

# City of Garibaldi, Oregon

## Zoning Ordinance

August 2014

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# Division I. Introductory Provisions

## Chapter 18.05 INTRODUCTORY PROVISIONS

### 18.05.010 Title

This title shall be known as the Garibaldi zoning ordinance. [Ord. 290 § 3(1.010), 2006.]

### 18.05.020 Purpose.

The purpose of this title is: to encourage the orderly development of the city; to promote appropriate uses of land; to conserve and stabilize the value of property; to provide adequate light and air; to lessen congestion; to prevent undue concentration of population; to facilitate adequate provisions for community facilities such as water supply and sewerage; to protect and enhance the appearance of the city; and in general to promote the public health, safety, convenience, and general welfare. The city has prepared a comprehensive plan and zoning ordinance to encourage orderly growth and to promote the public health, safety convenience, and public welfare. [Ord. 290 § 3(1.020), 2006.]

### 18.05.030 Definitions.

As used in this title, the following words and phrases shall mean:

“Access.” Access to property is described as normal vehicular access, by which normal ingress and egress by automobiles or other vehicles and pedestrians may be obtained to private property from public or private rights-of-way.

“Accessory use and structure” means a use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use.

“Aquaculture” means the propagation, planting, feeding, or growing and harvesting of fish, shellfish, plankton or aquatic plants.

“Bed and breakfast” means an owner-occupied dwelling where no more than four rooms are available for transient lodging and where a morning meal is provided.

“Bicycle facilities” means a general term denoting improvements and provisions made to accommodate or encourage bicycling, including parking facilities and all bikeways.

“Bikeway” means any road, path or way that is in some manner specifically open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are shared with other transportation modes. The five types of bikeways are:

1. “Multi-use path” means a paved way (typically 10 to 12 feet wide) that is physically separated from motorized vehicular traffic, typically shared with pedestrians, skaters, and other non-motorized users.

2. “Bike lane” means a portion of the roadway (typically four to six feet wide) that has been designated by permanent striping and pavement markings for the exclusive use of bicycles.

3. “Shoulder bikeway” means the paved shoulder of a roadway that is four feet or wider, typically shared with pedestrians in rural areas.

4. “Shared roadway” means a travel lane that is shared by bicyclists and motor vehicles.

5. “Multi-use trail” means an unpaved path that accommodates all-terrain bicycles; typically shared with pedestrians.

“Bridge crossing support structures” means piers, pilings, and similar structures necessary to support a bridge span, but not including fill for causeways or approaches.

“Bridge crossings” means the portion of a bridge spanning a waterway, not including support structures or fill located in the waterway or adjacent wetlands.

“Building” means a structure, other than a manufactured home, built for the support, shelter or enclosure of persons, animals, or property of any kind, and having a fixed base on or fixed connection to the ground.

“City” means the city of Garibaldi, Oregon.

“Commission” means the city planning commission.

“Council” means the city council.

“Daycare center” means a facility, other than the residence of the daycare provider, which receives three or more children for part of the 24 hours of the day for the purpose of providing care and board apart from the children’s parents or guardians.

“Dock” means a pier, piling, or secured floating platform for marine craft tie-up in association with one or more private residences.

“Dredge disposal” means the deposition of material obtained from dredging.

“Dwelling, duplex or two-family” means a detached building containing two dwelling units and designed for occupancy by two families.

“Dwelling, multifamily” means a building, or portion thereof, designed for occupancy by three or more families living independently of each other.

“Dwelling, single-family or one-family” means a detached building containing one dwelling unit and designed for occupancy by one family only.

“Dwelling unit” means one or more rooms in a building that are designed for occupancy by one family and that have cooking and sanitary facilities, but not including space in a structure or vehicle designed for camping or other temporary occupancy such as a hotel, motel, or recreational vehicle.

“Estuarine enhancement” means an action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

“Family” means an individual or two or more persons related by blood, marriage, legal adoption, guardianship, or one or more persons living together as one housekeeping unit, using one kitchen, and providing meals or lodging.

“Family daycare center” means a daycare facility where care is provided in the home of the provider, in the family living quarters, to fewer than 13 children including children of the provider, regardless of full- or part-time status.

“Fence” means a barrier consisting of wood, metal, vinyl, masonry or other engineered material placed or constructed for the purpose of obstructing movement or vision, or to enclose an open area.

“Fill” means the placement by man of sand, sediment, dredged material or other material which results in the replacement of an aquatic area with dry land, a change in the bottom elevation of a water body (in estuarine waters, intertidal areas or tidal wetlands) or an increase in the elevation of land (on shorelands). The placement of riprap is excluded from this category.

“Grade (ground level)” means the average elevation of the existing grade or ground at the centers of all walls of a building.

“Hedge” means a combination of nonannual plantings intended to form an obstruction to ingress or egress and/or vision, where such plantings provide, or are intended to provide, no physical space between individual plantings.

“Height of building” means the vertical distance from the grade to the highest point of the roof, excluding chimneys, aerials and similar extensions.

“Home occupation” means a lawful occupation carried on by a resident of a dwelling as an accessory use on the same property, in connection with which there is no person employed other than a person residing on the premises; and there is no activity conducted in such manner as to give an outward appearance of a business in the ordinary meaning of the term, or disruption of the neighborhood.

“Incidental alcohol service” means alcohol service when not more than 35 percent of food and beverage sales, measured over any relevant period of 30 days or more, are from sales of beverages containing alcohol.

“Kennel” means a lot or building in which four or more dogs, cats or at least four animals of four months of age or older are kept commercially for board, propagation, training or sale.

“Land use zone (district).” The term “district” is often interchanged with the term “zone” when referencing boundaries for the city’s various land use areas.

“Lot” means a parcel or tract of land.

“Lot area” means the total horizontal area within the lot lines of a lot, exclusive of public and private streets and easements of access to other property.

“Lot area coverage” means the maximum amount of the lot which can be covered with structures, including carports, porches and other attachments, but not parking areas, patios, decks or other surface-level improvements.

“Lot corner” means a lot abutting on two or more dedicated streets at their intersection.

“Lot depth” means the average horizontal distance between the front lot line and the rear lot line.

“Lot line” means the property line bounding a lot.

“Lot line, front” means the lot line separating the lot from the street, and in the case of a corner lot, the shortest lot line along a street.

“Lot line, rear” means the lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular, or other shaped lot, a line 10 feet in length within the lot parallel to and at a maximum distance from the front lot line.

“Lot line, side” means any lot line not a front or rear lot line.

“Lot width” means the average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

“Manufactured dwelling” means:

1. A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.

2. A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976, and

met the construction requirements of Oregon mobile home law in effect at the time of construction.

3. A manufactured home, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction. “Manufactured dwelling” does not mean any building or structure subject to the Structural Specialty Code adopted pursuant to ORS [455.100](#) through [455.450](#).

“Manufactured dwelling park” means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. “Manufactured dwelling park” does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured home per lot if the subdivision was approved by the city of Garibaldi.

“Marina” means publicly or privately owned commercial facilities that provide berthing, launching, storage, supplies, and a variety of services of recreational, commercial fishing and charter fishing marine craft. Marinas are differentiated from moorages by their larger scale, the provision of significant accessory landside services and/or the use of solid breakwater (rock, bulkheading, etc.).

“Minor navigation improvement” means alterations necessary to provide water access to existing or permitted uses in conservation management units including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

“Mitigation” means the creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS [541.626](#)).

“Mitigation site” means an area identified in the mitigation/restoration plan element of the Tillamook County comprehensive plan as a potential site for estuarine creation, restoration or enhancement, subject to applicable state and federal standards.

“Modular housing” means a dwelling unit manufactured off-site, built to be used for permanent residential occupancy, to be set on a permanent foundation and conforming to the Uniform Building Code.

“Nonconforming structure or use” means a lawful existing structure or use at the time this title or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

“Open space” means that portion of a lot or parcel of property which is left uncovered by structures, parking, patios, and other impervious surfaces; it is area devoted primarily to landscaping or natural vegetation, although the use of decks is allowed, and lands which remain substantially undeveloped for one or more of the following reasons:

1. Public or private outdoor recreation;
2. Public health or safety;
3. Managed resource preservation;
4. Managed resource production; and
5. Separation between other uses.

“Owner” means an owner of property or the authorized agent of an owner.

“Parking space” means an enclosed or unenclosed surface area permanently reserved for the temporary storage of one automobile and connected with a street or alley that affords ingress and egress for automobiles.

“Pedestrian facilities” means improvements and provisions made to accommodate or encourage walking, including sidewalks, access ways, crosswalks, ramps, paths, and trails.

“Permit” means discretionary approval of a proposed development of land under ORS [227.215](#).

“Person” means every natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government or any group or combination acting as a unit.

“Property, downslope” means a lot or parcel of land that is located below, or at a lower elevation than, the adjacent street, road, or vehicular access way, including easements. A lot or parcel that runs between two parallel streets shall be considered downslope property for purposes of building height.

“Public utility” means a private business or organization such as a public service corporation, performing some public service and subject to governmental regulation, or a governmental agency performing similar public services. Such services shall include but are not limited to electric, gas, power or telephone.

“Recreation vehicle” means a vacation trailer or other unit with or without motive power which is designed for human occupancy and to be used temporarily for recreation or emergency purposes and has a gross floor space of less than 400 square feet. “Recreational vehicle” includes camping trailers, motor homes, park trailers, bus conversions, van conversions, tent trailers, travel trailers, truck campers and any vehicle converted for use or partial use as a recreational vehicle. The unit shall be identified as a recreational vehicle by the manufacturer.

“Recreation vehicle park” means a lot that is operated on a fee or other basis as a place for the parking of occupied recreation vehicles.

“Residential facility” means a facility licensed by or under the authority of the Department of Human Resources under ORS [443.400](#) through [443.460](#) that provides residential care alone or in conjunction with training or treatment or a combination thereof for six to 15 individuals who need not be related. Staff required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

“Residential home” means a home licensed by or under the authority of the Department of Human Resources under ORS [443.400](#) through [443.825](#) that provides residential care alone or in conjunction with training or treatment or a combination thereof for five or fewer individuals who need not be related. Staff required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

“Resource capability” means the measure of an area, or the biological communities within an area, to withstand alteration. A use or activity is considered to be consistent with the resource capabilities of an area if the level of use proposed can be accommodated without producing significant adverse impacts to biological productivity or to the quality of air, land and water resources within the area.

“Restoration” means replacing or restoring original attributes or amenities such as natural biological productivity and aesthetic or cultural resources which have been diminished or lost by past alterations, activities, or catastrophic events. For the purposes of Goal 16, “estuarine restoration” means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

1. “Active restoration” means the use of specific positive remedial action, such as removing fills, dredging of shoaled navigation channels, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

2. “Passive restoration” means the use of natural processes, sequences, and timing that occur after removal or reduction of adverse stresses without other specific positive remedial action.

“Shoreline stabilization structures” means the protection of the banks of tidal or nontidal streams or rivers, estuarine waters or coastal lakes from flooding or erosion by vegetative means, or by structural means such as riprap, groins, bulkheads, or dikes.

#### Sign or Sign-Related Definitions.

1. “Abandoned sign” means a sign pertaining to a use or lot where the message of the sign no longer pertains to a use or activity occurring on the lot.

2. “Awning sign” means a sign that is placed on a temporary or moveable shelter supported entirely from the exterior wall of the building.
  3. “Bench sign” means a sign painted on or attached to a bench.
  4. “Incidental sign” means a sign, other than a temporary or lawn sign, which does not require a permit.
  5. “Lawn sign” means a temporary freestanding sign made of rigid materials.
  6. “Permanent sign” means a sign attached to a building, structure or the ground in some manner, having a sign face area of four square feet or more and made of materials intended for more than short-term use.
  7. “Projecting sign” means a sign attached to and projecting out from a building face or wall and generally at right angles to the building.
  8. “Readerboard sign” means a sign that can accommodate changeable copy.
  9. “Sandwich board sign” means a sign not supported by a structure in the ground, nor attached to or erected against a structure, and capable of being moved.
  10. “Sign” means any identification, description, illustration, symbol or device which is affixed upon a building, structure or land and whose primary purpose is to convey a message.
  11. “Site frontage” means the length of the property line parallel to and along each public right-of-way.
  12. “Temporary” means a sign not permanently attached to a building, structure or the ground, and is intended to be displayed not more than 90 days in a calendar year.
  13. “Undeveloped site” means a lot with no permanent structure that contains a use permitted by the zone in which it is located.
  14. “Wall sign” or “wall graphics” means a sign attached to or erected against the wall of a building with the sign face in a parallel plane to the building wall, including a painting or other graphic art technique that is applied directly to the wall or the face of a building or structure.
  15. “Window sign” means a sign permanently affixed to the windowpanes of a building.
  16. “Portable” means a sign that is not permanent and intended to be displayed more than 90 days in a calendar year.
- “Staff” means most commonly the planner, administrator, and/or public works director or their assigns.

“Street” means the entire width between the right-of-way lines of every way for vehicular and pedestrian traffic and includes the terms “road,” “highway,” “lane,” “place,” “avenue,” “alley,” and other similar designations.

“Structural alteration” means any change to the supporting members of a structure including foundations, bearing walls or partitions, columns, beams, girders, or any structural change in the roof or exterior walls.

“Structure” means something constructed or built, or any piece of work artificially built up or composed of parts joined together in some definite manner.

“Telecommunication facility” means a facility designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices including transmission towers, antennas and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not “telecommunication facilities.”

“Temporary alteration” means dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include:

1. Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);
2. Alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations; and
3. Minor structures (such as blinds) necessary for research and educational observation.

“Transportation facilities” means the physical improvements used to move people and goods from one place to another; i.e., streets, sidewalks, pathways, bike lanes, airports, transit stations and bus stops, etc. Transportation facilities include the following:

1. Normal operation and maintenance;
2. Installation of improvements within the existing right-of-way;
3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;
4. Landscaping as part of a transportation facility;
5. Emergency measures;
6. Street or road construction as part of an approved subdivision or partition;

7. Transportation projects that are not designated improvements in the transportation system plan; and

8. Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

“Use” means the purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

“Water-dependent” means uses and activities which can be carried out only on, in or adjacent to water because the water location or access is needed for one of the following:

1. Water-borne transportation (navigation, moorage, fueling and servicing of ships or boats, terminal and transfer facilities, resource and material receiving and shipping); or

2. Recreation (active or passive recreation such as viewing and walking); or

3. A source of water (energy production, cooling of industrial equipment or wastewater, other industrial processes, aquaculture operations); or

4. Marine research or education (viewing, sampling, recording information, conducting experiments, teaching).

“Water-oriented” means a use whose attraction to the public is enhanced by a view of or access to coastal waters.

“Water-related” means uses and activities that do not require direct water access (are not water-dependent), but that:

1. Provide goods and/or services that are directly associated with other water-dependent uses (supplying materials to, or using products of, water-dependent uses); and

2. If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use.)

“Wetlands” means land areas where water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extremely low water; in nontidal areas by a depth of six feet. The areas below wetlands are submerged lands.

“Yard” means an open space on a lot that is unobstructed from the ground upward except as otherwise provided in this title.

“Yard, front” means a yard between the side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a building or other structure. Any yard meeting this definition and abutting a street shall be considered a front yard.

“Yard, rear” means a yard between side lot lines and measured horizontally at right angles to the rear lot line to the nearest point of a building or other structure.

“Yard, side” means a yard between the front and rear measured horizontally at right angles from the side lot line to the nearest point of a building or other structure.

“Yard, street side” means a yard adjacent to a street between the front yard and rear lot line measured horizontally and at right angles from the side lot line to the nearest point of a building or other structure. [Ord. 321 § 1, 2014; Ord. 319 §§ 2, 3, 2013; Ord. 290 § 3(1.030), 2006.]

#### **18.05.040 Estuarine and coastal shoreland definitions.**

The definitions in the Tillamook County land use code for estuary zones, shorelands overlay zone and water-dependent development zone are adopted by reference. The definitions contained therein shall be applied in the following zones where there is no appropriate definition in GMC 18.05.030: estuary natural zone, estuary conservation 1 zone, estuary conservation 2 zone, dredge material disposal site protection overlay zone, water-dependent development zone and waterfront mixed-use zone. [Ord. 319 § 4, 2013; Ord. 290 § 3(1.035), 2006.]

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# Division II Basic Provisions

## Chapter 18.10 BASIC PROVISIONS

### 18.10.010 Compliance with title.

Land may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied, or used only as this title permits. [Ord. 290 § 3(2.010), 2006.]

### 18.10.020 Classification of zones.

For the purposes of this title, the following zones are hereby established:

Zone	Abbreviated Designation
Medium Density Residential	R-1
Resource/Open Space	R-O
Commercial	C-1
Downtown	D-1
General Industrial	I-1
Water-Dependent Development	WD
Waterfront Mixed-Use Zone	WM
Dredge Material Disposal Site Protection Overlay Zone	DMD
Estuary Natural	EN
Estuary Conservation 1	EC-1
Estuary Conservation 2	EC-2
Estuary Development	ED

[Ord. 319 § 5, 2013; Ord. 304 Art. V(4), 2008; Ord. 290 § 3(2.020), 2006.]

### 18.10.030 Location of zones.

The boundaries for the zones listed in this title are indicated on the “Garibaldi Land Use and Zoning Map” which is hereby adopted by reference. The boundaries shall be modified in accordance with comprehensive plan, zoning ordinance or zoning map amendments that shall be adopted by reference and by a textual description of the change. [Ord. 290 § 3(2.030), 2006.]

### 18.10.040 Zoning map.

A zoning map or zoning map amendment adopted by GMC 18.200.010 or by an amendment shall be prepared by staff and approved through ordinance by the city council. The map or map amendment shall be dated with the effective date of the ordinance that adopts the comprehensive plan or zoning ordinance amendment. A certified print of the adopted map or map amendment shall be maintained in the office of the city recorder as long as the ordinance codified in this title remains in effect. [Ord. 290 § 3(2.040), 2006.]

#### **18.10.050 Zone boundaries.**

Unless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, centerlines of street or railroad right-of-way or such lines extended. [Ord. 290 § 3(2.050), 2006.]

#### **18.10.060 Zoning of annexed areas.**

Areas annexed to the city shall be the same as the county zoning designation until the city zones it otherwise. [Ord. 290 § 3(2.060), 2006.]

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## **Chapter 18.12 URBAN GROWTH BOUNDARY**

### **18.12.010 Joint management agreement – Introduction.**

A. The parties to the joint management agreement shall be the city of Garibaldi, Oregon, hereinafter referred to as “the city,” and Tillamook County, Oregon, hereinafter referred to as “the county.”

B. The terms of joint management agreement shall be applicable to the city's urban growth boundary area. For the purposes of this agreement, the urban growth boundary area shall be defined as that area of land extending from the city's corporate limits to the city's urban growth boundary as referenced and mapped in the city's comprehensive plan, and hereby incorporate into and made a part of this document. [Ord. 170 Att. E, § 1, 1990.]

### **18.12.020 Definitions.**

A. Words and phrases used in this joint agreement and not defined herein shall be construed in accordance with ORS chapters 92, 197, 215, and 227 and applicable Oregon Statewide Planning Goals unless otherwise specified. In the event two or more definitions are provided for a single work or phrase, the most restrictive definition shall be utilized in construing this agreement.

B. “Land use actions” consist of the following: conditional use permit, variance, actions affecting a nonconforming use or structure, subdivision major partition, and minor partition.

C. “Urban area” means those lands which lie within the designated urban growth boundary, either within or without the city.

D. “Urban growth area” means that portion of the urban area which is outside of the incorporated limits of the city.

E. “Urban growth boundary” means the line drawn around the urban area which separates rural from urbanizable land, as identified within the comprehensive plan for the city.

F. “Urbanizable lands” are those lands within the urban growth boundary which are identified and: (1) determined to be necessary and suitable for future urban area; (2) can be served by public facilities and services; (3) are needed for the expansion of an urban area. [Ord. 170 Att. E, § 2, 1990.]

### **18.12.030 Intent of agreement.**

The provisions of this agreement, shall establish the procedure for review and action on comprehensive plan amendments, implementing ordinance amendments, land use actions, public improvement projects, land use enforcement actions and other related matters. [Ord. 170 Att. E, § 3, 1990.]

### **18.12.040 Applicable documents.**

A. The Garibaldi comprehensive plan shall serve as the comprehensive plan for the urban area.

B. The Garibaldi zoning ordinance and subdivision ordinance shall provide the criteria for revising and acting on proposed land use actions in the urban area. [Ord. 170 Att. E, § 4, 1990.]

### **18.12.050 Land use regulatory procedures.**

Garibaldi shall serve as the lead agency for all development requests within the urban area. The following procedures shall be followed:

A. Land use actions, within the urban growth area, shall be processed according to the following procedure:

1. All applications shall be submitted to Garibaldi and shall be on forms provided by the city.
2. Upon receipt of a complete application, the city shall notify the county department of planning and development of the hearing date at which the matter will be considered.
3. The application shall be reviewed by the Garibaldi planning commission as provided for in the Garibaldi zoning ordinance and/or Garibaldi subdivision ordinance.
4. The county shall have standing to participate in the public hearing.
5. The city shall notify the county of the decision of the Garibaldi planning commission within five working days of the decision.
6. The decision of the Garibaldi planning commission shall be final unless appealed by a party to the public hearing.
7. An appeal of a decision of the Garibaldi planning commission shall be to the Tillamook County board of commissioners.
8. The review of the appeal shall be according to procedures in the Tillamook County zoning ordinance.
9. Garibaldi shall have standing to participate in the appeal.
10. Tillamook County shall notify Garibaldi of its final decision on an appeal within five working days of the decision.

B. Amendments to the Garibaldi comprehensive plan, including the urban growth boundary and plan map, Garibaldi zoning ordinance and Garibaldi subdivision ordinance shall be adopted by ordinance by both Garibaldi and Tillamook County according to the following procedure.

1. Application shall be submitted to Garibaldi on forms provided by the city.
2. Upon receipt of a complete application the city shall notify the county department of planning and development of the hearing date at which the matter will be considered before the Garibaldi planning commission and city council.
3. The county shall have standing to participate in the public hearing before the planning commission and city council.
4. The application shall be reviewed by the Garibaldi planning commission at a public hearing according to procedures specified in the comprehensive plan, zoning ordinance, or subdivision ordinance.
5. The city shall notify the county of the recommendation of the Garibaldi planning commission within five working days of the recommendation.
6. The Garibaldi city council shall hold a public hearing on the application according to applicable procedures specified in the comprehensive plan, zoning ordinance or subdivision ordinance.
7. If the city council approves the application, it shall do so by ordinance. If the city council denies the application, the decision may be appealed to the land use board of appeals.
8. The city shall notify the county of its final action within five working days of adoption of an ordinance or denial of the application.
9. Tillamook County shall hold a public hearing, on applications approved by Garibaldi, according to procedures established in the Tillamook County comprehensive plan or Tillamook County zoning ordinance.
10. Tillamook County shall notify Garibaldi of its final decision within five working days of its decision. [Ord. 170 Att. E, § 5, 1990.]

#### **18.12.060 Administration.**

- A. Tillamook County shall be responsible for issuing building permits and mobile home placement permits in the urban growth area.
- B. Tillamook County shall be responsible for the enforcement of the provisions of the zoning ordinance and subdivision ordinance in the urban growth area. [Ord. 170 Att. E, § 6, 1990.]

#### **18.12.070 Annexation.**

Annexation within the Garibaldi urban growth boundary shall be in accordance with relevant annexation procedures under Oregon Law and the policies of the Garibaldi comprehensive plan. [Ord. 170 Att. E, § 7, 1990.]

## **18.12.080 Services.**

A. Garibaldi sewer and water service shall be extended to areas in the urban growth boundary only upon annexation to the city.

B. Provision of sewer and water service shall occur beyond the urban growth boundary only after a determination by affected agencies that a “danger to the public health” as defined by ORS 413.705(5) exists. The service thus authorized shall serve only the area in which the health hazard has been established. [Ord. 170 Att. E, § 8, 1990.]

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# Division III. Use Zones

## Chapter 18.15 MEDIUM DENSITY RESIDENTIAL ZONE (R-1)

### 18.15.010 Purpose.

The R-1 zone is intended to provide an area of primarily single-family homes, duplexes and manufactured homes, with apartments allowed as a conditional use. [Ord. 290 § 3(3.010), 2006.]

### 18.15.020 Uses permitted outright.

In an R-1 zone, the following uses are permitted outright, subject to the standards and criteria of GMC 18.15.040:

A. Single-family dwellings, including modular housing.

B. Duplexes or two-family dwellings.

C. Manufactured dwelling.

D. Home occupations.

E. Public parks and playgrounds.

F. Family daycare center.

G. Residential home.

H. Manufactured dwelling or recreational vehicle used during the construction of a permitted use for which a building permit has been issued, but not to exceed six months' duration.

I. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition.

J. Storage of up to two boats and associated trailers, or two utility trailers, or a combination of one utility trailer and one boat with trailer, licensed by the property owner can be stored on a R-1 zoned lot if they:

1. Are placed on the portion of the lot farthest from the street;

2. Are placed on material such as a concrete pad, bark dust, gravel or similar packed material to assist with drainage;

3. Do not contain or are not used to store any hazardous materials (except gasoline in the primary tank);

4. Are not used for permanent or temporary habitation;

5. Are no longer than 24 feet;

6. Are removed from the property for repair;

7. The storage site and vehicles are approved by staff prior to use via a permit application. The use must be reviewed on an annual basis.

K. Accessory Dwelling. An accessory dwelling is a small, secondary unit on a single-family lot, usually the size of a studio apartment. The additional unit can be a detached cottage, a unit attached to a garage, or in a portion of the existing house. See GMC 18.135.010 for standards pertaining to accessory dwellings.

L. Vacation rental dwellings established prior to February 11, 2008, and located south of Garibaldi Avenue (U.S. 101) or accessed privately from Garibaldi Avenue (U.S. 101). [Ord. 304 Art. III(1), 2008; Ord. 290 § 3(3.010(1)), 2006.]

### **18.15.030 Conditional uses permitted.**

In an R-1 zone, the following uses are permitted subject to the provisions of Chapter 18.185 GMC and GMC 18.15.040:

A. Multifamily dwellings.

B. Manufactured dwelling parks.

C. Schools, churches and community buildings.

D. Planned unit developments in accordance with Chapter 18.205 GMC.

E. Bed and breakfast meeting the requirements of GMC 18.145.010.

F. Public utility structure.

G. Government structure.

H. Daycare center.

I. Residential facility.

J. Telecommunication facilities.

K. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

L. Vacation rental dwellings located south of Garibaldi Avenue (U.S. 101) or accessed privately from Garibaldi Avenue (U.S. 101). [Ord. 304 Art. III(2), 2008; Ord. 290 § 3(3.010(2)), 2006.]

### **18.15.040 Standards and criteria.**

In an R-1 zone, the following standards and criteria shall apply to all uses:

A. The minimum lot size for single-family dwellings, modular housing and manufactured dwellings shall be 5,000 square feet.

B. The minimum lot size for duplexes shall be 7,500 square feet.

C. The minimum lot size for a triplex shall be 10,000 square feet. The minimum lot size for multifamily dwellings, structures containing four or more dwelling units shall be 10,000 square feet for the first three dwelling units and 1,500 square feet for each dwelling unit thereafter.

D. The minimum lot width shall be 30 feet.

E. The minimum front yard shall be 10 feet.

F. The minimum rear yard shall be five feet.

G. The minimum side yard shall be five feet, except on a street side it shall be 10 feet.

H. The maximum building height shall be 24 feet.

I. The total amount of the lot on which structures and other impervious surfaces may be constructed shall not exceed 50 percent.

J. Manufactured dwellings shall meet the requirements of GMC 18.155.010.

K. Parking requirements of Chapter 18.125 GMC shall be adhered to.

L. A clear vision area on corner lots shall be provided and maintained pursuant to GMC 18.95.010.

M. Accessory uses and structures shall comply with GMC 18.135.010. [Ord. 304 Art. III(2), 2008; Ord. 290 § 3(3.010(3)), 2006.]

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## **Chapter 18.20 RESOURCE/OPEN SPACE ZONE (R-O)**

### **18.20.010 Purpose.**

The R-O zone is intended to maintain resource lands, including forest lands, watersheds and mineral and aggregate sites, for management protection. Intensive uses are intended to be regulated through the conditional use process. [Ord. 290 § 3(3.020), 2006.]

### **18.20.020 Uses permitted outright.**

In the R-O zone, the following uses are permitted outright, subject to the standards and criteria of GMC 18.20.040:

- A. Low-intensity recreation uses, including hiking trails.
- B. Natural areas and watershed preservation. [Ord. 290 § 3(3.020(1)), 2006.]

### **18.20.030 Conditional uses.**

In the R-O zone, the following uses are permitted subject to the standards and criteria of GMC 18.20.040 and of Chapter 18.185 GMC:

- A. Public utilities, including waterworks and power lines.
- B. Forest management, including logging, reforestation, road building and spraying of chemicals.
- C. Mineral and aggregate extraction.
- D. Recreation uses involving structures. [Ord. 290 § 3(3.020(2)), 2006.]

### **18.20.040 Standards.**

- A. Refer to conditional use standards, Chapter 18.185 GMC.
- B. The location of hiking trails shall be coordinated with the Oregon State Parks Department. [Ord. 290 § 3(3.020(3)), 2006.]

