportation facilities and/or more intense commercial and residential districts.

Drive-thru facilities allowed in other commercial districts are not subject to limitations of hours of operation. The standards for drive-in and drive-up establishments in Section 430-41 were initially adopted in 1983 through Ordinance No. 279. The standards adopted in 1983 are the same as those currently in effect.

- 3. How do other local governmental entities regulate hours of operation of drive-thru facilities?** Staff surveyed two counties (Clackamas and Yamhill) and the cities of Beaverton, Hillsboro, Tigard, Tualatin, and Sherwood. Of the seven entities surveyed, only Tigard has regulations that specifically limit hours of operation of drive-thru facilities when the use is on land that abuts a residential use. In Tigard, if a site is located across a street from a residential use, the site is not considered to abut the property on which the residential use is located. In Beaverton and Sherwood, limits on hours of operation may be imposed if deemed necessary for compatibility with adjacent uses (see Attachment A for details from each jurisdiction).
- 4. What are the cost implications in terms of monetary and staff resource costs?** If the CDC were amended to allow for the limitation of hours of operation, staff or a Hearings Officer could impose conditions of approval to restrict hours during the development review process. Staff has concluded that the limiting drive-thru uses when proposed on land near residential districts would not have any direct cost implications. However, there may be indirect cost implications for enforcement of the new standards due to the time spent investigating code compliance complaints.
- 5. Were noise and impacts to adjacent properties considered when residential areas were designated?** The Comprehensive Framework Plan for the Urban Area, adopted in the early 1980s, established characterizations and locational criteria for each of the land use districts. The location criteria describes where each land use district is most appropriate and noted that certain land use districts served as buffers between residential and non-residential uses. Community Plans, also adopted in the early 1980s, designated land use districts that took into account noise and other impacts on adjacent properties. Individual community plans also contain design elements that require commercial uses to mitigate impacts to adjacent residential properties and the CDC requires screening and buffering on commercial sites when adjacent to residential uses.
- 6. Would adoption of hours of operation limitations make existing drive-thru facilities nonconforming?** If authorized by the Board, any CDC amendments would simply allow for the *limitation* of hours of operation; not an outright prohibition on drive-thru operations between 10 p.m. and 7 a.m. Therefore, pre-existing drive-thrus would continue to operate as usual. Any modification of these pre-existing uses or requests for new drive-thru facilities would be subject to the revised standards and may be conditioned to limit hours of operation if deemed necessary by the Review Authority.

Conclusion

Based on the above analysis, staff has determined that the county's standards for drive-thru facilities are largely consistent with those in neighboring jurisdictions. The cities of Tigard and Sherwood are the only jurisdictions that restrict or allow the restriction of hours of operation for drive-thru facilities when those uses share a property line with residential uses.

If the Board wishes to retain the existing CDC standards, staff suggests the Board accept Option 1 described in the Recommendation section of this issue paper. While staff sees no compelling reason to make this change, if the Board wants to allow for limitations on hours of operation for drive-thru facilities, staff asks that the Board indicate its preference for Option 2 and authorize the filing of a land use ordinance to amend CDC Section 430-41.

