

# City of Wheeler, Oregon Zoning Ordinance

Adopted December 1979  
Amendments through September 2012

## CITY OF WHEELER, OREGON ZONING ORDINANCE

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Wheeler Zoning Ordinance 79-2 was passed on December 28, 1979. It was amended by the following ordinances:

- Ordinance No. 82-3 Clarification and addition of definitions; and changes in certain Conditional Uses / Activities and Development Standards
- Ordinance No. 85-2 Mobile homes
- Ordinance No. 87-7 Include Tillamook County Estuary Plan for the Nehalem Bay and River
- Ordinance No. 87-8 RV Parks and campgrounds
- Ordinance No. 88-3 Bed and Breakfast establishments
- Ordinance No. 91-3 Permanent placement of recreational vehicles in an RV Park
- Ordinance No. 94-1 Manufactured Homes
- Ordinance No. 94-4 Addition of definitions; changes in certain Conditional Uses/Activities and Development Standards; addition of Section 11.053 on Clearing, Cutting, and Filling; revision of Article 13; replacement of Article 16.
- Ordinance No. 97-13 Periodic Review changes
- Ordinance No. 2002-02 Flood Hazard Reduction (Section 9.050)
- Ordinance No. 2003-01 Historic Resource Overlay Zone
- Ordinance No. 2004-02 Changes required by FEMA; corrections of typos from Periodic Review Changes; and deletion of Section 11.100 on Signs
- Ordinance No. 2005-02 Changes in the Commercial Zones
- Ordinance No. 2007-02 Changes to Design Review
- Ordinance No. 2007-05 Changes to Geologic Investigations
- Ordinance No. 2010-01 Addition of open space definitions; and changes to mailed notice and enforcement procedures
- Ordinance No. 2010-04 Replacement of Clearing, Cutting, and Filling Section 11.053
- Ordinance No. 2012-04 Changes to Section 1.070 Definitions; Section 11.020 Geologic Investigations, Section 11.050 Design Review; Article 10 Planned Development; Article 17 Nonconforming Structures and Uses

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ORDINANCE NO. 79-2

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY  
OF WHEELER, OREGON

The City of Wheeler, Oregon, ordains as follows:

ARTICLE 1. INTRODUCTORY PROVISIONS

Section 1.010. Title.

This ordinance shall be known and may be cited as the "Wheeler Zoning Ordinance".

Section 1.020. Purpose.

This ordinance is to establish zoning districts and regulations within the city, consistent with the Wheeler Comprehensive Plan, and for the following purpose:

1. To promote appropriate uses of land and orderly development of the city;
2. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
3. To protect land uses from geologic hazards, pollution, floods and other dangers;
4. To provide adequate light, air quality and provisions for fire protection;
5. To promote the public health, safety, convenience and welfare;
6. To conserve and stabilize the value of property;
7. To protect and enhance the appearance of the city.

Section 1.030. Rules of Application.

1. No building or other structure shall be erected, reconstructed, altered, enlarged or moved, nor shall any building, structure or land be used for any purpose except as specifically (or by necessary implication) authorized by this ordinance. No lot shall be reduced in area so as to be smaller than the allowable minimum lot sizes authorized by this ordinance, and if already less, the area shall not be further reduced.

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2. Issuance of building permits, property divisions and other uses of land authorized by this ordinance shall require written certification by the City Recorder and Planning Commission Chairman that the proposal is consistent with the provisions of the City Zoning Ordinance, City Comprehensive Plan, and other local ordinances. A decision may be appealed to the City Council.

Section 1.040. Classification of Zones.

For the purpose of this ordinance, the following zones are hereby established:

ZONE	PRIMARY SYMBOL	ARTICLE
Water-Related Commercial	WRC	2.010-2.040
Water-Related Industrial	IND	3.010-3.040
General Commercial	GC	4.010-4.040
Residential 1	R1	5.010-5.040
Residential 2	R2	6.010-6.040
Public Land Areas	P EN	7.010-7.040
Estuarine Natural	ED	8.020-8.050
Estuarine Development	FHO	8.070-8.090
Flood Hazard Overlay		9.010-9.060

Section 1.050. Mapping of Zones.

1. The boundaries of zoning districts within the City limits are shown upon the maps entitled "City of Wheeler Zoning Maps."
2. Boundaries of zoning districts shall be the same as boundaries of the Comprehensive Plan Land-Use Map.
3. The City shall maintain an up-to-date copy of the City Zoning Map, revised when necessary, so that it accurately portrays changes of the district boundaries. Adjacent to any zoning map revisions, the City Recorder shall endorse the change with the ordinance number authorizing the zone map amendment.
4. Unless otherwise specified, zone boundaries are section lines; subdivision lines; lot lines; center lines of streets; or such lines extended.

Section 1.060. Zoning of Annexed Areas.

Areas annexed to the City shall automatically be classified consistent with the Comprehensive Plan.

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Section 1.070. Definitions.

