

ORDINANCE NO. 777

AN ORDINANCE RELATING TO LAND USE AND AMENDING MUNICIPAL CODE CHAPTERS 17.62 (C GENERAL COMMERCIAL) AND 17.68 (EC EXPANDED COMMERCIAL) TO PERMIT SCHOOLS.

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Section 17.62.030 (C General Commercial) of the Scappoose Municipal Code is amended by addition of the following paragraph:

EE. Public and private schools including but not limited to charter schools and career schools as defined and regulated by the State of Oregon.

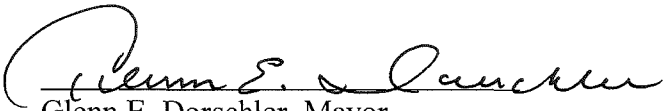
Section 2. Section 17.68.030 (EC Expanded Commercial) of the Scappoose Municipal Code is amended by addition of the following paragraph:

KK. Public and private schools including but not limited to charter schools and career schools as defined and regulated by the State of Oregon.

Section 3. In support of this ordinance, the City Council adopts the recommendation of the Scappoose Planning Commission and the findings of fact in the Staff Report dated April 25, 2006.


PASSED AND ADOPTED by the City Council this 15th day of May, 2006, and signed by me in authentication of its passage.

CITY OF SCAPPOOSE, OREGON


Glenn E. Dorschler, Mayor

First Reading: May 1, 2006

Second Reading: May 15, 2006

Attest: 
Susan Pentecost, City Recorder

CITY OF SCAPPOOSE

33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056
(503) 543-7146
FAX: (503) 543-7182

DCTA 1-06

May 9, 2006

Amendment to General Commercial and Expanded Commercial lists of Permitted Uses

CITY OF SCAPPOOSE STAFF REPORT

Request: Approval of amendments to the Development Code to expand the list of Conditional Uses in the General Commercial and Expanded Commercial zoning districts to include public and private schools with an enrollment of fewer than 100 students, including charter schools, career schools, and private elementary and secondary schools.

Applicant: South Columbia Family School

EXHIBITS

1. Report Submitted by the Applicant

INTRODUCTION

The South Columbia Family School, a public charter school¹, currently utilizes space at the Scappoose School District buildings. Due to space constraints, the charter school is seeking new facilities. Schools are conditional uses in three of the City's residential zoning districts (Low Density Residential, Moderate Density Residential, and Manufactured Housing) but are not permitted uses or conditional uses in the City's commercial zones.

As noted on the second page of the Applicant's request (**Exhibit 1**), the South Columbia Family School would like to utilize commercial property for their facility, due to the high cost of securing facilities in residential zones. To increase its options for instructional space, the South Columbia Family School has submitted an application to amend the list of Conditional Uses for both the General Commercial and the Expanded Commercial zoning districts to allow charter schools. Based on conversations with staff, the applicant tailored the request to include public and private schools with an enrollment of fewer than 100 students, including charter schools, career schools, and private elementary and secondary schools. City Council supported an alternative that would permit schools in commercial zones, subject to Site Development Review.

OBSERVATIONS

The General Commercial and Expanded Commercial zones accommodate a variety of permitted and conditional uses. Staff and members of the Planning Commission do not anticipate that

¹ A charter school in Oregon is a public school operated by a group of parents, teachers and/or community members as a semi-autonomous school of choice within a school district.

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schools would conflict with the stated purposes of either the General Commercial zone or the Expanded Commercial zone. If this legislative amendment is approved by the City Council, then the South Columbia Family School or other groups could request approval of schools in commercial zones via the Site Development Review process. At that time, the Planning Commission would review specific sites to determine their suitability for the proposed schools, looking at such factors as the location of accessways, drop-off locations, traffic safety, and compatibility with surrounding uses.

The City Manager, Building Official, City Engineer, Police Department, Scappoose Rural Fire Protection District, Scappoose School District, and the Oregon Department of Land Conservation and Development (DLCD) have been provided the opportunity to review copies of this proposed amendment. The Building Official commented that any new or existing buildings proposed for schools would be subject to building codes. DLCD staff provided advice observing that traffic and conflicting uses would be the major concerns for school locations in commercial zones. Those issues could be addressed when an applicant requests site development review for a specific location.

ANALYSIS

PURPOSES OF COMMERCIAL LAND USE DESIGNATIONS

All of the City's existing schools are currently located in commercial zones. However, schools are absent from the current list of permitted uses and conditional uses for the General Commercial and Expanded Commercial zones. As a result, under current regulations, no new schools would be permitted in the commercial zoning districts.