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## **Chapter 18.25 COMMERCIAL ZONE (C-1)**

### **18.25.010 Purpose.**

The C-1 zone is intended to allow certain additional uses not allowed along U.S. Highway 101 in the D-1 zone, and to maintain primary commercial uses such as stores, banks and offices beyond the limits of the downtown zone. Large land users and automobile-oriented drive-through uses are intended to be located in the commercial zone. [Ord. 321 § 2, 2014; Ord. 290 § 3(3.030), 2006.]

### **18.25.020 Uses permitted outright.**

In a C-1 zone, the following uses and their accessory uses are permitted outright, subject to the standards of GMC 18.25.040:

A. Primary retail activities, such as shops or stores engaged in the sale of retail merchandise, except establishments selling automobiles, manufactured dwellings or other large merchandise.

B. Consumer services such as banks, barber and beauty shops, repair shops, printing shops, laundries.

C. Eating and drinking establishments with no more than incidental alcohol service, including those that provide outdoor seating.

D. Indoor amusement activities and bowling alleys.

E. Business, government and professional offices.

F. Residential uses may be permitted within the commercial zone only when approved as part of a mixed use development. Mixed use developments may include housing above nonresidential uses (e.g., apartment lofts above offices), or housing side-by-side with nonresidential uses. All mixed use developments shall comply with the following standards:

1. No more than 50 percent of the ground floor space on each lot or parcel may be used for housing. A greater percentage may be approved for housing as part of a master planned development when the master plan provides for development of more than one lot/parcel, and the overall percentage of ground floor space does not exceed 50 percent residential use for the entire site.

G. Motels, hotels and tourist housing.

H. Churches, libraries or community meeting halls.

I. Health facilities such as clinics, nursing homes.

J. Arts and crafts studios or galleries.

K. Bus depot.

L. Parks and publicly owned recreation areas.

M. Family daycare center and daycare center.

N. Single-family residences established prior to July 1, 1996, and in a dwelling unit or structure originally permitted and constructed for that use.

O. Accessory structures.

P. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility; and

5. Emergency transportation facility measures.

Q. Street or road construction as part of an approved subdivision or partition.

R. Car wash.

S. Attended fueling stations established prior to July 1, 2007.

T. Special Events. As used in this section, “special event” means a community-oriented and endorsed gathering or celebration intended for recreation, entertainment, fundraising, or other similar purposes. Special events are allowed when:

1. The special event is limited to no more than seven days per calendar year; and

2. The special event organizer obtains approval from the Oregon Liquor Control Commission to serve alcohol at the event and otherwise meets all lawful requirements for alcohol sales and consumption outdoors; and

3. The special event organizer obtains the written permission of the city manager authorizing the outdoor sale and consumption of alcohol at the event. [Ord. 321 §§ 3 – 7, 2014; Ord. 319 § 1, 2013; Ord. 290 § 3(3.030(1)), 2006.]

### **18.25.030 Conditional uses permitted.**

In a C-1 zone, the following conditional uses and accessory uses are permitted, subject to the requirements of GMC 18.25.040 and Chapter 18.185 GMC:

A. Service or fueling stations, car lots, lumber yards, manufactured dwellings dealerships, public or private parking facilities, boat dealers, farm equipment dealers, nurseries, and other uses where outdoor sales and storage are associated with the use.

B. Cabinet or woodworking shops, plumbing, heating, electrical, paint or other contractor storage, repair or sales shops.

C. Wholesale warehouse or distribution establishments.

D. Tire retreading, welding or machine shops.

E. Recreational vehicle parks.

F. Mini-storage establishments.

G. Duplex, triplex or multifamily dwellings, subject to GMC 18.110.010.

H. Telecommunication facilities.

I. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

J. Residential uses converted from commercial uses.

K. Eating and drinking establishments with more than incidental alcohol service. [Ord. 321 §§ 8 – 10, 2014; Ord. 290 § 3(3.030(2)), 2006.]

### **18.25.040 Standards.**

In a C-1 zone, the following standards shall apply:

A. Minimum lot size: none.

B. Yards and Setbacks. For residential uses, the requirements shall be the same as in the R-1 zone. The minimum yard depth for portions of the property abutting a residential zone will be 15

feet. The Uniform Fire Protection Code shall govern adjacent commercial uses. The minimum setback requirements for commercial structures shall be established by applicable building codes.

C. Building Height. Maximum building height shall be 30 feet. Maximum building height allowed outright shall be 30 feet. Any building exceeding 30 feet in height shall be reviewed following the standards and procedures for conditional uses under Chapter 18.185 GMC.

D. Outdoor sales and service areas not requiring conditional use approval shall be approved by the planning commission. Such areas shall not exceed 400 square feet. The planning commission may require that such areas be enclosed by fencing or landscaping where appropriate.

E. All uses shall meet the parking and sign requirements of this title.

F. The minimum lot size for a triplex shall be 10,000 square feet. The minimum lot size for multifamily dwellings (four dwelling units or more) shall be 10,000 for the first three units and 1,500 for each unit thereafter. The planning commission may allow up to 50 percent additional dwelling units (up to 39 dwelling units per acre) for senior citizen or adult disabled housing.

G. There shall be no minimum yard requirements for housing developments in the C-1 zone. Senior citizens and/or adult disabled housing shall provide a minimum of 10 percent of the lot area in maintained landscaping. Family-oriented housing developments shall provide a minimum of 20 percent of the lot area in maintained landscaping. In addition, such developments shall provide a fenced playground which, in the view of the planning commission, is capable of serving the number of projected children. [Ord. 321 §§ 11 – 14, 2014; Ord. 290 § 3(3.030(3)), 2006.]

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## **Chapter 18.27 DOWNTOWN ZONE (D-1)**

### **18.27.010 Purpose.**

The D-1 zone is intended to increase and encourage mixed use dense commercial uses in the centralized part of U.S. Highway 101. It is intended to provide an area for small to medium sized commercial uses, encourage revitalization of downtown, and provide for adequate traffic flows and a pedestrian-friendly environment. [Ord. 321 § 15, 2014; Ord. 304 Art. I(1), 2008.]

### **18.27.020 Uses permitted outright.**

In a D-1 zone, the following uses and their accessory uses are permitted outright, subject to the applicable provisions of Division IV (Supplemental Provisions) and all development guidelines for natural hazards of this title:

A. Primary retail activities, such as shops or stores engaged in the sale of retail merchandise, except for outdoor sales establishments, establishments selling automobiles, manufactured dwellings or other large merchandise.

B. Consumer services such as banks, barber and beauty shops, repair shops, printing shops, and laundries.

C. Eating and drinking establishments with no more than incidental alcohol service, including those that provide outdoor seating.

D. Indoor amusement activities and bowling alleys.

E. Business, government and professional offices.

F. Residential uses in accordance with GMC 18.27.040(H).

G. Motels, hotels and tourist housing.

H. Arts and crafts studios or galleries and museums.

I. Parks and publicly owned plazas.

J. Single-family residences established prior to July 1, 1996, and in a dwelling unit or structure originally permitted and constructed for that use.

K. Attended service stations established prior to July 1, 2007.

L. Automobile drive-through commercial uses established prior to July 1, 2007.

M. Accessory structures in accordance with Chapter 18.135 GMC.

N. Certain transportation facilities as defined in GMC 18.05.030 and 18.185.050, specifically:

1. Normal operation and maintenance of transportation facilities;
2. Installation of transportation improvements within the existing right-of-way;
3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;
4. Landscaping as part of a transportation facility;
5. Emergency transportation facility measures;
6. Street or road construction as part of an approved subdivision or partition.

O. Private or public parking lots intended to provide general parking for the surrounding area and not required under Chapter 18.125 GMC.

P. Limited outdoor sales in conjunction with an established allowed use, subject to the following standards:

1. The area devoted to outdoor sales does not occupy any required parking spaces; and
2. The area devoted to temporary outdoor sales does not occupy more than 10 percent of the floor area devoted to the primary use; and
3. The product offered for sale outdoors is displayed and stocked adjacent to the building's exterior.

Q. Special Events. As used in this section, "special event" means a community-oriented and endorsed gathering or celebration intended for recreation, entertainment, fundraising, or other similar purposes. Special events are allowed when:

1. The special event is limited to no more than seven days per calendar year; and
2. The special event organizer obtains approval from the Oregon Liquor Control Commission to serve alcohol at the event and otherwise meets all lawful requirements for alcohol sales and consumption; and
3. The special event organizer obtains the written permission of the city manager authorizing the outdoor sale and consumption of alcohol at the event. [Ord. 321 §§ 16 – 23, 2014; Ord. 319 § 6, 2013; Ord. 304 Art. I(1), 2008.]

**18.27.030 Conditional uses permitted.**

In a D-1 zone, the following uses and their accessory uses may be conditionally permitted, subject to the applicable provisions of Division IV (Supplemental Provisions) and all development guidelines for natural hazards of this title:

A. Churches, libraries or community meeting halls.

B. Health facilities such as clinics and nursing homes.

C. Family day care center and day care center.

D. Expansion of service attended fueling station facilities established prior to July 1, 2007.

E. Expansion of automobile drive-through commercial uses established prior to July 1, 2007.

F. New automobile drive-through commercial use.

G. Certain transportation facilities as defined in GMC 18.05.030 and 18.185.050, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

H. Other uses similar to the above, subject to meeting applicable criteria listed in GMC 18.180.020.

I. Eating and drinking establishments with more than incidental alcohol service.

J. Accessory structures located in front of the primary structure or use. [Ord. 321 §§ 24 – 29, 2014; Ord. 304 Art. I(1), 2008.]

### **18.27.040 Standards.**

In a D-1 zone, the following standards shall apply:

A. Building Setbacks. The following setback standards apply to both primary and accessory structures. The standards may be modified only by approval of a variance in accordance with Chapter 18.190 GMC.

1. Front Yard Setbacks.

a. Minimum Setback. The minimum allowable front yard setback is three feet to be used to match the sidewalk and to allow for the placement of signs, benches, planters and other elective amenities on private property.

2. Rear Yard Setbacks. There is no minimum rear yard setback.

3. Side Yard Setbacks. There is no minimum side yard setback required, except that buildings shall conform to the clear vision standards in Chapter 18.95 GMC, and the applicable fire and building codes for attached structures, fire walls, and related requirements.

B. Lot Coverage. There is no maximum lot coverage requirement, except that compliance with other sections of this code may preclude full (100 percent) lot coverage for some land uses.

C. Building Height. All buildings in the Garibaldi downtown district shall comply with the following building height standard, intended to allow for development of appropriately scaled buildings incorporating a storefront character downtown, and to protect solar access, scenic views, and property values of adjacent residential uses in the R-1 zone.

1. Building Height. Maximum building height allowed outright shall be 30 feet. Any building exceeding 30 feet in height shall be reviewed following the standards and procedures for conditional uses under Chapter 18.185 GMC.

D. Underground Utilities.

1. It is the policy of the city to place all utilities underground except as otherwise exempted below. Developers shall make arrangements with serving utility companies for installation possibility of such utilities.

2. Exceptions. The city may permit overhead utilities as a condition of approval where the applicant can demonstrate one of the following conditions:

a. Underground utility locations are not feasible.

b. Temporary installations.

c. Major transmission facilities located within rights-of-way or easements.

d. Surface-mounted structures, substations or facilities requiring above ground locations by the serving utility.

3. Developers shall provide for the installation of conduit to a building for future undergrounding in the case of an exception.

E. Special Standards for Certain Uses. This section supplements the standards contained in GMC 18.27.020 through 18.27.030, providing standards for the following land uses in order to control the scale and compatibility of those uses within the downtown zone:

1. Residential Uses.

a. Mixed Use Development Required. Residential uses shall be permitted only when part of a mixed use structure (residential with commercial or public/institutional use). Both “vertical” mixed use (housing above the ground floor) and “horizontal” mixed use (housing on the ground floor) developments are allowed.

b. Limitation on Street-Level Housing. Residential uses on the ground floor may occupy no more than 50 percent of the total ground floor square footage.

2. Accessory Uses and Structures. Accessory uses and structures are of a nature customarily incidental and subordinate to the principal use or structure on the same lot. Typical accessory structures in the Garibaldi downtown zone may include small workshops, studios, storage sheds, and similar structures. Accessory uses and structures are allowed for all permitted land uses within the Garibaldi downtown zone. Accessory structures shall comply with the following standards:

a. Primary Use Required. An accessory structure shall not be allowed before or without a primary use.

b. Setback Standards. Accessory structures shall comply with the setback standards in subsection A of this section.

c. Restrictions. A structure shall not be placed over an identified alley or easement that prohibits such placement. No structure shall encroach into the public right-of-way.

3. Sidewalk Displays. Sidewalk display of merchandise next to buildings is permitted; however, a minimum pedestrian clearance of six feet shall be maintained.

4. Light Manufacture. Light manufacture uses (i.e., manufacturing of small-scale goods, such as crafts, electronic equipment, bakery products, printing and binderies, furniture, and similar goods) shall conform to all of the following standards which are intended to protect the pedestrian-friendly, storefront character of downtown Garibaldi:

a. Retail or Service Use Required. Light manufacture is allowed only when it is in conjunction with a permitted retail or service use.

b. Location. The light manufacture use shall be enclosed within a building.

#### F. Parking Requirements.

1. Parking Requirements. Parking requirements within the downtown zone shall conform to Chapter 18.125 GMC, with the following exceptions.

a. Uses allowed in the D-1 zone under GMC 18.27.020(A), (B), (C), (E), (H), (I), (K), and (L) which are located on lots created prior to 2012 and less than 10,000 square feet in size shall be exempt from off-street parking requirements.

2. On-Street Parking. On-street parking spaces that front and are contiguous to (on the same side of the street) the lot may be counted in the required parking.

3. Individual surface parking lots shall not exceed a total of 50 parking spaces, or one-half city block, whichever is smaller. [Ord. 321 § 30, 2014; Ord. 319 §§ 7 – 14, 2013; Ord. 304 Art. I(1), 2008.]

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## **Chapter 18.30 GENERAL INDUSTRIAL ZONE (I-1)**

### **18.30.010 Purpose.**

The purpose of the general industrial zone is to provide sites for industrial activities requiring large land areas, and which have generally greater impacts on the community, and which may be incompatible with other uses. Proximity to highway and railroad transportation is considered important. [Ord. 290 § 3(3.040), 2006.]

### **18.30.020 Uses permitted outright.**

In the I-1 zone, the following uses are permitted, subject to the standards of GMC 18.30.040:

A. Fabrication, production, processing, assembling, packaging or treatment of materials, goods, food stuffs and other semi-finished or finished products from semi-finished or raw materials.

B. Storage or distribution services or facilities, including terminals, warehouses, storage buildings and yards, contractors' establishments, ready mix plants or similar uses.

C. Research and development laboratories, including experimental, testing and processing facilities.

D. Welding or heavy repair services.

E. Temporary or interim uses which do not preclude the use of the property for more intensive industrial uses.

F. Public utility structure.

G. Mini-storage establishments (see definitions, GMC 18.05.030).

H. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition. [Ord. 290 § 3(3.040(1)), 2006.]

### **18.30.030 Conditional uses permitted.**

In the I-1 zone, the following uses are permitted, subject to requirements of GMC 18.30.040 and Chapter 18.185 GMC:

A. Automobile wrecking yard.

B. Telecommunication facilities.

C. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 290 § 3(3.040(2)), 2006.]

### **18.30.040 Standards.**

In an I-1 zone, the following standards shall apply:

A. Lot size: no minimum lot size.

B. Yards and Setbacks. Industrial uses abutting a WD-1 or WD-2 zone shall be set back from the adjoining zone a minimum of 10 feet.\*

C. Buffers and Landscaping. Industrial uses shall establish a sight-obscuring fence or hedge around outdoor storage areas where such storage areas abut a WD-1 or WD-2 zone.\*

D. Building Height. Maximum building height shall be 30 feet.

E. All uses shall meet the noise, air quality and water quality requirements of the State Department of Environmental Quality (DEQ).

F. All uses shall meet the parking and sign requirements of this title.

G. Estuary and shoreland standards contained in Chapter 18.160 GMC shall apply. [Ord. 290 § 3(3.040(3)), 2006.]

\* Code reviser's note: Ordinance 319 replaced the WD-1 and WD-2 zones with the WD and WM zones, respectively.

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## **Chapter 18.35 WATER-DEPENDENT DEVELOPMENT ZONE (WD)**

### **18.35.010 Purpose.**

The WD zone is intended to provide an area in which primarily water-dependent and water-related uses are located for the support of the marine industry. Uses which are not water dependent but which are subordinate and incidental to allowed water-dependent and water-related uses may also be allowed, subject to special standards that are intended to maintain the viability of the marine industry. [Ord. 319 § 15, 2013; Ord. 290 § 3(3.050), 2006.]

### **18.35.020 Uses permitted outright.**

In a WD zone, the following uses and their accessory structures are permitted, subject to the standards and criteria of GMC 18.35.040:

A. Low-intensity recreation, such as viewpoints or fishing areas.

B. Navigational aids.

C. Maintenance and repair of existing structures and facilities.

D. Water-dependent industrial uses, including but not limited to:

1. Land-based portions or piers, wharves, and other terminal and transfer facilities for passengers or waterborne commerce such as fish, shellfish, timber or timber products, metal and port activities associated with such facilities;

2. Water intake and discharge facilities;

3. Facilities for the extraction of minerals, aggregate, petroleum, natural gas, earth products or geothermal resources (as defined by ORS 533.10(4)) which require access to water during the extraction procedure;

4. Water access structure or facilities which require access to a water body as part of the manufacture, assembly, fabrication or repair of marine equipment, due to the size or nature of the craft or equipment;

5. Seafood receiving and processing facilities;

6. Other water-dependent industrial uses.

E. Water-dependent commercial uses, including but not limited to:

1. Commercial marinas, docks and moorages and support facilities;

2. Other water-dependent commercial uses.

F. Water-dependent recreational facilities including private docks, moorages and waterfront parks.

G. Water-dependent portions of aquaculture facilities.

H. Structural shoreline stabilization.

I. Landfalls and access corridors for submerged cable, sewer line, waterline or other pipeline crossing.

J. New dike construction, if required for a water-dependent use.

K. A temporary use that involves minimal capital investment and no permanent structure, for a period not to exceed one year.

L. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition.

M. Utility infrastructure such as water lines, sewer lines, phone lines, electrical lines, cable television lines, and other communications lines. This also includes non-habitable vaults and structures necessary to facilitate these types of infrastructure. [Ord. 319 § 15, 2013; Ord. 290 § 3(3.050(1)), 2006.]

### **18.35.030 Conditional uses permitted.**

In a WD zone, the following uses and their accessory structures are permitted, subject to the provisions of Chapter 18.185 GMC and GMC 18.35.040:

A. Water-related industrial uses, including but not limited to:

1. Warehousing and/or other storage areas for marine equipment or waterborne commerce;

2. Sorting, storage and handling of logs or lumber in conjunction with a shipping facility or a processing facility which utilizes water transport of logs;

3. Other water-related industrial uses.

B. Water-related commercial uses, including but not limited to:

1. Seafood retail or wholesale outlets;

2. Marine craft or marine equipment sales establishments;

3. Sport fish cleaning, smoking or canning establishments;

4. Charter fishing offices;

5. Retail trade establishments providing primarily products necessary for the commercial and recreational fishing industry, such as ice, bait, tackle, nautical charts, gasoline or similar products;

6. Restaurants which provide a view of the waterfront and which are in conjunction with another water-dependent or water-related commercial use, such as a seafood processing plant or a charter office;

7. Other water-related uses.

C. Non-water-dependent or water-related commercial uses in conjunction with an operating water-dependent or water-related use, subject to the special conditional use standards of GMC 18.185.040(B).

D. Dredge material disposal.

E. Mitigation, restoration, creation or enhancement.

F. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 319 § 15, 2013; Ord. 290 § 3(3.050(2)), 2006.]

### **18.35.040 Standards.**

In the WD zone, the following standards shall apply:

A. Lot Size. The minimum lot size shall be the area necessary to support the proposed use, including sufficient land for parking, off-loading, ingress and egress, and storage of materials.

B. Yards and Setbacks. Industrial uses abutting the WM zone shall be set back from the adjoining zone a minimum of 15 feet.

C. Buffers and Landscaping. Industrial uses shall establish a sight-obscuring fence or hedge around outdoor storage areas where such storage areas abut the WM zone.

D. Estuary shoreland standards contained in Chapter 18.160 GMC shall apply.

E. Determination of Water-Dependent and Water-Related Uses. In determining whether a use is water-dependent or water-related, the following definitions shall be applied:

1. "Water-dependent" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water;

2. "Water-related" means uses and activities that do not require direct water access (are not water-dependent), but which:

a. Provide goods and/or services that are directly associated with other water-dependent uses (supplying materials to, or using products of, water-dependent use); and

b. If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use).

F. Building Height. Maximum building height shall be 30 feet. Any building exceeding 30 feet in height shall be reviewed following the standards and procedures for conditional uses under Chapter 18.185 GMC.

G. Agency Notification. The following agencies shall be notified of proposed conditional uses and activities in the WD zone:

1. The Oregon Department of Fish and Wildlife;

2. Oregon Division of State Lands;

3. Oregon Department of Land Conservation and Development;

4. Oregon Wildlife Service;

5. National Marine Fisheries;

6. Environmental Protection Agency;

7. U.S. Army Corps of Engineers; and

8. The Port of Garibaldi. [Ord. 319 § 15, 2013; Ord. 290 § 3(3.050(3)), 2006.]

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## **Chapter 18.40 WATERFRONT MIXED-USE ZONE (WM)**

### **18.40.010 Purpose.**

The WM zone is intended to provide a location for water-dependent, water-related and compatible non-water-related uses in a waterfront setting. Development may include a variety of mixed uses including residential uses when their location and design does not preclude or interfere with water-dependent uses on nearby and surrounding lands. The WM zone includes lands which are less suitable for water-dependent uses than those in the WD zone and which are not required to be protected for water-dependent uses. Such lands may include shoreland areas with limited or no access to navigable water or which adjoin estuarine areas unsuitable for development. [Ord. 319 § 16, 2013; Ord. 290 § 3(3.060), 2006.]

### **18.40.020 Uses permitted outright.**

In the WM zone, the following uses are permitted, subject to the standards of GMC 18.40.040:

A. Uses that provide support or backup for those uses permitted outright in a WD zone such as parking lots, boat and trailer storage areas, commercial fishing gear storage, accessory structures for port operations and maintenance.

B. Shipping and port activity.

C. Water-related industrial or commercial uses such as boat manufacture, repair, and sales, charter fishing office, tackle shop, marine equipment sales, seafood market.

D. Non-water-related commercial uses such as retail sales establishment, professional office, personal services establishment, gift shop, art gallery.

E. Restaurant, tavern, or other eating and drinking establishment.

F. Commercial aquarium or water park.

G. Public park or recreation area.

H. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition.

I. Residential uses may be permitted within the WM zone when approved as part of a mixed-use development, multifamily development or planned unit development. Mixed-use developments may include housing above nonresidential uses (e.g., apartment lofts above offices), or housing side-by-side with nonresidential uses. All mixed-use developments shall comply with the following standards:

1. No more than 50 percent of the ground floor space on each lot or parcel may be used for housing. A greater percentage may be approved for housing as part of a master planned development when the master plan provides for development of more than one lot/parcel, and the overall percentage of ground floor space does not exceed 50 percent residential use for the entire site.

2. The maximum allowable density shall not exceed one dwelling for each 3,500 square feet of land area. [Ord. 319 § 16, 2013; Ord. 304 Art. IV(1), 2008; Ord. 290 § 3(3.060(1)), 2006.]

#### **18.40.030 Conditional uses permitted.\***

In the WM zone, the following uses are permitted, subject to the provisions of Chapter 18.185 GMC and GMC 18.40.040:

A. Hotels or motels.

B. Multifamily developments.

C. Support activities and uses in conjunction with marine industry and/or water-related recreation, including but not limited to:

1. Recreation vehicle parking areas and campgrounds;

2. Parking lots;

3. Other accessory structures related to and in support of the operation of marine industrial and marine recreational uses.

D. Light industrial food or beverage processing use such as a bakery, brewery, distillery.

E. Indoor amusement such as bowling alley, movie theater, or other entertainment establishment.

F. Dredge material disposal.

G. Wetlands mitigation, restoration, creation or enhancement.

H. Public utility structures.

I. Planned unit developments in accordance with Chapter 18.205 GMC.

J. Certain transportation facilities as defined in GMC 18.05.030, specifically:

1. Transportation projects that are not designated improvements in the transportation system plan; and

2. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 319 § 16, 2013; Ord. 290 § 3(3.060(2)), 2006.]

\* Code reviser's note: At the request of the city, subsection K of this section, as adopted by Ordinance 319, has not been codified.

### **18.40.040 Standards.**

In the WM zone, the following standards shall apply:

A. Lot Size. The minimum lot size shall be the area necessary to support the proposed use, including sufficient area for parking, loading, ingress and egress, and storage of materials. Residential density for multifamily, mixed-use or planned unit developments shall not exceed one dwelling unit for each 3,500 square feet of land area.

B. Yards and Setbacks. Industrial and commercial uses shall be set back a minimum of 10 feet from abutting nonindustrial and noncommercial uses.

C. Buffers and Landscaping. Industrial uses shall establish a sight-obscuring fence or hedge around outdoor storage areas.

D. Estuary and shoreland standards contained in Chapter 18.160 GMC shall apply.

E. Building Height. Maximum building height shall be 30 feet. Any building exceeding 30 feet in height shall be reviewed following the standards and procedures for conditional uses under Chapter 18.185 GMC.

F. Determination of Water-Dependent and Water-Related Uses. The city shall, when considering a new use or expanded use, make a finding that the use is water-dependent or water-related if it conforms with the following definitions:

1. "Water-dependent" means a use or activity which can be carried out only on, in, or adjacent to a water area because the use requires access to the water body for waterborne transportation, recreation, energy production, or source of water;

2. "Water-related" means uses and activities that do not require direct water access (are not water-dependent), but which:

a. Provide goods and/or services that are directly associated with other water-dependent uses (supplying materials to, or using products of, water-dependent uses); and

b. If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use). [Ord. 319 § 16, 2013; Ord. 290 § 3(3.060(3)), 2006.]

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## **Chapter 18.45 DREDGE MATERIAL DISPOSAL SITE PROTECTION OVERLAY ZONE (DMD)**

### **18.45.010 Purpose.**

It is the intent of this overlay zone to designate dredged material disposal sites in the city with respect to present and expected water-dependent development and navigational access requirements and to protect these sites for dredge material operations. [Ord. 290 § 3(3.070), 2006.]

### **18.45.020 Designation of dredge material disposal sites.**

The DMD overlay zone shall be designated on Garibaldi land use and zoning maps and shall conform to the dimensions of the priority DMD site(s) specified in the Tillamook County dredge material disposal plan as being acceptable for dredge material disposal. Subsequent revisions to the Tillamook County dredge material disposal plan shall be recorded by an amendment to the land use and zoning map. [Ord. 290 § 3(3.070(1)), 2006.]

### **18.45.030 Uses permitted in a DMD zone.**

Dredge material disposal is a permitted use in the DMD zone. In addition, only those uses and activities allowed in the underlying zone that do not preempt the site's future use for dredge material disposal are allowed. (Refer to GMC 18.45.040.) Such uses and activities are subject to the requirements of the underlying zone. [Ord. 290 § 3(3.070(2)), 2006.]

### **18.45.040 Determination of preemptive uses.**

Incompatible or preemptive uses of the dredge material disposal sites are:

A. Uses requiring substantial structural or capital improvements (e.g., construction of permanent buildings).

B. Uses that require extensive alteration of the topography of the site, thereby reducing the potential usable volume of the dredged material disposal area (e.g., extensive site grading, elevation by placement of fill materials other than dredged spoils).

C. Uses that include changes made to the site that would prevent expeditious use of the site for dredge material disposal. Such uses would delay deposition of dredged materials on the site beyond the period of time commonly required to obtain the necessary federal, state and local dredging and spoil disposal permits (approximately 90 days). [Ord. 290 § 3(3.070(3)), 2006.]

### **18.45.050 Removal of dredged material disposal site designation.**

Sites may be removed by an amendment to the comprehensive plan and zoning ordinance in the following situations:

A. After a dredged material disposal site has been filled to capacity and is no longer available for additional dredged material disposal.

B. Removal of a dredged material disposal site designation before a site has been filled to capacity only if:

1. Provision is made for a replacement dredged material disposal site of suitable characteristics; or

2. The dredging need, for which the Priority I site was initially designated for dredged material disposal, is withdrawn or reevaluated. [Ord. 290 § 3(3.070(4)), 2006.]

### **18.45.060 Agency notification.**

The following agencies shall be notified of proposed uses and activities in the DMD overlay zone:

A. The Oregon Department of Fish and Wildlife;

B. Oregon Division of State Lands;

C. Oregon Department of Land Conservation and Development;

D. Oregon Department of Economic Development;

E. U.S. Fish and Wildlife Service;

F. Environmental Protection Agency;

G. U.S. Army Corps of Engineers; and

H. The Port of Garibaldi. [Ord. 290 § 3(3.070(5)), 2006.]

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## **Chapter 18.50 SENSITIVE BIRD HABITAT OVERLAY ZONE**

### **18.50.010 Purpose.**

The purpose of the sensitive bird habitat overlay zone is to ensure that habitat areas identified as critical for the great blue heron are protected from the effects of conflicting uses or activities. This objective shall be achieved through the development of site-specific management plans that ensure that proposed uses and activities will neither destroy nor result in the abandonment of sensitive bird habitat areas. [Ord. 290 § 3(3.075(1)), 2006.]