As used in the Ordinance the following words and phrases shall mean:

1. The word shall is mandatory and the words should or may are permissive.
2. Access. Means the way or means by which pedestrians and vehicles enter and leave property.
3. Accessory Use and Structure. A use of structure incidental and subordinate to the main use of the property and located on the same lot as the main use.
4. Alley. A street which affords only a secondary means of access to property.
5. Aquaculture. The raising, feeding, planting and harvesting of fish and shellfish, including associated facilities necessary to engage in the use.
6. Bed and Breakfast. An owner occupied dwelling where no more than three (3) rooms are available for transient lodging and where a morning meal is provided.
7. Bridge Crossing. The portion of a bridge spanning a waterway not including support structures or fill located in the waterway or adjacent wetlands.
8. Bridge Crossing, Support Structures. Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.
9. Building. A structure, other than a mobile home, built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind and having a fixed connection to the ground.
10. Condominium. A part of a property consisting of a building or one or more rooms occupying one or more floors of a building or a part or parts thereof, intended for any type of independent ownership, the boundaries of which are described pursuant to ORS Chapter 91, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.
11. Condominium, Time-Share. A condominium similar to a hotel in which rooms are individually owned and in which some or all rooms are available to transients for rent or on an exchange basis.
12. Cottage Industry. A small business activity which may involve the provision of services or manufacture and sale of products, is carried on by a member of the family living on the premises with no more than one other person employed by the family member, and is not detrimental to the overall character of the neighborhood.
13. Open Space within a Planned Development or Subdivision. Open space within a Planned Development or Subdivision shall be dedicated specifically for the purpose of providing places for

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recreation, conservation, landscaping, or preservation of natural features. Open space is not occupied by buildings, structures, parking areas, streets, alleys, or driveways. In the open space calculation, the following cannot be included: wetlands, waterways, ponds, marshes, and tidal marshes. See also Section 1.070(57) Open Space.

14. Day Care Center. A facility other than the residence of the day care provider, which receives three or more children for apart of the twenty-four hours of the day for the purpose of providing care and board apart from the children's parents or guardians.
15. Dock. A pier, wharf or secured float or floats for boat tie up or other water use.
16. Dredge Material Disposal. The deposition of dredge material in aquatic or shoreland areas.
17. Dwelling, Multi-family. A Building containing three or more dwelling units.
18. Dwelling, Single-family. A detached building other than a mobile home or recreational vehicle, containing one dwelling unit.
19. Dwelling, Two-family. A detached building containing two dwelling units.
20. Dwelling Unit. A building with one or more rooms designed for occupancy by one family and having not more than one cooking facility.
22. Estuarine Enhancement. An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.
23. Estuary  
A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.
24. Family. Means an individual or two or more persons related by blood, marriage, adoption, legal guardianship, living together as one housekeeping unit using one kitchen, or a household of no more than 5 unrelated persons.
25. Family Day Care Center. A day care facility where care is provided in the home of the provider to fewer than 13 children including children of the provider, regardless of full or part-time status.
26. Fence, Sight-obscuring. A fence or evergreen planting arranged in such a way as to obstruct vision.
27. Fill. The placement by man of sediment or other material (excluding solid waste) in an aquatic area to create new shoreland or on shorelands to raise the elevation of land.

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28. Green space  
Green space is any land that is landscaped or natural. Green space may consist of natural areas, residential lawns, landscaped areas with trees and shrubs, garden plots, parks and may include bike or hiking paths.
29. Height of Building. The vertical distance above mean lot elevation, as defined, to the highest point of the structure or building. In the Flood Hazard Overlay Zone the vertical distance shall be measured from base flood elevation rather than above mean lot elevation.
30. Highway Development or Railroad Development. Major or significant realignment, change of grade, rerouting or expansion of an arterial highway or abandonment of a railroad line or reconstruction thereof, not including routine maintenance activities such as repaving, widening for bicycles, or installation of traffic signs.
31. Home Occupation. A lawful occupation carried out by a resident of a dwelling as an accessory use within the same dwelling, in connection with which there is no person employed other than a member of the family residing on the premises; and there is no activity conducted in such a manner as to give an outward appearance of a business in the ordinary meaning of the word.
32. Hotel/Motel. A property, however owned and including condominiums in which rooms generally are rented as transient lodgings and not as principle residences.
33. Land Use Density  
A land use density is the number of lots or dwelling units allowed on an area of land. When calculating density, the net area is used. Net area is the total area less street dedications and open space dedication requirements. When a development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.
34. Line of Non-Aquatic Vegetation. The waterward limit of shoreland areas or where such a line cannot be determined, mean higher high water.
35. Lot. A parcel or tract of land.
36. Lot Area. The total horizontal area within the lot line of a lot exclusive of streets and easements of access to other property.
37. Lot, Corner. A lot abutting on two or more streets other than an alley, at their intersection.
38. Lot Depth. The average horizontal distance between the front lot line and the rear lot line.
39. Lot Line. The property line bounding a lot.

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40. Lot Line, Front. The lot line separating the lot from the street other than an alley, and in the case of a corner lot, the shortest lot line along a street other than an alley.
41. Lot Line, Rear. The lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular, or other shaped lot, a line 10 feet in length within the lot parallel to and at a maximum distance from the front lot line.
42. Lot Line, Side. Any lot line not a front or rear lot line.
43. Lot Width. The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.
44. Manufactured Dwelling.
- a. A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, is being used for residential purposes, and was constructed before January 1, 1962.
  - b. A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, is being used for residential purposes, and was constructed between January 1, 1962, and June 16, 1976, and met the construction requirements of the Oregon mobile home law in effect at the time of construction.
  - c. A manufactured home, a structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, is being used for residential purposes, and was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.
- "Manufactured dwelling" does not mean any building or structure subject to the Structural Specialty Code adopted pursuant to ORS 455.100 - 455.450.
45. Manufactured Dwelling Park. Any place where four or more manufactured dwellings are located within five hundred feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the city.
46. Marina. A facility for the docking of boats in the water, involving eleven (11) or more boats or boatslips.