A review of the Comprehensive Plan reveals that civic uses such as schools are consistent with the types of uses anticipated for the City's commercial properties. If the City amends the Development Code, schools (including charter schools, business schools, parochial schools, etc.) could be sited within existing or new buildings in the General Commercial and Expanded Commercial zones. The Site Development Review process would assure that schools are located where they are compatible with their surroundings.

COMPARISON WITH OTHER COMMUNITIES

Staff has performed a cursory review of the zoning regulations for other Oregon communities (including McMinnville, Hood River, La Grande, and others). Schools are typically allowed in these other communities as conditional uses, even without size limitations. Staff encouraged the applicant to place a limit on the enrollment of new schools within the City's commercial zones to ensure that any proposed schools would not overwhelm their surroundings. Staff from other jurisdictions observed that the conditional use permit process allows the affected neighborhood to participate in the land use review for specific schools and to comment on applications placed before the Planning Commission.

COMMERCIAL LAND SUPPLY

The 2003 Land Use Needs Analysis performed by the Benkendorf Associates Corp. indicated that Scappoose had a 3.9-acre surplus of commercial land, based on a comparison of the

Amendment to General Commercial and Expanded Commercial lists of Permitted Uses

available commercial land at that time and the need to provide a 20-year supply. Staff does not anticipate that there would be a great demand for school sites within commercial zones over a 20-year period. It is not anticipated that a handful of schools utilizing commercial property would appreciably increase the commercial land demand.

RECOMMENDATION

The request submitted by the applicant (**Exhibit 1**) quoted the definitions of charter schools, career schools, and private elementary and secondary schools as contained in the Oregon Revised Statutes. Since the state's definitions and regulations may change over time, staff has not proposed placing these definitions in the Scappoose Development Code. The proposed amendments to the Scappoose Municipal Code are included in Ordinance No. 777.

Based on the information within the proposed amendment; applicable statutes, rules, comprehensive plan provisions and implementing ordinances; and comparison with other communities, the Planning Commission recommends adoption of the proposed amendment.

FINDINGS OF FACT

1. Amending the Development Code to permit public and private schools in the General Commercial and Expanded Commercial zones would provide charter schools, career schools, and other educational organizations increased location options throughout the City.
2. The following Statewide Planning Goals have been considered by the City of Scappoose in the formation of the language contained within this request:

Citizen Involvement (Goal 1)

Objective: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Finding:

This application complies with the citizen involvement processes included in the City's acknowledged Comprehensive Plan and Development Code, which is consistent with Statewide Planning Goal 1. The Planning Commission held a hearing on the application on April 13, 2006, and the City Council scheduled public hearings on the proposal on May 1 and 15, 2006 prior to adopting any amendments to the Scappoose Municipal Code. Notice of the proposal and hearings was published in the local newspaper on March 29, April 5, April 12, April 19, and April 26. The proposal was mailed to the Department of Land Conservation and Development on February 22, 2006.

These actions will provide a venue for citizen participation in the review of the proposed Development Code amendment. Furthermore, approval of the amendment would provide opportunity for citizen input in the future when applications are submitted for specific school sites.

*Amendment to General Commercial and Expanded Commercial lists of Permitted Uses****Land Use Planning (Goal 2)***

Objective: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Finding:

The proposal to amend the Municipal Code is consistent with the City's regulations regarding legislative land use decisions. Legislative decisions first require a Planning Commission recommendation to the City Council, which then makes a decision based on stated findings. The Planning Commission and City Council hearings are open to the public. The Planning Commission hearing was held on April 13, 2006, and City Council hearings will be held on May 1 and 15, 2006. The Planning Commission recommends adoption based on the Findings of Fact. This action complies with Goal 2.

Economic Development (Goal 9)

Objective: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Finding:

The City prepared a Buildable Lands Inventory and Land Use Needs Analysis in 2003. These analyses indicated that Scappoose had a 3.9-acre surplus of commercial land, based on a comparison of the available commercial land at that time and the need to provide a 20-year supply. It is not anticipated that a handful of additional schools utilizing commercial property would appreciably increase the commercial land demand over a 20-year period.

The proposed Development Code amendment would offer additional location options for educational institutions, which should lead to a stronger workforce and sustain a healthy state and local economy, consistent with Goal 9.

Statewide Planning Goals 3-8 and 10-19 are not applicable to this application.

3. The following Statutes, Rules, Comprehensive Plan Provisions and Implementing Ordinances have been considered by the City of Scappoose in the formation of the language contained within this request:

ORS 338 – Public Charter School

338.005 Definitions. As used in this chapter, unless the context requires otherwise:

[...]

