

Article 4 – Administration of Land Use and Development

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Background: Article 4 contains procedures for the most common types of land use and development plan approvals (listed above). (Variances and non-conforming situations are addressed in Article 5.) The model code addresses minimum requirements under state statutes for public notice, the conduct of land use hearings, land use decision making, time limits, and appeals; however, much of the code language is not *mandatory*, rather, it is recommended. The model code provides step-by-step directions and clear approval criteria so city's with limited planning staff and volunteer decision makers can rely on it for most any type of project review.

The model code also encourages streamlined reviews for relatively simple proposals when decision making involves little or no discretion. Cities may need to update their land use application forms or create other administrative documents, such as application checklists (i.e., for completeness or 120-day scheduling) or other information handouts, for the public. For example, the model code recommends mandatory pre-application meetings between developers and city staff, and it suggests developers coordinate with neighbors on major projects such as subdivisions and zone changes. While the code is intended to be easy to understand and use, property owners may find it difficult to wade through the code and find these provisions due to its length. Forms and brochures used by other cities, many of which are available on-line, can serve as good examples. The League of Oregon Cities (www.orecities.org) also offers support and library collections to members.

Cities will also need to determine who within city government is responsible for administering new code procedures. The model code provides placeholders for designating a "planning official," which in many smaller cities is either the city recorder, city manager, or a department head. If a city contracts with another agency or a private firm for planning services, the code should still designate a city employee as the responsible official. The code can be modified to allow this individual to delegate decision making (i.e., to "his or her designee") for relatively minor actions.

Chapter 4.1 Types of Review Procedures

Sections:

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4.1.100 Purpose and Applicability of Review Procedures

Background: Section 4.1.100 (Table 4.1.100, specifically) is the one-stop-shop for determining the review procedure that applies to any given application. In general the model code procedures are designed to make it easier to process relatively simple land use requests, while ensuring due process and greater opportunities for citizen involvement and input on more complex, discretionary decisions.

Where the table indicates a choice (e.g., between Type II or Type III), cities should consider whether they want or need to require a public hearing for minor discretionary decisions (e.g., partitions, and code interpretations). Alternatively, they can review minor applications through an administrative staff (Type II) review, as long as they provide the required public notification and an opportunity for affected parties to request a (Type III) hearing or appeal the decision.

Cities should have a system for tracking land use permit applications, in part, to ensure that required timelines for public notice, hearings, and appeals are satisfied. For example, the actual time it takes to process a Type III application, from beginning to end, may be less than a Type II application that is referred to a Type III hearing. In some situations, the extra step can cause the city to exceed the 120-day time limit for final land use decisions. Therefore, cities should have the option of referring a potentially controversial Type II request to a hearing (many developers will actually prefer this route). Cities should also keep on hand 120-day Waiver forms and ask applicants to sign these forms if it appears their application review may exceed statutory time limits.

Statutes and Regulations: Section 4.1.100 addresses the following statutes and regulations: ORS 197.195 (Limited Land Use Decisions), ORS 197.610(1) and (2) (45-day Notice to DLCD for Regulatory Changes and Comprehensive Plan Amendments), ORS 197.763 (Conduct of Quasi-Judicial Land Use Hearings), and ORS 227.160 – 227.187 (Planning and Zoning Hearings and Review Procedures and Rules); specifically, ORS 227.178 (120-day Rule for Final Land Use Decisions), and ORS 227.186 (Measure 56 Notice, also known as notice to property owners that pending land use regulatory change may affect property value).

HB 2219, effective January 2004, requires notification to ODOT and railroads for land use actions in which a railroad-highway crossing provides or will provide the only access to a property. Applicants are required to indicate that fact in the application submitted to the decision maker. In addition, ODOT Rail Division generally wants to review all land use actions within 500 feet of a rail line. See also OAR 741 regarding rules and regulations related to railroads.

Legal Issues: Cities will need to refer to current law in determining whether Final Plat reviews are subject to a Type I or Type II procedure because, at the time of publication of the model code, legislation that could amend ORS 197.195 was pending. At the time of publication *Hammer v. Clackamas County*, 190 App 473 (2003) required Type II review of final plats.

A. Purpose. The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 4.1.100 provides a key for determining the review procedure and the decision-making body for particular approvals.

B. Applicability of Review Procedures. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures: Type I, II, III, and IV. These procedures are described in subsections 1-4 below. Table 4.1.100 lists all of the City’s land use and development approvals and their required review procedure(s).

1. Type I Procedure (Administrative). Type I decisions are made by the City Planning Official, or someone he or she officially designates, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying City standards and criteria requires no use of discretion;
2. Type II Procedure (Administrative). Type II decisions are made by the City Planning Official or designee with public notice, and an opportunity for a public hearing if appealed. The appeal of a Type II decision is heard by the Planning Commission;
3. Type III Procedure (Quasi-Judicial). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.
4. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts, not just one property). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

Table 4.1.100
Summary of Approvals by Type of Review Procedure

Approvals*	Review Procedures	Applicable Regulations
Access Permit (public street)	Type I	Chapters 3.1, 4.2, 4.3; Engineering Standards
Building Permit	N/A	Building Code
Code Interpretation	Type [II/III]	Chapter 4.8
Code Amendment	Type IV	Chapter 4.7
Comprehensive Plan Amendment	Type IV	Comprehensive Plan
Conditional Use Permit	Type III	Chapter 4.4
Flood Plain Development Permit	Type I	Building Code
Home Occupation exceeding the criteria in Section 2.2.200	Type [III]	Chapter 4.9
Master Planned Development	Type III	Chapter 4.5
Modification to Approval	Type II/III (minor or major)	Chapter 4.6
Land Use District Map Change Quasi-Judicial (no plan amendment required) Legislative (plan amendment)	Type III Type IV	Chapter 4.7 Chapter 4.7
Property Line Adjustments and Lot Consolidations	Type I	Chapter 4.3
Lot of Record Determination	Type I	Chapter 5.3
Non-Conforming Use or Development Confirmation	Type I	Chapter 5.2
Partition	Type II	Chapter 4.3
<i>[Sensitive Lands Development]</i>	<i>[Type III]</i>	<i>[Chapter 3.7]</i>
Sign Permit	Type I	Chapter 3.8
Land Use Review	Type I	Chapter 4.2, Building Code
Site Design Review	Type III	Chapter 4.2
Subdivision Preliminary Plan Final Plat	Type III Type [I/II]	Chapter 4.3
Temporary Use Permit	Type II/III	Chapter 4.9
Tree Removal	Type I/II	Chapter 3.7, Chapter 3.2
Variance		
Class A	Type I	Chapter 5.1
Class B	Type II	Chapter 5.1
Class C	Type III	Chapter 5.1

* The applicant may be required to obtain approvals from other agencies, such as a road authority some types of approvals. The City notifies agencies of applications that may affect their facilities or services.

4.1.200 Type I Procedure (Administrative).

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the City Planning Official or designee.
2. Application Requirements. Type I applications shall:
 - a. Include the information requested on the application form;
 - b. Address the criteria in sufficient detail for review and action; and
 - c. Be filed with the required fee.

B. Administrative Decision Requirements. The City Planning Official or designee's decision shall address all of the approval criteria, including applicable requirements of any road authority. Based on the criteria and the facts contained within the record, the City Planning Official shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

C. Final Decision. A Type I decision is the final decision of the City. It cannot be appealed to City officials.

D. Effective Date. A Type I decision is final on the date it is made.

4.1.300 Type II Procedure (Administrative).

A. Pre-application Conference. A pre-application conference is required for Type II reviews. Pre-application conference requirements and procedures are in Section 4.1.600.

B. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the City Planning Official or designee.
2. Submittal Information. The application shall:
 - a. Include the information requested on the application form;
 - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 4.2 (Land Use Review), 4.3 (Land Divisions), 4.6 (Modifications), 4.8 (Code Interpretations), and 4.9 (Miscellaneous Permits);
 - c. Be accompanied by the required fee; and

C. Notice of Application for Type II Administrative Decision.

1. Before making a Type II Administrative Decision, the City Planning Official or designee shall mail notice to:
 - a. All owners of record of real property within a minimum of 100 feet of the subject site;
 - b. All City-recognized neighborhood groups or associations whose boundaries include the site;
 - c. Any person who submits a written request to receive a notice; and
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
2. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application before

the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process.

3. Notice of a pending Type II Administrative Decision shall:
 - a. Provide a 14-day period for submitting written comments before a decision is made on the permit;
 - b. List the relevant approval criteria by name and number of code sections;
 - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
 - d. Include the name and telephone number of a contact person regarding the Administrative Decision;
 - e. Describe proposal and identify the specific permits or approvals requested;
 - f. Describe the street address or other easily understandable reference to the location of the site;
 - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
 - h. State that all evidence relied upon by the City Planning Official or designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
 - i. State that after the comment period closes, the City Planning Official or designee shall issue a Type II Administrative Decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
 - j. Contain the following notice: “Notice to mortgagee, lien holder, vendor, or seller: The City of *[name]* Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

D. Administrative Decision Requirements. The City Planning Official or designee shall make a Type II written decision addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the City Planning Official or designee shall approve, approve with conditions, or deny the requested permit or action. *[Alternatively, the City Planning Official, and/or the applicant, may refer the application to the [Hearings*

Officer/Planning Commission] for review in a public hearing, in which case the review shall follow the Type III procedures in Section 4.1.400.]

Note: If the City provides the option of referring the application to a public hearing, the City may want to require parties requesting a hearing to pay a fee covering the additional costs associated with the Type III review.

E. Notice of Decision.

1. Within five days after the City Planning Official or designee signs the decision, a Notice of Decision shall be sent by mail to:
 - a. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
 - b. Any person who submits a written request to receive notice, or provides comments during the application-review period;
 - c. Any City-recognized neighborhood group or association whose boundaries include the site; and
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.
2. The City Planning Official or designee shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
3. The Type II Notice of Decision shall contain:
 - a. A description of the applicant’s proposal and the City’s decision on the proposal (i.e., may be a summary);
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
 - c. A statement of where the City’s decision can be obtained;
 - d. The date the decision shall become final, unless appealed;
 - e. A statement that all persons entitled to notice may appeal the decision; and
 - f. A statement briefly explaining how to file an appeal, the deadline for filing an appeal, and where to obtain further information concerning the appeal process.