### **18.50.020 Definition of nest sites.**

All great blue heron rookeries identified in the comprehensive plan shall be subject to the requirements of the sensitive bird habitat overlay zone. When additional sites are identified by the Oregon Department of Fish and Wildlife they shall be added to the comprehensive plan, and become subject to the requirements of the sensitive bird habitat overlay zone. [Ord. 290 § 3(3.075(2)), 2006.]

### **18.50.030 Development and uses permitted.**

Uses permitted in the underlying zone(s) are permitted or conditionally permitted in the sensitive bird habitat overlay zone subject to the additional procedure and requirements of GMC 18.50.040. The overlay zone does not regulate forest practices. Requirements of the Forest Practices Act will be applied to sensitive bird habitat located on forest lands outside the urban growth boundary through the requirements of the Oregon Department of Forestry. [Ord. 290 § 3(3.075(3)), 2006.]

### **18.50.040 Development and use criteria.**

The following review procedure and criteria shall apply:

A. The review procedure is initiated when Garibaldi receives a request for a permit that may affect a sensitive bird habitat.

B. A proposed use or activity involving road building or land clearing is considered to have the potential for affecting a sensitive bird habitat if it is located within 600 feet of a heron rookery. All other uses or activities are considered to have the potential for affecting a sensitive bird habitat if it is located within 300 feet of a heron rookery.

C. If a proposed use or activity meets the locational criteria of subsection B of this section, Garibaldi shall notify the Oregon Department of Fish and Wildlife and the person proposing the use or activity.

D. Upon notification, the Oregon Department of Fish and Wildlife shall review the proposed use or activity and make a determination of whether the use or activity has the potential for adversely affecting a sensitive bird habitat area. In making this review and determination, the Oregon Department of Fish and Wildlife shall consult with the affected landowner(s), the city of Garibaldi and appropriate state agencies. The determination shall be completed within 10 working days of the receipt of notice from Garibaldi.

E. If the Oregon Department of Fish and Wildlife determines that the sensitive habitat will not be affected, it shall so notify the city of Garibaldi and the city may proceed with the processing of the permit application.

F. If the Oregon Department of Fish and Wildlife determines that a sensitive habitat would be affected, the person proposing the use or activity shall prepare a site-specific habitat protection plan. The plan shall demonstrate that the proposed development can be accomplished without conflicting with or jeopardizing the sensitive bird habitat area. The plan shall consider nesting trees, critical nesting periods, roosting sites and buffer areas. The habitat protection plan shall be prepared in cooperation with, and approved by, the Department of Fish and Wildlife.

G. The city shall incorporate the requirements of the Oregon Department of Fish and Wildlife approved habitat protection plan into any action it takes on the proposed development. [Ord. 290 § 3(3.075(4)), 2006.]

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## **Chapter 18.55 ESTUARY ZONES – GENERAL USE PRIORITIES AND AREAS INCLUDED**

### **18.55.010 General priorities.**

Estuary zones shall be applied to all estuarine waters, intertidal areas, submerged and submersible lands and tidal wetlands up to the line of nonaquatic vegetation of the mean higher high water (MHHW) line, whichever is most landward. [Ord. 290 § 3(3.080(1)), 2006.]

### **18.55.020 Uses permitted outright.**

The following uses are permitted outright within all estuary zones:

A. Maintenance and repair of existing structures or facilities not involving a regulated activity. For the purpose of this chapter, “existing structures or facilities” are defined as:

1. Structures or facilities in current use or good repair as of the date of adoption of the ordinance codified in this chapter (including structures or facilities which are in conformance with the requirements of this chapter and nonconforming structures or facilities established prior to October 7, 1977).

B. Low-intensity, water-dependent recreation, including but not limited to fishing, crabbing, clamming, wildlife observation, swimming and hunting.

C. Research and educational observation.

D. Grazing of livestock.

E. Fencing; provided, that it is not placed across publicly owned lands or publicly owned intertidal areas so as to restrict public access to or recreational boating access across said lands and intertidal areas.

F. Passive restoration.

G. Dike maintenance and repair for:

1. Existing serviceable dikes (including those that allow some seasonal inundation); and

2. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has not reverted to estuarine habitat; and

3. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has reverted to estuarine habitat only if the property is in the farm (F-1) zone and it has been in agricultural use for three of the last five years and reversion to estuarine habitat has not occurred more than five years prior.

Garibaldi will rely on the U.S. Army Corps of Engineers and the Division of State Lands to determine whether an area has reverted to estuarine influence.

For the purpose of this subsection, “agricultural use” means using an area for pasture several months of the year or harvesting this area once a year. [Ord. 290 § 3(3.080(2)), 2006.]

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## **Chapter 18.60 ESTUARY NATURAL ZONE (EN)**

### **18.60.010 Purpose and areas included.**

The purpose of the EN zone is to provide for preservation and protection of significant fish and wildlife habitats and other areas which make an essential contribution to estuarine productivity or fulfill scientific research or educational needs. Except where a goal exception has been taken in the Garibaldi comprehensive plan, the EN zone includes the following areas within the estuary:

A. Major tracts of tidal marsh, intertidal flats and seagrass and algae beds. The “major tract” determination is made through a consideration of all the following criteria: size/extent; habitat value; scarcity; and degree of alteration. [Ord. 290 § 3(3.090(1)), 2006.]

### **18.60.020 Uses permitted with standards.**

The following uses are permitted with standards within the EN zone; provided, that the procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC have been met:

A. Maintenance and repair of existing structures or facilities involving a regulated activity.

B. Navigational aids.

C. Vegetative shoreline stabilization.

D. Temporary dikes for emergency flood protection.

E. Mooring buoy.

F. Tidegate installation in existing functional dikes.

G. Bridge crossing and bridge crossing support structures. [Ord. 290 § 3(3.090(2)), 2006.]

### **18.60.030 Conditional uses.**

The following uses are conditional within the EN zone and may be permitted by the planning commission, subject to the procedures in Chapter 18.165 GMC, provisions of Chapter 18.185 GMC and the development standards in Chapter 18.160 GMC:

A. Aquaculture and water-dependent portions of aquaculture facilities that do not require dredging or fill.

B. Riprap to protect unique natural resources, historical and archaeological values, public facilities and uses existing as of October 7, 1977, and uses allowed by this zone.

C. Water, sewer, gas or phone lines.

D. Electrical distribution lines and line support structures.

E. Active restoration and estuarine enhancement.

F. Temporary low water bridges.

G. Temporary alterations.

H. Boat ramps for public use where no dredging or fill for navigational access is needed.

I. Water intake structures for outbay aquaculture.

J. Transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition;

7. Transportation projects that are not designated improvements in the transportation system plan; and

8. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 290 § 3(3.090(3)), 2006.]

#### **18.60.040 Regulated activities.**

The following regulated activities are permitted within the EN zone; provided, that the requirements of Chapter 18.160 GMC have been met. Regulated activities shall be reviewed by the procedure provided in Chapter 18.165 GMC.

A. Regulated activities for the purpose of on-site maintenance and repair of existing structures or facilities, limited to:

1. Dredging for on-site maintenance of:

a. Drainage tiles;

b. Drainage ditches;

c. Tidegates;

d. Bridge crossing support structures;

e. Water, sewer, gas or phone lines;

f. Electrical distribution lines;

g. Outfalls.

2. Fill or riprap for on-site maintenance of:

a. Dikes;

b. Bridge crossing support structures or other land transportation facilities.

3. Replacement of piling.

B. Riprap for structural shoreline stabilization and protection of uses allowed in this zone.

C. Piling installation for:

1. Navigational aids;

2. Aquaculture facilities;

3. Bridge crossing support structures;

4. Public boat ramps.

D. Dredging for installation of:

1. Water, sewer, gas or communication lines;

2. Electrical distribution lines;

3. Tidegates in existing dikes adjacent to EN zones;

4. Water intake facilities.

E. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.

F. Regulated activities in conjunction with temporary alterations.

G. Fill for installation of public boat ramps or bridge crossing support structures.

H. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks. [Ord. 290 § 3(3.090(4)), 2006.]

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## **Chapter 18.65 ESTUARY CONSERVATION 1 ZONE (EC-1)**

### **18.65.010 Purpose and areas included.**

A. The purpose of the EC-1 zone is to:

1. Provide for long-term utilization of areas that support, or have the potential to support, valuable biological resources;
2. Provide for long-term maintenance and enhancement of biological productivity;
3. Provide for the long-term maintenance of the aesthetic values of estuarine areas, in order to promote or enhance the low-intensity recreational use of estuarine areas adjacent to rural or agricultural shorelands.

B. Except where a goal exception has been taken in the Garibaldi comprehensive plan, the EC-1 zone includes the following areas within the Tillamook Bay estuary:

1. Tracts of tidal marshes, tideflats, seagrass and algae beds which are smaller or of less biological importance than those designated as estuary natural (EN);
2. Productive recreational or commercial shellfish and fishing areas;
3. Areas that are partially altered and adjacent to existing development of moderate intensity that do not possess the resource characteristics of EN or ED units; and
4. Areas with potential for shellfish culture (excluding platted oyster beds in Tillamook Bay). [Ord. 290 § 3(3.106(1)), 2006.]

### **18.65.020 Uses permitted with standards.**

The following uses are permitted with standards within the EC-1 zone; provided, that the procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC have been met.

- A. Maintenance and repair of existing structures or facilities involving a regulated activity;
- B. Navigational aids;
- C. Vegetative shoreline stabilization;
- D. Structural shoreline stabilization, limited to riprap;
- E. Boat dock in conjunction with one or more private residences. Single-purpose private docks shall be limited to maximum of 150 square feet in size;

F. Water, sewer, gas or phone lines;

G. Electrical distribution lines and line support structures;

H. Active restoration and estuarine enhancement;

I. Temporary dikes for emergency flood protection;

J. Mooring buoys;

K. Temporary low water bridges;

L. Tidegate installation in existing functional dikes adjacent to EC-1 zones;

M. Aquaculture and water-dependent portions of aquaculture facilities not requiring dredge or fill other than incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks;

N. Bridge crossings and bridge crossing support structures;

O. Boat ramps for public use where no dredging or fill for navigational access is needed. [Ord. 290 § 3(3.106(2)), 2006.]

### **18.65.030 Conditional uses.**

The following uses are conditional within the EC-1 zone and may be permitted by the planning commission, subject to the provisions of Chapter 18.185 GMC, procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC:

A. Water-dependent portions of aquaculture facilities which require dredge or fill;

B. Water-dependent recreational facilities, including:

1. Boat ramps requiring dredging or fill for navigational access;

2. Community boat docks in conjunction with a subdivision or planned development;

3. Public or commercial docks and moorages for recreational marine craft (including seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area;

C. Mining and mineral extraction;

D. Storm water and treated sewer outfall;

E. Bulkheads for structural shoreline stabilization;

F. Temporary alterations;

G. Minor navigational improvements;

H. Transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition;

7. Transportation projects that are not designated improvements in the transportation system plan; and

8. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 290 § 3(3.106(3)), 2006.]

#### **18.65.040 Regulated activities.**

The following regulated activities are permitted within the EC-1 zone; provided, that the requirements of Chapter 18.160 GMC have been met. Regulated activities shall be reviewed by the procedure provided in Chapter 18.165 GMC.

A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:

1. Dredging for on-site maintenance of:

a. Drainage tiles.

b. Drainage ditches.

c. Tidegates.

d. Bridge crossing support structures.

e. Water, sewer, gas or phone lines.

f. Electrical distribution lines.

g. Outfalls.

2. Fill or riprap for on-site maintenance of:

a. Dikes.

b. Bridge crossing support structures or other land transportation facilities.

3. Replacement of Piling. Piling installation for:

a. Water-dependent recreational facilities.

b. Aquaculture facilities.

c. Navigational aids.

d. Bridge crossing support structures or other land transportation facilities.

e. Bulkheads.

B. Riprap for structural shoreline stabilization and protection of uses allowed by this zone.

C. Dredging for:

1. Bridge crossing support structure installation.

2. Storm water or treated sewage outfall installation.

3. Tidegate installation in existing functional dikes adjacent to EC-1 zones.

4. Water, sewer, gas or phone line installation.

5. Electrical distribution line installation.

6. Mining or mineral extraction.

7. Water intake facilities.

8. Boat ramps.

9. Minor navigational improvements.

10. Water-dependent portions of aquaculture facilities.

D. Fill for:

1. Bridge crossing support structures.

2. Structural shoreline stabilization.

3. Boat ramps.

4. Water-dependent portions of aquaculture facilities.

E. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.

F. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

G. Regulated activities in conjunction with temporary alterations. [Ord. 290 § 3(3.106(4)), 2006.]

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## **Chapter 18.70 ESTUARY CONSERVATION 2 ZONE (EC-2)**

### **18.70.010 Purpose and areas included.**

A. The purpose of the EC-2 zone is to:

1. Provide for long-term use of renewable resources that do not require major alteration of the estuary except for purposes of restoration.
2. Other than minor navigational improvements, aquaculture facilities and water-dependent recreational facilities, provide for new water-dependent industrial and commercial uses only where dredging and filling are not necessary and where consistent with the resource capabilities of the area and purposes of the management unit.

B. The EC-2 zone includes the following areas:

1. Tracts of significant habitat not included in EN or EC-1 zones;
2. Areas containing existing water-dependent development that require periodic dredging to maintain water access;
3. Partially altered estuarine areas or estuarine areas adjacent to existing water-dependent development and which do not otherwise qualify for EN, EC-1 or ED designations; and
4. Subtidal channel areas that require minor navigational improvements, navigable areas which are adjacent to urbanized areas, which do not qualify for EN or EC-1 designation and which are not federally authorized and maintained navigation channels. [Ord. 290 § 3(3.108(1)), 2006.]

### **18.70.020 Uses permitted with standards.**

The following uses are permitted with standards within the EC-2 zone; provided, that the procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC have been met.

A. Aquaculture and water-dependent portions of aquaculture facilities not requiring dredging or fill other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks.

B. Navigational aids.

C. Vegetative shoreline stabilization.

D. Structural shoreline stabilization, limited to riprap.

E. Boat dock in conjunction with one or more private residences. Single-purpose private docks shall be limited to a maximum of 150 square feet in size.

F. Tidegate installation in existing dikes adjacent to EC-2 zones.

G. Water, sewer, gas or phone lines.

H. Electrical distribution lines and line support structures.

I. Temporary dikes for emergency flood protection.

J. Active restoration and estuarine enhancement.

K. Water intake facilities for outbay aquaculture requiring dredge or fill.

L. Temporary low water bridges.

M. Boat ramps for public use where no dredging or fill for navigation access is needed.

N. Maintenance and repair of existing structures or facilities involving a regulated activity.

O. Bridge crossing and bridge crossing support structures. [Ord. 290 § 3(3.108(2)), 2006.]

### **18.70.030 Uses permitted conditionally.**

The following uses are conditional within the EC-2 zone, and may be permitted by the planning commission, subject to the provisions of Chapter 18.185 GMC, the procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC.

A. Water-dependent recreational facilities, including:

1. Boat ramps that require dredging or fill for recreational access.

2. Community boat docks in conjunction with a subdivision or planned development.

3. Public or commercial docks, moorages and marinas for recreational marine craft (including seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area.

B. Water-dependent commercial facilities not requiring the use of dredging or fill, including moorages, docks and marinas for commercial marine craft (including seaplanes), and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area.

C. Water-dependent industrial facilities not requiring the use of dredging or fill, including:

1. Piers, wharves and other terminal and transfer facilities for passengers or waterborne commerce, such as fish, shellfish, metal, timber or timber products.

2. Water intake and discharge structures.

3. Water access structures or facilities that require access to a water body as part of the manufacturing, assembly, fabrication or repair of marine craft or marine equipment, due to the size of the craft or equipment.

D. Other water-dependent uses not requiring the use of dredging or fill. A use is determined to be water-dependent when it can be carried out only on, in or adjacent to water, and the location or access is needed for:

1. Waterborne transportation.

2. Recreation.

3. A source of water (such as energy production, cooling of industrial equipment or wastewater, or other industrial processes).

E. Navigational structures, limited to floating breakwaters.

F. Mining and mineral extraction.

G. Storm water and sewer outfalls.

H. Bulkheads for structural shoreline stabilization.

I. Water-dependent portions of aquaculture facilities requiring dredging or fill.

J. Temporary alteration.

K. Minor navigational improvements.

L. Transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition;

7. Transportation projects that are not designated improvements in the transportation system plan; and

8. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 290 § 3(3.108(3)), 2006.]

### **18.70.040 Regulated activities.**

The following regulated activities are permitted within the EC-2 zone; provided, that the requirements of Chapter 18.160 GMC have been met. Regulated activities shall be reviewed by the procedure provided in Chapter 18.165 GMC.

A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:

1. Dredging for on-site maintenance of:

a. Drainage tiles.

b. Drainage ditches.

c. Tidegates.

d. Bridge crossing support structures.

e. Water, sewer, gas or phone lines.

f. Electrical distribution lines.

g. Outfalls.

2. Fill or riprap for on-site maintenance of:

a. Dikes.

b. Bridge crossing support structures or other land transportation facilities.

c. Shoreline stabilization structures.

3. Replacement of pilings.

B. Piling installation for:

1. Water-dependent industrial, commercial or recreational facilities.

2. Water-dependent portions of aquaculture facilities or aquaculture operations.

3. Navigational aids.

4. Bulkheads.

5. Bridge crossing support structures.

C. Dredging for:

1. Maintenance of existing facilities.

2. Minor navigational improvements.

3. Water-dependent recreational facilities.

4. Water-dependent portions of aquaculture facilities.

5. Mining or mineral extraction.

6. Bridge crossing support structure installation.

7. Outfall installation.

8. Water, sewer or gas line installation.

9. Electrical distribution line installation.

10. Tidegate installation in existing dikes adjacent to EC-2 zones.

11. Boat ramps.

D. Riprap for structural shoreline stabilization and protection of uses allowed by this zone.

E. Fill for:

1. Bridge crossing support structures.

2. Structural shoreline stabilization.

3. Water-dependent recreational activities.

4. Water-dependent portions of aquaculture facilities.

5. Boat ramps.

F. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.

G. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

H. Regulated activities in conjunction with temporary alterations. [Ord. 290 § 3(3.108(4)), 2006.]

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## **Chapter 18.75 ESTUARY DEVELOPMENT ZONE (ED)**

### **18.75.010 Purpose and areas included.**

A. The purpose of the ED zone is to:

1. Provide for long-term maintenance, enhancement, expansion or creation of structures or facilities for navigational and other water-dependent commercial, industrial or recreational uses.
2. Provide for the expansion or creation of other commercial, industrial or recreational facilities.

B. The ED zone includes the following areas within development estuaries:

1. Areas that contain public facilities which are utilized for shipping, handling or storage of waterborne commerce, or for moorage or fueling of marine craft.
2. Subtidal channel areas adjacent or in proximity to the shoreline which are currently used or needed for shallow-draft navigation (including authorized, maintained channels and turning basins).
3. Areas of minimum biologic significance needed for uses requiring alteration of the estuary not included in EN, EC-1, and EC-2 zones. [Ord. 290 § 3(3.110(1)), 2006.]

### **18.75.020 Uses permitted with standards.**

The following uses are permitted with standards within the ED zone; provided, that the procedures in Chapter 18.165 GMC and the development standards in Chapter 18.160 GMC have been met.

- A. Maintenance and repair of existing structures or facilities involving a regulated activity.
- B. Navigational structures and navigational aids.
- C. Vegetative shoreline stabilization.
- D. Structural shoreline stabilization.
- E. Tidegate installation in existing dikes adjacent to ED zones.
- F. Water, sewer, gas or phone lines.
- G. Electrical distribution lines and line support structures.
- H. Temporary dikes for emergency flood protection.

I. Mooring buoys.

J. Temporary low water bridges.

K. Temporary alterations.

L. Active restoration or estuarine enhancement.

M. Bridge crossing and bridge crossing support structure.

N. Water-dependent commercial uses, including docks, moorages, marinas for commercial marine craft (including seaplanes).

O. Water-dependent industrial uses, including:

1. Piers, wharves, and other terminal and transfer facilities for passengers or waterborne commerce, such as fish, shellfish, metal, timber or timber products.

2. Water intake and discharge structures.

3. Water access structures or facilities that require access to a water body as part of the manufacturing, assembly, fabrication or repair of marine craft or marine equipment due to the size of the craft or equipment.

P. Water-dependent public recreational facilities, including:

1. Boat ramps.

2. Commercial docks, moorages and marinas for recreational marine craft (including seaplanes).

Q. Aquaculture and water-dependent portions of aquaculture facilities.

R. Other water-dependent uses. A use is determined to be water-dependent when it can be carried out only on, in or adjacent to water, and the location or access is needed for:

1. Waterborne transportation;

2. Recreation;

3. A source of water (such as energy production, cooling of industrial equipment or wastewater, or other industrial processes). [Ord. 290 § 3(3.110(2)), 2006.]

### **18.75.030 Conditional uses.**

The following uses are conditional within the ED zone, and may be permitted by the planning commission, subject to the provisions of Chapter 18.185 GMC, the procedures of Chapter 18.165

GMC and the development standards in Chapter 18.160 GMC, and only after a finding that the proposed facility does not preclude or unduly conflict with water-dependent use on the site or in the adjacent water-dependent development shorelands.

A. Water-related industrial uses not requiring the use of fill, including but not limited to:

1. Fish or shellfish processing plants.
2. Warehouse and/or other storage areas for marine equipment or waterborne commerce.

B. Water-related commercial uses not requiring the use of fill, including but not limited to:

1. Fish or shellfish retail or wholesale outlets.
2. Marine craft or marine equipment sales establishments.
3. Sport fish cleaning, smoking or canning establishments.
4. Charter fishing offices.
5. Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water-dependent use.
6. Restaurants which provide waterfront views and are in conjunction with a water-dependent or water-related use such as a seafood processing plant or charter office.

C. In-water sorting, storage and handling of logs in association with waterborne transportation of logs.

D. Other water-related uses not requiring the use of fill. A use is determined to be water-related when the use:

1. Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses).
2. If not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality will involve a subjective consideration of economic, social and environmental consequences of the use.

E. Accessory uses or structures in conjunction with a conditional use listed in subsections A through D of this section, limited in size to a maximum of 10 percent of the lot or parcel size.

F. Mining and mineral extraction.

G. Storm water and sewer outfalls.

H. Non-water-dependent and non-water-related uses not requiring the use of fill.

I. New dike construction if:

1. Required for a water-dependent use for which there is a public need and for which no practicable upland locations exist.

2. Adverse impacts are avoided or minimized to be consistent with the resource capabilities and purposes of the area.

J. Temporary alterations.

K. Transportation facilities as defined in GMC 18.05.030, specifically:

1. Normal operation and maintenance of transportation facilities;

2. Installation of transportation improvements within the existing right-of-way;

3. Projects identified in the adopted transportation system plan not requiring future land use review and approval;

4. Landscaping as part of a transportation facility;

5. Emergency transportation facility measures;

6. Street or road construction as part of an approved subdivision or partition;

7. Transportation projects that are not designated improvements in the transportation system plan; and

8. Transportation projects that are not designed and constructed as part of an approved subdivision or partition. [Ord. 290 § 3(3.110(3)), 2006.]

### **18.75.040 Regulated activities.**

The following regulated activities are permitted within the ED zone; provided, that the requirements of Chapter 18.160 GMC have been met. Regulated activities shall be reviewed by the procedures provided in Chapter 18.165 GMC.

A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities.

B. Dredging for:

1. Maintenance of existing facilities.

2. Navigational improvements.
3. Water-dependent portions of aquaculture operations.
4. Water-dependent uses.
5. Mining and mineral extraction.
6. Bridge crossing support structure installation.
7. Outfall installation.
8. Water, sewer or gas line installation.
9. Electrical distribution line installation.
10. Tidegate installation in existing dikes adjacent to ED zones.

C. Fill for:

1. Water-dependent uses.
2. Water-dependent portions of aquaculture facilities.
3. Navigational structures or navigational improvements.
4. Structural shoreline stabilization.
5. Bridge crossing support structures.
6. New dike construction.

D. Piling and dolphin installation in conjunction with GMC 18.75.020, Uses permitted with standards, or GMC 18.75.030, Conditional uses, within this zone.

E. Riprap for structural shoreline stabilization or protection of uses allowed by this zone.

F. Dredged material disposal in an approved DMD site or in conjunction with an approved fill project, subject to state and federal permit requirements for dredged material disposal.

G. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.

H. Flow-lane disposal of dredge material, subject to state and federal permit requirements.

I. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

J. Regulated activities in conjunction with temporary alterations. [Ord. 290 § 3(3.110(4)), 2006.]

### **18.75.050 Additional requirements.**

Garibaldi boat basin exception area: Development shall be limited to that described in the goal exception for the expansion of the Garibaldi boat basin. [Ord. 290 § 3(3.110(5)), 2006.]

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## **Chapter 18.80 HILLSIDE OVERLAY ZONE (HOZ)**

### **18.80.010 Purpose.**

The hillside overlay zone applies to all areas of the city where the slope of the land is 20 percent or greater. The intent of the zone is to establish special criteria and procedures for development in a way that the potential for property damage and adverse impacts on the natural environment are reduced, so that safe, orderly and beneficial development in the zone results. For the purposes of this section, “development” is defined as any alteration of the land surface greater than two feet in depth by construction of any kind, including hand or machine grading, filling, cutting and other earth moving activities, and/or construction of a building, road, driveway, parking area or other structure. Normal landscaping activities are not regulated by this section. [Ord. 290 § 3(3.120(1)), 2006.]

### **18.80.020 Area affected.**

Areas of land with a slope of more than 20 percent are identified on a map titled “Slope, Garibaldi, Oregon” which is contained in the comprehensive plan of the city of Garibaldi. The boundaries of this overlay district are consistent with information available to the city on the slope of parcels within the city. Boundaries may be changed where site-specific survey information shows that the slope of a given parcel of land is less than 20 percent. Where such information is provided, the requirements of the hillside overlay zone are not applicable. [Ord. 290 § 3(3.120(2)), 2006.]

### **18.80.030 Development and uses permitted.**

Any use permitted outright or conditional use permitted in the underlying zone may be permitted within the boundaries of the hillside overlay zone, subject to the procedures and development and use criteria of GMC 18.80.040 and 18.80.050. [Ord. 290 § 3(3.120(3)), 2006.]

### **18.80.040 Procedure.**

The requirements of the hillside overlay zone shall be met prior to the issuance of a building permit. The requirements of this section shall also be met in conjunction with any request for approval of a subdivision, or a major or minor partition, or planned unit development. Where the requirements of the hillside overlay zone are met as part of the review and approval of a subdivision, major partition, or minor partition, or planned unit development, no further review, prior to the issuance of a building permit, will be required for property located within an approved subdivision, major partition or minor partition, or planned unit development. [Ord. 290 § 3(3.120(4)), 2006.]

### **18.80.050 Development and use criteria.**

A. The city planner, at the direction of the city council, shall require the following reports be provided by an applicant who proposes to develop land within the hillside overlay zone. The cost of all reports shall be borne by the applicant.

1. Geologic Site Investigation. This report shall include an adequate description, as defined by the building official, of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and recommendations on specific engineering or construction methods which will eliminate or minimize to an acceptable level any identified geologic hazards. The report shall be prepared by a registered geologist.

2. Grading Plan. This plan shall include the following information:

a. Existing and proposed contours (five-foot intervals) of property;

b. Details of terrain and area drainage;

c. Location of any existing buildings or structures on the property where the work is to be performed, the location of any existing buildings or structures on land of adjacent owners that are within 15 feet of the property or that may be affected by the proposed grading operations, and proposed or approximate locations of structures relative to adjoining topography;

d. The direction of drainage flow and the approximate grade of all streets;

e. Limiting dimensions, elevations, or finish contours to be achieved by the grading, including all cut and fill slopes, proposed drainage channels, and related construction;

f. Detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, storage reservoirs, and other protective devices to be constructed with, or as a part of, the proposed work, together with a map showing drainage area, the complete drainage network, including outfall lines and natural drainage ways which may be affected by the proposed development, and the estimated runoff of the area served by the drains.

The grading plan shall be prepared by a registered civil engineer.

3. Erosion Control Plan. This plan shall describe measures to be taken to stabilize slopes and minimize soil erosion during construction.

B. The following requirements are applicable to geologic site investigations:

1. The burden of proof shall be upon the applicant to show construction feasibility in hazardous areas. A proposed use will only be permitted where:

a. The site investigation indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity.

b. The site investigation specifies engineering or construction methods that will eliminate or minimize to an acceptable level the identified hazard.

2. Where a site investigation report concludes that an engineering solution will solve an indicated problem, the building official shall require that the additional standards and requirements set forth in the geologic hazard report be a requirement of the building permit.

3. Where the proposed development includes grading, the site investigation report shall include conclusions and recommendations concerning grading procedures as well as conclusions and recommendations concerning the adequacy of sites and streets to be developed by the proposed grading.

4. The city planner may recommend to the city council/planning commission an independent review of the site report, particularly where the geologist or engineer has a financial interest in the property to be developed. The council/commission may require the preparation of such a report prior to issuance of a building permit. The cost of the independent review shall be borne by the property owner or developer.