(2) "Public charter school" means an elementary or secondary school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant and operating pursuant to this chapter.

ORS 345 – Private Schools

CAREER SCHOOLS

Amendment to General Commercial and Expanded Commercial lists of Permitted Uses

345.010 Definitions for ORS 345.010 to 345.450 and 345.992 to 345.997. As used in ORS 345.010 to 345.450 and 345.992 to 345.997:

[...]

(4) "Career school" or "school" means any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession.

PRIVATE ELEMENTARY AND SECONDARY SCHOOLS

345.505 Definitions for ORS 345.505 to 345.575. As used in ORS 345.505 to 345.575 unless the context requires otherwise:

[...]

(2) "Private school" means a private elementary or secondary school operated by a person or by a private agency except as provided in ORS 339.030 (1)(c) or (d), offering education in prekindergarten, kindergarten, or grades 1 through 12 or any part thereof.

Finding:

Public charter schools, career schools, and private elementary and secondary schools are governed by the terms of the Oregon Revised Statutes (ORS 338 and ORS 345). The City would not regulate the formation or operation of schools, but adoption of the proposed amendment would allow the City to review the location and site layout of schools in commercial zones.

Goals and Policies from the Scappoose Comprehensive Plan:

GOAL FOR ECONOMICS

It is the goal of the City of Scappoose to:

1) *Maintain conditions favorable for a growing, healthy, stable, and diversified business and industrial climate.*

POLICIES FOR ECONOMICS

It is the policy of the City of Scappoose to:

1) *Make sufficient land available for the anticipated expansion of commercial and industrial activities.*

2) *Encourage the preservation, improvement and renewal of the existing business district of the City so that it will be allowed to play a role as a center of economic and civic activity for the entire community.*

6) *Cooperate with other agencies, interest groups and businesses in efforts to develop program strategies for improving the local economy.*

*Amendment to General Commercial and Expanded Commercial lists of Permitted Uses***Finding:**

The City's relatively small population (5,700 people) would lead to a correspondingly small demand for schools in commercial zones. The remaining commercial land would be available for other permitted and conditional uses as specified in the City's zoning regulations.

Siting schools in commercial neighborhoods complements the existing uses and preserves and furthers the civic activity in business areas. Specific site evaluation would be coordinated with affected agencies when applications are submitted for site development review.

The applicable GOAL FOR ECONOMICS and the POLICIES FOR ECONOMICS are satisfied.

GENERAL GOALS OF THE CITY OF SCAPPOOSE FOR LAND USES

3) *A suitable balance between competing land use should be established so that, insofar as possible, the complete range of social, economic, cultural, and aesthetic needs of the community are met.*

Finding:

Allowing the option for schools in commercial zones expands the range of land uses that can meet the community's needs. The applicable GENERAL GOAL OF THE CITY OF SCAPPOOSE FOR LAND is satisfied by the proposed Development Code amendment.

GOAL FOR THE COMMERCIAL LAND USE DESIGNATION

It is the goal of the City of Scappoose to:

1) *Establish commercial areas which provide maximum service to the public and which are safely integrated into the physical patterns of the City.*

POLICIES FOR THE COMMERCIAL LAND USE DESIGNATION

1) *Make sufficient land available for the anticipated expansion of commercial and industrial activities.*

2) *Encourage the preservation, improvement, expansion, and renewal of the City's existing business district and implement the adopted Downtown Scappoose Plan supporting the existing business district in its role as a center of economic and civic activity for the entire community.*

3) *Encourage the filling-in of vacancies in present commercial strips, together with design features that would reduce conflict with traffic flow, such as frontage roads and single access joint off-street parking.*

*Amendment to General Commercial and Expanded Commercial lists of Permitted Uses***Finding:**

Approval of the proposed amendment would allow schools to be located within existing business districts, potentially filling vacancies. The Site Development Review process would provide for the integration of land uses by assuring that inappropriate locations are not approved, and that appropriate locations have adequate parking and address traffic and pedestrian safety. The applicable GOAL FOR THE COMMERCIAL LAND USE DESIGNATION and POLICIES FOR THE COMMERCIAL LAND USE DESIGNATION are satisfied.

Ordinance language from Title 17 of the Scappoose Municipal Code (Land Development Code):*Chapter 17.160 PROCEDURES FOR DECISION MAKING—LEGISLATIVE*

17.160.120 The standards for the decision. A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

- 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;*
- 2. Any federal or state statutes or rules found applicable;*
- 3. The applicable comprehensive plan policies and map; and*
- 4. The applicable provisions of the implementing ordinances.*

B. Consideration may also be given to:

Proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.