F. Final Decision and Effective Date. A Type II administrative decision is final for purposes of appeal, when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

G. Appeal. A Type II administrative decision may be appealed to the Planning Commission as follows:

1. Who may appeal. The following people have legal standing to appeal a Type II Administrative Decision:
 - a. The applicant or owner of the subject property;
 - b. Any person who was entitled to written notice of the Type II administrative decision;
 - c. Any other person who participated in the proceeding by submitting written comments.
2. Appeal filing procedure.
 - a. *Notice of appeal.* Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures;
 - b. *Time for filing.* A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
 - c. *Content of notice of appeal.* The Notice of Appeal shall contain:
 - (1) An identification of the decision being appealed, including the date of the decision;
 - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - (3) A statement explaining the specific issues being raised on appeal;
 - (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - (5) Filing fee.
3. Scope of appeal. The appeal of a Type II Administrative Decision by a person

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with standing shall be a hearing *de novo* before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Type II administrative review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

4. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type II Administrative Appeals, as provided in Sections 4.1.400.C - E;
5. Further Appeal to City Council. The decision of the Planning Commission regarding an appeal of a Type II Administrative Decision is the final decision of the City unless appealed to City Council. An appeal to City Council shall follow the same notification and hearing procedures as for the Planning Commission hearing. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

4.1.400 Type III Procedure (Quasi-Judicial).

A. Pre-application Conference. A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section 4.1.600.C.

B. Application Requirements.

1. Application forms. Type III applications shall be made on forms provided by the City Planning Official or designee; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
2. Submittal Information. When a Type III application is required, it shall:
 - a. Include the information requested on the application form;
 - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 4.2 (Land Use Review), 4.3 (Land Divisions), 4.6 (Modifications), 4.8 (Code Interpretations), and 4.9 (Miscellaneous Permits);
 - c. Be accompanied by the required fee; and
 - d. Include one set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application as required in Section 4.1.400.C. The records of the [name] County Assessor's Office are the official records for determining ownership. The applicant shall produce the notice list. At the applicant's request, and upon payment of a fee noted on the City's fee list, the City shall prepare the public notice mailing list. The City or the applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of application.

C. Notice of Hearing.

1. Mailed notice. The City shall mail the notice of the Type III action. The records of the [name] County Assessor's Office are the official records for determining ownership. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:
 - a. At least 20 days before the hearing date, notice shall be mailed to:

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- (1) The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
 - (2) All property owners of record within 100 feet of the site;
 - (3) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
 - (4) Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
 - (5) Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
 - (6) Any person who submits a written request to receive notice;
 - (7) For appeals, the appellant and all persons who provided testimony in the original decision; and
 - (8) For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
- b. The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
 - c. At least 14 business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
2. Content of Notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:
 - a. The nature of the application and the proposed land use or uses that could be authorized for the property;

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- b. The applicable criteria and standards from the development code(s) that apply to the application;
- c. The street address or other easily understood geographical reference to the subject property;
- d. The date, time, and location of the public hearing;
- e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
- f. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
- g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at *[name]* City Hall at no cost and that copies shall be provided at a reasonable cost;
- h. A statement that a copy of the City’s staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- I. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
- j. The following notice: “Notice to mortgagee, lien holder, vendor, or seller: The City of *[name]* Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

D. Conduct of the Public Hearing.

- 1. At the commencement of the hearing, the hearings body shall state to those in attendance:
 - a. The applicable approval criteria and standards that apply to the application or appeal;
 - b. A statement that testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;

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- c. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue;
 - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a “continuance”) per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.
2. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
 3. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.
 - a. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
 - b. An extension of the hearing or record granted pursuant to Section 4.1.400.D is subject to the limitations of ORS 227.178 (“120-day rule”), unless the continuance or extension is requested or agreed to by the applicant;
 - c. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant’s final submittal shall be part of the record but shall not include any new evidence;
 - d. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
 - e. In making its decision, the hearings body may take notice of facts not in the

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hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;

- f. The review authority shall retain custody of the record until the City issues a final decision.
4. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing *ex parte* contacts (see Section 4.1.400.D (6) below) as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
 - a. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing *ex parte* contacts (as defined in Section 4.1.400.D(5) below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
 - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
 - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
 - d. If a member of the hearings body abstains or is disqualified, the City shall provide a substitute in a timely manner subject to the impartiality rules in Sections 4.1.400.D(4) through (5). In this case, a member of the City Council appointed by [*the Mayor/a majority vote of the City Council*] may substitute for a member of the Planning Commission.
 - e. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;

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- f. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.
5. Ex parte communications.
- a. Members of the hearings body shall not:
 - (1) Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per Section C above;
 - (2) Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
 - b. No decision or action of the hearings body shall be invalid due to *ex parte* contacts or bias resulting from *ex parte* contacts, if the person receiving contact:
 - (1) Places in the record the substance of any written or oral *ex parte* communications concerning the decision or action; and
 - (2) Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
 - c. A communication between City staff and the hearings body is not considered an *ex parte* contact.
6. Presenting and receiving evidence.
- a. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section 4.1.400.D;
 - c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their

decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

E. The Decision Process.

1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection 2, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten business days after the close of the deliberation;
5. Notice of Decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
6. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.

4.1.500 Type IV Procedure (Legislative).

A. Pre-Application Conference. A pre-application conference is required for all Type IV applications initiated by a party other than the City of *[name]*. The requirements and procedures for a pre-application conference are described in Section 4.1.600.C.

B. Timing of Requests. The City accepts legislative requests twice yearly, on *[date]* and *[date]*. The City Council may initiate its own legislative proposals at any time.

C. Application Requirements.

1. Application forms. Type IV applications shall be made on forms provided by the City Planning Official or designee.
2. Submittal Information. The application shall contain:
 - a. The information requested on the application form;
 - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. The required fee; and
 - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

D. Notice of Hearing.

1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications, except annexations where only a hearing by the City Council is required.
2. Notification requirements. Notice of public hearings for the request shall be given by the City Planning Official or designee in the following manner:
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - (1) Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment);

- (2) Any affected governmental agency;
 - (3) Any person who requests notice in writing;
 - (4) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;
 - (5) Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.
- b. At least 10 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
 - c. The City Planning Official or designee shall:
 - (1) For each mailing of notice, file an affidavit of mailing in the record as provided by subsection a; and
 - (2) For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b.
 - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD Certificate of Mailing.
 - e. Notifications for annexation shall follow the provisions of this Chapter.
3. Content of notices. The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of the City Planning Official or designee's office where additional information about the application can be obtained;
 - b. The proposed site location;
 - c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;
 - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing

will be held under this title and rules of procedure adopted by the Council and available at City Hall (See Section 4.1.500.E); and

- e. Each mailed notice required by Section 4.1.500.D shall contain the following statement: “Notice to mortgagee, lien holder, vendor, or seller: The *[name]* Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”
4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:
- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
 - b. Published notice is deemed given on the date it is published.

E. Hearing Process and Procedure.

1. Unless otherwise provided in the rules of procedure adopted by the City Council:
- a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
 - (1) Regulate the course, sequence, and decorum of the hearing;
 - (2) Direct procedural requirements or similar matters; and
 - (3) Impose reasonable time limits for oral presentations.
 - b. No person shall address the Commission or the Council without:
 - (1) Receiving recognition from the presiding officer; and
 - (2) Stating their full name and address.
 - c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council shall conduct the hearing as follows:
- a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary

of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council;

- b. The City Planning Official or designee’s report and other applicable staff reports shall be presented;
 - c. The public shall be invited to testify;
 - d. The public hearing may be continued to allow additional testimony or it may be closed; and
 - e. The body’s deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.
- F. Continuation of the Public Hearing.** The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.
- G. Decision-Making Criteria.** The recommendation by the Planning Commission and the decision by the City Council shall be based on the following factors:
1. Approval of the request is consistent with the Statewide Planning Goals;
 2. Approval of the request is consistent with the Comprehensive Plan; and
 3. The property and affected area is 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 concurrently with the development of the property.
- H. Approval Process and Authority.**
1. The Planning Commission shall:
 - a. After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
 - b. Within 14 business days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the City Planning Official or designee.
 2. Any member of the Planning Commission who votes in opposition to the Planning Commission’s majority recommendation may file a written statement of opposition with the City Planning Official or designee before the Council public

- hearing on the proposal. The City Planning Official or designee shall send a copy to each Council member and place a copy in the record;
3. If the Planning Commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal within 60 days of its first public hearing on the proposed change, the City Planning Official or designee shall:
 - a. Report the failure together with the proposed change to the City Council; and
 - b. Provide notice and put the matter on the City Council’s agenda for the City Council to hold a public hearing make a decision. No further action shall be taken by the Commission.
 4. The City Council shall:
 - a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application;
 - b. Consider the recommendation of the Planning Commission; however, the City Council is not bound by the Commission’s recommendation; and
 - c. Act by ordinance, which shall be signed by the Mayor after the Council’s adoption of the ordinance.

I. Vote Required for a Legislative Change.

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.
2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.

J. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the City Council decision is filed with the City Planning Official or designee. The City shall also provide notice to all persons as required by other applicable laws.

K. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

L. Record of the Public Hearing.

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record;
2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;
3. The official record shall include:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the City Planning Official or designee to the hearings body regarding the application;
 - c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
 - d. The final ordinance;
 - e. All correspondence; and
 - f. A copy of the notices that were given as required by this Chapter.

4.1.600 General Provisions: 120-day Rule; Time Computation; Pre-application Conferences; Acceptance and Review; Planning Official’s Duties, Amended Applications; Re-submittal; Appeals

A. 120-day Rule. The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions - plan and code amendments - under ORS 227.178.)