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47. Minor Navigation Improvement. Alteration necessary to provide water access to existing or permitted uses in conservation management units including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.
48. Mean Lot Elevation. The mean elevation of the highest and lowest lot corners.
49. Mitigation. The creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary such as its natural biological productivity, habitats and species diversity unique features and water quality (ORS 541.626).
50. Moorage. A facility for the docking of boats in the water, involving ten (10) or fewer boats or boatslips.
51. Navigation Aid. A beacon, mooring buoy, or channel marker.
52. Navigational Improvements. Pile dikes, groins, fills, jetties, and breakwaters that are installed to help maintain navigation channels, control erosion or protect marinas and harbors by controlling water flow, wave action and sand movement.
53. Net Buildable Area  
Net buildable area is the developable / buildable area of a site less public rights-of-way, streets, roads, utility easements, and facilities, sidewalks, riparian setback areas, parking lots, recreation areas, and open space.
54. Nonconforming Structure or Use  
A nonconforming use is a use or a structure that was legally established but is no longer permitted because zoning regulations have been applied or changed since the use or structure was established.
55. Non-Premise Sign. A sign which directs attention to a business, product, activity, or service which is not necessarily conducted, sold, or offered upon the premises where such a sign is located.
56. Nursing Home. A place for the rooming or boarding of aged or convalescent persons, whether ambulatory or non-ambulatory.
57. Open Space. Open space is any land that is either retained in a substantially natural condition, is specifically required to be protected by a conservation easement, or is improved for recreational purposes such as hiking or nature trails, or equestrian or biking paths. Open space may include lands protected as important natural features, lands preserved for farm or forest use and land used as buffers. Open space does not include residential lots or yards, buildings, structures, parking areas, streets, alleys, or driveways.

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58. Owner. An owner of property or the authorized agent or an owner.
59. Parking Lot.  
A parking lot is property, other than streets on which parking spaces are defined for a specific use or for use by the general public.
60. Parking Space. Parking space means an area of 9 feet by 18 feet for full size spaces, and an area of 8 feet by 16 feet for compact spaces, located off the street right of way, and intended for the parking of vehicles.
61. Person. Every natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.
62. Pier.  
A pier is a raised structure, including bridge and building supports and walkways, over water, typically supported by widely spread piles or pillars.
63. Public Utility. Any person, firm or corporation, municipal department or board fully authorized to furnish the public electricity, gas, steam, sewage, cable TV, telephone, telegraph, transport or water.
64. Recreation Vehicle. A vacation which is:  
a. Built on a single chassis;  
b. 400 square feet or less when measured at the largest horizontal projections;  
c. Designed to be self-propelling or permanently towable by a light duty truck, and  
d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel, or seasonal use.
65. Resource Capability. A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.
66. Restoration. For the purposes of Goal 16, estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.
67. Riparian.  
Of, pertaining to, or situated on the edge of the bank of a river or other body of water. A riparian setback is measured on tidal waters at mean higher high water, and on non-tidal waterways at the

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ordinary high-water mark.

68. Shoreline

The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

69. Shoreline Stabilization. The protection of the banks of tidal or non-tidal stream, river or estuarine waters by vegetative or structural means.

70. Short Term Rental. A dwelling unit occupied for remuneration for less than 14 calendar days, including portions of days as full days. Remuneration means compensation, money, rent, or other bargained for consideration given in return for occupancy.

71. Sign. See definition in the current version of the Wheeler Sign Ordinance.

72. Street. The entire width between the right-of-way lines of every public way for vehicular and pedestrian traffic and includes the terms "road", "highway", "land", "place", "avenue", "alley", and other similar designations.

73. Structural Alteration. Any change to the supporting members of a structure including foundations, bearing walls, or partitions, columns, beams, girders, or any structural change in the roof or in the exterior walls.

74. Structure. Something constructed or built, or any piece of work artificially built-up or composed of parts joined together in some definite manner, having a fixed connection to the ground.

75. Temporary Alteration. Dredging, filling or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan.

76. Use. The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

77. Video Arcade. A business primarily involved in the provision of on-site video viewing or video games, with five or more video game machines.

78. Water-Dependent. A commercial or industrial use or activity is water-dependent if uses and activities can only be carried out on, in or adjacent to water. The water location or access must be needed for either:

- Water-borne transportation - navigation, moorage, fueling and servicing ships or boats, terminal and transfer facilities, resource and material receiving and shipping; or
- Recreation - swimming, boating, fishing, hunting, viewing, and walking; or
- A source of water - for energy production, cooling industrial equipment or wastewater, industrial processes, and aquaculture operations.

79. Water-Oriented. A use whose attraction to the public is enhanced by a view of or access to coastal waters.
80. Water-Related. A commercial or industrial use or activity is water-related if:
- Uses and activities are not directly dependent upon access to a water body, but provide goods or services that are directly associated with water-dependent land or waterway use; and
  - If not located adjacent to water, would result in a public loss of quality in the goods and services offered.
  - Except as necessary for water-dependent or water-related uses or facilities; residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent upon or related to water location needs.
81. Wharf  
A wharf is a structure located on land that is used to accommodate waterway access.
82. Wheeler Waterfront. Property adjoining the waterfront as well as those properties fronting on U.S. Highway 101.
83. Yard. An open space on a lot which is unobstructed from the ground upward except as otherwise provided in this ordinance.
84. Yard, Front. A yard between side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a building or to the structure. Any yard meeting this definition and abutting on a street other than an alley shall be considered a front yard.
85. Yard, Rear. A yard between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of a building or other structure.
86. Yard, Side. A yard between the front and rear yard measured horizontally at right angles from the side lot line to the nearest point of a building or other structure.
87. Yard, Street Side. A yard adjacent to a street between the front yard and rear lot line measured horizontally and at right angles from the side lot line to the nearest point of a building or other structure.