5. The degree of protection from problems caused by geologic hazards required by this section is considered reasonable for regulatory purposes. This chapter does not imply that uses permitted will be free from geologic hazards. This chapter shall not create liability on the part of the city or by any officer, employee or official thereof for any damages due to geologic hazards that result from reliance on this chapter or any administrative decision lawfully made.

C. The following requirements are applicable to activities undertaken in conjunction with a grading plan:

#### 1. Cuts.

a. The slope of cut surfaces shall be not steeper than is safe for intended use and shall be not steeper than two horizontal to one vertical unless the applicant submits a geologic site investigation report stating the site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property.

b. Cuts shall not remove the toe of any slope where a potential landslide or erosion hazard exists.

#### 2. Fills.

a. Fill slopes shall not be constructed on natural slopes steeper than two horizontal to one vertical.

b. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, scarifying to provide a bond with the new fill and, where slopes are steeper than five to one and the height is greater than five feet, by benching into sound bedrock or other competent materials as determined by a soils engineer.

c. Detrimental amounts of organic material shall not be permitted in structural fills. No rock or similar material greater than 12 inches in diameter shall be placed in a structural fill. The building official may permit placement of larger rock if a soils engineer designs a method of placement, continually inspects the placement and certifies the stability of the fill.

d. Fills will be compacted to a minimum of 90 percent of maximum density as determined by Uniform Building Code Standard No. 70-1. An engineer shall certify all structural fill as meeting minimum bearing capacity for the intended use.

D. The following requirements are applicable to drainage facilities:

1. All cut and fill slopes shall be provided with subsurface drainage as is necessary for stability.

2. All roof and foundation drainage must be collected, controlled, and directed to either a city street, a storm drain or to a natural drainageway if it is acceptable to the public works director.

3. Other alternative methods of storm water disposal may be approved by the public works director.

E. Erosion Control Measures. The following standards are a minimum requirement for the purposes of minimizing soil erosion. The final program for soil stabilization may vary as site conditions and development programs warrant. These minimum guidelines are not intended to resolve all project soil erosion conditions. The applicant is responsible for containing all soil on the project site.

1. Prior to approval of building permit, only the removal of existing vegetation may be carried out for surveying or planning of structures. Cutting of deciduous trees over six inches in diameter and conifers over four inches at a height of four and one-half feet above ground level shall only be carried out after the approval of the building permit.

2. If topsoil is to remain stockpiled during a rainy season, seeding or other stabilization measures are required.

3. All areas that will, by necessity, be left bare after September 30th shall be seeded to a cover crop (i.e., cereal rye, annual rye grass, perennial rye grass). Mulching is an alternative to seeding.

4. Means shall be devised to prevent sediment laden water from entering any storm sewer facilities.

5. Vegetation shall be established as soon as possible after completion of grading. The building official may require the use of matting prior to seeding on certain slopes.

F. Minimum Lot Size. The minimum lot size for any structure in the hillside overlay zone shall be 8,000 square feet. Where the property proposed for development consists of smaller contiguous lots, such lots shall be aggregated to meet this minimum lot size. Lots of less than

8,000 square feet may be built upon after a variance is granted in accordance with Chapter 18.190 GMC, Variances.

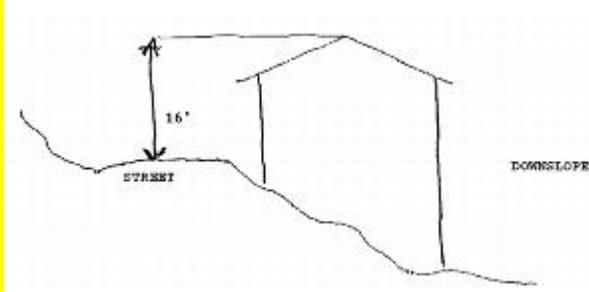
G. Maximum Lot Coverage. The total amount of the lot on which structures and other impervious surfaces may be constructed shall not exceed 40 percent.

H. Yard Requirements. The minimum yard requirement for the yard abutting a street or vehicular access way is five feet. Where this standard is used, the minimum rear yard, or yard opposite the yard abutting the street or vehicular access way, shall be 30 feet. The minimum side yard shall be 10 feet.

I. Building Height. Within the hillside overlay zone, building heights of structures other than accessory buildings shall be as follows:

1. Structures which are located below or downslope from the street, road, or vehicular access way shall have a maximum height of 16 feet above the centerline of the adjacent street, road or access way.

2. Structures other than those described in subsection (I)(1) of this section shall adhere to the



height requirements of the underlying zone.

(Note: Measurements shall be taken at the midpoint of the structure at its highest point perpendicular to the street.)

3. Upon completion of construction of structures 16 feet or higher, the applicant shall submit to the city's planner an elevation certificate affirming the height standard.

J. Uncovered vehicle access structures such as bridges may be located in the front yard setback. [Ord. 304 Art. V(2), 2008; Ord. 290 § 3(3.120(5)), 2006.]

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## **Chapter 18.85 LIMITED USE OVERLAY ZONE (LUO)**

### **18.85.010 Purpose.**

To regulate the timing or size of development of a specific parcel of land or to define the uses allowable on a specific parcel of land more narrowly than allowed by the underlying zone. [Ord. 290 § 3(3.130(1)), 2006.]

### **18.85.020 Application.**

A. Uses permitted in the underlying zone shall be limited to those uses specifically referenced in the limited use overlay.

B. The following limitations shall apply to application of the limited use overlay:

1. The application of the limited use overlay is consistent with policies of the comprehensive plan. [Ord. 290 § 3(3.130(2)), 2006.]

### **18.85.030 Procedure.**

A. The limited use overlay shall be applied through the zone change process at the time the underlying zone is changed.

B. The order adopting the zone change involving a “reasons” exception shall specify the permitted use(s) approved and shall specify the application of the limited use overlay.

C. The permitted use, or description thereof, shall be qualified as necessary to achieve the intent of the limited use overlay. [Ord. 290 § 3(3.130(3)), 2006.]

### **18.85.040 Official plan/zoning map.**

The official plan/zoning map shall be amended to note the application of the limited use overlay to the applicable parcel. [Ord. 290 § 3(3.130(4)), 2006.]

### **18.85.050 Other requirements.**

A. In addition to limiting the uses permitted through the zone change, site plan approval shall be required to ensure compatibility of the use(s) allowed with other existing uses in the area.

B. Site plan requirements may be added by specific reference to the adopting order.

C. All other requirements of the underlying zone remain in effect unless specifically altered by site plan approval incorporated in the adopting order. [Ord. 290 § 3(3.130(5)), 2006.]

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## **Division IV. Supplemental Provisions**

### **Chapter 18.90 ACCESS REQUIREMENTS**

#### **18.90.010 Access requirements.**

Every lot shall abut a street, lane, or alley for at least 25 feet, or have vehicular access or easement. A lot which has not met this requirement may not be created or reconfigured through a partition, property line adjustment or subdivision, or through the annexation of contiguous parcels or lots of land into the city limits. [Ord. 319 § 17, 2013; Ord. 290 § 3(4.010), 2006.]

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### **Chapter 18.95 CLEAR VISION AREAS**

#### **18.95.010 Clear vision areas.**

A clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad.

A. A clear vision area shall consist of a triangular area, two sides of which are lot lines, measured from the corner intersection of the street lot lines for a distance specified in this regulation (15 feet), or, where the lot lines have rounded the corners, the lot lines extended in a straight line to a point of intersection and so measured, and the third side of each is a line across the corner of the lot joining the nonintersecting ends of the other two sides of the triangle.

B. A clear vision area shall contain no planting, fence, wall structure, or temporary or permanent obstruction exceeding two and one-half feet in height, measured from the street centerline grade, except that trees exceeding this height may be located in this area; provided, all branches and foliage are removed to a height of eight feet above the grade level. [Ord. 290 § 3(4.020), 2006.]

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### **Chapter 18.100 MAINTENANCE OF MINIMUM REQUIREMENTS**

### **18.100.010 Maintenance of minimum requirements.**

No lot area, yard, other open space, or off-street parking or loading area existing on or after the effective date of the ordinance codified in this chapter shall be reduced below the minimum required for it by this title. [Ord. 290 § 3(4.030), 2006.]

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## **Chapter 18.105 DUAL USE OF REQUIRED OPEN SPACE**

### **18.105.010 Dual use of required open space.**

No required open space shall be used for other purposes such as the construction of carports or auxiliary buildings. This provision shall apply to all lot coverage requirements. [Ord. 290 § 3(4.040), 2006.]

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## **Chapter 18.110 MULTIFAMILY OR APARTMENT SITING CRITERIA**

### **18.110.010 Multifamily or apartment siting criteria.**

In any zone where a multifamily dwelling, condominium or apartment structure is proposed, the planning commission shall review the plans under the following criteria:

A. The placement of the structure takes advantage of natural features such as streams, shorelines, or hillsides. Existing trees are retained whenever feasible.

B. Ingress and egress points shall be located so as to minimize impact on any adjacent residential uses. In the downtown area, access shall be limited wherever possible to side streets, rather than Garibaldi Avenue.

C. Parking areas are located to minimize impact on any adjacent residential uses. Parking areas that provide for eight or more vehicles shall be screened from adjacent residential uses by means of a fence or sight-obscuring hedge.

D. In the R-1 zone, a minimum of 25 percent of the lot area shall be devoted to natural open space or landscaping. In the C-1 zone, a minimum of 20 percent of the lot area shall be devoted to natural open space or landscaping for family-oriented developments, and 10 percent of the lot area shall be devoted to natural open space or landscaping for senior citizen/adult handicapped housing. A fenced playground shall be provided for all family-oriented developments.

E. Where the proposed structure is located in a residential zone or abuts a residential zone, the following setbacks shall be met:

1. Front yard: one-story structure, 10 feet; two-story structure, 15 feet;
2. Rear yard: one-story structure, 10 feet; two-story structure, 15 feet;
3. Side yard: one-story structure, five feet; two-story structure, 10 feet.

F. In the downtown core area, multifamily or apartment complexes shall include a commercial use with frontage on U.S. 101.

G. Vegetation that attains a mature height of six feet may be required in order to screen the development from adjacent dwellings. [Ord. 290 § 3(4.042), 2006.]

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## **Chapter 18.115 HISTORIC SITE PROTECTION**

### **18.115.010 Historic site protection.**

Prior to the issuance of a building permit, any proposal for the exterior alteration of historic portions of the Garibaldi Coast Guard Station shall be reviewed by the planning commission to ensure that the materials and improvements are consistent with the historic character of the building. The planning commission may seek the advice of the State Historic Preservation Office in making this determination. When the city receives an application for a demolition permit on a historic portion of the Garibaldi Coast Guard Station, it shall put a 60-day freeze on the issuance of the permit. The planning commission shall notify the State Historic Preservation Office that a demolition permit has been requested. The 60-day freeze shall provide the State Historic Preservation Office and other interested parties an opportunity to negotiate for the preservation of the property. If after 60 days the negotiations have been unsuccessful, the city shall proceed with the processing of the demolition permit. [Ord. 290 § 3(4.043), 2006.]

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# **Chapter 18.120 SIGN REQUIREMENTS**

## **18.120.010 Purpose.**

This section regulates such factors as the size, number, location, illumination and construction of signs with the intent of safeguarding and enhancing the aesthetic character of Garibaldi. [Ord. 290 § 3(4.050(1)), 2006.]

## **18.120.020 Conformance.**

No sign may be erected unless it conforms with the regulations of this section. Sign permits, as required by GMC 18.120.060, must be approved prior to the placement of the sign. [Ord. 290 § 3(4.050(2)), 2006.]

## **18.120.030 Exempt signs.**

The following signs are exempt from the provisions of this section:

- A. Signs within a building not intended to be visible from the exterior of a building.
- B. Signs legally erected in a street right-of-way.
- C. Three flags of national or state governments. [Ord. 290 § 3(4.050(3)), 2006.]

## **18.120.040 General sign regulations.**

The following general provisions shall govern all signs, in addition to all other applicable provisions pertaining to signs:

### **A. Sign Face Area.**

1. The area of sign faces enclosed in frames or cabinets is determined by the outer dimensions of the frame or cabinet surrounding the sign. Sign area does not include foundations, supports and other essential structures that do not serve as a backdrop or border to the sign. Only one side of a double-faced sign is counted in measuring the sign face area. (To be considered a double-faced sign, the sides of the sign must be flush.)
2. When signs are constructed of individual pieces, the sign area is determined by a perimeter drawn around all the individual pieces taken together.
3. For sign structures containing multiple sign modules oriented in the same direction, the sum of the sign area of the individual sign modules are counted as one sign face.
4. The area of a sign shall be determined according to the following:

- a. Rectangle or square: length times width.
- b. Triangle: length times width divided by two.
- c. Circle: 3.14 times R squared, where R is the sign's radius.
- d. Oval: the area contained within a rectangle whose length times width does not exceed 30 square feet.
- e. The city shall measure other sign shapes, not listed above, according to the formula it determines to be most appropriate.

Sign Face Measurement

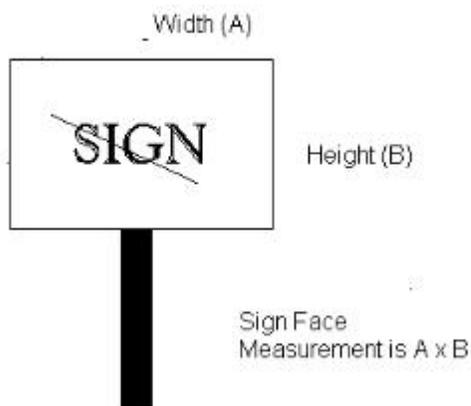


Figure 1.

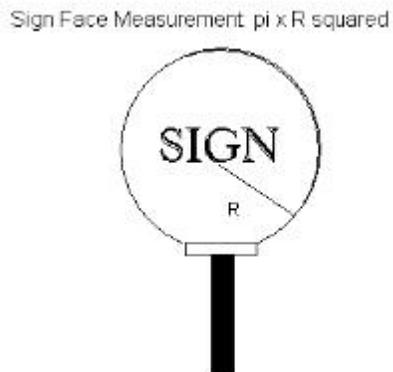


Figure 2.

Sign Face Measurement for Multiple Sign:  
 $(A \times B) + (C \times D) + (E \times F)$

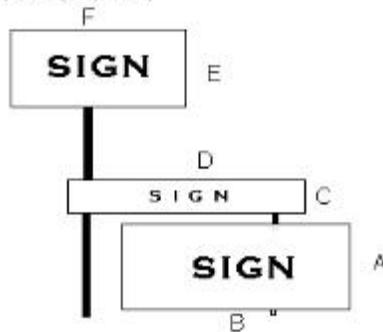


Figure 3.

**B. Height of Signs.** Signs shall conform to the height requirement of the zone in which they are located. The height of a sign or sign supporting structure is measured from the existing grade directly below the sign to the highest point of the sign or sign supporting structure.

**C. Clearances.** Clearances are measured from the existing grade directly below the sign to the bottom of the sign structure enclosing the sign face.

#### D. Sign Placement.

1. **Placement.** All signs and sign structures shall be erected and attached totally within the site, except where permitted to extend into a street right-of-way.

2. **Frontages.** Signs allowed based on the length of one site frontage may be placed on another site frontage.

3. **Vision Clearance Areas.** No sign may be located within a clear vision area as defined in GMC 18.95.010.

4. **Vehicle Area Clearances.** When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure shall be at least 14 feet above the ground. Vehicle areas include driveways, parking lots, and loading and maneuvering areas.

5. **Pedestrian Area Clearances.** When a sign extends over sidewalks, walkways or other spaces accessible to pedestrians, the bottom of the sign structure shall be at least eight feet above the grade.

6. **Projecting Signs.** Signs shall not project into a public right-of-way, except over a sidewalk. Where a sign projects over a sidewalk, it may project within two feet of the outside edge of the sidewalk.

**E. Signs Not to Constitute a Traffic Hazard.** Signs or sign supporting structures shall not be located so as to detract from a motorist's view of vehicular or pedestrian traffic or a traffic sign.

F. Glare. All signs shall be so designed and located so as to prevent the casting of glare or direct light from artificial illumination upon adjacent publicly dedicated streets and surrounding public or private property.

G. Prohibited Signs. The following signs are prohibited:

1. Signs that contain flashing elements.
2. Signs that contain moving, rotating or otherwise animated parts.

H. Maintenance. All signs, together with their supporting structures, shall be kept in good repair and maintenance. Signs shall be kept free from corrosion, peeling paint or other surface deterioration. The display surfaces of all signs shall be kept in a neat appearance.

I. Removal of Abandoned Sign. It is the responsibility of the property owner to remove any abandoned sign within 30 days of the cessation of its use.

J. Permanent Signs. Permanent signs are not allowed on undeveloped sites. [Ord. 290 § 3(4.050(4)), 2006.]

### **18.120.050 Base zone sign regulations.**

A. Commercial (C-1), Downtown (D-1), General Industrial (I-1), Water-Dependent (WD), Waterfront Mixed-Use Zone (WM) Sign Requirements. For all lots in the C-1, D-1, I-1, WD, or WM zone, the following sizes and types of signs are allowed. All allowed signs must also be in conformance with the regulations in GMC 18.120.040.

1. Total Sign Square Footage Permitted.

a. The total square footage of all signage, except temporary and lawn signs, associated with a lot shall not exceed one and one-half square feet of sign face area per lineal foot of site frontage. (Example: a business located on a site with 50 feet of frontage on a street is permitted 75 square feet of sign area.)

b. The total square footage of all temporary signs shall not exceed 25 percent of the total sign square footage allowed under subsection (A)(1)(a) of this section.

2. Individual Signs.

a. The maximum sign face area for an individual sign shall be no more than 100 square feet.

b. Sandwich board or readerboard signs shall not be placed on a sidewalk or in a public right-of-way.

3. Types of Signs. The following types of signs are permitted: permanent, freestanding, wall, projecting, window, awning, bench, sandwich board, readerboard, temporary, portable, incidental, and lawn signs.

4. Temporary Signs. Temporary signs shall be displayed for no more than 90 days in a calendar year.

B. Medium Density Residential (R-1), and Resource/Open Space (R-O) Sign Requirements. For all lots in the R-1 and R-O zones, the following number, sizes, and types of signs are allowed. All allowed signs must also be in conformance with the regulations of GMC [18.120.040](#).

1. Total Sign Square Footage Permitted. The total square footage of signage associated with a lot shall not exceed 10 square feet.

2. Individual Signs. The maximum sign face area for an individual sign shall be no more than six square feet.

3. Types of Signs Permitted. The following types of signs are permitted: permanent, incidental, freestanding, wall, projecting, window, temporary, and lawn signs.

C. Estuarine Zones (EN), (EC-1), (EC-2), and (ED) Sign Requirements. Signs shall be reviewed by the planning commission to determine the applicable site frontage to be used. After the site frontage determination, the standards of GMC 18.120.040(A) shall be applied. [Ord. 319 § 18, 2013; Ord. 304 Art. V(5), 2008; Ord. 290 § 3(4.050(5)), 2006.]

### **18.120.060 Sign permits.**

A. Sign Permit Required. A sign permit is required for the placement of any new permanent sign or any temporary sign with a sign face area of four square feet or more or the alteration of the structure of an existing permanent sign in the C-1, I-1, WD, WM, ED, EC-1 or EC-2 zones. A structural building permit may be required in addition to a sign permit at the discretion of the building official.

B. Required Information for a Sign Permit. For purposes of review by the city, a scale drawing of the proposed sign shall be submitted. The drawing shall indicate the dimensions of the sign, location of the sign, any structural elements of the proposed sign, the size and dimensions of any other sign(s) located on the applicant's building or property, and the material of which the sign is to be constructed.

C. Sign Permit Fee. The fee for a sign permit shall be set by resolution. [Ord. 319 § 19, 2013; Ord. 290 § 3(4.050(6)), 2006.]

### **18.120.070 Variances.**

Variances to the sign requirements of this section may be approved by the planning commission following the procedures of Chapter 18.210 GMC where the planning commission finds that the variance meets the following criteria:

- A. The variance would permit the placement of a sign with an exceptional design, or when there are exceptional circumstances applicable to the lot.
- B. The granting of the variance would not be detrimental to abutting properties.
- C. The granting of the variance would not create a traffic or safety hazard. [Ord. 290 § 3(4.050(7)), 2006.]

### **18.120.080 Nonconforming signs.**

For the purpose of this section, a “nonconforming sign” shall be defined as a sign existing at the effective date of the ordinance codified in this chapter which could not be erected under the terms of this chapter. The following requirements shall apply to nonconforming signs (the requirements of Chapter 18.195 GMC are not applicable):

- A. A nonconforming sign may continue to be used.
- B. No nonconforming sign may be enlarged in any manner.
- C. A nonconforming sign that is damaged or destroyed by any means other than the action of the owner of the sign may be replaced with a new sign; provided, that the new sign conforms to the dimensions of the previous sign. [Ord. 290 § 3(4.050(8)), 2006.]

### **18.120.090 Abandoned signs or signs in disrepair.**

The city shall notify the owner of the real property where a sign has been abandoned or allowed to fall into disrepair, and shall require reasonable repair, replacement, or removal within 30 days. If compliance does not occur, the city shall cause removal or repair of such signs, pursuant to the city’s nuisance ordinance. Expenses incurred in the enforcement of the provision shall be paid by the owner of the real property from which it was removed. [Ord. 290 § 3(4.050(9)), 2006.]

### **18.120.100 Administration and enforcement.**

- A. The city shall provide each business license applicant with a current copy of its sign requirements.
- B. A business license must be obtained before any sign for a business may be erected.
- C. Signs may be transferable if the ownership of a business is changed. [Ord. 290 § 3(4.050(10)), 2006.]

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## Chapter 18.125 AUTOMOBILE PARKING STANDARDS

### 18.125.010 Purpose.

The purpose of this chapter is to provide basic and flexible standards for the development of vehicle and bicycle parking. The design of parking areas is critical to the economic viability of some commercial areas, pedestrian and driver safety, the efficient and safe operation of adjoining streets, and community image and livability. Historically, some communities have required more parking than is necessary for some land uses, paving extensive areas of land that could be put to better use. Because vehicle parking facilities occupy large amounts of land, they must be planned and designed carefully to use the land efficiently, minimize storm water runoff, and maintain the visual character of the community. This chapter recognizes that each development has unique parking needs and provides a flexible approach for determining parking space requirements (i.e., “minimum” and “performance-based” standards). This chapter also provides standards for bicycle parking because many people use bicycles for recreation, commuting, and general transportation. Children as well as adults need safe and adequate spaces to park their bicycles throughout the community. [Ord. 290 § 3(4.060(1)), 2006.]

### 18.125.020 Applicability.

All development subject to review including development of parking facilities, shall comply with the provisions of this chapter. [Ord. 290 § 3(4.060(2)), 2006.]

#### Article II. Automobile Parking Standards

### 18.125.030 Vehicle parking – Minimum standards by use.

The number of required off-street vehicle parking spaces shall be determined in accordance with the standards in Table 18.125.030, Minimum Required Parking by Use, or alternatively, through a separate parking demand analysis prepared by the applicant and subject to a land use review. Where a use is not specifically listed in this table, parking requirements are determined by finding that a use is similar to one of those listed in terms of parking needs, or by estimating parking needs individually using the demand analysis option described above. Parking that counts toward the minimum requirement includes parking in garages, carports, parking lots, bays along driveways, shared parking, and designated on-street parking.

Table 18.125.030 – Minimum Required Parking by Use	
Use Categories	Minimum Parking per Land Use (fractions rounded down to the closest whole number)

Residential Categories	
Household Living	
Accessory Dwelling	None
Single-Family Dwelling	2 spaces
Duplex	3 spaces per duplex
Multifamily	1 space per studio or 1-bedroom unit
	1.5 spaces/unit per 2-bedroom unit
	2 spaces/unit per 3-bedroom or larger unit
Group Living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing	0.5 space per 4 bedrooms
Commercial Categories	
Drive-Up/Drive-In/Drive-Through (drive-up windows, kiosks, ATMs)	No requirement.
Bed and Breakfast Inn	1 space per bedroom
Educational Services, not a school (e.g., tutoring or similar services)	2 spaces per 1,000 sq. ft. floor area
Entertainment, Major Event	Per CU review
Offices	2 spaces per 1,000 sq. ft. floor area
Outdoor Recreation, Commercial	Per CU review
Parking Lot (when not an accessory use)	Per CU review
Quick Vehicle Servicing or Vehicle Repair (See also Drive-Up/Drive-In/Drive-Through Uses)	2 spaces, or per CU review
Retail Sales and Service (See also Drive-Up Uses)	Retail: 2 spaces per 1,000 sq. ft., except bulk retail (e.g., auto, boat, trailers, nurseries, lumber and construction materials, furniture, appliances, and similar sales) 1 space per 1,000 sq. ft.
	Restaurants and Bars: 8 spaces per 1,000 sq. ft. floor area
	Health Clubs, Gyms, Continuous Entertainment (e.g., bowling alleys): 3 spaces per 1,000 sq. ft.
	Lodging (hotels, motels, inns), (see also Bed and Breakfast Inns): 0.75 space per rentable room; for associated uses, such as restaurants, entertainment uses, and bars, see above

	Theaters and Cinemas: 1 space per 6 seats
Self-Service Storage	No standard
Industrial Categories	
Industrial Service (See also Drive-Up Uses)	1 space per 1,000 sq. ft. of floor area
Manufacturing and Production	1 space per 1,000 sq. ft. of floor area
Warehouse and Freight Movement	0.5 space per 1,000 sq. ft. of floor area
Waste-Related	Per CU review
Wholesale Sales – fully enclosed – not enclosed	1 space per 1,000 sq. ft. Per CU review
Institutional Categories	
Basic Utilities	None
Colleges	Per CU review
Community Service	1 space per 200 sq. ft. of floor area
Daycare, adult or child daycare; does not include Family Daycare (12 or fewer children) under ORS 657A.250	1 space per 500 sq. ft. of floor area
Parks and Open Space	Determined per CU review for active recreation areas, or no standard
Religious Institutions and Houses of Worship	1 space per 75 sq. ft. of main assembly area; or per CU review, as applicable
Schools	Grade, elementary, middle, junior high schools: 1 space per classroom, or per CU review
	High schools: 7 spaces per classroom, or per CU review
Other Categories	
Accessory Uses (with a permitted use)	No standard, except some uses may be required to provide parking under the minimum standards for primary uses, as determined by the decision body through land use review, conditional use permit review, or site design review
Agriculture – Animals	None, or per CU review
Agriculture – Nurseries and similar horticulture	See Retail Sales and Wholesale Sales, as applicable
Mining	Per CU review
Radio Frequency Transmission Facilities	None

Rail Lines and Utility Corridors, except those existing prior to effective date of Development Code are allowed	None
Transportation Facilities (operation, maintenance, preservation, and construction [in accordance with the City's Transportation System Plan])	None

[Ord. 319 § 20, 2013; Ord. 304 Art. IV(2), 2008; Ord. 290 § 3(4.060(3)(A)), 2006.]

**18.125.040 Vehicle parking – Minimum accessible parking.**

A. Accessible parking shall be provided for all uses in accordance with the standards in Table 18.125.030; parking spaces used to meet the standards in Table 18.125.040, Minimum Number of Accessible Parking Spaces, shall be counted toward meeting off-street parking requirements in Table 18.125.030;

B. Such parking shall be located in close proximity to building entrances and shall be designed to permit occupants of vehicles to reach the entrance on an unobstructed path or walkway;

C. Accessible spaces shall be grouped in pairs where possible;

D. Where covered parking is provided, covered accessible spaces shall be provided in the same ratio as covered nonaccessible spaces;

E. Required accessible parking spaces shall be identified with signs and pavement markings identifying them as reserved for persons with disabilities; signs shall be posted directly in front of the parking space at a height of no less than 42 inches and no more than 72 inches above pavement level. Van spaces shall be specifically identified as such.

Table 18.125.040 – Minimum Number of Accessible Parking Spaces			
Source: ADA Standards for Accessible Design 4.1.2(5)			
Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (with 60" access aisle, or 96" aisle for vans*)	Van Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
1 to 25	Column A	1	0

	1		
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1,000	2% of total parking provided in each lot	1/8 of Column A**	7/8 of Column A***
1,001 or more	20 plus 1 for each 100 over 1,000	1/8 of Column A**	7/8 of Column A***
<p>*vans and cars may share access aisles</p> <p>**1 out of every 8 accessible spaces</p> <p>***7 out of every 8 accessible parking spaces</p>			

[Ord. 290 § 3(4.060(3)(B)), 2006.]

### **18.125.050 On-street parking.**

On-street parking shall conform to the following standards:

A. Dimensions. The following constitutes one on-street parking space:

1. Parallel parking, each 22 feet of uninterrupted curb;
2. Forty-five or 60 degree diagonal, each with 10 to 12 feet of curb;
3. Ninety degree (perpendicular) parking, each with 12 feet of curb.

B. Location. Parking may be counted toward the minimum standards in Table 18.125.030 when it is on the block face abutting the subject land use. An on-street parking space must not obstruct a required clear vision area and it must not violate any law or street standard.

C. Public Use Required for Credit. On-street parking spaces counted toward meeting the parking requirements of a specific use may not be used exclusively by that use, but shall be available for general public use at all times. Signs or other actions that limit general public use of on-street spaces are prohibited. [Ord. 304 Art. IV(3), 2008; Ord. 290 § 3(4.060(3)(C)), 2006.]