B. Time Computation. In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

C. Pre-application Conferences.

1. Participants. When a pre-application conference is required, the applicant shall meet with the City Planning Official or his/her designee(s) and other parties as appropriate;
2. Information provided. At such conference, the City Planning Official or designee shall:
 - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
 - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - c. Provide available technical data and assistance that will aid the applicant;
 - d. Identify other governmental policies and regulations that relate to the application; and
 - e. Reasonably identify other opportunities or constraints concerning the application.
3. Disclaimer. Failure of the City Planning Official or his/her designee to provide any of the information required by this Section 4.1.600.C shall not constitute a waiver of any of the standards, criteria or requirements for the application;

4. Changes in the law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

D. Acceptance and Review of Applications.

1. Initiation of applications:
 - a. Applications for approval under this Chapter may be initiated by:
 - (1) Order of City Council;
 - (2) Resolution of the Planning Commission;
 - (3) The City Planning Official or designee;
 - (4) A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
 - b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
2. Consolidation of proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.
 - a. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.
 - b. When proceedings are consolidated:
 - (1) The notice shall identify each application to be decided;
 - (2) The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and
 - (3) Separate findings and decisions shall be made on each application.

3. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:
 - a. Acceptance. When an application is received by the City, the City Planning Official or designee shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant;
 - (1) The required form;
 - (2) The required fee;
 - (3) The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.
 - b. Completeness.
 - (1) Review and notification. After the application is accepted, the City Planning Official or designee shall review the application for completeness. If the application is incomplete, the City Planning Official or designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days to submit the missing information, or 14 days to submit a refusal statement;
 - (2) Application deemed complete for review. In accordance with the application submittal requirements of this Chapter, the application shall be deemed complete upon the receipt by the City Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Official or designee in Section 4.1.600.D.3.b(1), above. For the refusal to be valid, the refusal shall be made in writing and received by the City Planning Official or designee no later than 14 days after the date on the City Planning Official or designee's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on 31st day after the City Planning Official or designee first accepted the application.
 - (3) Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted.

(4) Coordinated Review. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

4. Changes or additions to the application during the review period. Once an application is deemed complete:
- a. All documents and other evidence relied upon by the applicant shall be submitted to the City Planning Official or designee at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by City Planning Official or designee, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation;
 - b. When documents or other evidence are submitted by the applicant during the review period but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application;
 - c. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see “d”, below), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;
 - d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions, at the choice of the applicant:
 - (1) Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;
 - (2) Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (Section 4.1.600.A above) on the existing application. If the applicant does not consent, the City shall not select this option;

- (3) Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its decision-making process without considering the new evidence;
- e. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

E. City Planning Official's Duties. The City Planning Official or designee shall:

1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions;
2. Accept all development applications that comply with Section 4.1.600;
3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report may also provide a recommended decision of: approval; denial; or approval with specific conditions that ensure conformance with the approval criteria;
4. Prepare a notice of the proposal decision:
 - a. In the case of an application subject to a Type I or II review process, the City Planning Official or designee shall make the staff report and all case-file materials available at the time that the notice of the decision is issued;
 - b. In the case of an application subject to a hearing (Type III or IV process), the City Planning Official or designee shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by Sections 4.1.400.C (Type II), 4.1.400.C (Type III), or 4.1.500.D (Type IV);
5. Administer the hearings process;
6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law;
7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given

notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and

8. Administer the appeals and review process.

F. Amended Decision Process.

1. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
2. The City Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new 10-day appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures in Chapter 4.6. All other changes to decisions that are not modifications under Chapter 4.6 follow the appeal process.

G. Re-submittal of Application Following Denial. An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 12 months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the City Planning Official or designee.

H. Appeal Process. An appeal by a person with standing shall be a hearing *de novo* and following the Type III procedure under Section 4.1.500. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the proceeding below. The Planning Commission or City Council may allow additional evidence, testimony, or argument concerning any standard, criterion, condition, or issue relevant to the original application.

4.1.700 Special Procedures.

A. Expedited Land Divisions. An Expedited Land Division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.

1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit his/her right to use it;
2. Review procedure. All applications for Expedited Land Divisions shall comply with ORS 197.360 through 197.380 and the [city] Comprehensive Plan; ORS 197.360 through ORS 197.380 details the criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.
3. Appeal procedure. An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a city employee), the City Attorney shall serve as the referee for ELD appeals.

B. [Reserved for other Special Procedures, as may be adopted]

4.1.800 Neighborhood Meetings.

Applicants are *[required/encouraged]* to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. *[Applicants for Type III quasi-judicial applications are required to hold a neighborhood meeting with a recognized neighborhood or community organization. If no organization exists, then the applicant must hold a meeting with adjacent property owners who will receive public notice (a minimum 100 ft. radius from subject property.)]*

Background: There is no legal requirement to conduct neighbor-developer meetings. However, some experienced developers know that neighborhood contact can be important to the success of their projects. This requirement is for the other half, who either do not know or refuse to make the contact on their own. Cities that require applicant to submit evidence of neighborhood contact typically have them provide copies of notices, mailing lists, and meeting summaries. It is important that the applicant also send his or her meeting summary to the neighborhood group or individuals who attended the meeting. Some cities also require applicants to provide affidavits attesting that they did in fact mail the notices and posted the site with the meeting notice.

4.1.900 Traffic Impact Studies

The purpose of this section of the code is to assist in determining which road authorities participate in land use decisions, and 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 impacts and protect transportation facilities. This Chapter 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.

- A. **When a Traffic Impact Study is Required.** The City or other road authority with jurisdiction may require a Traffic Impact Study (TIS) as part of an application for development, a change in use, or a change in access. A TIS shall be required when a land use application involves one or more of the following actions:
1. A change in zoning or a plan amendment designation;
 2. Any proposed development or land use action that a road authority states may have operational or safety concerns along its facility(ies);
 3. An increase in site traffic volume generation by [300] Average Daily Trips (ADT) or more; or
 4. An increase in peak hour volume of a particular movement to and from the State highway by [20] percent or more; or
 5. 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
 6. The location of the access driveway does not meet minimum sight 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
 7. A change in internal traffic patterns that may cause safety problems, such as back up onto a street or greater potential for traffic accidents.
- B. **Traffic Impact Study Preparation.** A Traffic Impact Study shall be prepared by a professional engineer in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), consult ODOT's regional development review planner and OAR 734-051-180.

Chapter 4.2 Land Use Review and Site Design Review

Sections:

- 4.2.100 Purpose**
- 4.2.200 Applicability**
- 4.2.300 Land Use Review Procedure and Approval Criteria**
- 4.2.400 Site Design Review - Application Review Procedure**
- 4.2.500 Site Design Review - Application Submission Requirements**
- 4.2.600 Site Design Review Approval Criteria**
- 4.2.700 Bonding and Assurances**
- 4.2.800 Development in Accordance With Permit Approval; Modifications; Permit Expiration**

4.2.100 Purpose

The purpose of this Chapter is to:

- A. Provide rules, regulations and standards for efficient and effective administration of land use and site development review;
- B. Carry out the development pattern and plan of the City and its comprehensive plan policies;
- C. Promote the public health, safety and general welfare;
- D. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards;
- E. Encourage the conservation of energy resources; and
- F. Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

4.2.200 Applicability.

Land Use Review or Site Design Review shall be required for all new developments and modifications of existing developments described below. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair shall be exempt from review.

A. Land Use Review. Land Use Review is a review conducted by the City Planning Official or designee without a public hearing (Type I or II). (See Chapter 4.1 for review procedure.) It is for changes in land use and developments that do not require a conditional use permit or site design review approval. Land Use Review ensures compliance with the basic land use and development standards of the land use district, such as lot area, building setbacks and orientation, lot coverage, maximum building height, and other provisions of Article 2. Land Use Review is required for all of the types of land uses and development listed below. Land uses and developments exceeding the thresholds below require Site Design Review.

1. Change in occupancy from one type of land use to a different land use;
2. Single-family detached dwelling (including manufactured home on its own lot);
3. A single duplex, or up to two single family attached (town home) units not requiring a land division, and accessory parking on the same lot;
4. Non-residential building additions up to [500] square feet, or [20%] of an existing structure, whichever is greater;
5. Minor Modifications to development approvals as defined by Chapter 4.6;
6. Any proposed development that has a valid conditional use permit. Major modifications to a development with a conditional use permit shall require review and approval in accordance with Chapter 4.4 - Conditional Use Permits;
7. Home occupations requiring a permit under Chapter 4.9;
8. Temporary uses requiring a permit under Chapter 4.9;
9. Accessory structures and accessory parking;
10. Development and land uses that are part of a previously approved Site Design Review or Conditional Use Permit application;
11. Public improvements required by a condition of approval (e.g., transportation facilities and improvements, parks, trails, and similar improvements, as determined by the City Planning Official).

12. *[Reserved for any other types of development, as needed.]*

B. Site Design Review. Site Design Review is a discretionary review conducted by the Planning Commission with a public hearing (Type III Quasi-Judicial Review). (See Chapter 4.1 for review procedure.) It applies to all development in the City, except those specifically listed under “A” above (applications subject to Development Review). Site Design Review ensures compliance with the land use and development standards in Article 2 (e.g., lot area, building setbacks and orientation, lot coverage, maximum building height), and the design standards and public improvement requirements in Article 3.

4.2.300 Land Use Review Procedure and Approval Criteria

When Land Use Review is required, it shall be conducted prior to issuance of building permits, occupancy permit, business license, or public improvement permits, as determined by the City Planning Official. The City shall conduct Land Use Reviews using either a Type I or Type II procedure, as described in Sections 4.1.200 and 4.1.300. A Type I procedure shall be used when the Planning Official finds that the applicable standards are clear and objective and do not require the exercise of discretion. A Type II procedure shall be used when the decision is discretionary in nature. The City Planning Official shall be responsible for determining the required review procedure. An application for Land Use Review shall be approved only upon meeting all of the following criteria:

- A. The proposed land use or development is permitted by the underlying land use district (Article 2);
- B. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district and any applicable overlay district(s) are met (Article 2); and
- C. When development is proposed, the applicable sections of Article 3, Design Standards apply.

Land Use Reviews do not address a project's compliance with applicable building, fire and life safety regulations.

4.2.400 Site Design Review - Application Review Procedure

Where Site Design Review is required, it shall be conducted using a Type III procedure, consistent with Section 4.1.400, and using the application requirements and approval criteria contained in Sections 4.2.500 through 4.2.600, below.

4.2.500 Site Design Review - Application Submission Requirements

All of the following information is required for Site Design Review application submittal:

A. General Submission Requirements. An application for Site Design Review shall contain all of the information required for a Type III review under Section 4.1.400, and provide:

1. **Public Facilities and Services Impact Study.** The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Section 4.1.600C). The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users;
2. **Traffic Impact Study**, if required by the road authority. Traffic Impact Studies shall conform to the standards and procedures in Section 4.1.900; and
3. In situations where this Code requires the dedication of real property to the City, the City shall either (1) include in the written decision evidence that shows that the required property dedication is directly related to and roughly proportional to the projected impacts of the development on public facilities and services, or (2) delete the dedication as a condition of approval.