ARTICLE 2. WRC ZONE - WATER-RELATED COMMERCIAL

Section 2.010. Intent.

The water-related commercial zone, designated by the primary symbol WRC, is established along the water-front to provide land space for marine-oriented commercial uses.

Section 2.020. Permitted Principal Uses/Activities.

The following uses, their accessory uses and activities are permitted out-right:

1. Low-intensity marine research and/or education;
2. Navigational aids;
3. Marinas and/or shallow water port facilities and shipping activities;
4. Piers and wharves;
5. Low-intensity water-dependent recreation facilities and public access points, including parks, waysides and boat ramps;
6. Marine services;
7. Retail/wholesale fish and shellfish sales.
8. Boat, canoe, kayak sales and or rentals.

Section 2.030. Conditional Uses/Activities.

The following conditional uses, their accessory uses and activities are permitted in the WRC zone subject to the provisions of Article 15:

1. Fill and dredge material disposal.
2. Aquaculture or hatchery sites.
3. Permanent recreation facilities other than boat ramps, including public rest rooms, and other developed recreation facilities.
4. Shoreline stabilization.
5. Railroad development.

6. Medium- or high-intensity research and/or educational activities.
7. Bicycle paths.
8. Dry boat storage.
9. Hotels and motels.
10. Restaurants.
11. Educational facilities such as museums, interpretive centers, and aquariums.
12. Residential use in conjunction with a permitted or conditional use where the street level shall be maintained as a commercial use.
13. Bed and Breakfast when in conjunction with a permitted or conditional use where the street level is maintained as a commercial use.

Section 2.040. Development Standards.

In the WRC zone, the following standards shall apply:

1. The maximum building height shall be 24 feet.
2. Outdoor storage areas shall be enclosed by suitable vegetation, fencing or walls.
3. Exterior lighting shall not adversely affect the livability of property in nearby residential zones.
4. All development shall be in accordance with shoreland development standards, Section 11.110.
5. Landscaping standards in accordance with Section 11.050.
6. All commercial developments shall be subject to design review, Section 11.050.
7. Parking shall be in accordance with Section 11.090.
8. Signs shall be in accordance with Section 11.100.

Section 2.050. Special Use Standards.

A conditional use allowed in the WRC zone shall meet #1 below and either #2 or #3 of the following criteria:

1. The use is not an Especially Suited to Water Dependent (ESWD) use which means that it can be carried out on land that is not adjacent to the water and the water location or access is not needed for:
  - a. Uses especially suited for water-dependent uses.
  - b. Uses especially suited for water-related uses.
  - c. Uses which retain flexibility of future use and do not inalterably commit shorelands for more intensive uses.
  - d. Uses which maintain the integrity of estuaries and coastal waters.
2. The use does not require filling or dredging of the estuary; or
3. The use is approved by the Planning Commission in accordance with Article 2, Section 2.040, Article 11, Section 11.050 and Section 11.110, and Article 15 of this Ordinance.

ARTICLE 3. IND ZONE - WATER-RELATED INDUSTRIAL

Section 3.010. Intent.

The water-related industrial area, designated by the primary symbol IND, is established to encourage development of marine-oriented industrial and commercial uses which are compatible with the community setting and natural values in the Wheeler area.

Section 3.020. Permitted Principal Uses/Activities.

In an IND zone the following uses and their accessory uses and activities are permitted outright:

1. Shallow-water port facilities.
2. Marinas, piers and wharves.
3. Navigation improvements.
4. Boat ramps.
5. Hatchery site and aquaculture uses.
6. Boat building.
7. Seafood processing.
8. Other water-related industry.
9. Marine services.
10. Dry boat storage.
11. Log storage and processing.

Section 3.030. Conditional Uses/Activities.

The following uses, their accessory uses and activities are permitted in an IND zone subject to provisions of Article 15:

1. Non-water-related industry.
2. Retail/wholesale fish and shellfish sales.

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3. Other water-related commercial uses.
4. Park, wayside or bicycle paths.
5. Fill and dredge material disposal.
6. Railroad development.
7. Non-premise signs.
8. Residential use in conjunction with and incidental and subordinate to a permitted or conditional use where the street level shall be maintained as a water-dependent industrial use and the residential use square footage ratio does not exceed one to three, non-water-dependent to water-dependent.
9. Shoreline stabilization.

### Section 3.040. Development Standards.

In the IND Zone, the following standards shall apply:

1. The maximum building height shall be 24 feet.
2. Outdoor storage areas shall be enclosed by suitable vegetation, fencing, or walls.
3. Exterior lighting shall not adversely affect the livability of property in nearby residential zones.
4. When a use abuts a lot in a non-industrial zone, there will be an attractively designed and maintained buffer which can be in the form of vegetation, fencing, or walls.
5. All development shall be in accordance with shoreland development standards, Section 11.110.
6. The minimum lot size and shape for residential uses shall be the same as in a R-1 zone.
7. All commercial developments shall be subject to design review, Section 11.050.
8. Parking shall be in accordance with Section 11.090.
9. Signs shall be in accordance with Section 11.100.