### **18.125.060 Shared parking.**

Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facilities used jointly, to the extent that the owners or operators show that the need for parking facilities does not materially overlap (e.g., uses primarily of a daytime versus nighttime nature; weekday uses versus weekend uses), and provided that the right of joint use is evidenced by a recorded deed, lease, contract, or similar written instrument establishing the joint use. The city may approve owner requests for shared parking through land use review. [Ord. 290 § 3(4.060(3)(D)), 2006.]

### **18.125.070 Off-site parking.**

Except for single-family dwellings, the vehicle parking spaces required by this section may be located on another parcel of land, provided the parcel is within 500 feet of the use it serves and the city has approved the off-site parking through land use review. The distance from the parking area to the use shall be measured from the nearest parking space to a building entrance, following a sidewalk or other pedestrian route. The right to use the off-site parking must be evidenced by a recorded deed, lease, easement, or similar written instrument. [Ord. 304 Art. IV(4), 2008; Ord. 290 § 3(4.060(3)(E)), 2006.]

### **18.125.080 General parking standards.**

A. Location. Parking is allowed only on streets, within garages, carports, and other structures, or on driveways or parking lots that have been developed in conformance with this code. Street parking spaces shall not include space in a vehicle travel lane (including emergency or fire access lanes), public right-of-way, pedestrian accessway, landscape, or other undesignated area.

B. Mixed Uses. If more than one type of land use occupies a single structure or parcel of land, the total requirements for off-street automobile parking shall be the sum of the requirements for all uses, unless it can be shown that the peak parking demands are actually less (i.e., the uses operate on different days or at different times of the day). The city may reduce the total parking required accordingly through land use review.

C. Availability of Facilities. Owners of off-street parking facilities may post a sign indicating that all parking on the site is available only for residents, customers, and/or employees. Signs shall conform to the standards of Chapter [18.120](#) GMC.

D. Lighting. Parking areas shall have lighting to provide at least two foot-candles of illumination over parking spaces and walkways. Light standards shall be directed downward only and shielded to prevent lighting spillover into any adjacent residential district or use.

E. Screening of Parking Areas. Parking spaces shall be located or screened so that headlights do not shine onto adjacent residential uses. [Ord. 290 § 3(4.060(3)(F)), 2006.]

### **18.125.090 Parking stall design and minimum dimensions.**

All off-street parking spaces shall be improved to conform to city standards for surfacing, storm water management, and striping. Standard parking spaces shall conform to the following standards and the dimensions in Figure 18.125.090(1), Parking Area Layout, and Figure 18.125.090(2), Disabled Person Parking Requirements, and Table 18.125.120, Minimum Required Bicycle Parking Spaces:

A. Motor vehicle parking spaces shall measure eight feet, six inches wide by 18 feet long or by 16 feet long, with not more than a two-foot overhang when allowed;

B. All parallel motor vehicle parking spaces shall measure eight feet, six inches by 22 feet;

C. Parking area layout shall conform to the dimensions in Figures 18.125.090(1) and (2), and Table 18.125.090, Parking Area Layout, below;

D. Parking areas shall conform to Americans With Disabilities Act (ADA) standards for parking spaces (dimensions, van accessible parking spaces, etc.). Parking structure vertical clearance, van accessible parking spaces, should refer to federal ADA guidelines; and

E. Bicycle parking shall be on a two-foot by six-foot minimum concrete pad per bike, or within a garage or patio of residential use.

Figure 18.125.090(1) – Parking Area Layout

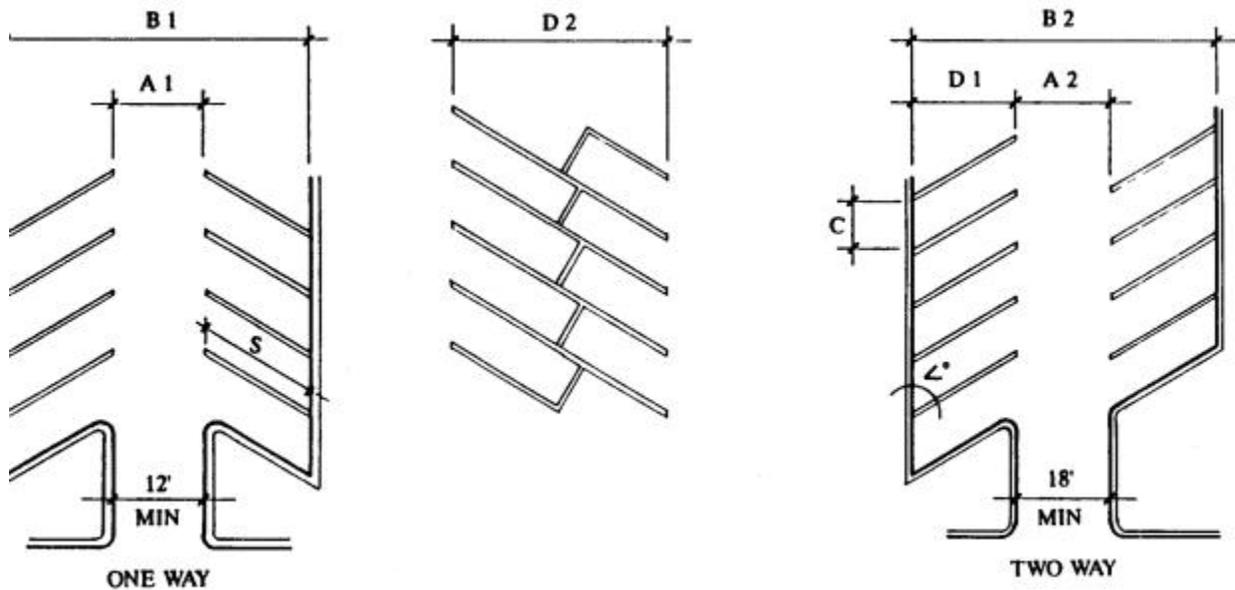


Figure 18.125.090(2) – Disabled Person Parking Requirements

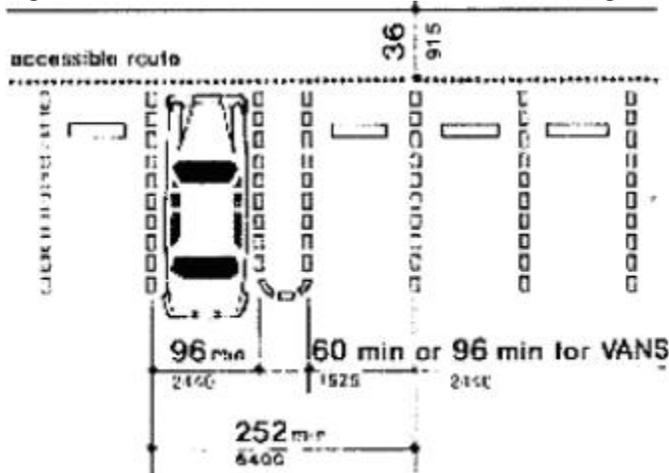


Table 18.125.090 – Parking Area Layout

Standard	Parking Angle °	Curb Length	Stall Depth		Aisle Width		Bay Width		Stripe Length
			Single D1	Double D2	One-Way A1	Two-Way A2	One-Way B1	Two-Way B2	
(See Figure 18.125.090(2) for ADA space requirements)	90°	8'-6"	18'	36'	23'	23'	59'	59'	18'
	60°	10'	20'	40'	17'	18'	57'	58'	23'
	45°	12'	18'-6"	37'	13'	18'	50'	55'	26'-6"
	30°	17'	16'-6"	33'	12'	18'	45'	51'	32'-8"
	0°	22'	8'-6"	17'	12'	18'	29'	35'	8'-6"

[Ord. 290 § 3(4.060(3)(G)), 2006.]

**18.125.100 Important cross-references.**

See also Section 2, Land Use District standards, for parking location requirements for some multifamily and commercial land uses; Section 3.1, Access and Circulation, for driveway standards; Section 3.2, Landscaping; and Section 3.5, Surface Water Management. [Ord. 290 § 3(4.060(3)(H)), 2006.]

Article III. Bicycle Parking Requirements

**18.125.110 Background.**

This article implements part of the Transportation Planning Rule, which requires bicycle parking. (OAR 660-012-0045)

All uses that are subject to site design review shall provide bicycle parking, in conformance with the standards in Table 18.125.120, and GMC 18.125.120 through 18.125.190. [Ord. 290 § 3(4.060(4)), 2006.]

**18.125.120 Minimum required bicycle parking spaces.**

Uses shall provide long- and short-term bicycle parking spaces, as designated in Table 18.125.120. Where two options are provided (e.g., two spaces, or one per eight bedrooms), the option resulting in more bicycle parking is used.

Table 18.125.120 – Minimum Required Bicycle Parking Spaces			
Use Categories	Specific Uses	Long-term Spaces (covered or enclosed)	Short-term Spaces (near building entry)
Residential Categories			
Household Living	Multifamily	1 per 4 units	2, or 1 per 20 units
Group Living		2, or 1 per 20 bedrooms	None
	Dormitory	1 per 8 bedrooms	None
Commercial Categories			
Retail Sales and Service		2, or 1 per 12,000 sq. ft. of floor area	2, or 1 per 5,000 sq. ft. of floor area
	Lodging	2, or 1 per 20 rentable rooms	2, or 1 per 20 rentable rooms
Office		2, or 1 per 10,000 sq. ft. of floor area	2, or 1 per 40,000 sq. ft. of floor area
Commercial Outdoor Recreation		8, or 1 per 20 auto spaces	None
Major Event Entertainment		8, or 1 per 40 seats, or per CU review	None
Industrial Categories			
Manufacturing and Production		2, or 1 per 15,000 sq. ft. of floor area	None
Warehouse and Freight Movement		2, or 1 per 40,000 sq. ft. of floor area	None
Institutional Categories			
Basic Utilities	Bus transit center	8	None
Community Service		2, or 1 per 10,000 sq. ft.	2, or 1 per 10,000 sq. ft.

		of floor area	of floor area
	Park and ride	8, or 5 per acre	None
Parks (active recreation areas only)		None	8, or per CU review
Schools	Grades 2 – 5	1 per classroom, or per CU review	1 per classroom, or per CU review
	Grades 6 – 12	2 per classroom, or per CU review	4 per school, or per CU review
Colleges	Excluding dormitories (see Group Living, above)	2, or 1 per 20,000 sq. ft. of net building area, or per CU review	2, or 1 per 10,000 sq. ft. of net building area, or per CU review
Medical Centers		2, or 1 per 70,000 sq. ft. of net building area, or per CU review	2, or 1 per 40,000 sq. ft. of net building area, or per CU review
Religious Institutions and Places of Worship		2, or 1 per 4,000 sq. ft. of net building area	2, or 1 per 2,000 sq. ft. of net building area
Daycare		2, or 1 per 10,000 sq. ft. of net building area	None
Other Categories			
Other Categories	Determined through land use review, site design review, or CU review, as applicable		

[Ord. 290 § 3(4.060(4)(A)), 2006.]

### **18.125.130 Exemptions.**

This article does not apply to single-family and multifamily housing (attached, detached, or manufactured housing), home occupations, agriculture and livestock uses. [Ord. 290 § 3(4.060(4)(B)), 2006.]

### **18.125.140 Location and design.**

Bicycle parking should be no farther from the main building entrance than the distance to the closest vehicle space, or 50 feet, whichever is less. Long-term (i.e., covered) bicycle parking should be incorporated whenever possible into building design. Short-term bicycle parking, when allowed within a public right-of-way, should be coordinated with the design of street furniture, as applicable. [Ord. 290 § 3(4.060(4)(C)), 2006.]

### **18.125.150 Visibility and security.**

Bicycle parking for customers and visitors of a use shall be visible from street sidewalks or building entrances, so that it provides sufficient security from theft and damage. [Ord. 290 § 3(4.060(4)(D)), 2006.]

#### **18.125.160 Options for storage.**

Long-term bicycle parking requirements for multiple family uses and employee parking can be met by providing a bicycle storage room, bicycle lockers, racks, or other secure storage space inside or outside of the building. [Ord. 290 § 3(4.060(4)(E)), 2006.]

#### **18.125.170 Lighting.**

For security, bicycle parking shall be at least as well lit as vehicle parking. [Ord. 290 § 3(4.060(4)(F)), 2006.]

#### **18.125.180 Reserved areas.**

Areas set aside for bicycle parking shall be clearly marked and reserved for bicycle parking only. [Ord. 290 § 3(4.060(4)(G)), 2006.]

#### **18.125.190 Hazards.**

Bicycle parking shall not impede or create a hazard to pedestrians. Parking areas shall be located so as to not conflict with vision clearance standards (Section 3.1, Access and Circulation). [Ord. 290 § 3(4.060(4)(H)), 2006.]

#### Article IV. Loading Areas

#### **18.125.200 Background.**

The loading area provisions are typical, except that GMC 18.125.250 allows for the use of a street right-of-way loading area under certain conditions. This exception is meant to conserve land for employment uses, particularly in the downtown and main street zones. Some cities' codes prohibit vehicles backing onto a public right-of-way (except single-family uses), so it is important to check for that restriction and allow reasonable exceptions. [Ord. 290 § 3(4.060(5)), 2006.]

#### **18.125.210 Purpose.**

The purpose of this article is to provide standards (1) for a minimum number of off-street loading spaces that will ensure adequate loading areas for large uses and developments, and (2) to ensure that the appearance of loading areas is consistent with that of parking areas. [Ord. 290 § 3(4.060(5)(A)), 2006.]

#### **18.125.220 Applicability.**

This article applies to residential projects with 50 or more dwelling units, and nonresidential and mixed-use buildings with 20,000 square feet or more total floor area. [Ord. 290 § 3(4.060(5)(B)), 2006.]

### **18.125.230 Number of loading spaces.**

A. Residential Buildings. Buildings where all of the floor area is in residential use shall meet the following standards:

1. Fewer than 50 dwelling units on a site that abuts a local street: No loading spaces are required.
2. All other buildings: One space.

B. Nonresidential and Mixed-Use Buildings. Buildings where any floor area is in nonresidential use shall meet the following standards:

1. Less than 20,000 square feet total floor area: No loading spaces required.
2. Twenty thousand to 50,000 square feet of total floor area: One loading space.
3. More than 50,000 square feet of total floor area: Two loading spaces. [Ord. 290 § 3(4.060(5)(C)), 2006.]

### **18.125.240 Size of spaces.**

Required loading spaces shall be at least 35 feet long and 10 feet wide, and shall have a height clearance of at least 13 feet. [Ord. 290 § 3(4.060(5)(D)), 2006.]

### **18.125.250 Placement, setbacks, and landscaping.**

Loading areas shall conform to the setback and perimeter landscaping standards in Divisions II and III of this title. Where parking areas are prohibited between a building and the street, loading areas are also prohibited. The decision body may approve a loading area adjacent to or within the street right-of-way through site design review or conditional use permit review, as applicable, where it finds that loading and unloading operations are short in duration (i.e., less than one hour), do not obstruct traffic during peak traffic hours, or interfere with emergency response service. [Ord. 290 § 3(4.060(5)(E)), 2006.]

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## **Chapter 18.130 FENCE REQUIREMENTS**

### **18.130.010 Fence requirements.**

- A. Fences located in the clear vision area shall not exceed two and one-half feet from the ground level, or two and one-half feet from the street level, whichever is lower.
- B. Fences may be constructed up to the property line, unless jointly owned by adjoining property owners, in which case they may be on the property line.
- C. All fences or portions thereof shall be located in such a way as to not be detrimental to abutting property, and shall not obstruct views from adjacent property.
- D. Fences shall not be made of barbed wire or other sharp or dangerous material except commercial fences.
- E. The maximum height of a fence shall be six feet for residential uses, eight feet for commercial, industrial or municipal uses; provided, that the maximum height for a fence on commercial, industrial or municipal property shall be six feet where abutting residential property. [Ord. 290 § 3(4.070), 2006.]

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## **Chapter 18.135 ACCESSORY STRUCTURES**

### **18.135.010 Accessory structures.**

- A. In the medium density residential zone (R-1), detached accessory structures used as garages, tool and storage sheds, playhouses and similar uses are allowed:
1. These accessory structures shall not be used for human habitation.
  2. The maximum square footage for these accessory structures shall be limited to 975 square feet or 75 percent of the total building footprint of the primary residential use, whichever is greater. An accessory structure that exceeds this limit shall require conditional use review and approval in accordance with Chapter 18.185 GMC.
  3. The height of accessory structures shall be limited to 15 feet for sidewall height and a maximum overall height of 19 feet to the roof peak.

4. These accessory structures, including all projections, shall not be closer than six feet from any other building.

5. These accessory structures shall be located to the side or the rear of the primary structure, except that they may not be located on the street side of a primary structure.

6. These accessory structures shall meet all setback and lot coverage requirements.

7. No unpainted metal or corrugated metal siding material shall be permitted on accessory structures.

8. For the purpose of this section, breezeways and decks do not serve as attachments to the primary use.

B. Accessory dwelling units shall comply with the following standards, which are intended to control the size and number of accessory dwellings on individual lots, ensure compatibility with existing uses and ensure that accessory dwellings are for the use of permanent or long-term residents, rather than short-term rental use.

1. The structure complies with applicable building codes.

2. The primary residence shall be owner-occupied. Alternatively, the owner may appoint a family member as a caretaker of the principal house and manager of the accessory dwelling.

3. A maximum of one accessory dwelling unit is allowed per lot.

4. The maximum floor area of the accessory dwelling shall not exceed 33 percent of the living area of the house or 600 square feet, whichever is less, and may not exceed 15 percent of the entire area of the site.

5. The accessory dwelling shall meet the setback, placement and design requirements of the R-1 zone and meet all the requirements of any associated overlay zones.

6. In addition to the parking required for the primary dwelling, a minimum of one space shall be provided for the accessory dwelling.

7. The accessory dwelling shall remain in the same ownership as the primary dwelling. The accessory dwelling shall not be sold as a separate real or personal property.

C. All accessory structures shall comply with the standards of the zone in which they are located and with applicable building codes.

D. In the commercial (C-1) and downtown (D-1) zones, accessory structures shall not be used for human habitation. [Ord. 319 § 21, 2013; Ord. 304 Art. V(6), 2008; Ord. 290 § 3(4.080), 2006.]

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## **Chapter 18.140 HOME OCCUPATIONS**

### **18.140.010 Home occupations.**

The home occupation provision is included in recognition of the needs of many people who are engaged in small-scale business ventures which could not be sustained if it were necessary to lease commercial quarters for them, or which, in the nature of the home occupation, cannot be expanded to full-scale enterprise.

It is the intent of this chapter that home occupations be allowed which are unobtrusive by nature, which do not cause disruption of the surrounding neighborhood or have an adverse effect on the adjacent properties or environment. [Ord. 290 § 3(4.090), 2006.]

### **18.140.020 Standards.**

A “home occupation” shall mean any occupation or profession carried on by a person residing on the premises; provided, the following conditions are satisfied:

- A. No sign is used other than a nameplate not over 10 square feet in area;
- B. There is no display or outside storage that would indicate that the lot is being used in whole or primarily for purposes other than residential;
- C. The lot, including the building, retains the characteristics of a residential zone. [Ord. 290 § 3(4.090(1)), 2006.]

### **18.140.030 Complaint procedures.**

The planning commission shall review home occupations upon receipt of two written complaints from two separate households located within 250 feet of the boundary of the affected property, or a complaint from the city building official. Complaints shall set forth the nature of the objection. The complaints shall be considered by the planning commission at a public hearing. The hearing procedure shall be the same as outlined in Chapter 18.210 GMC.

Criteria for judging objections shall include:

- A. Generation of excessive traffic.
- B. Monopoly of on-street parking areas.
- C. Frequent deliveries and pickups by motor freight.

D. Noise in excess of that created by normal residential use (either in terms of volume or hours of occurrence).

E. Smoke, fumes, or odors in excess of those created by normal residential use.

F. Other offensive activities not in harmony with a residential neighborhood. [Ord. 290 § 3(4.090(2)), 2006.]

### **18.140.040 Action by the planning commission.**

The commission, upon hearing the evidence, may:

A. Approve the use as it exists.

B. Require the use to be terminated.

C. Impose appropriate restrictions, such as limiting hours of operation, establishing a phasing out of the use, or other measures ensuring compatibility with the neighborhood.

D. The determination of the commission becomes final 10 days after the date of decision unless appealed in accordance with Chapter 18.210 GMC. [Ord. 290 § 3(4.090(3)), 2006.]

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## **Chapter 18.145 BED AND BREAKFAST ESTABLISHMENTS**

### **18.145.010 Bed and breakfast establishments.**

A. The number of guest bedrooms shall be limited to four.

B. The dwelling shall be owner occupied.

C. In addition to required off-street parking for the dwelling, one off-street parking space for each guest bedroom shall be provided. In residential zones only, boat trailers and other towed vehicles shall be prohibited from designated parking spaces.

D. Except as otherwise approved by the planning commission, in residential zones only, signs shall be limited to one nonilluminated sign not to exceed six square feet in area. The design, size and placement of the sign shall be approved by the planning commission.

E. In residential zones only, bed and breakfast establishments shall not be located within a 200-foot radius of each other, when such placement would adversely affect the residential character, the property values, health, safety and welfare of the affected area.

F. Bed and breakfast establishments with more than two guest bedrooms shall be licensed and inspected by the State Health Division.

G. The water and sewer usage of the establishment shall be metered at the expense of the owner.

H. A yearly business license is required, revocable at any time for noncompliance. [Ord. 290 § 3(4.095), 2006.]

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## **Chapter 18.150 RECREATION VEHICLE PARKS**

### **18.150.010 Recreation vehicle parks.**

A. Recreational vehicle (RV) camping areas or parks shall be allowed as conditional uses in certain zones.

B. RV areas shall be at least 29,000 square feet in size.

C. RV areas shall be connected to city water and sewer, and shall have toilet facilities, lavatories and showers with hot water in a ratio of one of each fixture per 10 RV spaces.

D. Each RV space shall be at least 500 square feet, exclusive of common streets, restroom areas or common open space areas.

E. All standards of the Oregon State Health Division for tourist facilities must be observed.

F. Streets within the park and RV parking sites shall be properly surfaced with crushed gravel or asphalt.

G. A vegetation buffer or fence of at least six feet shall be maintained around the perimeter of the park where abutted by a residential area.

H. Wherever possible, existing tree cover and natural vegetation shall be maintained.

I. Where RV parks are to be located near shoreline areas, they shall be set back from the waterfront at least 50 feet, and shall maintain public access to the water.

J. No recreational vehicle shall be used as a permanent dwelling. No permanent or semi-permanent structures, including but not limited to storage structures, outside appliances, fences of any type, TV or radio antennas, except those normally mounted on RVs, outdoor lighting posts, or outside toilets may be placed on any site in an RV park, nor may any trailer which is designed as permanent living quarters be located or placed on any site. [Ord. 290 § 3(4.100), 2006.]

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## **Chapter 18.155 MANUFACTURED DWELLINGS**

### **18.155.010 Manufactured dwellings.**

A. Manufactured dwellings may be placed in those zones where they are permitted. An application for a placement permit, and the payment of a fee, shall be made to the city. The application shall include two copies of a plot plan as well as plans and specifications for any accessory structures. The city may also require a survey by a registered surveyor. The placement permit shall be approved prior to the placement of a mobile home.

B. Manufactured Dwellings on Individual Lots. A manufactured dwelling placed on an individual lot, other than a lot in a manufactured dwelling park, shall conform to the requirements of the zone in which it is located, applicable state installation standards and the following additional provisions:

1. Only one manufactured dwelling shall be located on a lot not less than 3,500 square feet in size, and the lot must be owned by the owner of the manufactured dwelling.
2. The manufactured dwelling shall have a minimum width of 14 feet and contain a minimum floor area of 800 square feet.
3. The manufactured dwelling shall have a roof with a minimum pitch of three to 12. The roofing material shall be composition, shake, shingle or tile.
4. The manufactured dwelling shall have siding material, such as horizontal wood, vinyl or aluminum lap siding, similar to that used on houses constructed to the Uniform Building Code.
5. The manufactured dwelling's wheels, axles and hitch mechanism shall be removed prior to occupancy.
6. All load-bearing foundations, supports and enclosures shall be installed in conformance with the Oregon Building Code's agency regulations and with the manufacturer's installation specifications. Manufactured dwellings must also provide a permanent perimeter enclosure or be

installed with an approved foundation skirting enclosing the entire perimeter of the home. The skirting material shall be weather-resistant, and blend with the exterior siding of the manufactured dwelling. The perimeter enclosure must be completed prior to the occupancy of the manufactured dwelling.

7. Each manufactured dwelling shall be provided with a wooden storage building of at least 96 square feet. The storage building shall be securely fastened to the ground. The building shall be constructed or placed within 90 days of the issuance of the placement permit. A storage building is not required for manufactured dwellings that are provided with a garage.

8. The manufactured dwelling shall bear a HUD label of compliance with the Manufactured Housing Construction and Safety Standards Code verifying that the manufactured dwelling is not older than five years at the time of placement.

9. The owner of the property agrees, in writing, to remove the foundation and all additions to the manufactured dwelling and to permanently disconnect sewer, water and other utilities if the manufactured dwelling is removed from its foundation. The agreement authorizes the city to perform the work and to place a lien against the property for the cost of the work in the event the owner fails to accomplish the work within 90 days from the date on which the manufactured dwelling is moved from its foundation. This condition shall not apply in the event the manufactured dwelling is replaced on the original foundation, or on the original foundation as modified by another approved manufactured dwelling within 90 days of the original unit's removal. [Ord. 290 § 3(4.105), 2006.]

### **18.155.020 Manufactured dwelling parks.**

A. Spaces in manufactured dwelling parks shall be sized as follows:

1. Spaces for double-wide units (units with a width of 16 feet or greater) shall be a minimum of 5,000 square feet.

2. Spaces for single-wide units (units with a width greater than eight feet) shall be a minimum of 3,500 square feet.

3. Spaces for park model units (“park model units” are defined as small manufactured dwellings designed for permanent occupancy and do not include recreational vehicles) shall be a minimum of 3,000 square feet.

B. Manufactured dwellings shall be located within their designated spaces in such a way that there shall be a minimum of 10 feet between manufactured dwellings or between any manufactured dwelling and any other building in the manufactured dwelling park other than structures accessory to an individual manufactured dwelling.

C. Manufactured dwellings shall be located a minimum of 10 feet from any street or road and conform to the clear vision requirements of GMC 18.95.010.

D. Manufactured dwellings shall be located no less than 10 feet from any property line. The perimeter of the manufactured dwelling park shall be screened. This screening can take the form of a fence six feet in height or vegetation that attains a maximum mature height of eight feet.

E. Ingress points shall be located to minimize impact on any adjacent residential uses.

F. Interior access drives shall be provided within the park, shall be continuous unless provided with adequate turnaround area or cul-de-sac, and shall have a minimum width of 24 feet.

G. All access drives within the manufactured dwelling park shall be surfaced according to standards established by the city.

H. Each manufactured dwelling space shall have a pad with adequate base, with crushed rock or better surface. The pad shall have a minimum area equal to that of the manufactured dwelling which will be located on the space.

I. Off-street parking shall be provided with a minimum of two parking spaces for each manufactured space. Parking spaces shall be of crushed rock or better surfacing. Required access drives shall not be considered as fulfilling this requirement.

J. Provisions for storage shall be made as follows:

1. A storage building with a minimum floor area of 96 square feet shall be provided for each manufactured dwelling space; and

2. A centralized storage area for such items as boats, trailers and camping vehicles shall be provided. Such a storage area shall contain a minimum of 100 square feet for each manufactured dwelling space and be enclosed by a sight-obscuring fence or a vegetative buffer approved by the planning commission.

K. All manufactured dwelling parks shall be served by the city's sewer and water system. The design and layout of sewer and waterlines is subject to the review and approval of the superintendent of public works. [Ord. 290 § 3(4.106), 2006.]

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## Chapter 18.160 ESTUARY AND SHORELINE STANDARDS

### 18.160.010 Aquaculture facilities.

A. Evidence shall be provided by the applicant and findings made by the city that aquaculture facilities do not prevent access to navigation channels, and that obstruction of access to publicly owned lands and recreation use areas is minimized.

B. Aquaculture facilities should be designed to minimize their visual impact (view obstruction). Whenever feasible, submerged structures are preferred over floating structures.

C. The design and construction of an aquaculture facility should consider reclamation and reuse of wastewater.

D. Water diversion structures or manmade spawning channels shall be constructed so as to maintain required stream flows for aquatic life in adjacent streams and avoid significant reduction or acceleration of average water flow in an associated marsh. Water quality policies shall apply.

E. Water discharge from an aquaculture facility shall meet all federal and state water quality standards and any conditions attached to a waste discharge permit. Water quality policies shall apply.

F. All state and federal laws governing environmental quality, resource protection, public health and safety, and engineering standards shall be met in the design, siting, construction and operation of aquaculture facilities. This determination shall be made by the Oregon Department of Fish and Wildlife or other state or federal agencies with regulatory authority over aquaculture facilities.

G. Aquaculture facilities in estuary conservation (EC) zones, estuary development (ED) zones and estuary natural (EN) zones shall be permitted only if evidence can be provided by the applicant and findings made by the city that:

1. Aquaculture facilities in estuary development (ED) zones will not preclude the provision or maintenance of navigation or other needs for commercial and industrial water-dependent uses, and will not preempt the use of shorelands especially suited for water-dependent development.