B. Site Design Review Information. In addition to the general submission requirements for a Type III review (Section 4.1.400) an applicant for Site Design Review shall provide the following additional information, as deemed applicable by the City Planning Official. The Planning Official may deem applicable any information that he or she needs to review the request and prepare a complete staff report and recommendation to the approval body:

1. **Site analysis map.** At a minimum the site analysis map shall contain the following:
 - a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the City, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;

- b. Topographic contour lines at 2-foot intervals for slopes of less than 10 percent, and 5-foot intervals for steeper slopes;
 - c. Identification of slopes greater than 25 percent;
 - d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
 - e. Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;
 - f. Resource areas, including marsh and wetland areas, streams, and wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection;
 - g. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
 - h. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
 - i. The location, size and species of trees and other vegetation having a caliper (diameter) of six (6) inches or greater at four feet above grade;
 - j. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed;
 - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable.
2. Proposed site plan. The site plan shall contain the following information:
- a. The proposed development site, including boundaries, dimensions, and gross area;
 - b. Features identified on the existing site analysis maps that are proposed to remain on the site;
 - c. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development;
 - d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;

- e. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
 - f. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;
 - g. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops);
 - h. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
 - i. Loading and service areas for waste disposal, loading and delivery;
 - j. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
 - k. Location, type, and height of outdoor lighting;
 - l. Location of mail boxes, if known;
 - m. Name and address of project designer, if applicable;
 - n. Locations of bus stops and other public or private transportation facilities;
 - o. Locations, sizes, and types of signs;
3. Architectural drawings. Architectural drawings showing one or all of the following shall be required for new buildings and major remodels:
- a. Building elevations (as determined by the City Planning Official) with building height and width dimensions;
 - b. Building materials, colors and type;
 - c. The name of the architect or designer.
4. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for development sites ½ acre or larger. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with Section 3.4.400.

5. Landscape plan. A landscape plan may be required and at the direction of the City Planning Official shall show the following:
 - a. The location and height of existing and proposed fences, buffering or screening materials;
 - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
 - c. The location, size, and species of the existing and proposed plant materials (at time of planting);
 - d. Existing and proposed building and pavement outlines;
 - e. Specifications for soil at time of planting, irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule;
 - f. Other information as deemed appropriate by the City Planning Official. An arborist's report may be required for sites with mature trees that are protected under Chapter 3.2. Landscape, Street Trees, Fences and Walls of this Code.
6. Sign drawings shall be required in conformance with the City's Sign Code (Chapter 3.6).
7. Deed restrictions. Copies of all existing and proposed restrictions or covenants, including those for access control.
8. Narrative. Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 4.2.600 Approval Criteria.
9. Traffic Impact Study, when required, shall be prepared in accordance with the road authority's requirements. See Section 4.1.9, and Section 3.4.1 for relevant standards.
10. Other information determined by the City Planning Official. The City may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this Code.

4.2.600 Site Design Review Approval Criteria

The review authority shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying an application:

1. The application is complete, as determined in accordance with Chapter 4.1 - Types of Applications and Section 4.2.500, above.
2. The application complies with all of the applicable provisions of the underlying Land Use District (Article 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;
3. The applicant shall be required to upgrade any existing development that does not comply with the applicable land use district standards, in conformance with Chapter 5.2, Non-Conforming Uses and Development;
4. The application complies with all of the Design Standards in Article 3:
 - a. Chapter 3.1 - Access and Circulation;
 - b. Chapter 3.2 - Landscaping, Significant Vegetation, Street Trees, Fences and Walls;
 - c. Chapter 3.3 - Parking and Loading, for automobiles and bicycles;
 - d. Chapter 3.4 - Public Facilities and Franchise Utilities;
 - e. Chapter 3.5 - Surface Water Management;
 - f. Chapter 3.6 - Other Standards, as applicable.
5. Existing conditions of approval required as part of a prior Land Division (Chapter 4.3), Conditional Use Permit (Chapter 4.4), Master Planned Development (Chapter 4.5) or other approval shall be met.

4.2.700 Bonding and Assurances

- A. Performance Bonds for Public Improvements.** On all projects where public improvements are required, the City shall require a bond in an amount not greater than 100% or other adequate assurances as a condition of site development approval in order to guarantee the public improvements;
- B. Release of Performance Bonds.** The bond or assurance shall be released when the City Planning Official finds the completed project conforms to the site development approval, including all conditions of approval.
- C. Completion of Landscape Installation.** Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping as determined by the City Planning Official or a qualified landscape architect is filed with the City Planning Official assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation.

4.2.800 Development in Accordance With Permit Approval; Modifications; Permit Expiration

Development shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., site design review approval) and building permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Section 4.2.700. Development Review and Site Design Review approvals shall be subject to all of the following standards and limitations:

- A. Modifications to Approved Plans and Developments.** Minor modifications of an approved plan or existing development, as defined in Chapter 4.6, shall be processed as a Type I procedure and require only Land Use Review. Major modifications, as defined in Chapter 4.6, shall be processed as a Type II or Type III procedure and shall require Site Design Review. For information on Type I, Type II and Type III procedures, please refer to Chapter 4.1. For Modifications approval criteria, please refer to Chapter 4.6.
- B. Approval Period.** Development Review and Site Design Review approvals shall be effective for a period of one year from the date of approval. The approval shall lapse if:
1. A public improvement plan or building permit application for the project has not been submitted within one year of approval; or
 2. Construction on the site is in violation of the approved plan.

C. **Extension.** The Planning Commission shall, upon written request by the applicant, grant a written extension of the approval period not to exceed one year; provided that:

1. No changes are made on the original approved site design review plan;
2. The applicant can show intent of initiating construction on the site within the one-year extension period;
3. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site design review shall be required; and
4. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one year of site design approval was beyond the applicant's control.

D. **Phased Development.** Phasing of development may be approved with the Site Design Review application, subject to the following standards and procedures:

1. A phasing plan shall be submitted with the Site Design Review application.
2. The Planning Commission shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than 2 years without reapplying for site design review.
3. Approval of a phased site design review proposal requires satisfaction of all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Section 4.3.180. A temporary public facility is any facility not constructed to the applicable City or district standard, subject to review by the City Engineer;
 - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
 - d. An application for phasing may be approved after Site Design Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 4.6).

Chapter 4.3 Land Divisions and Property Line Adjustments

Sections:

- 4.3.100 Purpose
- 4.3.110 General Requirements
- [4.3.112 *Pre-planning for Large Sites*]
- 4.3.115 Flexible Lot Size; Flag Lots; Lots Accessed by Mid-Block Lanes
- 4.3.120 Approval Process
- 4.3.130 Preliminary Plat Submission Requirements
- 4.3.140 Approval Criteria: Preliminary Plat
- 4.3.150 Variances Authorized
- 4.3.160 Final Plat Submission Requirements and Approval Criteria
- 4.3.170 Public Improvements
- 4.3.180 Performance Guarantee
- 4.3.190 Filing and Recording
- 4.3.200 Re-platting and Vacation of Plats
- 4.3.210 Property Line Adjustments

4.3.100 Purpose

The purpose of this chapter is to:

- A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments, as defined below and in Chapter 1.3:
 - 1. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year.
 - 2. Partitions are the creation of three or fewer lots within one calendar year.
 - 3. Lot line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots).
- B. Carry out the City's development pattern, as envisioned by the Comprehensive Plan.
- C. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
- D. Promote the public health, safety and general welfare through orderly and efficient urbanization;
- E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards; and

G. Encourage the conservation of energy resources.

4.3.110 General Requirements

- A. **Subdivision and Partition Approval Through Two-step Process.** Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:
1. The preliminary plat must be approved before the final plat can be submitted for approval consideration; and
 2. The final plat must include all conditions of approval of the preliminary plat.
- B. **Compliance With ORS Chapter 92.** All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.
- C. **Future Re-division Plan.** When subdividing or partitioning tracts into large lots (i.e., greater than two times or 200 percent the minimum lot size allowed by the underlying land use district), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use district and this Code. A re-division plan shall be submitted for large lots identifying:
1. Potential future lot division(s), consistent with the density and lot size standards of Article 2;
 2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;
 3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.
- D. **Lot Size Averaging.** Single family residential lot size may be averaged to allow lots less than the minimum lot size in Residential districts, as provided by Section 2.2.150, Flexible Lot Size Option, or through approval of a Master Planned Development under Chapter 4.5.
- E. **Temporary Sales Office.** A temporary sales office in conjunction with a subdivision may be approved as set forth in Section 4.9.100, Temporary Uses.
- F. **Minimize Flood Damage.** All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within

the floodway and, where possible, allow building outside of the flood fringe. Development in a 100-year flood plain shall comply with the National Flood Insurance Program and state building code requirements, including elevating structures above the base flood elevation. The applicant shall be responsible for obtaining floodplain development permit from the NFIP and local jurisdiction.

- G. Determination of Base Flood Elevation.** Where a development site consists of five (5) or more acres or 50 or more lots, and is located in or near areas prone to inundation for which the base flood elevation has not been mapped, the applicant shall have the base flood elevation it shall be prepared by a qualified professional as part of the land division application.
- H. Need for Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.
- I. Need for Adequate Drainage.** All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required.
- J. Floodplain, Park, and Open Space Dedications.** Where land filling and/or development is allowed within or adjacent to regulatory flood plain and the Comprehensive Plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway and/or trail adjoining or within the flood plain for transportation, storm drainage/water quality, or park purposes in the public interest. When practicable, this area shall include portions at a suitable elevation for the construction of a multi-use pathway in accordance with the City’s adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development’s impact to the park and/or trail system, or stormwater management requirements, consistent with Chapter 3.4.200 and 3.4.400, and assist in obtaining any floodplain permit that may be required.