ARTICLE 4. GC ZONE - GENERAL COMMERCIAL

Section 4.010. Intent.

The town commercial area, designated by the primary symbol GC, is established to provide for commercial uses.

Section 4.020. Permitted Principal Uses.

In a GC zone the following uses and their accessory uses are permitted outright:

1. Retail trade establishments such as grocery stores, drug stores, gift shops, variety stores, appliance stores.
2. Repair and maintenance service of the type of goods to be found in the above permitted trade establishments.
3. Arts and crafts galleries and studios.
4. Eating and drinking establishment.
5. Theater.
6. Wholesale business in conjunction with a retail business on the same premises.
7. Residential use in conjunction with a permitted or conditional use where the street level shall be maintained as a commercial use.
8. Publicly owned park and recreation area.
9. Family day care center, day care center, or adult day care residence.
10. Business, personal and professional service establishments.
11. Financial institutions.
12. Mobile food vendor by special permit.
13. Mobile merchandise vendor by special permit.

Section 4.030. Conditional Uses Permitted.

In the GC zone, the following conditional uses are permitted subject to the provisions of Article 15:

1. Automobile service stations.
2. Government offices or facilities.
3. Hotel, motel, time-share condominium, or Bed and Breakfast.
4. Churches, lodges or meeting halls.
5. RV Parks on 4.5 acres or more.

Section 4.035. Prohibited Uses.

1. Video arcades.
2. Amusements activities, including uses such as shooting galleries, bumper cars, or similar facilities.
3. Auto wrecking and scrap metal.

Section 4.040. Development Standards.

In the GC Zone, the following standards shall apply:

1. The maximum building height shall be 24 feet.
2. Outdoor storage areas shall be enclosed by suitable vegetation, fencing or walls.
3. Exterior lighting shall not adversely affect the livability of property in nearby residential zones.
4. All development shall be subject to design review, Section 11.050.
5. Parking shall be in accordance with Section 11.090.
6. Signs shall be in accordance with Section 11.100.
7. For a motel, hotel or time share condominium, the minimum lot size shall be 5,000 square feet. The density of the development shall be determined as follows: 1 unit for the first 5,000 square feet and 1 unit for each additional 1,000 square feet.
8. All developments shall meet the landscaping requirements of Section 11.050.

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### ARTICLE 5. R-1 ZONE - RESIDENTIAL TYPE 1

#### Section 5.010. Intent.

The residential type 1 area, designated by the primary symbol R-1, is established to provide for orderly residential development of mainly conventional structures, in areas that have already been subdivided and/or where physical limitations do exist.

#### Section 5.020. Permitted Principal Uses.

In an R-1 zone the following uses and their accessory uses are permitted outright

1. Single family dwelling.
2. Duplexes.
3. Manufactured dwellings subject to the requirements of Article 11.
4. Home Occupations subject to the requirements of Article 11.
5. Public parks and recreation areas.
6. Accessory uses.
7. Family day care center or adult day care residence.
8. Residential home, or residential facility.
9. Utility lines and substations necessary for public service in the immediate area.
10. A manufactured dwelling or recreational vehicle not exceeding three hundred square feet in area, used temporarily during the construction period of a permitted use for which a building permit has been issued, but not to exceed one year.

#### Section 5.030. Conditional Uses.

In the R-1 zone, the following Conditional Uses are permitted subject to the provisions of Article 15:

1. Multiple family dwellings.
2. Church or community meeting halls.
3. Public utility buildings or municipal structure.

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4. Day care center.
5. Hospital or other medical facilities.
6. Public or private schools.
7. Cottage industry.
8. Forest management in accordance with Article 11.
9. Bed and Breakfast.

### Section 5.035. Prohibited Uses.

1. Short term rentals.

### Section 5.040. Development Standards.

In the R-1 zone, the following development standards shall apply:

1. The minimum lot size shall be 5,000 square feet, plus 2,500 square feet for each additional unit.
2. The minimum lot width shall be 40 feet, except on a corner lot it shall be 50 feet.
3. The minimum lot depth shall be 85 feet.
4. The minimum front yard shall be 20 feet.
5. The minimum rear yard shall be 10 feet, except on a corner it can be 5 feet.
6. The minimum side yard shall be 5 feet, except on the street side of a corner lot it shall be 15 feet.
7. The maximum building height shall be 24 feet (except accessory structures shall not exceed 15 feet).
8. Parking shall be in accordance with Section 11.090.
9. Signs shall be in accordance with Section 11.100.

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ARTICLE 6. R-2 ZONE - RESIDENTIAL TYPE 2

Section 6.010. Intent.

The residential type 2 area, designated R-2, is established for higher density residential development, including multi-family dwellings as an outright use.

Section 6.020. Permitted Principal Uses.

In a R-2 zone the following uses and their accessory uses are permitted outright:

1. Single family dwelling or single family modular housing.
2. Duplexes or two-family housing.
3. Home occupations.
4. Park, wayside, bicycle paths and public owned recreation areas.
5. Manufactured dwellings subject to the requirements of Article 11.
6. Multiple family dwellings.

Section 6.030. Conditional Uses Permitted.

In the R-2 zone, the following conditional uses are permitted subject to the provisions of Article 15:

1. Manufactured dwelling parks.
2. Church or community meeting hall.
3. Day care center or adult day care residence.
4. Forest management in accordance with Article 11.
5. Government structure, excluding a storage or repair facility.
6. Hospitals or other medical facilities.
7. Public or private schools.
8. Cottage industries.