2. Aquaculture facilities in estuary natural (EN) zones will be consistent with the resource capabilities and purpose of the management unit(s) in which they are to be located. The Oregon Department of Agriculture shall provide these findings for oyster culture and the Oregon Department of Fish and Wildlife shall provide them for other types of aquaculture in instances when Garibaldi finds that it does not have the technical expertise or resources to make them.

3. Aquaculture facilities in estuary conservation (EC) zones will require a resource capability determination where dredging, fill, or other alterations of the estuary are needed, other than incidental dredging for harvest of benthic species or removal of in-water structures.

4. Aquaculture facilities in estuary natural (EN) zones will not require dredging or fill other than incidental dredging for harvest of benthic species or removal of in-water structures.

H. Shellfish culture facilities shall either be located more than 2,000 feet away from sanitary sewer outfalls so that there will be no potential health hazard, or shall make provision for purification of water used in the aquaculture operation.

I. Leasing of publicly owned estuarine waters, intertidal areas or tidal wetlands for aquaculture shall be subject to the requirements of the Division of State Lands.

J. Dredge, fill, shoreline stabilization, piling/dolphin installation or other activities in conjunction with an aquaculture facility shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(1)), 2006.]

### **18.160.020 Siting, design, construction, maintenance or expansion of dikes.**

A. Diking policy requirements in the Garibaldi comprehensive plan shall be met.

B. Proposals for new dike construction or dike maintenance or repair shall be accompanied by a brief statement from the local soil and water conservation service or a certified engineer stating that:

1. The project is in conformance with good engineering practices and any applicable rules and regulations set forth by the Oregon Division of State Lands and the U.S. Army Corps of Engineers; and

2. Provides for suitable erosion protection for the dike face; and

3. Will produce no appreciable flood and erosion potential upstream or downstream of the proposed project.

C. When temporary dikes are constructed in intertidal areas or tidal wetlands, notice must be given to the Division of State Lands within 24 hours following the start of such activity and their approval for continuation of the project must be obtained (ORS 541.615(4)). Intertidal areas and tidal wetlands shall be restored by the sponsor of the dike to pre-dike conditions after the removal of temporary dikes.

D. Fill, shoreline stabilization or other activities in conjunction with dike construction, maintenance or repair shall be subject to the respective standards for these activities.

E. Repair and maintenance of existing dikes, and construction of new dikes involving fill in intertidal areas and tidal wetlands is subject to the requirements of the State Fill and Removal Law (ORS 541.605 through 541.665) and the Clean Water Act of 1977 (PL 95-217) (applies to fill only). [Ord. 290 § 3(4.110(2)), 2006.]

### **18.160.030 Docks and moorages.**

A. Docks and moorages policy requirements in the Garibaldi comprehensive plan shall be met.

B. When new construction or expansion of docks and moorages is proposed, evidence shall be provided by the applicant and findings made by the city that:

1. The size of the facility is the minimum necessary to accommodate the number and size of boats using the facility. Maximum size limit for single-purpose private dock (excluding walkways) shall be 150 square feet.

2. Alternatives such as dry land storage, launching ramps or mooring buoys are impracticable.

C. To ensure that consideration is given to the beneficial economic and social impacts of moorages on local communities, proposals for new or expanded moorages should include statements on the impacts to local communities derived from increases in employment or increases in commercial or recreational activity.

D. Open pile piers or secured floats shall be used for dock construction. Piers and floats shall extend no further out into the water than is needed to provide navigational access.

E. Floating docks shall be designed so that they do not rest on the bottom at low water.

F. Single-purpose docks shall be permitted if evidence is provided by the applicant and findings made by the city that cooperative use facilities (marinas or community docks or mooring buoys) are unavailable, impractical or will not satisfy the need.

G. Covered or enclosed moorages shall be limited to 10 percent (in number) of the total moorage spaces of a given moorage.

H. To avoid contamination of estuarine waters, intertidal areas or tidal wetlands, public docks and moorages should provide enclosed facilities on shorelands for public dumping of oil and emptying of holding tanks.

I. When docks and moorages are proposed in estuary conservation 1 or estuary conservation 2 zones, evidence shall be presented by the applicant and findings made by the city that the proposed dock or moorage is consistent with the resource capabilities of the area and the long-term use of renewable resources and does not constitute a major alteration to the estuary. In assessing the resource capabilities of an area, consideration shall be given to the size or intensity of the proposed facility, and its location with respect to adjacent resources.

J. Docks and moorages in shoreland zones or other areas within the shoreland overlay zone shall be subject to shoreland development standards.

K. Moorages with a capacity greater than 25 boats shall be subject to port facility and marina standards.

L. Dredging, fill, piling/dolphin installation, shoreland stabilization or other activities in conjunction with the construction of docks and moorages shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(3)), 2006.]

### **18.160.040 Dredged material disposal.**

A. Dredged material disposal shall occur only in approved dredged material disposal sites, or for fill of development sites that have received appropriate local, state and federal permits. All dredged material disposal policy requirements and fill standards shall apply.

B. State and federal water quality standards shall be met during all phases of dredged material disposal. Water quality policies shall apply.

C. The timing of dredged material disposal shall be coordinated with state and federal resource agencies to ensure adequate protection of wildlife habitat, bird nesting areas, fish runs and fish spawning activity and to minimize interference with fishing activities.

D. Ocean disposal of dredged material shall be permitted only in an ocean disposal site approved by the U.S. Army Corps of Engineers and the Environmental Protection Agency.

E. With regard to in-water disposal in the river, estuary and ocean:

1. Consideration shall be given to the need for the proposed disposal, and the availability and desirability of alternate sites and methods of disposal that might be less damaging to the environment.

2. The physical and chemical characteristics of the dredged material should be compared with those of the disposal site, and consideration should be given to matching the dredged material to the capabilities of the site.

3. In-water disposal requires either an EPA/DEQ water quality certification or a short-term exemption. Polluted materials that cannot meet EPA/DEQ requirements for ocean disposal shall be disposed of on nonaquatic sites designed to properly settle out all pollutants prior to discharge back into the aquatic system. Dredged material disposal shall not be permitted in the vicinity of a public water supply intake.

4. Flow-lane disposal of dredged material shall be monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of the affected natural and conservation management units.

F. Ocean disposal of dredged material shall be conducted to ensure that U.S. Army Corps of Engineers and Environmental Protection Agency standards are met, and that:

1. The amount of material deposited at a site will not seriously impact local ocean resources; and

2. Interference with sport and commercial fishing is minimized; and

3. Disposal is confined to the authorized disposal site; and

4. The sediment transport of the materials after disposal will not return to the bar or to the estuary.

This determination shall be made by the U.S. Army Corps of Engineers and the Environmental Protection Agency during their review of permit applications for ocean disposal of dredged material.

G. Disposal of dredged materials on ocean beaches for purposes of beach nourishment shall be conducted to ensure that:

1. The volume and frequency of dredged material disposal is controlled to avoid excessive fluctuations in beach profile. A stable beach profile shall be maintained as nearly as possible; and

2. Adverse impacts on benthic productivity, and native plants and wildlife within, and downstream of, the disposal site shall be avoided or minimized. Particular care shall be taken to ensure that erosion or smothering of productive habitat areas does not occur; and

3. The dredged material is uncontaminated and composed predominantly of sand with a particle size compatible with material on the receiving shores.

H. Land disposal of dredged materials shall be conducted to ensure that the integrity of estuarine waters, streams, underground springs and waterways is maintained. To ensure this:

1. U.S. Army Corps of Engineers guidelines for design of containment areas at dredged material disposal sites shall be followed. The U.S. Army Corps of Engineers shall be responsible for determining that these guidelines have been met.

2. All surface water runoff from disposed dredged materials shall be controlled and shall enter the waterway or estuary directly through an approved outfall. Outfalls shall be designed so that effluence is routed as directly as practicable to the main channel or deep water for dilution.

3. When necessary, dikes shall be constructed around land dredged material sites.

4. Dredged material disposal settling ponds shall be designed to maintain at least one foot of standing water at all times to encourage proper settling of suspended solids. Secondary dredged material disposal settling ponds may be necessary to ensure the proper treatment of overflow water, particularly in areas used for disposal of spoils containing toxic materials.

5. Runoff from disposed dredged materials must pass over an appropriately designed and operated weir. Weir design and size shall be dependent upon the size of the disposal site and the physical and chemical characteristics of the dredged materials.

I. The final height and slope after each use of a land dredged material site shall be such that:

1. The site does not enlarge itself by sloughing and erosion at the expense of adjacent aquatic areas; and

2. Loss of material from the site during storms and freshets is minimized; and

3. Interference with the view from nearby residences, scenic viewpoints and parks is avoided.

J. Revegetation of land disposal sites shall occur as soon as is practicable in order to retard water- or wind-induced erosion and to restore agricultural or wildlife habitat value to the site. Native species or nonnative species approved by the Soil Conservation Service shall be used, and reference shall be made to the Inter-Agency Seeding Manual prepared by the Soil Conservation Service.

K. Disposal of dredged material should occur on the smallest practicable land area consistent with the use of the property and the characteristics of the dredged material. Clearing of the land should occur in stages on an as-needed basis. Reuse of existing disposal sites is preferred over creation of new sites in order to minimize the total land area covered by dredged material.

L. Before dredged materials are disposed of on land areas for use as fill in approved fill projects, a determination shall be made that the structural characteristics of the material are suitable for this use.

M. The use of agricultural lands for dredged material disposal shall occur only when the sponsor of the dredging project can demonstrate that the soils can be restored to agricultural productivity after disposal use is completed. In cases where this demonstration cannot be made, an exception to the agricultural lands goal must be taken and included as an amendment to the comprehensive plan prior to the use of the site for dredged material disposal.

N. Dredging project proposals shall provide at least a five-year program for disposal of dredged material, consistent with the standards listed above. Disposal programs shall provide a mechanism for establishing stockpile sites of fill material suitable for use in approved fill projects. [Ord. 290 § 3(4.110(4)), 2006.]

### **18.160.050 Dredging in estuarine waters, intertidal areas and tidal wetlands.**

A. The following standards shall apply only to dredging in excess of 50 cubic yards within a 12-month period, or dredging of 50 cubic yards or less, which requires a Section 10 permit from the U.S. Army Corps of Engineers.

B. When dredging in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the city that:

1. The dredging is necessary for navigation or other water-dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and

2. A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and

3. No feasible alternative upland locations exist; and

4. Adverse impacts are minimized.

C. Dredging projects shall meet all requirements of the State Fill and Removal Law (ORS 541.605 through 541.665), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over dredging projects.

D. Existing water quality, quantity and rate of flow shall be maintained or improved. Minimum stream flow requirements shall be maintained. Water quality policies shall apply.

E. Flushing capacity of estuaries shall be maintained. A hydrologic report from a professional registered hydrologist or engineer may be required by the planning commission to ensure that this standard has been met.

F. Dredging shall be timed in order to minimize the effects of sedimentation and turbidity and to minimize impacts on fish, shellfish and recreational and commercial fishery activities. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW 1976) shall be followed unless approval of alternative work periods has been obtained from ODFW.

G. Evidence shall be provided by the applicant and findings made by the city that projects requiring dredging are sited and designed so that initial and maintenance dredging are minimized.

H. Dredging proposals shall provide at least a five-year program for disposal of dredged materials. Programs for disposal of dredged material shall be consistent with dredged material disposal standards.

I. Dredging proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.

J. New dredging projects shall not be allowed in areas where insufficient data is available to assess the relative biological value. Under these circumstances, the applicant may arrange to provide the necessary information with the technical assistance of state and federal resource agencies.

K. When dredging for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be presented by the applicant and findings made by the city that:

1. The dredging is necessary to maintain proper operation of the facility; and

2. The amount of dredging proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.

L. Excavation to create new water surface area shall be subject to the standards listed above and to the following standards:

1. Provision shall be made for stabilization of new banklines prior to the connection of the new water body to existing water bodies. Excavation of as much as is practical of the new water body shall be completed before it is connected to existing water bodies;

2. Toxic substances or other pollutants shall not leak into the water as a result of the excavation;

3. Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;

4. Excavation shall occur at a time that will minimize its impact on aquatic life;

5. Excavated materials shall not be disposed of in estuarine waters, intertidal areas or tidal wetlands, except as part of an approved fill project subject to fill standards.

M. Dredging for the purpose of bankline or stream alteration (i.e., realignment of a stream bank or the entire stream either within or without its normal high water boundaries) shall be subject to the standards listed above and to the following standards:

1. Alignments should make maximum use of natural or existing deep water channels; provided, that pockets of stagnant water are not created;

2. Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;

3. Temporary stabilization (mulching or sodding), sediment basins or other performance equivalent structures may be required at the discretion of the planning commission;

4. Provision shall be made for stabilization of new banklines. Shoreline stabilization standards shall apply;

5. Adverse impacts on fish spawning, feeding, migration, and transit routes and wildlife habitats shall be evaluated and minimized.

N. An impact assessment shall be conducted during local, state and federal review of permit applications for dredging in estuarine waters, intertidal areas or tidal wetlands. The impact assessment shall follow the procedures outlined in Chapter 18.165 GMC. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area. [Ord. 290 § 3(4.110(5)), 2006.]

### **18.160.060 Energy facilities and utilities.**

A. When new energy facilities are proposed within estuarine waters, intertidal areas or tidal wetlands, evidence shall be provided by the applicant and findings made by the city that:

1. A public need (i.e., a substantial public benefit) exists and the use or alteration does not unreasonably interfere with public trust rights; and

2. Alternative nonaquatic locations are unavailable or impractical; and

3. Dredging, fill, and other adverse impacts are avoided or minimized.

B. Electrical or communication transmission lines shall be located underground or along existing rights-of-way unless economically unfeasible.

C. Aboveground utilities shall be located to have the least adverse effect on visual and other aesthetic characteristics of the area. Interference with public use and public access to the estuary shall be minimized.

D. Whenever practicable, new utility lines and crossings within estuarine waters, intertidal areas or tidal wetlands shall follow the same corridors as existing lines and crossings.

E. Water discharge into estuarine waters, intertidal areas and tidal wetlands from an energy facility or utility shall meet EPA and DEQ standards, and shall not produce increases in temperature in the receiving waters which would have adverse impacts on aquatic life. Water quality policies shall apply.

F. When new energy facilities and utilities are proposed in EN zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the preservation of areas needed for scientific research or educational needs.

G. When storm water and sewer outfalls are proposed in EC-1 and EC-2 zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the use will not preclude the provision or maintenance of navigation and other public, commercial, and industrial water-dependent uses.

H. When new energy facilities and utilities are proposed in estuary development (ED) zones, evidence shall be provided by the applicant and findings made by the city that the proposed facility will not preclude the provision or maintenance of navigation and other public, commercial and industrial water-dependent uses.

I. Storm water and sewer outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or intertidal wetlands. Effluent from outfalls must meet DEQ and EPA water quality standards. Water quality policies shall apply.

J. Dredge, fill, shoreline stabilization or other activities in conjunction with construction of energy facilities or utilities shall be subject to the respective standards for these activities.

K. Energy facilities and utilities shall be sited so that they do not and will not require structural shoreline stabilization methods. [Ord. 290 § 3(4.110(6)), 2006.]

### **18.160.070 Fill in estuarine waters, intertidal areas and tidal wetlands.**

A. The following standards shall apply only to fill in excess of 50 cubic yards or fill of less than 50 cubic yards which requires a Section 10 or 404 permit from the U.S. Army Corps of Engineers.

B. When fill in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the city that:

1. The fill is necessary for navigation or other water-dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and

2. A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and

3. No feasible alternative upland locations exist; and

4. Adverse impacts are minimized.

C. When fill for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be provided by the applicant and findings made by the city that:

1. There are no alternatives to fill to maintain proper operation of the facility; and

2. The amount of fill proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.

D. Where existing public access is reduced, suitable access as part of the development project shall be provided.

E. The fill shall be placed at a time that will minimize sedimentation and turbidity. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW 1976) shall be followed unless approval of alternative work periods has been obtained from the ODFW.

F. Only nonpolluted materials may be used for fill. Materials that would create water quality problems are not permitted.

G. The perimeters of the fill shall be provided with erosion prevention measures, consistent with shoreline stabilization standards.

H. Fills shall be placed so that adjacent or nearby property is not adversely impacted by increased erosion, shoaling and flooding produced by changes in littoral drift or other changes in

water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the planning commission as a result of the impact assessment required in Chapter 18.165 GMC.

I. Fill proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.

J. Fill in estuarine waters, intertidal areas and tidal wetlands shall be subject to the requirements of the State Fill and Removal Law (ORS 541.605 through 541.665), the Rivers and Harbors Act of 1899, the Clean Water Act of 1977 (PL 95-217), and other applicable state and federal agencies with regulatory authority over fill projects.

K. An impact assessment shall be conducted during the local, state, and federal review of permit applications for fill in estuarine waters, intertidal areas or tidal wetlands according to the provision outlined in Chapter 18.165 GMC. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area. [Ord. 290 § 3(4.110(7)), 2006.]

### **18.160.080 Forestry and the forest products industry.**

A. Log storage, sorting and processing areas in shorelands adjacent to estuaries or waterways shall be designed, constructed and operated to control leakages and prevent the loss of bark, chips, sawdust and other wood debris into public waters.

B. In-water log handling, sorting, and storage areas, and log storage, sorting and processing areas in shorelands adjacent to estuaries or other water bodies shall be subject to the requirements of the water quality program administered by the Department of Environmental Quality under the Clean Water Act of 1977 (PL 92-500). DEQ, in conjunction with other affected resource agencies, shall be responsible for determining that the flushing characteristics of in-water log handling, sorting and storage areas, the number of logs and duration of storage, and the bark and debris controls for both in-water and shoreland sites are such that state and federal clean water standards are met.

C. Leasing of publicly owned aquatic areas for the purpose of in-water log handling, sorting and storage shall be subject to the requirements of the Division of State Lands.

D. When new in-water log handling, sorting and storage areas are proposed in estuarine waters, evidence must be presented by the applicant and findings made by the city that:

1. The proposed use is an integral part of the process of waterborne transportation of logs (i.e., is water-dependent);

2. There is a public need (i.e., a substantial public benefit) for the proposed use, and the use or alteration does not unreasonably interfere with public trust rights;

3. Alternative nonaquatic locations are unavailable, impracticable or do not meet the need;

4. Conflicts with navigation, aquaculture and commercial and recreational fishing have been avoided or minimized;

5. Easy let-down facilities for transfer of logs from land to water have been provided for (free fall log dumps shall not be permitted); and

6. Sites are located to avoid shellfish beds, shallow spawning areas, or areas where grounding of logs will occur. [Ord. 290 § 3(4.110(8)), 2006.]

### **18.160.090 Industrial and commercial uses in estuarine waters, intertidal areas and tidal wetlands.**

A. Evidence shall be provided by the applicant and findings made by the city that:

1. The amount of estuarine surface area occupied is the minimum required to meet the need; and

2. Provision has been made for public access, viewpoints and recreational use, consistent with safety and security considerations; and

3. Multipurpose and cooperative use of piers, wharves, parking areas or handling and storage facilities have been provided for, or are impracticable; and

4. Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves; and

5. Alteration of productive intertidal areas and tidal marshes has been avoided or minimized; and

6. Adverse impacts on the following have been avoided or minimized to be consistent with the resource capabilities and purposes of the area:

a. Water quality;

b. Hydrographic characteristics;

c. Aquatic life and habitat;

d. Bird and wildlife habitat;

e. Fish transit and migration routes.

B. Removal of riparian vegetation shall be permitted only if direct access to water is required in conjunction with a water-dependent use. Replacement of riparian vegetation or enhancement of existing riparian vegetation shall be required, where consistent with water-dependent use, to enhance attractiveness or assist in bank stabilization.

C. Visual access to the water shall not be impaired by the placement of signs. When feasible, signs shall be constructed on or against existing buildings to minimize visual obstruction of the shoreline and water bodies. Off-premises outdoor advertising signs shall not be allowed within estuarine waters, intertidal areas or tidal wetlands.

D. The design and construction of new industrial and commercial facilities should consider reclamation and reuse of wastewater.

E. Provision for the prevention and control of contaminants from entering the water shall be made. A contingency plan to provide for containment of cleanup of spills of contaminants shall be provided.

F. Industrial outfalls, sewer outfalls, and storm water outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or salt marshes. Effluent from outfalls must meet DEQ and EPA water quality standards. Water quality policies shall apply.

G. When water-dependent industrial and commercial uses are proposed in estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

H. When water-related or nondependent, nonrelated industrial or commercial uses are proposed in estuary development (ED) zones, evidence must be presented that:

1. The use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses; and

2. The use will not preempt the use of shorelands especially suited for water-dependent development; and

3. Non-water-dependent and non-water-related uses which permanently alter estuarine resources and values shall include evidence of the public benefits derived from the project, which shall include:

a. The beneficial economic impacts generated by increases in employment; and/or

b. Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.

I. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, wastewater and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.

J. Dredging, fill, piling/dolphin installation, shoreline stabilization, disposal of dredged material or other activities in conjunction with industrial and commercial uses shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(9)), 2006.]

### **18.160.100 Land transportation facilities.**

A. Proposals for new county or state highways, or for railroads, shall provide an evaluation of the proposed project on the following:

1. Land use patterns;

2. Energy use;

3. Air and water quality;

4. Estuarine habitat, functions and processes;

5. Existing transportation facilities;

6. Physical and visual access to estuaries and shorelands.

B. Evidence shall be provided by the applicant and findings made by the city that the siting, design, construction and maintenance of land transportation facilities will be conducted to avoid mass soil wasting or excessive surface erosion.

C. Land transportation facility proposals shall include a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Site rehabilitation plans shall provide for replacement of riparian vegetation.

D. Vegetated buffer strips shall be maintained, whenever practicable, along roadways to manage storm drainage runoff.

E. When culverts are used in association with bridge crossings, spring line natural bottom culverts are preferred over box culverts.

F. All bridge crossings and culverts shall be positioned and maintained to allow fish passage, avoid interference with anadromous fish runs and to prevent any constriction of natural streams which would result in increases in flood or erosion potential. When culverts are used, no fill shall be allowed in streams, rivers or estuaries.

G. When new bridge crossing support structures are proposed in estuary natural (EN) zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities and purposes of the area.

H. When new land transportation facilities are proposed in estuary development (ED) zones, evidence shall be presented by the applicant and findings made by the city that the proposed use

is consistent with the resource capabilities of the area and that the use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.

I. Dredging, fill, piling/dolphin installation, shoreline stabilization, dredged material disposal or other activities in conjunction with land transportation facilities shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(10)), 2006.]

### **18.160.110 Mining and mineral extraction.**

A. Mining and mineral extraction policy requirements in the Garibaldi comprehensive plan shall be met.

B. Mining and mineral extraction proposals shall include a mining plan and a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Any necessary rehabilitation of mining and/or mineral extraction sites shall be completed within two years of the completion of the mining or mineral extraction operation.

C. Evidence shall be provided by the applicant and findings made by the city that mining and mineral extraction projects are sited, designed, operated and maintained to ensure that adverse impacts on the following are minimized:

1. Aquatic life and habitat, including but not limited to the spawning, rearing and passage requirements of anadromous fish;

2. Bird and wildlife habitat;

3. Hydrographic characteristics, including but not limited to the alteration of local currents that may affect adjacent properties by causing erosion, accretion or increased flooding;

4. Water quality policies shall apply.

D. Temporary removal of riparian vegetation shall be permitted in cases where direct water access is required as part of a mining or mineral extraction operation. Site rehabilitation plans shall provide for replacement of riparian vegetation.

E. Spoils and stockpiles shall not be placed within estuarine waters, intertidal areas or tidal wetlands, unless as part of an approved fill project, subject to fill standards.

F. When mining and mineral extraction projects are proposed in estuary conservation 1 (EC-1) and estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the proposed project is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

G. When mining and mineral extraction projects are proposed in estuary development (ED) zones, evidence shall be presented by the applicant and findings made by the city that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.

H. Dredging, fill or other activities in conjunction with mining and mineral extraction shall be subject to the respective standards for these activities.

I. The location and operation of mining and mineral extraction projects shall be in conformance with the requirements of the Division of State Lands (ORS 541.605 through 541.665; ORS 273.551; ORS 273.775 through 273.780), the Department of Geology and Mineral Industries (ORS 520.005 through 520.095) and other applicable state and federal laws governing environmental quality, resource protection and public health and safety. These requirements shall be enforced by state and federal agencies with regulatory authority over mining and mineral extraction projects. [Ord. 290 § 3(4.110(11)), 2006.]

### **18.160.120 Mitigation.**

A. Mitigation policy requirements in the Garibaldi comprehensive plan shall be met.

B. Mitigation for dredge or fill within estuarine waters of intertidal wetlands shall be required by the Director of the Division of State Lands (under the provisions of ORS 541.605 through 541.665). The suitability of a mitigation proposal for a given proposed project shall be determined by the Director of the Division of State Lands, according to the procedure established in Administrative Rule 85-245 (Chapter 141).

C. Mitigation projects shall go into effect prior to or at the same time as the development project. [Ord. 290 § 3(4.110(12)), 2006.]

### **18.160.130 Navigational structures and navigational aids.**

A. When navigational structures are proposed, evidence shall be provided by the applicant and findings made by the city that:

1. The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use; and

2. The project will not interfere with the normal public use of fishery, recreation or water resources; and

3. The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required; and

4. Nonstructural solutions are unavailable, impractical or do not meet the need.

B. When floating breakwaters are proposed in estuary conservation 1 (EC-1) and estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

C. Navigational structures shall meet all applicable U.S. Army Corps of Engineers engineering standards. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards have been met.

D. An impact assessment shall be conducted during local, state and federal review of permit applications for navigational structures. The impact assessment shall follow the procedures outlined in Chapter 18.165 GMC. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purpose of the area.

E. Dredging, fill or other activities in conjunction with navigational structures and navigational aids shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(13)), 2006.]

#### **18.160.140 Piling/dolphin installation.**

A. When piling or dolphin installation is proposed, evidence shall be provided by the applicant and findings made by the city that:

1. The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;

2. The project will not unduly interfere with the normal public use of fishery, recreational or water resources; and

3. The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the planning commission as a result of the impact assessment required in Chapter 18.165 GMC.

B. When new piling or dolphin installation is proposed in estuary natural (EN), estuary conservation 1 (EC-1), or estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the project is consistent with the resource capabilities and purposes of the area.

C. When proposals for new piling or dolphin installation in conjunction with a non-water-dependent or non-water-related use within estuary development (ED) zones are made, evidence shall be presented by the applicant and findings made by the city that the project is consistent with the maintenance of navigation and needed public, commercial and industrial water-dependent uses.

D. Piling/dolphin replacement and new installation shall meet all applicable U.S. Army Corps of Engineers engineering standards and permit requirements. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards and permit requirements have been met.

E. An impact assessment shall be conducted during local, state and federal review of permit applications for piling/dolphin installation. The impact assessment shall follow the procedures outlined in Chapter 18.165 GMC. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area. [Ord. 290 § 3(4.110(14)), 2006.]

### **18.160.150 Restoration.**

A. Restoration policy requirements in the Garibaldi comprehensive plan shall be met.

B. Proposals for restoration projects shall present evidence that:

1. The restored area is a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed; and

2. The restored area may not have been a functioning part of the estuarine system when alteration work begins; and

3. The restored area is revitalizing, returning or replacing original attributes and amenities which have been diminished or lost by past alterations, activities, or catastrophic events.

C. All estuarine enhancement project proposals shall identify:

1. The original conditions to be restored;

2. The cause of the loss or degradation; and

3. The location and extent of actions necessary to achieve the restoration objective.

D. When active restoration or estuarine enhancement projects are proposed in estuary natural (EN) zones, evidence shall be provided by the applicant and findings made by the city that the project is consistent with the resource capabilities of the area and with the protection of significant fish and wildlife habitats, biological productivity, and of scientific research and educational needs.

E. When active restoration or estuarine enhancement projects are proposed in estuary conservation 1 (EC-1) or estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

F. When passive or active restoration or enhancement projects are proposed in estuary development (ED) zones, evidence shall be provided by the applicant and findings made by the city that the project will not interfere with the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses, or with the use of adjacent shorelands especially suited for water-dependent development.

G. When active restoration projects are proposed in the WD-1 zone\*, evidence shall be provided by the applicant and findings made by the city that the proposed project does not preclude or conflict with existing or reasonable potential water-dependent use on the site or in the vicinity. Shoreland development standards shall apply.

H. Dredge, fill, shoreline stabilization, shoreland development, installation of energy facilities or utilities, dredged material disposal and other uses and activities proposed as part of an active restoration project shall be subject to the respective standards for these uses and activities.

I. Estuarine enhancement project proposals shall present evidence that the project will result in an overall improvement in the cultural, historic, economic or navigation features of an estuary, which will outweigh any adverse impacts. [Ord. 290 § 3(4.110(15)), 2006.]

\* Code reviser's note: Ordinance 319 replaced the WD-1 and WD-2 zones with the WD and WM zones, respectively.

### **18.160.160 Shallow draft port facilities and marinas.**

A. Evidence shall be provided by the applicant and findings made by the city that:

1. Facilities have been sited and designed to minimize initial and maintenance dredging;
2. Dry land boat storage has been provided for, or is impracticable;
3. Provision has been made for public access, viewpoints and recreation use, consistent with safety and security considerations;
4. Multipurpose and cooperative use of piers, wharves, parking areas and cargo handling and storage has been provided for, or is impracticable;
5. Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves;
6. The amount of water surface occupied is the minimum required to meet the need;
7. Provision has been made for maintenance of riparian vegetation, except where direct access to water is required;
8. Natural or manmade protection from wind, waves, storm or tidal currents or ship wakes has been provided for;

9. Adverse impacts on the following have been avoided or minimized:

a. Navigation;

b. Water quality;

c. Hydrographic characteristics;

d. Natural processes of erosion and sedimentation;

e. Aquatic life and habitat.