[4.3.112 Pre-planning for Large Sites

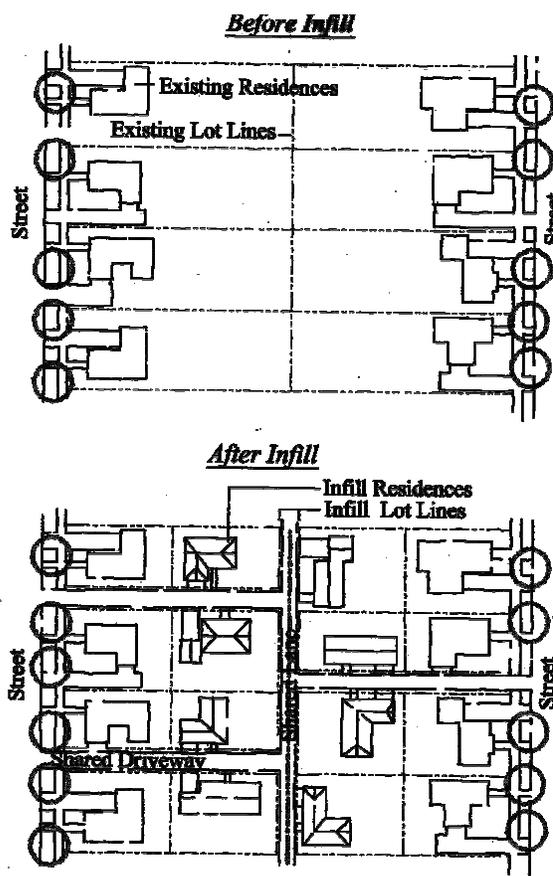
- A. Purpose.** *The purpose of this Section is to require pre-planning of large sites (i.e., in conjunction with annexation or prior to subdivision approval) and ensure the development of fully integrated, mixed-use pedestrian-oriented neighborhoods. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation, particularly as new development takes place on large parcels of land.*
- B. Applicability.** *This Section applies to parcels, and development sites with more than one parcel in Residential District(s) that are [40] acres or larger.*
- C. Area plan required.** *Prior to annexation and land division approval, a specific area plan shall be prepared for all sites meeting the criteria in subsection D.*
- D. Land use and design standards.** *The specific area plan required under subsection C, above, shall be consistent with the following design criteria:*
1. *All neighborhoods have identifiable centers and outer boundaries;*
 2. *Edge lots are readily accessible to neighborhood commercial and recreational uses by walking and bicycling (a distance not greater than one-quarter mile);*
 3. *Uses and housing types are mixed and in close proximity to one another;*
 4. *Streets are connected and blocks are walkable in scale (e.g., 200-600 feet in length, with an average perimeter no greater than 1,400 feet), except where topography, existing development, or other physical features require longer blocks;*
 5. *Civic buildings, monuments and open spaces (e.g., parks, squares, greenbelts, natural areas, etc.), and scenic viewing points are given prominent sites throughout the neighborhood;*
 6. *Overall, the master plan achieves a housing density that is consistent with the Comprehensive Plan.; and*
 7. *Land needed for public use (e.g., schools, parks, fire stations, and other facilities) shall be designated on the master plan, in accordance with the Comprehensive Plan.*
- E. Implementation.** *Upon approval of a plan under the provisions of Section 4.3.112, the processing of development proposals shall follow the Land Division procedures in Chapter 4.3, and the Land Use Review and/or Site Design Review procedures in Chapter 4.2, as applicable. Any modifications to the approved master plan shall be subject to the standards and procedures in Chapter 4.6 - Modifications.]*

4.3.115 Flexible Lot Size; Flag Lots; Lots Accessed by Mid-Block Lanes

A. Flexible Lot Size. To allow creativity and flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a [10%] modification to the lot area and/or lot dimension (width/depth) standards in Section 2.2.130, provided that the overall density of the subdivision does not exceed the allowable density of the district and the approval body finds that granting the modification allows for a greater variety of housing types or it improves development compatibility with natural features or adjacent land uses. The approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than [20,000] square feet.

B. Mid-block lanes. Lots may be developed without frontage onto a public street when lot access is provided by mid-block lanes, as shown below. Mid-block lanes or shared driveways, as illustrated in Figure 4.3.115B, may be required when practicable to provide connectivity between infill developments. Mid-block lanes with access easements for adjoining properties may be allowed as an alternative to requiring through streets where block lengths do not necessitate a through street. The lanes shall meet the standards for alleys, per Chapter 3.4.1, and the standards under subsections C-F, below.

Figure 4.3.115B - Mid-block Infill



- C. Flag lots.** Flag lots may be created only when a through street or mid-block lanes cannot be extended to serve abutting uses or future development. A flag lot driveway (“flag pole”) may serve no more than two (2) dwelling units, including accessory dwellings and dwellings on individual lots, unless Uniform Fire Code (UFC) standards are met for more units. When UFC standards are met, the maximum number of dwellings shall be four (4). A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots. No fence, structure or other obstacle shall be placed within the drive area. The Fire Marshal may require an emergency turn-around. Fire sprinklers may also be required for buildings that cannot be fully served by fire hydrants (i.e., due to distance from hydrant or insufficient fire flow).
- D. Driveway and lane width.** The minimum width of all shared drives and lanes shall be [10-12] feet; the maximum width is [12-20] feet, except as required by the Uniform Fire Code.
- E. Easement and improvement of drive lane.** The property owner shall record a [20]-foot easement benefiting all properties that are to receive vehicle access. The drive lane shall be improved with an all weather surface approved by the City. Dedication or recording, as applicable, shall be so indicated on the face of the subdivision or partition plat.
- F. Maximum drive lane length.** The maximum drive lane length is subject to requirements of the Uniform Fire Code, but shall not exceed [150] feet for a shared side drive, and [400] feet for a shared rear lane.
- G. Future street plans.** Building placement and alignment of shared drives shall be designed so that future street connections can be made as surrounding properties develop (i.e., as shown in the Figure 4.3.115.B).

4.3.120 Preliminary Plat Approval Process

- A. Review of Preliminary Plat.** Review of a preliminary plat with 2 or 3 lots (partition) shall be processed with a Type II procedure, under Section 4.1.300. Preliminary plats with 4 or more lots (subdivision) shall be processed with a Type III procedure under Section 4.1.400. All preliminary plats shall be reviewed using approval criteria in Section 4.3.140. An application for subdivision may be reviewed concurrently with an application for a Master Planned Development under Chapter 4.5.
- B. Review of Final Plat.** Review of a final plat for a subdivision or partition shall be processed as a Type [I/II] procedure under Section 4.1.[200/300], using the approval criteria in Section 4.3.160.

Legal Issue: Cities will need to refer to current law in determining whether Final Plat reviews are subject to a Type I or Type II procedure because, at the time of publication of the model code, legislation that could amend ORS 197, Chapter 195 was pending. At the time of publication *Hammer v. Clackamas County*, 190 App 473 (2003) required Type II review of final plats.

C. Preliminary Plat Approval Period. Preliminary plat approval shall be effective for a period of three (3) years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the 3-year period.

D. Modifications and Extensions. The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.6 - Modifications. The City Planning Official shall, upon written request by the applicant and payment of the required fee, grant one written extension of the approval period not to exceed one year; provided that:

1. Any changes to the preliminary plat follow the procedures in Chapter 4.6;
2. The applicant has submitted written intent to file a final plat within the one-year extension period;
3. An extension of time will not prevent the lawful development of abutting properties;
4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and
5. The extension request is made before expiration of the original approved plan.

E. Phased Development.

1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be more than 2 years without reapplying for a preliminary plat;
2. The criteria for approving a phased land division proposal are:
 - a. Public facilities shall be constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Section 4.3.180. A temporary public facility is any facility not constructed to the applicable City or district standard;
 - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and

- d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.

4.3.130 Preliminary Plat Submission Requirements.

A. General Submission Requirements. For all partitions (three or fewer parcels), the application shall contain all of the information required for a Type II procedure under Section 4.1.300. For all subdivisions (four or more lots) the application shall contain all of the information required for a Type III procedure under Section 4.1.400, and the information in subsections 1-3, below:

1. Public Facilities and Services Impact Study. The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Section 4.1.600C). The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users;
2. Traffic Impact Study, if required by the road authority. Traffic Impact Studies shall conform to the standards and procedures in Section 4.1.900; and
3. In situations where this Code requires the dedication of real property to the City, the City shall either (1) include in the written decision evidence that shows that the required property dedication is directly related to and roughly proportional to the projected impacts of the development on public facilities and services, or (2) delete the dedication as a condition of approval.

B. Preliminary Plat Information. In addition to the general information described in Subsection A above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. General information:
 - a. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in *[name]* County (please check with County Surveyor);
 - b. Date, north arrow, and scale of drawing;
 - c. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;

- d. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the designer, and engineer and surveyor if any, and the date of the survey if submitted; and
- e. Identification of the drawing as a “preliminary plat”.

2. Site analysis:

- a. Streets: Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;
- b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
- c. Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
- d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding 10 percent and at 2-foot intervals for ground slopes of less than 10 percent or as required by the City. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than 6 percent;
- e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
- f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
- g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, Chapter 3.7 and relevant portions of the Comprehensive Plan.);
- h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
- i. Designated historic and cultural resources on the site and adjacent parcels or lots;
- j. The location, size and species of trees having a caliper (diameter) of 6 inches or greater at 4 feet above grade in conformance with Chapter 3.2;
- k. North arrow and scale;

- l. Name and address of project designer, if applicable; and
 - m. Other information, as deemed appropriate by the City Planning Official. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
3. Proposed improvements:
- a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
 - b. Easements: location, width and purpose of all proposed easements;
 - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;
 - d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use; potential location of future buildings;
 - e. Proposed improvements, as required by Article 3 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
 - f. Preliminary location of development showing those future buildings can meet siting and dimensional standards of the district.
 - g. The proposed source of domestic water;
 - h. The proposed method of sewage disposal;
 - i. Proposed method of surface water drainage and treatment if required;
 - j. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
 - k. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s);
 - l. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable;

- m. Identification of the base flood elevation for development of more than 2 lots or ½ acre, whichever is less. Written evidence of initiation of a Federal Emergency Management Agency (FEMA) flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain. FEMA approval of the amendment shall be a condition of City land use approval;
- n. Evidence of contact with from the road authority for any development requiring access to its facility(ies); and
- o. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 3.7.