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9. Bed and Breakfast.
10. A manufactured dwelling or recreational vehicle not exceeding three hundred square feet in area used temporarily during the construction period of a permitted use for which a building permit has been issued, but not to exceed one year.
11. Plant nursery.
12. RV Parks or Campgrounds on tracts of 10 acres or more.

Section 6.035. Prohibited Uses.

1. Short term rentals except as allowed under Section 6.030(12).

Section 6.040. Development Standards.

In the R-2 zone, the following standards shall apply:

1. The minimum lot size shall be 5,000 square feet for single family or duplexes, plus 2,500 square feet for each additional unit.
2. The minimum lot width shall be 40 feet, except on a corner lot it shall be 50 feet.
3. The minimum lot depth shall be 85 feet.
4. The minimum rear yard shall be 10 feet except on a corner lot it can be 5 feet.
5. The minimum front yard shall be 20 feet.
6. The minimum side yard shall be 5 feet, except on the street side of a corner lot it shall be 15 feet.
7. The maximum building height shall be 24 feet (except accessory structures shall not exceed 15 feet).
8. Non-residential developments shall be subject to design review in accordance with Section 11.050.
9. Parking shall be in accordance with Section 11.090.
10. Signs shall be in accordance with Section 11.100.

ARTICLE 7. P ZONE - PUBLIC LANDS ZONE

Section 7.010. Intent.

The public lands zoned area, designated by the primary symbol P, is established to be applied to lands publicly owned.

Section 7.020. Permitted Principal Uses.

In a P zone, the following uses and their accessory uses are permitted outright:

1. Park and wayside area.
2. Bicycle paths.
3. Public dock.
4. New highway or railroad development.

Section 7.030. Conditional Uses.

In a P zone, the following conditional uses are permitted subject to the provisions of Article 15:

1. Schools.
2. Hospitals.
3. Community meeting halls.
4. Public utility buildings.
5. Other public buildings.

Section 7.040. Development Standards.

1. The maximum building height shall be 24 feet except accessory structures shall not exceed 15 feet).
2. Parking shall be in accordance with Section 11.090.
3. Signs shall be in accordance with Section 11.100.

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ARTICLE 8. ESTUARY ZONE

Section 8.010. Estuary Zones. Areas Included.

Estuary Zones shall be applied to all estuarine water, intertidal areas, submerged and submersible lands and tidal wetlands up to the line of non-aquatic vegetation or the Mean Higher High Water (MHHW) line, whichever is most landward.

Section 8.015. Uses Permitted Outright (P)

The following uses are permitted outright within all estuary zones:

- A. Maintenance and repair of existing structures or facilities not involving a regulated activity. For the purpose of this ordinance, "existing structures and facilities" are defined as structures or facilities in current use or good repair as of the date of adoption of this ordinance, including structures or facilities which are in conformance with the requirements of this ordinance and non-conforming structures or facilities established prior to October 7, 1977.
- B. Low-intensity, water-dependent recreation, including but not limited to fishing, crabbing, clamming, wildlife observation, swimming and hunting.
- C. Research and educational observation.
- D. Passive restoration.
- E. Dike maintenance and repair for:
  - 1. Existing serviceable dikes, including those that allow some seasonal inundation; and
  - 2. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has not reverted to estuarine habitat; and
  - 3. Dikes that have been damaged by flooding, erosion or tidegate failure where the property has reverted to estuarine habitat only if the property is in the Farm, F-1, zone and it has been in agricultural use for 3 of the last 5 years and reversion to estuarine habitat has not occurred more than 5 years prior. Wheeler will rely on the U.S. Army Corps of Engineers and the Division of State Lands to determine whether an area has reverted to estuarine habitat.

For the purpose of this subsection, agricultural use means using an area for pasture several months of the year or harvesting this area once a year.

- F. Grazing of livestock.
- G. Fencing, provided that it is not placed across publicly owned areas so as to restrict public access to, or recreational boating access across said lands and intertidal areas.

Section 8.020. Estuary Natural Zone (EN).

Section 8.025. Purpose and Areas Included.

The purpose of the EN zone is to provide for preservation and protection of significant fish and wildlife habitats and other areas which make an essential contribution to estuarine productivity or fulfill scientific, research or educational needs.

The EN zone includes the following areas within the estuary:

Major tracts of tidal marsh, intertidal flats and seagrass and algae beds. The "Major tract" determination is made through a consideration of all the following four criteria: size; habitat value; scarcity; and degree of alteration.

Section 8.030. Uses Permitted with Standards (PS).

The following uses are permitted with standards (PS) within the EN zone, provided that the development standards in Section 11.110 have been met and procedures of Section 11.115, Regulated Activities and Impact Assessment, have been followed.

- A. Maintenance and repair of existing structures or facilities involving a regulated activity.
- B. Navigational aids.
- C. Vegetative shoreline stabilization.
- D. Temporary dikes for emergency flood protection.
- E. Mooring buoy.
- F. Tidegate installation in existing functional dike.
- G. Aquaculture facilities limited to temporary or easily removed bottom or in-the-water column structures (stakes, racks, trays, longlines, or rafts) or ground culture aquaculture.
- H. Bridge crossings and bridge crossing support structures.

Section 8.040. Conditional Uses (C).