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Jurisdictional Comparisons for Drive-Thru Facilities		
Jurisdiction	Requirements	Notes
Washington County	<p><i>Drive-in / drive-up establishments:</i> Permitted in the Neighborhood Commercial District (Type II)</p> <p><i>Drive-In/Up Restaurants:</i> Allowed in the OC District as an accessory use in an Office Commercial Center (Type II)</p> <p><i>Drive Up Banks:</i> Allowed in the OC District (Type II)</p> <p><i>Eating and Drinking Establishments with drive-in/up windows:</i> Permitted in NC, GC and CBD Districts (Type II)</p> <p>Drive-through facilities are defined in Section 375, but not specifically listed as permitted uses in the TO:Retail Commercial and TO:Business Districts.</p>	<p>All uses subject to Section 430-41. In the OC District, hours of operation are limited to between 7:00 am and 6:00 pm</p>
Clackamas County	<p><i>Drive-thru banks:</i> Permitted in the Community Commercial and Rural Commercial zones as accessory to the primary use (bank); but not allowed in the Retail Commercial zone.</p> <p><i>Drive-thru restaurants:</i> Permitted in the Retail Commercial zone as an accessory to the primary use (restaurant); but are not permitted in the Community Commercial zone. "Drive-Thru Window Service" uses are subject to the Conditional Standards of Section 827 of the county code. Section 827 does not limit hours of operation; nor address noise. Standards primarily focus on transportation and related impacts.</p>	
Yamhill County	<p><i>Drive-thru restaurants:</i> Permitted in the Highway/Tourist Commercial and Neighborhood Commercial Districts, subject to Site Design Review (Section 1100.00). <i>Drive-thru banks:</i> Not identified as a permitted use in either the Highway/Tourist Commercial or Neighborhood Commercial Districts.</p>	<p>Section 1100.00. Site Design Review Process and Standards does not limit hours of operation, but does consider "Provisions for adequate noise and/or visual buffering from noncompatible uses."</p>
Beaverton	<p><i>Drive-Up Window Facilities (fast-food restaurants and banks):</i> Permitted in the Neighborhood Service, Community Service, Corridor Commercial, and General Commercial zones, subject to the standards of Section 60.07 of the city's development code. Chapter 20 of the city's code addresses these 4 land use districts, including Hours of Operation (#23). Generally uses are permitted to operate between 10:00 pm and 7:00 am unless limited through a Conditional Use Permit (e.g., commercial uses adjacent to a residential zone require Conditional Use approval and often approved with limitations of hours of operation). Additionally, communication systems used at a drive-up window facility shall not exceed 55 decibels at the adjoining property line.</p> <p><i>Drive-Up Window Facilities:</i> Within the city's Regional Center, Town Center, Station Community allowances range from not permitted to Allowed as a Conditional Use to Permitted, by right. In the Regional Center, Town Center, Station Community none of the Use Restrictions (20.20.25) limit hours of operation. <i>Drive-Up Window Facilities</i> requiring Conditional Use Permit approval must, in part, demonstrate that the proposed use "can be reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site"</p>	
Hillsboro	<p><i>Drive-In Restaurants:</i> Permitted in the General Commercial zone, but not in the Neighborhood Commercial zone. <i>Drive-thru banks:</i> Permitted in the General Commercial zone; but not in the Neighborhood Commercial zone, as banks are not allowed in this zone. <i>Drive-Thru Facilities:</i> Permitted in the Mixed-Use Commercial District, if located within 100 ft of a City Arterial and subject to standards set forth in Section 48A.IV.C.5, none of which address noise or hours of operation; Permitted in the SCC-Multi-Modal District; and Permitted in the SCC-Downtown District as a Conditional Use and the standards of Section 136(VI)(A)(11).</p>	<p><i>Drive-Thru Facilities:</i> Not allowed in the Mixed-Use Neighborhood District or SCC-Station Commercial District</p>
Tigard	<p><i>Drive-thru facilities:</i> Permitted in the Neighborhood Commercial and Community Commercial Districts, subject to approval of a Conditional Use Permit (when the site abuts a residential use, hours of operation [of the drive-up window] are limited to between 7:00 am and 9:00 pm. If a site is across the street from a residential use, then the site is not considered to be abutting the residential use; the use must share a common property line)</p>	<p>New drive-up windows are not permitted in the Mixed Use-Central Business District. Also sound systems shall not exceed 55 decibels at adjoining property lines.</p>
Tualatin	<p><i>Drive-In Restaurants:</i> Recreational Commercial (CR), Conditional Use; <i>Drive-up Banks:</i> Central Commercial (CC), Conditional Use; <i>Drive-in restaurants:</i> General Commercial (CG), Permitted Use; <i>Drive-up restaurants:</i> Prohibited in the Central Design District of the Central Urban Renewal Area; not permitted in Office Commercial Planning District; and not listed in the Neighborhood Commercial Planning District.</p>	<p>Section 32.030, Criteria for Review of Conditional Uses, does not contain any criterion that specifically limits or otherwise addresses hours of operation</p>
Sherwood	<p><i>Restaurants with drive-thru services:</i> Permitted in the Retail Commercial and General Commercial zones; but not permitted in the Office Commercial or Neighborhood Commercial zones. <i>Drive-thru banks:</i> Permitted in commercial districts. (However, drive-thru restaurants and banks are not permitted in the city's Old Town District.) The city does not specifically limit hours of operation for drive-thru uses; however, limitations could be imposed if the proposed use would not satisfy environmental performance standards for noise, odor, or glare. All permitted and conditional uses in the Neighborhood Commercial zone are limited to operating between 7:00 am and 10:00 pm.</p>	<p>Bank and other drive-up uses are a Conditional Use in the downtown "Central Design District," and as a Conditional Use, hours and restrictions would likely be an issue for the Council to consider as conditions of approval.</p>