4.3.140 Approval Criteria: Preliminary Plat.

A. General Approval Criteria. The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this Article, and the applicable chapters and sections of Article 2 (Land Use Districts) and Article 3 (Design Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 5;
2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat; and
5. Evidence that any required State and federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Evidence that improvements or conditions required by the City, road authority, *[name]* County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; *[and]*
7. If any part of the site is located within a Specific Area Plan District, Overlay Zone, or

previously approved Master Planned Development, it shall conform to the applicable regulations and/or conditions.

C. Layout and Design of Streets, Blocks and Lots. All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use district (Article 2), and the standards of Section 3.1.200.J - Street Connectivity and Formation of Blocks.
2. Setbacks shall be as required by the applicable land use district (Article 2).
3. Each lot shall conform to the standards of Chapter 3.1 - Access and Circulation.
4. Landscape or other screening may be required to maintain privacy for abutting uses. See Article 2 - Land Use Districts, and Chapter 3.2 - Landscaping.
5. In conformance with the Uniform Fire Code, a 20-foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See Chapter 3.1- Access and Circulation.
6. Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.

D. Conditions of Approval. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 3.4 (Public Facilities).

4.3.150 Variances Authorized.

Variations to the standards of this Chapter shall be processed in accordance with Chapter 5.1 - Variations. Applications for variations shall be submitted at the same time an application for land division or lot line adjustment is submitted, and the applications shall be reviewed together.

4.3.160 Final Plat Submission Requirements and Approval Criteria.

A. Submission Requirements. Final plats shall be reviewed and approved by the City prior to recording with *[name]* County. The applicant shall submit the final plat within 1 year of the approval of the preliminary plat as provided by Section 4.3.120. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the City Planning Official.

B. Approval Criteria. By means of a Type *[I/II]* procedure, the City Planning Official and City Engineer shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:

1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
2. All public improvements required by the preliminary plat have been installed and approved by the City Engineer or appropriate service provider (e.g., road authority). Alternatively, the developer has provided a performance guarantee in accordance with Section 4.3.180;
3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
4. The streets and roads held for private uses have been approved by the City as conforming to the preliminary plat;
5. The plat and deed contain a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, sewage disposal storm drainage and water supply systems;
6. The applicant has provided copies of all recorded homeowners association Covenants, Conditions and Restrictions (CC&R's); deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;

7. The plat complies with the applicable Sections of this code (i.e., there have been no changes in land use or development resulting in a code violation since preliminary plat approval);
8. Certification by the City or service district, as applicable, that water and sanitary sewer service is available to every lot depicted on the plat; or bond, contract or other assurance has been provided by the subdivider/partitioner to the City that such services will be installed in accordance with Chapter 3.4 - Public Facilities, and the bond requirements of Section 4.3.180. The amount of the bond, contract or other assurance by the subdivider/partitioner shall be determined by a registered professional engineer, subject to review and approval by the City;
9. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner established by the U.S. Geological Survey, or giving two or more permanent objects for identifying its location.

4.3.170 Public Improvements Required

Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the subdivider/partitioner shall provide a performance guarantee, in accordance with Section 4.3.180.

4.3.180 Performance Guarantee

A. Performance Guarantee Required. When a performance guarantee is required under Section 4.3.170, the subdivider/partitioner shall file an assurance of performance with the City supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
3. Cash.

B. Determination of Sum. The assurance of performance shall be for a sum determined by the City as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

C. Itemized Improvement Estimate. The developer shall furnish to the City an itemized improvement estimate, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.

D. Agreement. An agreement between the City and developer shall be recorded with the final plat. The agreement may be prepared by the City or prepared by the applicant as a letter. It shall not be valid until it is signed and dated by both the applicant and City Planning Official. The agreement shall contain all of the following:

1. The period within which all required improvements and repairs shall be completed;
2. A provision that if work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the applicant;
3. The improvement fees and deposits that are required;
4. (Optional) A provision for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

E. When Subdivider Fails to Perform. In the event the developer fails to carry out all provisions of the agreement and the City has un-reimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.

F. Termination of Performance Guarantee. The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

4.3.190 Filing and Recording

A. Filing Plat with County. Within 60 days of the City approval of the final plat, the applicant shall submit the final plat to *[name]* County for signatures of County officials as required by ORS Chapter 92.

B. Proof of Recording. Upon final recording with the County, the applicant shall submit to the City a mylar copy and 5 paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots.

C. Prerequisites to Recording the Plat.

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;

2. No plat shall be recorded until it is approved by the County Surveyor in the manner provided by ORS Chapter 92.

4.3.200 Re-platting and Vacation of Plats.

- A. Re-platting and Vacations.** Any plat or portion thereof may be re-platted or vacated upon receiving an application signed by all of the owners as appearing on the deed.
- B. Procedure.** All applications for a re-plat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition (i.e., the same process used to create the plat shall be used to re-plat or vacate the plat). The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See Chapter 4.1 - Types of Applications and Review Procedures.) The road authority(ies) shall be notified of all applications for re-plats and street vacations. All street vacations shall also conform to the ORS Chapter 271.
- C. Basis for Denial.** A re-plat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.
- D. Recording of Vacations.** All approved plat vacations shall be recorded in accordance with 4.3.190 and the following procedures:
 1. Once recorded, a re-plat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
 2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications described on the plat.
- E. After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.
- F. Street Requirement.** Except as prohibited by law (e.g., ORS 92.837, Manufactured Home Park), in approving a right-of-way vacation or re-plat, the City may require dedication of access ways, paths or trails as a condition of the vacation of any public easement or right-of-way, in order to establish or maintain a safe, convenient and direct pedestrian and bicycle circulation system. Such requirements shall be coordinated with the applicable road authority.

4.3.210 Property Line Adjustments

A Property Line Adjustment is the modification of lot boundaries, when no lot is created or removed. The application submission and approval process is as follows:

A. Submission Requirements. All applications for Property Line Adjustment shall be made on forms provided by the City and shall include information required for a Type I application, as governed by Section 4.1.200. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; *[location of sensitive lands and significant vegetation]*; existing fences and walls; and any other information deemed necessary by the City Planning Official or designee for ensuring compliance with City codes.

B. Approval Process.

1. Decision-making process. Property line adjustments shall be reviewed by means of a Type I procedure, as governed by Section 4.1.200, using approval criteria contained in Section 4.3.210.C below. The road authority(ies) shall be notified of lot line adjustments that may affect property access or traffic volumes or operations on their facilities.
2. Time limit on approval. The property line adjustment approval shall be effective for a period of one (1) year from the date of approval, during which time it must be recorded.
3. Lapsing of approval. The property line adjustment approval shall lapse if:
 - a. The property line adjustment is not recorded within the time limit in Section 4.3.210.B(2);
 - b. The property line adjustment has been improperly recorded with *[name]* County without the satisfactory completion of all conditions attached to the approval; or
 - c. The final recording is a departure from the approved plan.

C. Approval Criteria. The City Planning Official or designee shall approve or deny a request for a property line adjustment in writing based on all of the following criteria:

1. Parcel Creation. No additional parcel or lot is created or removed by the lot line adjustment;
2. Lot standards. All lots and parcels conform to the applicable lot standards of the land use district (Article 2) including lot area, dimensions, setbacks, and coverage, and no resulting lot is wholly comprised of a flood hazard area or jurisdictional wetland;
3. Access and Road authority Standards. All lots and parcels conform to the standards or requirements of Chapter 3.1 – Access and Circulation, and all applicable road authority

requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made even less conforming by the property line adjustment;

D. Recording Property Line Adjustments.

1. Recording. Upon the City’s approval of the proposed property line adjustment, the applicant shall record the property line adjustment with *[name]* County within 60 days of approval (or the decision expires), and submit a copy of the recorded survey map to the City, to be filed with the approved application.
2. Time limit. The applicant shall submit a copy of the recorded property line adjustment survey map to the City within 15 days of recording and prior to the issuance of any building permits on the re-configured lots.

E. Extension.

The City shall, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:

1. No changes are made to the original property line adjustment as approved by the City;
2. The applicant can show intent of recording the approved plan within the one-year extension period;
3. There have been no changes in the applicable Code or plan provisions on which the approval was based. In the case where the property line adjustment conflicts with a code change, the extension shall be denied; and
4. The extension request is made before expiration of the original approved plan.

Legal Note: Cities may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines, as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060 (7). [ORS 190.192(3)]

Chapter 4.4 Conditional Use Permits

Sections:

- 4.4.100 Conditional Use Permits - Purpose**
- 4.4.200 Conditional Use Permits - Approvals Process**
- 4.4.300 Conditional Use Permits - Application Submission Requirements**
- 4.4.400 Conditional Use Permits - Criteria, Standards and Conditions of Approval**
- 4.4.500 Conditional Use Permits - Additional Development Standards**

4.4.100 Conditional Use Permits - Purpose

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as “Conditional Uses” in Article 2 - Land Use Districts. The purpose of Chapter 4.4 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

4.4.200 Conditional Use Permits - Approvals Process

- A. Initial Application.** An application for a new conditional use shall be processed as a Type III procedure (Section 4.1.400). The application shall meet submission requirements in Section 4.4.300, and the approval criteria contained in Section 4.4.400.
- B. Modification of Approved or Existing Conditional Use.** Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 4.6 - Modifications.

4.4.300 Conditional Use Permits - Application Submission Requirements

In addition to the submission requirements required in Chapter 4.1, an application for conditional use approval must include the following information (1-8), as applicable. For a description of each item, please refer to Section 4.2.500 - Site Design Review Application Submission Requirements:

1. Existing site conditions;
2. Site plan;
3. Preliminary grading plan;
4. A landscape plan;
5. Architectural drawings of all structures;
6. Drawings of all proposed signs;

7. A copy of all existing and proposed restrictions or covenants;
8. Narrative report or letter documenting compliance with all applicable approval criteria in Section 4.4.400.

4.4.400 Conditional Use Permits - Criteria, Standards and Conditions of Approval

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.

A. Use Criteria.

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and
3. All required public facilities have adequate capacity to serve the proposal.