The following uses are Conditional (C) within the EN zone and may be permitted by the Planning Commission, subject to the provisions of Article 15 and the development standards in Section 11.110 and the procedures of Section 11.115 Regulated Activities and Impact Assessment, have been followed.

- A. Aquaculture and water dependent portions of aquaculture facilities which do not require dredging or fill and water intake structures for out-bay aquaculture.
- B. Riprap to protect unique natural resources, historical and archeological values, public facilities uses existing as of October 7, 1977 and uses allowed by this zone.
- C. Water, sewer, gas or phone lines.
- D. Electrical distribution lines and line support structures.
- E. Active restoration and estuarine enhancement.
- F. Temporary low water bridges.
- G. Temporary alterations.
- H. Boat ramps for public use where no dredging or fill for navigational access is needed.

Section 8.050. Regulated Activities (RA).

The following regulated activities are permitted within the EN zone, provided that the requirements of Section 11.110 have been met. Regulated Activities shall be reviewed by the procedure provided in Section 11.115.

- A. Regulated activities for the purpose of on-site maintenance and repair of existing structures or facilities, limited to:
  - 1. Dredging for on-site maintenance of:
    - (a) Drainage tiles
    - (b) Drainage ditches
    - (c) Tidegates
    - (d) Bridge crossing support structures
    - (e) Water, sewer, gas or phone lines
    - (f) Electrical distribution lines and line support structures
    - (g) Outfalls.

2. Fill or riprap for on-site maintenance of:
  - (a) Dikes
  - (b) Bridge crossing support structures or other land transportation facilities.
- B. Riprap for structural shoreline stabilization or protection of uses allowed by this zone.
- C. Piling installation for:
  1. Navigational aids
  2. Aquaculture Facilities
  3. Public boat ramp
  4. Bridge crossing support structures.
- D. Dredging for installation of:
  1. Water, sewer, gas or phone lines.
  2. Electrical distribution lines and line support structures.
  3. Tidegates in existing functional dikes adjacent to EN zones.
  4. Water intake facilities.
  5. Bridge crossing support structures.
  6. Public boat ramps.
- E. Regulated activities in conjunction with an approved Active Restoration or estuarine enhancement project.
- F. Regulated activities in conjunction with temporary alterations.
- G. Fill for installation of public boat ramps or bridge crossing support structures.
- H. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks.

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### Section 8.070. Estuary Development Zone (ED)

Section 8.075. Purpose. The purpose of the ED Zone is to:

- A. Provide for long-term maintenance, enhancement, expansion or creation of structures or facilities for navigational and other water-dependent commercial, industrial or recreational uses.
- B. Provide for the expansion or creation of other commercial, industrial or recreational facilities, subject to the general use priorities outlined in Section 8.010.

The ED zone includes the following areas within Development Estuaries:

- A. Areas which contain public facilities which are utilized for shipping, handling or storage of water-borne commerce, or for moorage or fueling of marine craft.
- B. Subtidal channel areas adjacent or in proximity to the shoreline which are currently used or needed for shallow-draft navigation (including authorized, maintained channels and turning basins).
- C. Areas of minimum biologic significance needed for uses requiring alteration of the estuary not included in the EN Zone.
- D. Where an acknowledged Goal 16 exception has been taken, areas of biological significance which are potentially suitable for commercial, recreational or industrial development due to their proximity to subtidal channels, developed or developable shorelands or developed estuarine areas, and to the availability of services.

Section 8.080. Uses Permitted with Standards (PS).

The following uses are permitted with Standards (PS) within the ED zone, provided that the development standards in Section 11.110 have been met and the procedures of Section 11.115 Regulated Activities and Impact Assessment have been followed:

- A. Maintenance and repair of existing structures or facilities involving a regulated activity.
- B. Navigational structures and navigational aids.
- C. Vegetative shoreline stabilization.
- D. Structural shoreline stabilization.
- E. Tidegate installation in existing functional dikes adjacent to ED zones.

- F. Water, sewer, gas and phone lines.
- G. Electrical distribution lines and line support structures.
- H. Temporary dikes for emergency flood protection.
- I. Mooring buoys.
- J. Temporary low-water bridges.
- K. Temporary alterations.
- L. Active restoration or estuarine enhancement.
- M. Bridge crossing and bridge crossing support structure.

Section 8.085. Conditional Uses (C)

The following uses are Conditional (C) within the ED zone, and may be permitted by the Planning Commission subject to the provisions of Article 15 and the development standards in Section 11.110 and the procedures of Section 11.115 Regulated Activities and Impact Assessment have been followed.

- A. Water-dependent commercial uses, including docks, moorages, marinas for commercial marine craft (including seaplanes).
- B. Water-dependent industrial uses, including:
  - 1. Piers, wharves, and other terminal and transfer facilities for passengers or water-borne commerce, such as fish, shellfish, metal, timber or timber products.
  - 2. Water intake and discharge structures.
  - 3. Water access structures of facilities which require access to a water body as part of the manufacturing, assembly, or fabrication or repair of marine craft, or marine equipment due to the size of the craft or equipment.
- C. Water-dependent public recreational facilities, including:
  - 1. Boat ramps.