In EC-2 zones, a resource capability determination is also required.

B. Marina access channels shall be designed to maximize water circulation and avoid dead spots. Dead-end channels or confined basins should be avoided. A demonstration shall be made that state and federal clean water standards can be maintained. A field study of water circulation patterns may be required by the planning commission as a result of the impact assessment required in Chapter 18.165 GMC.

C. Safe navigational access to port facilities and marinas shall be provided and maintained.

D. Covered or enclosed moorages shall be limited to 10 percent (in number) of the total moorage spaces of a given port facility or marina.

E. The following provisions for the prevention and control of contaminants from entering the water shall be made:

1. Enclosed shoreland facilities for public dumping of oil and emptying of holding tanks shall be provided;

2. A contingency plan to provide for contaminant and cleanup of spills of contaminants shall be provided.

F. Proposals for expansion or creation of port and marina facilities shall be accompanied by a demonstration of the public benefits derived from the project, which shall include:

1. Information on why the capacity of existing facilities is inadequate; and

2. The beneficial economic impacts to local communities derived from increases in employment; and/or

3. Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.

G. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, wastewater and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.

H. When marina expansion or development is proposed in estuary conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the city that the project is consistent with the resource capabilities of the area and the long-term use of renewable resources and does not cause a major alteration of the estuary.

I. Dredge, fill, piling/dolphin installation, navigational structures, shoreline stabilization or other activities in conjunction with expansion or creation of new port facilities and marinas shall be subject to the respective standards for these activities. [Ord. 290 § 3(4.110(16)), 2006.]

### **18.160.170 Shoreline stabilization.**

A. Within estuarine waters, intertidal areas and tidal wetlands, and along shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:

1. Proper maintenance of existing riparian vegetation;
2. Planting of riparian vegetation;
3. Vegetated riprap;
4. Groins, bulkheads or other structural methods.

Shoreline protection proposals shall include justification for the use of a lower priority method over a higher priority method.

B. Vegetative shoreline stabilization shall utilize native species, or nonnative species approved by the Soil Conservation Service. Reference shall be made to the Inter-Agency Seeding Manual prepared by the Soil Conservation Service.

C. When structural shoreline stabilization methods are proposed, evidence shall be presented by the applicant and findings made by the city that:

1. Flooding or erosion is threatening an established use on a subject property; or
2. There is a demonstrated public need in conjunction with navigation or a water-dependent use; and
3. Land use management practices or nonstructural solutions are inappropriate or will not meet the need; and

4. The proposed structural stabilization method is the minimum size needed to accomplish the desired stabilization; and

5. The proposed project will not restrict existing public access to publicly owned lands or interfere with the normal public use of fishery, recreation or water resources; and

6. The proposed project will not adversely impact adjacent aquatic areas or nearby property through increased erosion, sedimentation, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer, hydrologist, or geologist may be required by the planning commission as a result of the impact assessment required in Chapter 18.165 GMC.

A brief statement from the local Soil and Water Conservation Service may serve as evidence that standards in subsections (C)(3) and (C)(4) of this section have been met.

D. Shoreline stabilization projects shall be timed to minimize impacts on aquatic life.

E. Proposals for riprap shall include evidence that the rock to be used will be effective, and will provide justification for use of a slope steeper than one and one-half feet horizontal to one foot vertical.

F. When bulkheads are proposed, evidence shall be provided by the applicant and findings made by the city that other forms of structural stabilization are inappropriate or will not meet the need. Bulkheads should be designed to be permeable to groundwater and runoff. Fill policies and standards shall apply to bulkhead projects which involve fill within estuarine waters, intertidal areas or tidal wetlands.

G. When riprap is proposed in estuary natural (EN) zones evidence shall be presented by the applicant and findings made by the city that the project is consistent with the resource capabilities of the area and the protection of significant fish and wildlife habitats and other areas which make an essential contribution to estuarine productivity or fulfill scientific research, and educational needs.

H. When structural shoreline stabilization is proposed in estuary conservation 1 (EC-1) and estuary conservation 2 (EC-2) zones, evidence shall be presented by the applicant and findings made by the city that the project is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

I. When structural shoreline stabilization is proposed in estuary development (ED) zones, evidence shall be presented by the applicant and findings made by the city that the project is consistent with the resource capabilities of the area and the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.

J. An impact assessment shall be conducted during local, state and federal review of permit applications for structural shoreline stabilization seaward of the line of nonaquatic vegetation or the mean higher high waterline (MHHW). The impact assessment shall follow the procedure

outlined in Chapter 18.165 GMC. Identified adverse impacts shall be avoided or minimized to be consistent with the resource capabilities and purposes of the area. [Ord. 290 § 3(4.110(17)), 2006.]

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## **Chapter 18.165 REVIEW OF REGULATED ACTIVITIES**

### **18.165.010 Purpose.**

The purpose of this section is to provide an assessment process and criteria for local review and comment on state and federal permit applications which could potentially alter the estuarine ecosystem. [Ord. 290 § 3(4.120(1)), 2006.]

### **18.165.020 Regulated activities.**

Regulated activities are those actions that require state and/or federal permits, and include the following:

A. Fill (either fill in excess of 50 cubic yards, or fill of less than 50 cubic yards, which requires a Section 10 or Section 404 permit from the U.S. Army Corps of Engineers);

B. Dredging (either dredging in excess of 50 cubic yards within a 12-month period, or dredging of less than 50 cubic yards which requires a Section 10 permit from the U.S. Army Corps of Engineers);

C. Dredged material disposal;

D. Piling/dolphin installation;

E. Shoreline stabilization, bankline or streamline alteration involving fill or dredging in excess of 50 cubic yards;

F. In-water log storage. [Ord. 290 § 3(4.120(2)), 2006.]

### **18.165.030 Procedure for reviewing regulated activities.**

The planning commission shall review state and federal permit notices. Regulated activities and any associated use or uses as a whole shall be reviewed based on requirements of the zone(s) in which the proposed uses and activities are to be located (Chapters 18.55 through 18.75 GMC), standards relevant to the proposed uses and activities (Chapter 18.160 GMC), an impact assessment (GMC 18.165.050), resource capability and purpose determinations where applicable (GMC 18.165.060), requirements for degradations or reductions of estuarine natural values where applicable (GMC 18.165.070) and comments from state and federal agencies having responsibility for permit review (GMC 18.165.080). Based on this review, the planning commission will decide whether the proposed uses and activities comply with this title and will forward its decision to the appropriate permitting agencies and the permit applicant prior to the final date set for comments. Decisions of the planning commission may be appealed (GMC 18.210.060). [Ord. 290 § 3(4.120(3)), 2006.]

### **18.165.040 Zone requirements.**

Uses and activities shall be allowed only if they are allowed in the zones in which they are to be located. Accessory uses proposed for adjacent upland areas must be allowed in the upland zones in which they are to be located. Uses that are permitted with standards must comply with the standards of Chapter 18.160 GMC. Uses listed as conditional uses shall be reviewed according to the procedures of Chapter 18.185 GMC and the standards of Chapter 18.160 GMC. If a conditional use review is required, the city shall notify the applicant and state and federal permitting agencies and shall request an extension of the comment period. [Ord. 290 § 3(4.120(4)), 2006.]

### **18.165.050 Impact assessments.**

The city shall, with the assistance of affected state and federal agencies, develop impact assessments for regulated activities. Federal environmental impact statements or assessments may be substituted if made available to the planning commission. The following considerations must be addressed in the impact assessment:

A. The type and extent of alterations expected.

B. The type of resource(s) affected including, but not limited to, aquatic life and habitats, riparian vegetation, water quality and hydraulic characteristics.

C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary.

D. The methods that could be employed to avoid or minimize adverse impacts. [Ord. 290 § 3(4.120(5)), 2006.]

### **18.165.060 Requirements for resource capability determinations.**

Uses and activities for which a resource capability determination is required by Chapter 18.160 GMC shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposes of the zone(s) in which they are to be located. An activity will be found to be consistent with the resource capability of the estuary natural zone (as described in Section 2 of the estuarine resources element of the Tillamook County comprehensive plan) when either:

A. The impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or

B. The resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.

An activity will be found to be consistent with the resource capability of estuary conservation 1 (EC-1) and estuary conservation 2 (EC-2) zones when either the impacts of the use on estuarine

species, habitats, biological productivity and water quality are not significant, or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture. [Ord. 290 § 3(4.120(6)), 2006.]

### **18.165.070 Significant degradations or reductions of estuarine natural values.**

A. Definition. Significant degradations or reductions of estuarine natural values include dredging, fill, and other activities which will cause significant off-site impacts as determined by the impact assessment.

B. Requirements. Dredging and fill must comply with the standards in Chapter 18.160 GMC. Other reductions and degradations of estuarine natural values shall be allowed only if:

1. A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and

2. No feasible alternative upland locations exist; and

3. Adverse impacts are minimized as much as feasible. [Ord. 290 § 3(4.120(7)), 2006.]

### **18.165.080 State and federal reviewing agency comments.**

Where the review of regulated activities involves a resource capability and purpose determination or an impact assessment or a request for a single-purpose dock or pier the city shall notify the following agencies:

A. Oregon Department of Fish and Wildlife;

B. Oregon Division of State Lands;

C. Oregon Department of Land Conservation and Development;

D. Oregon Department of Economic Development;

E. U.S. Fish and Wildlife Service;

F. National Marine Fisheries Service;

G. Environmental Protection Agency;

H. U.S. Army Corps of Engineers.

Notice will be mailed within seven days of city receipt of the state or federal permit notice. The notice will include permit reference, identification of the local decisions to be made, references to applicable policies and standards, and notification of comment and appeal periods. The city

shall consider any comments received no later than seven days before the closing date for comments on the state and federal permit notice. [Ord. 290 § 3(4.120(8)), 2006.]

### **18.165.090 Appeals.**

Planning commission decisions on regulated activities may be appealed according to the requirements of GMC 18.210.060. Planning commission decisions on regulated activities that involve a conditional use may be appealed according to the requirements of GMC 18.210.060. If the decision of the planning commission is appealed, the city shall notify the appropriate state and federal permitting agencies and shall request an extension to the comment period to allow for the local appeals process. [Ord. 290 § 3(4.120(9)), 2006.]

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# Chapter 18.170 RIPARIAN VEGETATION

## 18.170.010 Riparian vegetation.

Riparian vegetation adjacent to Tillamook Bay and the streams in Garibaldi shall be protected in accordance with the following provisions:

A. The following areas of riparian vegetation are defined:

1. Fifteen feet on either side of Cannery Creek, Johnson Creek, School Creek, Whitney Brook, Hill Creek, Hobson Creek, and Lagler Creek.
2. Twenty-five feet adjacent to Tillamook Bay in those areas described in the comprehensive plan V No. 4 and XII No. 2 where riparian vegetation has been identified.

The distance is measured from the bank of a stream and from the mean higher high waterline adjacent to Tillamook Bay.

B. All structures and uses shall be located outside of areas listed in subsection A of this section with the following exceptions:

1. Where direct water access is required in conjunction with a water-dependent use; or
2. Access to a lot where the proposed access is the only reasonable alternative; or
3. Structural shoreline stabilization; or
4. Trails or other pedestrian walkways that provide access to the water.

C. For areas described in subsections (A)(1) and (2) of this section, all trees, six inches in diameter, four and one-half feet above grade, and 50 percent of the understory vegetation shall be retained within the areas listed with the following exceptions:

1. Removal of dead, diseased or dying trees, or trees that pose an erosion hazard.
2. Removal of vegetation necessary to provide for uses listed in subsection B of this section.
3. Vegetation removal in conjunction with an approved in-water project.
4. The removal of noxious weeds as defined by the city's nuisance ordinance.
5. Removal of vegetation necessary to ensure that the stream continues to serve its drainage functions.

D. The city may approve the removal of riparian vegetation not covered by subsection C of this section where a proposed plan of vegetation removal has been reviewed by the planning

commission and found to be in conformance with the overall objective of maintaining the functional characteristics of riparian vegetation. [Ord. 290 § 3(4.130), 2006.]

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## Chapter 18.175 MAINTENANCE OF ACCESS

### 18.175.010 Maintenance of access.

The city shall review, under ORS [271.080](#) through [271.230](#), proposals for the vacation of public easements or rights-of-way which provide access to or along Tillamook Bay. The city shall review, under the provisions of ORS [271.300](#) through [271.360](#), proposals for the sale, exchange or transfer of public ownership which provides access to Tillamook Bay. Existing public ownership rights-of-way and similar public easements which provide access to or along Tillamook Bay shall be retained or replaced if they are sold, exchanged or transferred. Rights-of-way may be vacated to permit redevelopment of shoreland areas, provided public access across the affected site is retained. [Ord. 290 § 3(4.140), 2006.]

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## **Chapter 18.180 EXCEPTIONS**

### **18.180.010 Zone boundaries.**

If a zone boundary, as shown on the map, divides a lot between two zones, the entire lot shall be deemed to be in the zone in which the greater area of the lot lies; provided, that this adjustment involves a distance not to exceed 20 feet from the mapped zone boundary. [Ord. 290 § 3(5.010), 2006.]

### **18.180.020 Authorization of similar uses.**

The planning commission may permit in a particular zone a use not listed in this title; provided, the use is of the same general type as the uses permitted there by this title. [Ord. 290 § 3(5.020), 2006.]

### **18.180.030 Projections from buildings.**

Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys and flues shall not project more than 24 inches into a required yard, except that unsupported eaves may extend up to one-half the distance of a required setback. [Ord. 290 § 3(5.040), 2006.]

### **18.180.040 General exception to lot size requirements.**

If a lot or the aggregate of contiguous lots held in a single ownership as recorded in the office of the county clerk at the time of the passage of the ordinance codified in this chapter has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the holdings may be occupied by a use permitted in the zone subject to the other requirements of the zone; provided, that if there is an area deficiency, residential use shall be limited to a single-family dwelling or to the number of dwelling units consistent with the density requirements of the zone. [Ord. 290 § 3(5.050), 2006.]

### **18.180.050 General exception to yard requirements.**

The following exceptions to the front yard requirements for a dwelling are authorized for a lot in any zone:

A. The required front yard for a dwelling need not exceed the average depth of the nearest front yards of dwellings within 100 feet on both sides of the proposed dwelling on the same side of the street.

B. The setback of a building from the bay shore shall be the average of the setbacks of the structures on either side up to a distance of 200 feet, but in no case beyond the surveyed property line. If no structures are within this distance, the setback shall conform to the general oceanfront building line as described in the comprehensive plan. [Ord. 290 § 3(5.060), 2006.]

### **18.180.060 General exception to building height limitations.**

Projections such as chimneys, aerials, flagpoles, and other similar objects not used for human occupancy, no more than 48 inches in width, are not subject to the building height limitations of this title. [Ord. 290 § 3(5.070), 2006.]

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## Chapter 18.185 CONDITIONAL USES

### 18.185.010 Authorization to grant or deny conditional uses.

Conditional uses listed in this title may be permitted, enlarged or otherwise altered upon authorization by the planning commission in accordance with the standards and procedures set forth in this section through GMC 18.185.030.

In the case of a use existing prior to the effective date of the ordinance codified in this chapter and classified in this title as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.

In permitting a conditional use or the modification of a conditional use other than a housing type (e.g., multifamily structure, manufactured dwelling park), the planning commission may impose, in addition to those standards and requirements expressly specified for that use, other conditions which are necessary to protect adjacent property, an identified resource, or the city as a whole.

An approved conditional use shall be subject to revocation by the planning commission if it is ascertained thereby that the application includes or included any false information, or if it is determined that the conditions of approval have not been complied with or are not being maintained, or the conditional use becomes detrimental to public health, safety, or welfare.

In order to consider revocation of a conditional use permit, the planning commission shall hold a public hearing in accordance with GMC 18.210.050\* in order for the permit holder to show cause why such permit should not be revoked.

If the planning commission finds that the conditions of permit approval have not been complied with or are not being maintained, a reasonable time may be given for rectification, and if corrections are not made within that time, revocation of the permit shall become effective 15 days after the time specified. [Ord. 319 § 22, 2013; Ord. 290 § 3(6.010), 2006.]

\* Code reviser's note: In Ordinance 319, this cross-reference cites GMC 18.50.030. It has been editorially corrected at the request of the city.

### 18.185.020 Conditional use review criteria.

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

A. The proposed use is consistent with the policies of the comprehensive plan.

B. The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties.

C. The use will not generate excessive traffic when compared to the traffic generated by uses permitted outright and adjacent streets have the capacity to accommodate the traffic generated.

D. Public facilities and services are adequate to accommodate the proposed use.

E. The site's physical characteristics in terms of topography, soils and other pertinent considerations are appropriate for the intended use.

F. The site has adequate area to accommodate the proposed use. The site layout has been designed to provide appropriate access points, on-site drives, parking areas, loading areas, storage facilities, setbacks, buffers, utilities or other facilities which are required by city ordinances or desired by the applicant. [Ord. 290 § 3(6.020), 2006.]

### **18.185.030 Conditional use procedure.**

The following procedures shall be observed in applying for and acting on a conditional use:

A. A property owner may initiate a request for a conditional use or the modification of a conditional use by filing an application with the city using a form prescribed pursuant to GMC 18.210.010. The planning commission may require other drawings or information necessary to an understanding of the proposed use and its relationship to surrounding properties.

B. The procedure is as follows:

1. Public notice shall be given in accordance with GMC 18.210.020.

2. A public hearing shall be held in accordance with GMC 18.210.050.

3. A decision on the conditional use application shall be made in accordance with GMC 18.210.050(F).

4. A decision of the planning commission may be appealed to the city council in accordance with GMC 18.210.060.

5. The applicant shall attach a copy of the decision of the planning commission to the building permit application.

6. The conditional use permit shall be null and void after two years unless substantial construction has taken place or unless the planning commission grants a one-year extension upon a finding that circumstances have not changed since the original approval. Only three one-year extensions may be granted. [Ord. 310 § 1, 2008; Ord. 290 § 3(6.030), 2006.]

### **18.185.040 Specific conditional use standards.**

A. Non-water-dependent or water-related uses in the WD zone shall be permitted only where the finding is made that such uses will not preclude the allocation of water-dependent uses, that sufficient land and water area exists for water-dependent uses, that public access and riparian vegetation (where applicable) will be maintained or provided, and that such uses will not cause the filling of the estuary or other adverse water quality impact.

B. Additional Standards for Non-Water-Dependent and Non-Water-Related Commercial Uses. Non-water-dependent and non-water-related commercial uses in the WD zone may be permitted when the following standards are met:

1. The use is incidental and subordinate to, and in conjunction with an allowed water-dependent or water-related use.

2. The use fronts a dedicated right-of-way used for vehicle and/or pedestrian access.

3. The use occupies no more than 25 percent of the ground floor area of the building that serves a water-dependent or water-related use, and no more than 50 percent of the total floor area of the building if it has more than one floor.

4. If the use is not located in a building, it occupies no more than 25 percent of the total land area of the lot or parcel on which it is located.

5. The use is compatible with nearby water-dependent or water-related uses. Determination of compatibility may be based on potential impacts of vehicular and pedestrian traffic associated with the use; visual, audible or other environmental effects created by the use; or any other impact that would not be expected from water-dependent or water-related use.

6. The use does not preclude future water-dependent or water-related uses from occurring on or near the site.

C. Telecommunication facilities are allowed under the criteria of GMC 18.185.020 and when they meet the height limitation criteria of the zone. [Ord. 319 § 23, 2013; Ord. 290 § 3(6.040), 2006.]

### **18.185.050 Conditional uses and criteria for certain transportation facilities and improvements.**

A. Development of certain transportation facilities and improvements that are subject to conditional use approval shall satisfy all of the following criteria:

1. The project and its design are consistent with city of Garibaldi's adopted TSP and with the State Transportation Planning Rule, OAR 660-012 ("the TPR").

2. The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties.

3. The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources and scenic qualities, and a site with fewer environmental impacts is not reasonably available. The applicant shall document all efforts to obtain a site with fewer environmental impacts, and the reasons alternative sites were not chosen.

4. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.

5. The project includes provisions for bicycle and pedestrian access and circulation consistent with the comprehensive plan, the requirements of this title, and the TSP or TPR.

B. State Transportation System Facility or Improvement Projects. The Oregon Department of Transportation (ODOT) shall provide a narrative statement with the conditional use application demonstrating compliance with all of the criteria and standards in subsections (A)(1) through (A)(5) of this section. Where applicable, an environmental impact statement or environmental assessment may be used to address one or more of these criteria.

C. Proposal Inconsistent with TSP. If the city determines that the proposed use or activity or its design is inconsistent with the TSP, then the applicant shall apply for and receive approval for a comprehensive plan amendment prior to or in conjunction with conditional use permit approval. If the city's determination of inconsistency is part of the final decision on the conditional use permit application, the applicant shall submit a new conditional use permit application, along with a plan/zoning amendment application for joint review and decision.

D. Expiration. A conditional use permit for transportation system facilities and improvements shall be void after five years. [Ord. 290 § 3(6.050), 2006.]

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## **Chapter 18.190 Variances**

### **18.190.010 Background.**

This chapter and Chapter 18.195 GMC are primarily derived from the Oregon State Model Code. The model code is designed to be more flexible than conventional zoning; and frequently allows outright, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the model code provides flexibility in lot sizes and setbacks, as well as minimum parking ratios that are below the minimums of some codes. It also allows reductions to required off-street parking if an applicant can demonstrate through a parking study that less parking would be sufficient.

Typical variance procedures require the property owner to demonstrate that a hardship exists which is not self-imposed; there are unusual or extraordinary circumstances related to the site; and rights that others in the vicinity enjoy would be denied without a variance. In contrast, the three variance options in this chapter provide a range of standards and approval criteria based on the specific type of variance requested. For example, it should be fairly easy to modify a yard setback in order to protect significant trees or to provide other amenities if all applicable building and fire codes are met. [Ord. 290 § 3(7.010), 2006.]

### **18.190.020 Variances – Purpose.**

This chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this code as exceptions to code standards. This code cannot provide standards to fit every potential development situation. The city's varied geography, and complexities of land development, require flexibility. This chapter provides that flexibility, while maintaining the purposes and intent of the code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met. [Ord. 290 § 3(7.011), 2006.]

### **18.190.030 Variances – Applicability.**

A. Exceptions and Modifications Versus Variances. A code standard or approval criterion (“code section”) may be modified without approval of a variance if the applicable code section expressly allows exceptions or modifications. If the code section does not expressly provide for exceptions or modifications, then a variance is required to modify that code section and the provisions of this chapter apply.

B. Combining Variances with Other Approvals; Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the city approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of state highway access.

C. Types of Variances. As provided in this chapter, there are three types of variances (Class A, B, or C); the type of variance required depends on the extent of the variance request and the discretion involved in the decision-making process. [Ord. 290 § 3(7.012), 2006.]

### **18.190.040 Class A variances.**

A. Applicability. The following variances are reviewed using an administrative procedure outlined in this code using the approval criteria in subsection B of this section:

1. Front Yard Setbacks. Up to a 10 percent change to the front yard setback standard in the land use district.

2. Interior Setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.

3. Lot Coverage. Up to 10 percent increase of the maximum lot coverage required in the base zone.

4. Landscape Area. Up to 10 percent reduction in landscape area (overall area or interior parking lot landscape area).

B. Approval Criteria. Class A variance requests shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;

2. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;

3. The variance will not result in violation(s) of any other adopted ordinance or code standard; each code standard to be modified shall require a separate variance request;

4. An application for a Class A variance is limited to one lot per application;

5. No more than three Class A variances may be approved for one lot or parcel in 12 months. [Ord. 304 Art. IV(5), 2008; Ord. 290 § 3(7.013), 2006.]

### **18.190.050 Class B variances.**

A. Applicability. Class B variance requests apply to the types of requests meeting the approval criteria in this section, and that conform to subsections (A)(1) through (3) of this section. Class B variances shall be reviewed using the criteria outlined in this section:

1. The Class B variance standards apply to individual platted and recorded lots only.

2. The Class B variance procedure shall not be used to modify a standard for lots yet to be created through a partition or subdivision process; such requests shall utilize the Class C variance procedure.

3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use zone.

B. Variance to Minimum Housing Density Standard. The city may approve a variance to a minimum housing density standard pursuant to Chapter 18.15 GMC after finding that the minimum housing density cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means steep topography, sensitive lands, unusual parcel configuration, or a similar constraint. The variance approved shall be the minimum variance necessary to address the specific physical constraint on the development.

C. Variance to Vehicular Access and Circulation Standards. Where vehicular access and circulation cannot be reasonably designed to conform to the transportation system plans policies, criteria or standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the city may grant a variance to the access requirements after finding all of the following:

1. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;

2. There are no other alternative access points on the street in question or from another street;

3. The access separation requirements cannot be met;

4. The request is the minimum variance required to provide adequate access;

5. The approved access or access approved with conditions will result in a safe access;

6. The visual clearance requirements pursuant to Chapter 18.95 GMC will be met;

7. Variances for street access deviations shall be subject to review and approval by the roadway authority;

8. Variances for access deviations on a Tillamook County road right-of-way shall be subject to review and approval by Tillamook County.

D. Variance to Parking and Loading Standards.

1. The city may approve variances to the minimum or maximum standards for off-street parking (quantities and dimensions of parking spaces) pursuant to Chapter 18.125 GMC upon finding all of the following:

a. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;

b. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and

c. All other code standards are met in conformance with specific land use zone and design standard requirements.

2. The city may reduce the number of required bicycle parking spaces pursuant to Chapter 18.125 GMC, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.

3. The city may allow a reduction in the amount of vehicle stacking area required for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.

4. The city may modify the loading area standards if such a reduction is deemed appropriate after analysis of the use, anticipated shipping or delivery traffic generated by the use and alternatives for loading/unloading, such as use of on- or off-street parking areas during nonbusiness hours; provided, that traffic is not impeded.

E. Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features. The city may grant a variance to the applicable setback requirements of this code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.

F. Variances to Transportation Improvement Requirements. The city may approve, approve with conditions, or deny a variance to a transportation improvement standard pursuant to the transportation system plan when the variance does not exceed 10 percent of the standard. When a variance request to the standards exceeds 10 percent, then the request shall be reviewed as a Class C variance. [Ord. 290 § 3(7.014), 2006.]

### **18.190.060 Class C variances.**

A. Applicability. Class C variance requests are those that do not conform to the previous two sections and that meet the criteria in subsections (A)(1) through (4) of this section. Class C variances shall be reviewed using the planning commission public hearings procedure.

1. The Class B variance standards apply to individual platted and recorded lots only.

2. The Class C variance procedure may be used to modify a standard for three or fewer lots, including lots yet to be created through a partition process.

3. An applicant who proposes to vary a standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure. Approval of a master planned development shall be required to vary a standard for lots yet to be created through a subdivision process, where a specific code section does not otherwise permit exceptions.

4. A variance shall not be approved that would vary “permitted uses” or “prohibited uses” outlined in the criteria of the individual land use zones.

B. Approval Process. Class C variances shall be processed using the planning commission public hearings procedure and using the approval criteria in subsection (C) of this section. In addition to the application requirements, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection (C) of this section.

C. Approval Criteria. The city shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The proposed variance will not be materially detrimental to the purposes of this code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;

2. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone);

3. The use proposed will be the same as permitted under this title and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;

4. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred as specified by the subject code standard;

5. The hardship is not self-imposed; and

6. The variance requested is the minimum variance that would alleviate the hardship. [Ord. 290 § 3(7.015), 2006.]

### **18.190.070 Variance application and appeals.**

A. Application. The variance application shall conform to the requirements of this code, as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

B. Appeals to variance decisions shall be processed in accordance with the provisions of this code. [Ord. 290 § 3(7.016), 2006.]

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## Chapter 18.195 NONCONFORMING USES

### 18.195.010 Nonconforming uses and developments – Purpose.

This chapter provides standards and procedures for nonconforming situations (i.e., existing uses or development that do not comply with the code). The standards for nonconforming uses and development are intended to provide some relief from code requirements for uses and developments that were established prior to the effective date of the ordinance codified in this chapter and do not comply with current standards. [Ord. 290 § 3(7.021), 2006.]

### 18.195.020 Nonconforming uses.

Where at the time of adoption of this code a use of land exists which would not be permitted by the regulations imposed by this code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

A. Expansion Prohibited. No such nonconforming use is enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land;

B. Location. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this code;

C. Discontinuation or Abandonment. The nonconforming use of land is not discontinued for any reason for a period of more than six months. For purposes of calculating the six-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

1. On the date when the use of land is physically vacated;

2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;

3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or

4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than six months, any subsequent use of land shall conform to the applicable standards and criteria specified by this code for the land use district in which such land is located. [Ord. 290 § 3(7.022), 2006.]