Finding:

The Planning Commission's recommendations and the City Council's decisions are based on applicable statewide planning goals and guidelines, federal and state statutes and rules, Comprehensive Plan policies, and provisions of the Scappoose Municipal Code, as detailed in the findings. Section 17.160.120 is satisfied.

Application to amend Section 17.62.040 Conditional uses, of the General Commercial Zone, to include Charter Schools.

1. Chapter 17.62 C General Commercial, Section 17.62.040 Conditional uses is amended as follows:

17.62.040 Conditional Uses.

I. Public and private schools with an enrollment of less than 100 students, including Charter Schools, Career Schools, Private Elementary and Secondary Schools.

2. Chapter 17.68 EC Expanded Commercial, Section 17.68.040 Conditional Uses is amended as follows:

17.68.040 Conditional Uses.

J. Public and private schools with an enrollment of less than 100 students, including Charter Schools, Career Schools, Private Elementary and Secondary Schools.

CHARTER SCHOOLS

(Definitions)

338.005 Definitions. As used in this chapter, unless the context requires otherwise:

- (1) "Applicant" means any person or group that develops and submits a written proposal for a public charter school to a sponsor.
- (2) "Public charter school" means an elementary or secondary school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant and operating pursuant to this chapter.
- (3) "Sponsor" means:
 - (a) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter with an applicant to create a public charter school.

CAREER SCHOOLS

(Definitions)

345.010 Definitions for ORS 345.010 to 345.450 and 345.992 to 345.997. As used in ORS 345.010 to 345.450 and 345.992 to 345.997:

- (1) "Agent" means a person employed by or for a career school for the purpose of procuring students, enrollees or subscribers by solicitation in any form, made at a place or places other than the school office or place of business of such school.
- (2) "Barbering" has the meaning given that term in ORS 690.005.
- (3) "Board" means the State Board of Education.

(4) "Career school" or "school" means any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession.

(5) "Facial technology" has the meaning given in ORS 690.005.

(6) "Hair design" has the meaning given in ORS 690.005.

(7) "License" means the authority the career school has been granted to operate under ORS 345.010 to 345.450.

(8) "Nail technology" has the meaning given in ORS 690.005.

(9) "Registration" means the approval by the Superintendent of Public Instruction of a teacher or agent to instruct in or to represent the school.

(10) "Superintendent" means Superintendent of Public Instruction. [Amended by 1957 c.279 §1; 1961 c.268 §1; 1965 c.529 §12; 1973 c.239 §1; 1975 c.478 §1; 1977 c.886 §27; 1979 c.387 §1; 1987 c.31 §13; 1989 c.333 §1; 1993 c.267 §19; 1995 c.343 §1]

PRIVATE ELEMENTARY AND SECONDARY SCHOOLS

(Definitions)

345.505 Definitions for ORS 345.505 to 345.575. As used in ORS 345.505 to 345.575 unless the context requires otherwise:

(1) "Educational services" means instructional programs but does not include programs limited solely to dancing, drama, music, religious or athletic instruction.

(2) "Private school" means a private elementary or secondary school operated by a person or by a private agency except as provided in ORS 339.030 (1)(c) or (d), offering education in prekindergarten, kindergarten, or grades 1 through 12 or any part thereof. [1975 c.557 §1; 1979 c.271 §1; 1985 c.579 §4; 1989 c.619 §5; 1991 c.67 §87; 1993 c.45 §276; 1999 c.59 §92; 1999 c.717 §6]

The proposed changes to the zoning code are requested for the following reasons:

1. Limited funding. Charter Schools often have a difficult time financing charter school facilities. A 2000 National Study of Charter Schools found that inadequate facilities are one of the major obstacles to implementation. Charter schools, unlike traditional public schools, do not typically receive facilities funding and generally cannot raise funds through taxes. Furthermore, charter schools have difficulty securing funding because they are considered risky by conventional lenders.
2. Current zoning codes restrict Charter Schools to Residential zones. The availability of suitable facilities is limited and beyond the resources of a new Charter School.
3. The public school facilities are operating at capacity and cannot provide space for Charter Schools.
4. Commercial builders and landlords' are willing to provide suitable space at affordable rates. A variety of options are available in the commercial zone to house a Charter School with minimal impact on existing commercial businesses.
5. This change is consistent with applicable state and Federal planning goals. Sighting a Charter School in a commercial zone is not specifically prohibited or discouraged in the statewide planning goals.