B. Site Design Standards. The Site Design Review approval criteria (Section 4.2.600) shall be met.

C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. Limiting the hours, days, place and/or manner of operation;
2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size or lot coverage, and/or location on the site;
5. Designating the size, number, location and/or design of vehicle access points or parking areas;

6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height and/or lighting of signs;
9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands (Chapter 3.7);
13. Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 3.1, and Section 3.1.300 in particular;

4.4.500 Conditional Use Permits - Additional Development Standards

- A. Concurrent Variance Application(s).** A conditional use permit shall not grant variances to regulations otherwise prescribed by the Development Code. Variance application(s) may be filed in conjunction with the conditional use application, and both applications may be reviewed at the same hearing.
- B. Additional Development Standards.** Development standards for specific uses are contained in Article 2 - Land Use Districts.

Chapter 4.5 Master Planned Developments

Sections:

- 4.5.100 Master Planned Development - Purpose**
- 4.5.110 Master Planned Development - Applicability**
- 4.5.120 Master Planned Development - Review and Approvals Process**
- 4.5.130 Master Planned Development - Modification of District Standards (Article 2) and Design Standards (Article 3)**
- 4.5.140 Master Planned Development - Overlay Zone and Concept Plan Submission**
- 4.5.150 Master Planned Development - Overlay Zone and Concept Plan Approval Criteria**
- 4.5.160 Master Planned Development - Administrative Procedures**
- 4.5.170 Master Planned Development - Detailed Development Plan Submission Requirements**
- 4.5.180 Master Planned Development - Detailed Development Plan Approval Criteria**
- 4.5.190 Master Planned Development - Land Use Review, Site Design Review, Final Plat, and Building Permit Approvals**

4.5.100 Master Planned Development - Purpose

The purposes of this Section are to:

- A. Implement the Comprehensive Plan and applicable land use district(s) by providing a means for master planning large development sites;
- B. Encourage innovative planning that results in projects that benefit the community (i.e., through compatible mixed use development, improved protection of open spaces, transportation options and consistent application of standards in phased developments);
- C. Encourage developments that recognize the relationship between buildings, their use, open space, and transportation options, providing varied opportunities for innovative and diversified employment environments;
- D. Facilitate the efficient use of land;
- E. Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F. Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;
- G. Encourage energy conservation and improved air and water quality and;
- H. Assist the City in planning infrastructure improvements.

4.5.110 Master Planned Development - Applicability

The master planned development designation is an overlay zone that may be applied over any of the City’s land use districts. An applicant may elect to develop a project as a master planned development in compliance with the requirements of this Chapter. In addition, the City may require that the following types of development be processed using the provisions of this Chapter:

- A. Subdivisions of large residential sites (*[__]* acres and larger), in accordance with the Master Planned Development standards of Section 2.2.230L.
- B. District designation for large residential sites undergoing annexation, in accordance with Section 2.2.230L.
- B. *[Reserved for other uses requiring master plan approval.]*

4.5.120 Master Planned Development - Review and Approvals Process

A. Review Steps. There are three required steps to planned development approval, which may be reviewed individually or combined into one package for concurrent review:

- 1. The approval of a planned development overlay zone and concept plan;
- 2. The approval of a detailed development plan; and
- 3. The approval of a preliminary subdivision plat(s) and/or site design review application(s).

B. Approval Process.

- 1. The Master Planned Development (PD) overlay zone and Concept Plan shall be reviewed together using the Type III procedure in Section 4.1.400, the submission requirements in Section 4.5.170, and the approval criteria in Section 4.5.150.
- 2. The detailed development plan shall be reviewed using the Type III procedure in Section 4.1.400, to ensure substantial compliance with the approved concept plan.
- 3. Preliminary subdivision plats and site design review applications for approved planned developments shall be reviewed using a Type II procedure, as governed by Section 4.2.400.
- 4. Steps 1-3, above, may be combined in any manner, so long as the decision-making sequence follows that in Section 4.5.120.A, above. Notification and hearings may be combined.

4.5.130 Master Planned Development - Modification of District Standards (Article 2) and Design Standards (Article 3)

The district standards in Article 2 and design standards of Article 3 may be modified through the master plan approval without the need for variances, except that the following standards within Articles 2 and 3 shall not be modified:

- A. **Public improvement standards and engineering design criteria** shall not be modified without variance to such standards approved by the City Engineer. The City may grant such variances concurrently with other Planned Development approvals;
- B. **Residential densities**, as allowed under the Comprehensive Plan; and
- C. **Industrial and commercial uses, if not otherwise allowed in a Residential District**, shall not be allowed in a Residential District master plan.

4.5.140 Master Planned Development - Overlay Zone and Concept Plan Submission

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by Section 4.1.400. In addition, the applicant shall submit the following:

1. A statement of planning objectives to be achieved by the planned development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.
2. A development schedule indicating the approximate dates when construction of the planned development and its various phases are expected to be initiated and completed.
3. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the planned development.
4. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section 4.5.180.
5. Special studies prepared by qualified professionals may be required by the City Planning Official, Planning Commission or City Council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

B. Additional Information. In addition to the general information described in Subsection “A” above, the concept plan, data, and narrative shall include the following exhibits and information:

1. Existing Conditions map, as defined in Section 4.2.500 - Site Design Review Application Submission Requirements;

2. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
3. Grading concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);
5. Architectural concept (e.g., information sufficient to describe architectural styles, building heights, and general materials);
6. Sign concept plan (e.g., locations, general size, style and materials of signs);
7. Copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

4.5.150 Master Planned Development - Overlay Zone and Concept Plan Approval Criteria

The City shall make findings that all of the following criteria are satisfied when approving or approving with conditions, the overlay zone and concept plan. The City shall make findings that not all of the criteria are not satisfied when denying an application:

- A. Comprehensive Plan.** All relevant provisions of the Comprehensive Plan are met;
- B. Land Division Chapter.** All of the requirements for land divisions, as applicable, shall be met (Chapter 4.3);
- C. Article 2 and Article 3 Standards.** All of the land use, development, and design standards contained in Articles 2 and 3 are met, except as may be modified in Section 4.5.130
- D. Open Space.** Master plans shall contain a minimum of [15-20] percent open space. Public open space shall be integral to the master plan. Plans shall emphasize public gathering places such as plazas, neighborhood parks, trails, and other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open space is designated, the following standards apply:

- 1. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument; and
- 2. The open space shall be conveyed in accordance with one of the following methods:
 - a. By dedication to the City as publicly owned and maintained open space. Open space proposed for dedication to the City must be acceptable to the City Planning Official with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities;
 - b. By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the City retaining the development rights to the property. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the City.

4.5.160 Master Planned Development - Administrative Procedures

- A. Land Use District Map Designation.** After a planned development overlay zone has been approved, the land use district map shall be amended in accordance with Chapter 4.7, to indicate the approved planned development designation for the subject development site. The approval of the planned development overlay zone shall not expire.
- B. Time Limit on Filing of Detailed Development Plan.** Within three (3) years after the date of approval of the concept plan, the applicant or his or her successor shall prepare and file with the City a detailed development plan, in conformance with Section 4.5.170 through 4.5.180.
- C. Extension.** The City shall, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:
 - 1. No changes have been made on the original conceptual development plan as approved;
 - 2. The applicant can show intent of applying for detailed development plan review within the one- year extension period;
 - 3. There have been no changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based; and
 - 4. The extension request is made before expiration of the original approval period.

4.5.170 Master Planned Development - Detailed Development Plan Submission Requirements

The contents of the detailed development plan shall be determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features, prior to approval of a development permit. The detailed development plan may combine land division, development review, site design review, and/or other applications for concurrent review and approval. The detailed development plan shall be reviewed using a Type III procedure.

4.5.180 Master Planned Development - Detailed Development Plan Approval Criteria

The City shall approve the detailed development plan upon finding that the final plan conforms to the concept plan and required conditions of approval. If the detailed plan request combines other land use and development applications, as provided in Section 4.5.180, those applications shall additionally be subject to the applicable approval criteria in Article 4. Minor changes to the approved concept plan may be approved with the detailed plan, when the approval body finds that the modification(s) is/are consistent with the criteria in 1-7, below. Changes exceeding those in subsections A-H, below, must be reviewed as major modifications under Chapter 4.6.

- A. Increased residential densities** (overall or reallocated between development phases) by no more than 20 percent, provided such increase conforms to the Comprehensive Plan and underlying District;
- B. Increase in lot coverage or impervious surface** (overall or reallocated between development phases) by no more than 15 percent over that which is approved;
- C. Reduction in open space or landscaping** by no more than 10 percent;
- D. Increase in overall automobile parking spaces** by no more than 10 percent;
- E. Land use.** No change in land use shall be permitted without a major modification to the concept plan;
- F. Proposals to add or increase lot coverage within an environmentally sensitive areas (sensitive lands) or areas subject to a potential hazard** shall require a major modification to the concept plan;
- G. Major changes in the location of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements shall require a Major Modification pursuant to Chapter 4.6.** “Major” in this subsection means by more than 100 feet, or 15 percent, relative to setbacks; and
- H. Other substantial modifications** not listed in A-G, above, shall require approval of a major modification, in conformance with Chapter 4.6.

4.5.190 Master Planned Development - Land Use Review, Site Design Review, Final Plat, and Building Permit Approvals

- A. Land Use and Site Design Reviews.** For projects requiring land use or site design review, all such approvals must be final and appeal periods expired before the City issues building permits. Chapter 4.2 applies to site design review.
- B. Land Divisions.** For projects requiring a land division, the preliminary land division plats must be final and appeal periods expired before a final plat is approved and building permits issued. Chapter 4.3 applies to land divisions.
- C. Streamlined Review Option.** Applications for preliminary land division plats, land use reviews, and site design review applications that are part of an approved master planned development may be reviewed using a Type II procedure, rather than the conventional Type III procedure. This shall be the applicant’s option. The variation from the standard procedures of Chapter 4.2 - Site Design Review, and Chapter 4.3 - Land Divisions is intended to streamline review of projects that have received master planned development approvals, since those projects have previously been subject to public review and hearings.

Chapter 4.6 Modifications to Approved Plans and Conditions of Approval

Sections:

- 4.6.100 Modifications - Purpose**
- 4.6.200 Modifications - Applicability**
- 4.6.300 Major Modifications**
- 4.6.400 Minor Modifications**

4.6.100 Modifications - Purpose

The purpose of this Chapter is to provide an efficient process for modifying land use decisions and approved development plans, in recognition of the cost and complexity of land development and the need to conserve City resources.