### **18.195.030 Nonconforming development.**

Where a development exists at the effective date of adoption or amendment of this code that could not be built under the terms of this code by reason of restrictions on lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot or other requirements concerning the development; and the development was lawful when constructed, the development may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

A. Alterations. No such nonconforming development may be enlarged or altered in a way that increases its nonconformity, but any development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this code or will decrease its nonconformity;

B. Destruction. Should such nonconforming development or nonconforming portion of development be destroyed by any means to an extent more than 50 percent of its current value as assessed by the Tillamook County assessor, it shall be reconstructed only in conformity with this code;

C. Roadway Access. The owner of a nonconforming access connection (i.e., street or highway access) may be required to bring the nonconforming access into conformance with this code and other applicable standards as a condition of the city or other roadway authority approving a new access connection permit, or a change in land use;

D. Relocation or Removal. Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this code. [Ord. 290 § 3(7.023), 2006.]

### **18.195.040 Lots of record.**

A. Purpose. The purpose of this section is to establish criteria and a process for determining when a lot of record exists.

B. Applicability. A lot of record is a plot of land that was not created through an approved subdivision or partition, was created and recorded before the effective date of the city's subdivision ordinance (GMC Title 17, Ordinance No. 215) on November 16, 1994, and for which the deed, or other instrument dividing the land, is recorded with Tillamook County. A lot of record shall be entitled to development of no less than one single-family dwelling and, provided all applicable code standards are met, additional land use or development may be approved.

C. Procedure. A lot of record determination shall be made by the city's planning official through a procedure outlined in this code. It shall be the property owner's responsibility to demonstrate that his or her plot of land meets the lot of record criteria in subsection B of this section. [Ord. 290 § 3(7.031 – 7.033), 2006.]

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# **Chapter 18.200 LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

## **18.200.010 Amendments – Purpose.**

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this code and the land use district map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law. [Ord. 290 § 3(9.010), 2006.]

## **18.200.020 Legislative amendments.**

Legislative amendments are policy decisions made by city council. They are reviewed by the planning commission and city council and shall conform to the Transportation Planning Rule provisions in GMC 18.200.060, as applicable. [Ord. 290 § 3(9.020), 2006.]

## **18.200.030 Quasi-judicial amendments.**

A. Applicability of Quasi-Judicial Amendments. Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial district map amendments shall follow the public hearing procedure, as governed by the zoning ordinance. The approval authority shall be as follows:

1. The planning commission shall review and recommend land use district map changes that do not involve comprehensive plan map amendments;
2. The planning commission shall make a recommendation to the city council on an application for a comprehensive plan map amendment. The city council shall decide such applications; and
3. The planning commission shall make a recommendation to the city council on a land use district change application that also involves a comprehensive plan map amendment application. The city council shall decide both applications.

B. Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. Approval of the request is consistent with the statewide planning goals;
2. Approval of the request is consistent with the comprehensive plan;

3. The property and affected area are presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided in the planning period;

4. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application; and

5. The amendment conforms to the Transportation Planning Rule provisions under GMC 18.200.060. [Ord. 290 § 3(9.030), 2006.]

#### **18.200.040 Conditions of approval for quasi-judicial amendments.**

A quasi-judicial decision may be for denial, approval, or approval with conditions; conditions shall be based on applicable regulations and factual evidence in the record. A legislative amendment may only be approved or denied. [Ord. 290 § 3(9.040), 2006.]

#### **18.200.045 Land use district map and text amendments.**

A final quasi-judicial order shall be issued after approval of the action by either the planning commission or city council. The order should include the name of the applicant, mailing address of the applicant, map and tax lots of the affected property, type of request, property's zoning, brief description of the applicant's reason for the request, review of the public meetings, hearings and notices dealing with the request, review of the adopted findings of fact, review of any conditions associated with the request and whether those conditions shall be met before the approval is effective, date the approval is effective, appeal options by affected parties, and signatures of the planning commission chair and secretary (or mayor and city recorder). [Ord. 304 Art. V(1), 2008.]

#### **18.200.050 Record of amendments.**

The city recorder shall maintain a record of amendments to the text of this code and the land use districts map in a format convenient for public use. [Ord. 290 § 3(9.050), 2006.]

#### **18.200.060 Transportation Planning Rule compliance.**

A. Review of Applications for Effect on Transportation Facilities. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060 (the Transportation Planning Rule – TPR) and the traffic impact study provisions. “Significant” means the proposal would:

1. Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors). This would occur, for example, when a proposal causes future traffic to exceed the levels associated with a “collector” street classification, requiring a change

in the classification to an “arterial” street, as identified by the city’s transportation system plan (“TSP”); or

2. Change the standards implementing a functional classification system; or

3. As measured at the end of the planning period identified in the city’s comprehensive plan, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or

4. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the city’s comprehensive plan; or

5. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the city’s comprehensive plan.

B. Amendments That Affect Transportation Facilities. Except as provided in subsection C of this section, amendments to the comprehensive plan and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the TSP. This shall be accomplished by one of the following:

1. Adopting measures that demonstrate that allowed land uses are consistent with the planned function of the transportation facility; or

2. Amending the TSP or comprehensive plan to provide transportation facilities, improvements, or services adequate to support the proposed land uses; such amendments shall include a funding plan to ensure the facility, improvement, or service will be provided by the end of the planning period; or

3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or

4. Amending the planned function, capacity or performance standards of the transportation facility; or

5. Providing other measures as a condition of development or through a development agreement or similar funding method, specifying when such measures will be provided.

C. Exceptions. Amendments to the comprehensive plan or land use regulations with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the city’s comprehensive plan, may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange area, as defined under applicable law;

2. The currently planned facilities, improvements or services are not adequate to achieve the standard;
3. Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development; and
4. The city provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility. [Ord. 304 Art. IV(6, 7), 2008; Ord. 290 § 3(9.060), 2006.]

#### **18.200.070 Limitation on reapplications.**

No application of property owner for an amendment to the text of this title or to the zoning map shall be considered by the planning commission within the one-year period immediately following a previous denial of such request, except the planning commission may permit a new application, if in the opinion of the planning commission, new evidence or a change of circumstances warrant it. [Ord. 290 § 3(9.070), 2006.]

#### **18.200.080 Change of zone for manufactured dwelling parks.**

If an application would change the zone of property which includes all or part of a manufactured dwelling park as defined by ORS 446.003, the city shall give written notice by first class mail to each existing mailing address for tenants of the manufactured dwelling park at 20 days, but not more than 40 days, before the date of the first hearing on the application. The failure of a tenant to receive notice which was mailed shall not invalidate any zone change. [Ord. 290 § 3(9.080), 2006.]

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## **Chapter 18.205 PLANNED UNIT DEVELOPMENT (PUD)**

### **18.205.010 Intent.**

This chapter is intended to provide for developments incorporating a single type or a variety of housing types and related uses that are planned and developed as a unit. Such developments may consist of individual lots as part of a larger holding or as common building sites. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long-term value of the homes and other development. It is the intent of this chapter to foster a more innovative approach to land development than is possible under the traditional lot-by-lot methods. [Ord. 290 § 3(10.010), 2006.]

### **18.205.020 Purpose.**

The purpose of this chapter is to provide a more desirable environment through the application of flexible and diversified land development standards following an overall comprehensive site development plan. [Ord. 290 § 3(10.020), 2006.]

### **18.205.030 Permitted buildings and uses.**

The following buildings and uses may be permitted either singly or in combination; provided, the overall density of the planned unit development does not exceed the density of the parent zone as provided in this title.

A. Single-family dwellings including detached, attached, or semi-attached units, row houses, atrium or patio houses, provided each has its own separate plot.

B. Duplexes and multiple-family dwellings.

C. Accessory buildings and uses.

D. Commercial uses only when supported mainly by the planned unit development and only when economic feasibility can be shown.

E. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the planned unit development is located. [Ord. 290 § 3(10.030), 2006.]

### **18.205.040 Development standards.**

A. Minimum Site Size. Planned unit developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the planning commission to be in keeping with the intent of this title.

B. Open Space. In all residential developments, or in combination residential-commercial developments, area should be devoted to open space. Of this area, 25 percent of said open space

may be utilized privately by individual owners or users of the planned unit development; however, 75 percent of this area should be common or shared open space. The planning commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 25 percent of the site.

C. Density. The density of a planned development shall not exceed the density of the parent zone, except as more restrictive regulations may be prescribed as a condition of a planned unit development permit. When calculating density, the gross area is used (total area including street dedications). Areas of public use may be included in calculating allowable density.

D. Subdivision Lot Sizes. Minimum area, width, depth, and frontage requirements for subdivision lots in a planned unit development may be less than the minimums set forth elsewhere in city ordinances; provided, that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

E. Off-Street Parking. Parking spaces shall conform to all provisions of this title, except that the planning commission may authorize exceptions where warranted by unusual circumstances.

F. Signs. All signs of any type within a planned unit development are subject to approval of the planning commission. They shall consider each sign on its merits, based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

G. Height Guidelines. The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the planning commission may allow a variance of heights where it is determined that the surrounding property will not be harmed.

H. Streets and Roads. Necessary streets and roads within the planned unit development shall be dedicated to the public and constructed to standards determined by the planning commission and city engineer.

I. Dedication and Maintenance of Facilities. The planning commission may, as a condition of approval for a planned unit development, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:

1. Recreation Facilities. The planning commission may require that suitable area for parks or playgrounds be set aside, improved, or permanently reserved for the owners, residents, employees or patrons of the planned unit development.

2. Common Area. Whenever common area is provided, the planning commission may require that an association of owners or tenants be created into a nonprofit corporation under the laws of the state of Oregon, which shall adopt such articles of incorporation.

3. Easements. Easements necessary to the orderly extension of public utilities may be required as a condition of approval.

J. Approvals. The planning commission shall submit the preliminary development plan to the fire district, city engineer, county sanitarian, power company, and other utilities which will serve the planned unit development and shall consider their recommendations in regard to approval of the proposal. [Ord. 290 § 3(10.040), 2006.]

### **18.205.050 Procedure – Preliminary development plan.**

A. The applicant shall submit four copies of the preliminary development plan to the planning commission. A fee prescribed in GMC 18.210.080 shall accompany applications. This plan and any written statements shall contain at least the following information:

1. Proposed land uses and densities.
2. Location and approximate dimensions and heights of structures.
3. Plan of open spaces or common spaces.
4. Map showing existing features of site and topography.
5. Proposed method of utilities service and drainage.
6. Road and circulation plan including off-street parking.
7. Relation of the proposed development to the surrounding area and the comprehensive plan.
8. Lot layout.
9. A schedule, if it is proposed that the final development plan will be executed in stages.

B. The commission shall consider the preliminary development plan at a public hearing, at which time they shall determine whether the proposal conforms to city ordinances. In addition, in considering the plan, the commission shall seek to determine that:

1. There are special physical conditions or objectives of development that the proposal will satisfy to warrant a departure from the standard ordinance requirements.
2. Resulting development will not be inconsistent with the comprehensive plan provisions or zoning objectives of the area.
3. The proposed development will be substantially in harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes or wildlife habitats.
4. The plan can be completed within a reasonable period of time.

5. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.

6. Proposed utility and drainage facilities are adequate for the populations densities and type of development proposed.

C. The planning commission shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision. Commission action can be appealed to the city council pursuant to GMC 18.210.060.

D. Following this hearing, the applicant may proceed with his request for approval of the planned development. [Ord. 290 § 3(10.050), 2006.]

### **18.205.060 Procedure – Final approval.**

A. Within one year after preliminary plan approval or modified approval of a preliminary development plan, the applicant shall file a final plan for the entire development or, when submission in stages has been authorized, for the first unit of the planned unit development, with the planning commission. The final plan shall conform in all respects with the approved preliminary development plan. The final plan shall include all information included in the preliminary plan, plus the following:

1. Contour map showing at least eight-foot intervals.
2. Grading plan showing future contours if existing grade is to be changed more than eight feet.
3. Existing and proposed utility lines.
4. Preliminary subdivision plan if property is to be subdivided.
5. Location and dimensions of pedestrian way, roads, malls, common open space, recreation area and parks.
6. Location, dimensions, and arrangement of off-street parking including width of aisles, spaces, and other design criteria.
7. Preliminary planting and landscaping plan.
8. Preliminary architectural plans and elevations of typical structures.
9. The applicant shall also submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the planned unit development be followed.

B. Upon receipt of the final development plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it

conforms in all substantial respects to the previously approved preliminary development plan, or requires such changes in the proposed development or imposes such conditions of approval as are, in its judgment, necessary to ensure conformity to the applicable criteria and standards. In so doing, the planning commission may permit the applicant to revise the plan and resubmit it as a final development plan within 30 days.

C. After final approval by the planning commission, the planned unit development application will be considered approved unless appealed to the city council pursuant to GMC 18.210.060. [Ord. 290 § 3(10.060), 2006.]

### **18.205.070 Mapping.**

An approved planned unit development shall be identified on the zoning map with the letters “PUD” in addition to the abbreviated designation of the parent zone. [Ord. 290 § 3(10.070), 2006.]

### **18.205.080 Adherence to approved plan and modification thereof.**

A. Building permits in a planned unit development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the planning commission for processing as an amendment to this title.

B. A performance bond may be required, in an amount to be determined by the planning commission, to ensure that a development proposal is completed as approved and within the time limits agreed to.

C. The developer shall show to the satisfaction of the planning commission that the proposal will be carried out in such a way that no significant damage will be done to the lakes, streams, beaches or wetlands in the city. Special attention will be paid to the impact of the planned unit development on slide-prone hillsides to ensure that damage will not be caused to surrounding property. [Ord. 290 § 3(10.080), 2006.]

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## **Chapter 18.210 ADMINISTRATIVE PROVISIONS**

### **18.210.010 Application information and procedures.**

A. An application for a permit or zone change provided for in this title shall consist of:

1. A completed application form.
2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.

B. If the application is complete when first submitted, or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

C. If an application for a permit or zone change is incomplete, the city shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete upon receipt of additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete on the thirty-first day after the governing body first received the application.

D. All documents or evidence provided by the applicant shall be submitted to the city and be made available to the public at the time the notice of public hearing required by GMC 18.210.020 is provided.

E. Where a proposed development requires more than one permit, or zone change request from the city, the applicant may request that the city consider all necessary permit and zone change requests in a consolidated manner. If the applicant requests that the city consolidate its review of the development proposal, all necessary public hearings before the planning commission shall be held on the same date. [Ord. 290 § 3(11.010), 2006.]

### **18.210.020 Notice of public hearing.**

A. Notice of a public hearing shall be reasonably calculated to give actual notice and shall contain the following information:

1. The name of the applicant.
2. The date, time, place of hearing and who is holding the public hearing.
3. A description reasonably calculated to inform a person of the location of the property for which a permit or other action is pending, including the street address, and the subdivision lot

and block designation, or tax map designation of the county assessor. This is not required for legislative actions under this title.

4. A concise description of the proposed development action.
5. A description, in general terms, of the applicable criteria from this title and comprehensive plan known to apply to the issue.
6. A statement that failure of an issue to be raised in a hearing, in person or by letter, or a failure to provide sufficient specificity to afford decision makers an opportunity to respond to the issue precludes an appeal based on that issue.
7. A statement describing where the complete application, criteria and other relevant information is available for review.
8. The name and phone number of a local government representative to contact for more information.
9. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost, and that copies can be provided at reasonable cost.
10. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and that copies can be provided at reasonable cost.
11. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

#### B. Mailed Notice.

1. Mailed notice shall be sent to property owners with the following distances from the exterior boundary of the subject property:
  - a. Legislative change to this title: none.
  - b. Quasi-judicial change to this title: 200 feet.
  - c. Conditional use: 200 feet.
  - d. Variance request: 100 feet.
  - e. Appeal of a planning commission decision: same as for the initial hearing (e.g., variance: 100 feet).
2. Mailed notice shall be sent to the applicant.

3. Addresses for a mailed notice required by this title shall be obtained from the county assessor's real property tax records. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this title for notice.

In addition for persons to receive notice as required by the matter under consideration, the city shall provide notice to others it has reason to believe are affected or otherwise represent an interest that may be affected by the proposed action.

4. Notice shall be sent to ODOT and other affected agencies for the following: all public hearings, subdivisions and partitions and any land use application affecting public or private access to a state facility.

C. Published Notice. Notice shall be given for the proposed actions described below by publication in a newspaper of general circulation of the city of Garibaldi:

1. Legislative change to this title.
2. Quasi-judicial change to this title.
3. Conditional use.
4. Variance.
5. Appeal of a planning commission decision.

D. Notice shall be mailed or published not less than 20 days prior to the hearing requiring the notice. [Ord. 290 § 3(11.020), 2006.]

### **18.210.030 Date of public hearing.**

The planning commission shall hold a public hearing within 60 days of the filing of a complete application unless the applicant grants an extension. [Ord. 290 § 3(11.030), 2006.]

### **18.210.040 Availability of staff reports.**

Any staff report to be used at a public hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. This continuance period shall not be counted as part of the 120-day time limit in GMC 18.210.070. [Ord. 290 § 3(11.035), 2006.]

### **18.210.050 Public hearing procedure and requirements.**

A. Public hearings conducted under this title shall follow the procedures and requirements of this section.

B. Procedural Entitlements. The following procedural entitlements shall be provided at the public hearings:

1. An impartial review as free from potential conflicts of interest and prehearing ex parte contact as is reasonably possible:

a. No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

i. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

ii. The member owns property within the area entitled to receive notice of the public hearing.

iii. The member has a direct private interest in the proposal.

iv. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

b. Disqualifications due to a conflict of interest or personal bias may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motions.

c. Hearing body members shall reveal any prehearing or ex parte contacts with regard to any matter at the commencement of the first public hearing following the prehearing or ex parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations. Disqualifications due to ex parte contact may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

d. A party to a hearing may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion.

e. A party to a hearing may rebut the substance of the communication that formed the basis for an ex parte contact declared by a member of the hearing body.

f. No officer or employee of the city who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest.

2. A reasonable opportunity for those persons potentially affected by the proposal to present evidence.

3. A reasonable opportunity for rebuttal of new material.

#### C. Rights of Disqualified Member of the Hearing Body.

1. An abstaining or disqualified member of the hearing body may be counted for the purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

2. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

D. Burden and Nature of Proof. Except for a determination, the burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this title, especially the specific criteria set forth for the particular type of decision under consideration.

E. Nature of Proceedings. An order of proceeding for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate:

1. Before receiving information on the issue, the following shall be addressed:

a. Any objections on jurisdictional grounds shall be noted in the record and, if there is an objection, the person presiding has the discretion to proceed or terminate.

b. Any abstentions or disqualifications shall be determined, based on conflict of interest, personal bias, or ex parte contacts.

c. A statement by the person presiding that:

i. Describes the applicable substantive criteria against which the application will be reviewed.

ii. Testimony at the hearing must be directed towards the criteria which will be used to review the land use action, or other criteria in the plan or land use regulations which a party believes to apply to the land use action.

iii. Failure to raise an issue or address criteria with sufficient specificity to afford the decision makers and the parties to the hearing an opportunity to respond to the issue precludes an appeal based on that issue or criteria.

iv. Describes the review and appeal process provided for by this title.

## 2. Presentation and Evidence.

a. The presiding officer shall preserve order at the public hearing and shall decide questions of order subject to a majority vote.

b. The presiding officer may set reasonable time limits for oral presentations. The presiding officer may determine not to receive cumulative, repetitive, immaterial or derogatory testimony.

c. Evidence shall be received from the staff and from proponents and opponents.

i. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Erroneous evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party to the hearing.

ii. Members of the hearing body may take official notice of judicially cognizable facts of a general or technical nature within their specialized knowledge. Such notice shall be stated and may be rebutted.

iii. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.

d. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decided may be interested in the proposal being considered. The time and date when the hearing is to resume shall be announced.

e. The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner and circumstances of such view in the record.

f. When the hearing has been closed, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff, if opportunity for rebuttal is provided. No testimony shall be accepted after the close of the public hearing unless the hearing body provides an opportunity for review and rebuttal of that testimony.

g. At the conclusion of the public hearing, a participant in the public hearing may request that the record remain open for at least seven days for the purpose of submitting additional evidence. Whenever the record is supplemented in this manner, any person may raise new issues that relate to the new evidence, testimony or criteria for decision making that applies to the matter at issue. This extension of time shall not be counted as part of the 120-day limit in GMC [18.210.070](#).

F. Decision. Following the procedure described in subsections A through E of this section, the hearing body shall approve, approve with conditions or deny the application, or, if the hearing is in the nature of an appeal, affirm, affirm with modifications or additional conditions, reverse or remand the decision that is on appeal.

1. The decision of the hearing body shall be by a written order signed by the chair or his designee.

2. The order shall incorporate findings of fact and conclusions that include:

a. A statement of the applicable criteria and standards against which the proposal was tested.

b. A statement of the facts which the hearing body relied upon in establishing compliance or noncompliance with each applicable criteria or standard, briefly stating how those facts support the decision.

c. In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.

3. The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.

G. Record of Proceedings. The secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded stenographically or electronically.

1. Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.

2. The hearing body shall, where practicable, retain as part of the hearing records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.

3. The finding shall be included in the record.

4. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

H. Notice of Decision. Notice of a decision by a hearing body shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of the decision shall include:

1. A brief description of the decision reached.
2. A statement that the decision may be appealed by filing, with the city, an appeal within 10 calendar days of the date that the final order was signed.
3. A description of the requirements for an appeal.
4. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing.
5. A statement that the complete case including the final order is available for review at the city. [Ord. 290 § 3(11.040), 2006.]

### **18.210.060 Request for review of a decision (appeals).**

A. A decision of a city administrative officer regarding a requirement of this title may be appealed to the planning commission by an affected party by filing an appeal with the city recorder within 10 days of the notice of decision. The notice of appeal that is filed with the city shall indicate the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this title.

B. A decision of the planning commission may be appealed to the city council by a party to the hearing by filing an appeal within 10 days of the date the final notice is signed. The notice of appeal filed with the city shall contain the information outlined in subsection C of this section.

C. Request for Appeal of a Planning Commission Decision. An appeal of a planning commission decision shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.
2. A statement of the interest of the person seeking review and that he was a party to the initial proceedings.
3. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the planning commission hearing.

D. Scope of Review. The reviewing body may determine, as a nonpublic hearing item, that the scope of review, on appeal, will be one of the following:

1. Restricted to the record made on the decision being appealed;
2. Limited to the admission of additional evidence on such issues as the reviewing body determines for a proper resolution of the matter;
3. Remand the matter to the hearing body for additional consideration;

4. A de novo hearing on the merits.

E. Review on the Record.

1. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include the following:

- a. A factual report prepared by the city recorder;
- b. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review;
- c. The final order and findings of fact adopted in support of the decision being appealed;
- d. The request for an appeal filed by the appellant;
- e. The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.

2. All parties to the initial hearing shall receive a notice of the proposed review of the record. The notice shall indicate the date, time and place of the review and the issue(s) that are the subject of the review.

3. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.

4. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.

5. The appellant shall bear the burden of proof.

F. Review Consisting of Additional Evidence or De Novo Review.

1. The reviewing body may hear the entire matter de novo, or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:

- a. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or
- b. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and
- c. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

2. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance of GMC 18.210.050.

3. All testimony, evidence and other material from the record of the previous consideration shall be included in the record of review. [Ord. 290 § 3(11.050), 2006.]

### **18.210.070 Final action on application for permit or zone change request.**

The city shall take final action on an application for a permit or zone change within 120 days of the receipt of a complete application. The 120-day period does not apply to an amendment to the comprehensive plan or zoning ordinance, or the adoption of a new land use regulation. At the request of the applicant, the 120-day period may be extended for a reasonable period of time. [Ord. 290 § 3(11.060), 2006.]

### **18.210.080 Filing fees.**

Filing fees shall be established by resolution of the city council. It shall be the responsibility of the applicant to pay for the full cost of processing permit applications, and shall be paid to the city upon the filing of an application. Such fees shall not be refundable. The applicant shall be billed for costs incurred over and above the minimum permit fee at the conclusion of the city action on the permit request. In no case shall the actual cost of the amendment, appeal, or permit exceed the cost to the city. Such fees shall not include the cost of preparing transcripts for appeals. [Ord. 290 § 3(11.070), 2006.]

### **18.210.090 Building permits.**

A. No permit shall be issued by the building official for the construction, reconstruction, alteration or change of use for a structure or lot that does not conform to the requirements of this title.

B. Building permits are required for any change, alteration or addition that affects the foundation, roofline, area of structure or enclosure of porches, decks, patios or carports. Building permits are required for any alteration, modification or repair to a structure that is open to the general public.

C. No building permit shall be issued for any new construction or any alteration or addition to an existing structure that approaches any lot line unless an official survey accompanies the application for a building permit. The survey shall also show the elevation of the building site in areas that are located within flood hazard areas as defined by FEMA.

D. Construction on property for which a permit has been issued must be started within 120 days from the date of issue. Construction must not be abandoned for over 120 days, or a new permit must be obtained at one-half the original fee. Building permits may be renewed only once.

E. If manufactured dwellings, recreational vehicles, or other temporary structures are used during construction, water and sewer facilities must be installed within 30 days.

F. Premises may not be occupied unless furnished with sewer and water facilities.

G. The building permit shall be on forms prescribed by the city. [Ord. 290 § 3(11.080), 2006.]

### **18.210.100 Authorization of similar uses.**

The planning commission may permit, in a particular zone, a use not listed in this title, provided the use is of the same general type as the uses permitted there by this title. However, this section does not authorize the inclusion in a zone, where it is not listed, of a use specifically listed in another zone. [Ord. 290 § 3(11.090), 2006.]

### **18.210.110 Traffic impact study.**

A. Purpose. The purpose of this section is to implement Section 660-012-0045(2)(e) of the State Transportation Planning Rule that requires the city to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This section establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a traffic impact study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a traffic impact study; and who is qualified to prepare the study.

B. Typical Average Daily Trips. Standards by which to gauge average daily vehicle trips include: 10 trips per day per single-family household, five trips per day per apartment; and 30 trips per day per 1,000 square feet of gross floor area such as a new supermarket or other retail development.

C. When Required. A traffic impact study may be required to be submitted to the city and ODOT with a land use application when the following conditions apply:

1. The development application involves one or more of the following actions:

a. A change in zoning or a plan amendment designation;

b. Any proposed development or land use action that ODOT states may have operational or safety concerns along a state highway;

c. The development shall cause one or more of the following effects, which can be determined by field counts, site observation, traffic impact analysis or study, field measurements, crash history, Institute of Transportation Engineers Trip Generation Manual, and information and studies provided by the local reviewing jurisdiction and/or ODOT:

i. An increase in site traffic volume generation by 150 average daily trips (ADT) or more; or

ii. An increase in ADT hour volume of a particular movement to and from the state highway by 20 percent or more; or

- iii. An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day; or
  - iv. The location of the access driveway does not meet minimum site distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the state highway, creating a safety hazard; or
  - v. A change in internal traffic patterns that may cause safety problems, such as backup onto the highway or traffic crashes in the approach area.
2. As requested by the planning commission, acting on the recommendation of city staff.

#### D. Traffic Impact Study Requirements.

1. Preparation. A traffic impact study shall be prepared by a professional engineer in accordance with OAR 734-051-180.
2. Review of Plan and Land Use Regulation Amendments for Effect on Transportation Facilities. Where and when required, a traffic impact study shall review a proposed plan or land use regulation amendment for its effect upon transportation facilities, pursuant to GMC 18.200.060.

#### E. Approval Criteria.

1. Criteria. When a traffic impact study is required, approval of the development proposal requires satisfaction of the following criteria:
- a. The traffic impact study was prepared by a professional engineer in accordance with OAR 734-051-180; and
  - b. If the proposed development shall cause one or more of the effects in subsection (C)(1)(c) of this section, or other traffic hazard or negative impact to a transportation facility, the traffic impact study shall include mitigation measures satisfactory to the city of Garibaldi, and ODOT when applicable; and
  - c. The proposed site design and traffic and circulation design and facilities, for all transportation modes, including any mitigation measures, are designed to:
    - i. Have the least negative impact on all applicable transportation facilities; and
    - ii. Accommodate and encourage non-motor vehicular modes of transportation to the extent practicable; and
    - iii. Make the most efficient use of land and public facilities as practicable; and
    - iv. Provide the most direct, safe and convenient routes practicable between on-site destinations, and between on-site and off-site destinations; and

v. Comply with the performance standards as described in the TSP and/or the Oregon Highway Plan (whichever is applicable); and

vi. Otherwise comply with applicable requirements of this title and subdivision and land partitioning procedures.

2. Conditions of Approval. The city may deny, approve, or approve the proposal with appropriate conditions. [Ord. 290 § 3(11.095), 2006.]

### **18.210.120 Interpretation.**

Where a provision of this title is less restrictive than another ordinance or requirement of the city, the provision or requirements which are less restrictive shall govern. [Ord. 290 § 3(11.100), 2006.]

### **18.210.125 Applicability.**

No use may be established or authorized under this title for an activity or purpose prohibited by, or in violation of, state or federal law. [Ord. 319 § 24, 2013.]

### **18.210.130 Severability.**

The provisions of this title are severable. If a section, sentence, clause or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this title. [Ord. 290 § 3(11.110), 2006.]

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## **Chapter 18.215 REMEDIES**

### **18.215.010 Penalty.**

A violation of any provision of this title shall, upon conviction, be considered a violation, punishable by a fine not to exceed \$250.00. A violation of this title shall be considered a separate offense for each day the violation continues. [Ord. 290 § 3(12.010), 2006.]

### **18.215.020 Alternative remedy.**

In case a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land in violation shall constitute a nuisance, and the city may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration or use. [Ord. 290 § 3(12.020), 2006.]

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