4.6.200 Modifications - Applicability

- A. This Chapter applies to all development applications approved through the provisions of Chapter 4, including:
 - 1. Land Use Review approvals;
 - 2. Site Design Review approvals;
 - 3. Subdivisions, Partitions, and Property Line Adjustments;
 - 4. Conditional Use Permits;
 - 5. Master Planned Developments; and
 - 6. Conditions of approval on any of the above permit types.
- B. This Chapter does not apply to Comprehensive Plan amendments, land use district changes, text amendments, annexations, temporary use permits, or other permits not listed in subsection A.

4.6.300 Major Modifications

A. Major Modification Defined. The City Planning Official shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:

1. A change in land use;
2. An increase in density by more than ten (10) percent, provided the resulting density does not exceed that allowed by the land use district;
3. A change in setbacks or lot coverage by more than 10 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district;
4. A change in the type and/or location of access-ways, drives or parking areas affecting off-site traffic;
5. An increase in the floor area proposed for non-residential use by more than 15 percent where previously specified;
6. A reduction of more than 10 percent of the area reserved for common open space; or
7. Change to a condition of approval, or a change similar to items 1-6, that could have a detrimental impact on adjoining properties. The City Planning Official shall have discretion in determining detrimental impacts warranting a major modification.

B. Major Modification Applications; Approval Criteria. An applicant may request a major modification using a Type II or Type III review procedure, as follows:

1. Upon the City Planning Official determining that the proposed modification is a major modification, the applicant shall submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.
2. The application shall be subject to the same review procedure (Type II or III), decision making body, and approval criteria used for the initial project approval, except that adding a conditional use to an approved project shall be reviewed using a Type III procedure.
3. The scope of review shall be limited to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping. Notice shall be provided in accordance with Chapter 4.1.
4. The decision making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the criteria.

4.6.400 Minor Modifications

A. Minor Modification. Any modification to a land use decision or approved development plan that is not within the description of a major modification as provided in Section 4.6.300.A, above.

B. Minor Modification Review Procedure. An application for approval of a minor modification shall be reviewed by the Planning Official using a Type I or a Type II review procedure under Section 4.1.200 or 4.1.300. The Planning Official is responsible for determining the appropriate review procedure based on the following criteria:

1. Minor modifications that involve only clear and objective code standards may be reviewed using a Type I procedure;
2. Minor modifications that involve one or more discretionary standards shall be reviewed through Type II procedure; and
3. When the code is unclear on whether the application should be a Type I or Type II review, a Type II procedure shall be used.

C. Minor Modification Applications. An application for minor modification shall include an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.

D. Minor Modification Approval Criteria. The Planning Official shall approve, deny, or approve with conditions an application for minor modification based on written findings that the modification is in compliance with all applicable requirements of the Development Code and conditions of approval on the original decision, and the modification is not a major modification as described in Section 4.6.300.A, above.

Chapter 4.7 Land Use District Map and Text Amendments

Sections:

- 4.7.100 Amendments - Purpose**
- 4.7.200 Legislative Amendments**
- 4.7.300 Quasi-Judicial Amendments**
- 4.7.400 Conditions of Approval on Quasi-Judicial Amendments**
- 4.7.500 Record of Amendments**
- 4.7.600 Transportation Planning Rule Compliance**

4.7.100 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.

4.7.200 Legislative Amendments

Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV procedure in Section 4.1.500 and shall conform to the Transportation Planning Rule provisions in Section 4.7.600, as applicable.

4.7.300 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 Type III procedure, as governed by Section 4.1.400, using standards of approval in Section 4.7.300.B. 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 is 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; and
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 Section 4.7.600.

4.7.400 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 amendments may only be approved or denied.

4.7.500 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. This shall be located in Article 6.

4.7.600 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 of Section 4.1.900. “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 road authority's adopted transportation system plan (TSP) / 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 *[road authority's transportation system plan (TSP) / 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 *[road authority's transportation system plan (TSP) / City's Comprehensive Plan]*.

B. Amendments That Affect Transportation Facilities. Except as provided in subsection C, 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 *[road authority's transportation system plan (TSP) / City's Comprehensive Plan]*, may be approved when all of the following criteria are met:

4.7 – Land Use District Map and Text Amendments

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, mitigates 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 road authority provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility.

Chapter 4.8 Code Interpretations

Sections:

4.8.100 Interpretations - Purpose

4.8.200 Code Interpretation Procedure

4.8.100 Interpretations - Purpose

Some terms or phrases within the Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

4.8.200 Code Interpretation Procedure

- A. Requests.** A request for a code interpretation shall be made in writing to the *[City Planning Official/Planning Commission]*.
- B. Decision to Issue Interpretation.** The Planning Official shall have the authority to interpret the code, or refer the request to the Planning Commission for its interpretation. The Planning Official shall advise the person making the inquiry in writing within 14 days after the request is made, on whether or not the City will make an interpretation.
- C. Written Interpretation.** If the City decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy. The written interpretation shall be issued within 14 days of the request. The decision shall become effective 14 days later, unless an appeal is filed in accordance with E-F below.
- E. Type II Procedure.** Code Interpretations shall be made using a Type II procedure under Section 4.1.300.
- F. Appeals.** The applicant and any party who received notice or who participated in the proceedings through the submission of written or verbal evidence may appeal the decision to the Planning Commission for a Type III decision. The appeal must be filed within 14 days after the interpretation was mailed or delivered to the applicant. Initiating an appeal requires filing a notice of appeal with the City Planning Official pursuant to Section 4.1.400.
- G. Interpretations On File.** The City shall keep on file a record of all code interpretations. *[See Article 6.]*

Chapter 4.9 Miscellaneous Permits

Sections:

4.9.100 Temporary Use Permits

4.9.200 Home Occupation Permits

4.9.100 Temporary Use Permits

Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Three types of temporary uses require permit approval (See A, B and C):

A. Seasonal and Special Events. These types of uses occur only once in a calendar year and for no longer a period than 30 days. Using the Type II procedure under Section 4.1.400, the City shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is permitted in the underlying land use district and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property-owner's permission to place the use on his/her property;
3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under Chapter 3.3 - Vehicle and Bicycle Parking;
4. The use provides adequate vision clearance, as required by Section 3.1.200, and shall not obstruct pedestrian access on public streets;
5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Section 3.1.200 - Vehicular Access and Circulation;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses allowed outright in the district do not affect the adjoining use; and
7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

B. Temporary Sales Office or Model Home. Using a Type I procedure under Section 4.1.200, the City may approve, approve with conditions or deny an application for the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary sales office:

- a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
- b. The property to be used for a temporary sales office shall not be permanently improved for that purpose;
- c. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

2. Model house:

- a. The model house shall be located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and
- b. The model house shall be designed as a permanent structure that meets all relevant requirements of this Code and other applicable codes and permit requirements.

C. Temporary Building, Trailer, Kiosk, or Structure. Temporary or permanent placement of a building, trailer, kiosk, or structure, including but not limited to prefabricated building(s), for use on any real commercial or industrial property within the City shall require a development permit. Using a Type II procedure, as governed by Section 4.1.400, the City may approve, approve with conditions or deny an application for a placement of a building, trailer, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, based on following criteria:

1. The temporary trailer or building shall be located within the specified property line setbacks of the parcel of land on which it is located;
2. The primary use on the property to be used for a temporary trailer is already developed;
3. Ingress and egress are safe and adequate as demonstrated by an approach permit approved by the road authority, as applicable. See also, Section 3.1.200 - Vehicular Access and Circulation;

4.9 – Miscellaneous Permits – Temporary Uses

4. There is adequate parking for the customers or users of the temporary use as required by Chapter 3.3 - Bicycle and Vehicle Parking;
5. The use will not result in vehicular congestion on streets;
6. The use will pose no impediment or hazard to pedestrians in the area of the use;
7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
8. The building complies with applicable building codes;
9. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
10. The length of time that the temporary building will be used does not exceed 6 months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit; and
11. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

4.9.200 Home Occupation Permits

A. Purpose.

The purpose of this Section is to encourage those who are engaged in small commercial ventures that do not conform to the Special Standards for Certain Uses in Section 2.1.200, H. Home Occupation. The standards referenced above allow home occupations as outright permitted uses that do not require Development Review or Site Design Review.

Section 4.9.200 provides a process for more intense home occupations to be allowed with Site Design Review by the Planning Commission and notice to surrounding property owners. These home occupations may be permitted, with conditions of approval when appropriate, in order to increase the benefits of people working and living in the same place, while protecting neighboring residents from adverse impacts of home occupation activities. These benefits to the business owner and to the general public include: reduced number of commute-to-work trips, day-time “eyes on the street” at the residence, and a neighborhood-scale version of mixed residential and commercial uses.

B. Approval Process and Criteria.

1. Home Occupation Permit. Applications for proposals that cannot meet all of the standards in Section 2.1.200.H. shall be processed using a Type III procedure, as governed by Chapter 4.1.400, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.400.B., the applicant shall provide:
 - a. A written narrative or letter:
 - (1) describing the proposed home occupation;
 - (2) demonstrating compliance with those standards in Sub Section 2.1.200.H that can be met, and explaining why the other standards in Sub Section 2.1.200.H cannot be met, and
 - (3) demonstrating compliance with the criteria in subsection 2 below;
 - b. A site plan, not necessarily to scale, of the lot proposed for the home occupation, including:
 - (1) the property lines and their dimensions;
 - (2) outlines of the foundations of all buildings proposed for home occupation use with dimensions for each wall, and the distances from each wall to the nearest property line;
 - (3) boundaries and dimensions of driveways and parking areas, indicating areas for use by home occupation employees and customers;
 - (4) outlines of the foundations of abutting residences, and the distances from the shared property line to the nearest wall of each neighboring residence; and

- (5) identifying the buildings and areas of those buildings in which home occupation activities will take place, and identifying which activities will take place in which buildings and areas.
2. The City shall approve, approve with conditions, or deny an application for a Type III home occupation based on all of the following criteria:
 - a. The proposed use will not be materially detrimental to the stated purposes of applicable Code requirements and to other properties within a radius of 100 feet of the subject property;
 - b. Impacts to surrounding properties may exist but can be mitigated;
 - c. Existing physical and natural systems, such as, but not limited to drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred in compliance Section 2.1.200.H.