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2. Commercial docks, moorages and marinas for recreational marine craft (including seaplanes).
- D. Aquaculture and water-dependent portions of aquaculture facilities.
  - E. Other water-dependent uses. A use is determined to be water-dependent when it can be carried out only on, in, or adjacent to the water, and the location or access is needed for:
    1. Water-borne transportation.
    2. Recreation
    3. A source of water (such as energy production, cooling of industrial equipment or wastewater, or other industrial processes).
  - F. Water-related industrial uses not requiring the use of fill, including, but not limited to:
    1. Fish or shellfish processing plants.
    2. Warehouse and/or other storage areas for marine equipment or water-borne commerce.
  - G. Water-related commercial uses not requiring the use of fill, including, but not limited to:
    1. Fish or shellfish retail or wholesale outlets.
    2. Marine craft or marine equipment sales establishments.
    3. Sport fish cleaning, smoking or canning establishments.
    4. Charter fishing offices.
    5. Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water-dependent use.
    6. Restaurants which provide waterfront views and which are in conjunction with a water-dependent or water-related use such as a seafood processing plant or charter office.
  - H. In-water sorting, storage and handling of logs in association with water-borne transportation of logs.

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- I. Other water-related uses not requiring the use of fill. A use is determined to be water-related when the use:
  - 1. Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses).
  - 2. If not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality will involve a subjective consideration of economic, social and environmental consequences of the use.
- J. Accessory uses or structures in conjunction with a conditional use listed in A-H above limited in size to a maximum of 10% of the lot or parcel size.
- K. Mining and mineral extraction.
- L. Storm water and sewer outfalls.
- M. Non-water-dependent and non-water-related uses not requiring the use of fill.
- N. New dike construction if:
  - 1. Required for a water-dependent use for which a substantial public benefit is demonstrated, the use or alteration does not unreasonably interfere with public trust rights and for which no practicable upland locations exist.
  - 2. Adverse impacts are avoided or minimized to be consistent with the purposes of the area.
- O. Water-related or non-dependent, non-related uses requiring the use of fill, provided that a Goal 16 exception has been approved and included as an amendment to the Tillamook County Comprehensive Plan or Wheeler Comprehensive Plan.

### Section 8.090. Regulated Activities (RA)

The following regulated activities are permitted within the ED zone, provided that the requirements of Section 11.110 have been met. Regulated activities shall be reviewed by the procedure provided in Section 11.115.

- A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities.
- B. Dredging for:
  - 1. Maintenance of existing facilities.

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

C. Fill for:

1. Water-dependent uses.
2. Water-dependent portions of aquaculture facilities.
3. Navigational structures or navigational improvements.
4. Structural shoreline stabilization.
5. Bridge crossing support structures.
6. New dike construction.
7. Water-related or non-water-dependent uses in areas where Goal 16 exceptions have been taken and approved as part of the Tillamook County Comprehensive Plan or Wheeler Comprehensive Plan.

D. Piling and dolphin installation in conjunction with a Permitted with Standards or Conditional Use within this zone.

E. Rip-rap for structural shoreline stabilization or protection of utility lines allowed in this zone.

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

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

H. Flow-land disposal of dredged material, subject to State and Federal permit requirements.

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

J. Regulated, activities in conjunction with temporary alterations.

Section 8.100. Mitigation Site Protection Zone (MP)

The purpose of the Mitigation Site Protection Zone is to protect identified mitigation sites from incompatible and preemptive uses that may prevent their ultimate restoration or addition to the estuarine ecosystem.

Section 8.110. Designation of MP Zones.

The Mitigation Site Protection Zone shall be designated on the City of Wheeler Comprehensive Plan/Zone Map and shall conform to the specifications of the overall mitigation plan for the Nehalem Estuary. Subsequent revisions to the overall mitigation plan shall be duly recorded by Ordinance amendment to the Comprehensive Plan/Zone Map.

Section 8.120. Uses and Activities Permitted in the MP Zone.

In a Mitigation Site Protection Zone all activities necessary to accomplish an approved mitigation project may be permitted as review uses. In addition, only those uses and activities permitted in the underlying zone which are determined not to preempt the area's future use as a mitigation site may be permitted, subject to the procedural requirements for that use in the underlying zone.

Incompatible and preemptive use of mitigation sites includes:

- (1.) Uses requiring substantial structural or capital improvements (e.g., construction of permanent buildings).
- (2.) Elevation of the site by the placement of fill.
- (3.) Uses that include changes made to the site that would prevent expeditious use of the site for mitigation (uses which would delay use of the site for mitigation beyond the period of time commonly required to obtain the necessary Federal, State, and local development permits (approximately 90 days)).

Section 8.130. Procedure for Review of Uses in an MP Zone.

Proposed activities necessary to accomplish an approved mitigation project are review uses/activities and shall be reviewed in accordance with procedures specified in Article 13. Other proposed uses and activities in the Mitigation Site Protection Zone shall follow the procedures required for that use in the underlying zone.

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ARTICLE 9. FHO ZONE - FLOOD HAZARD OVERLAY

Section 9.010. Definitions.

1. Area of Shallow Flooding

Means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

2. Area of Special Flood Hazard

The land in the flood plain subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letter A or V.

3. Base Flood

A flood having a one percent chance of being equaled or exceeded in any given year.

4. Development.

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling located within the area of special flood hazard.

5. Flood or Flooding.

A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a.) The overflow of inland or tidal waters and/or

(b.) The unusual and rapid accumulation or runoff of surface waters from any source.

6. Flood Insurance Rate Map (FIRM)

The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

7. Flood Insurance Study

The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Hazard Boundary-Floodway Map and the water surface elevation of the base flood.

8. Floodway

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

9. Lowest Floor.

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 9.050(6)(a).

10. Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

11. Manufactured Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

12. Mean Sea Level (MSL)

The average height of the sea for all stages of the tide.

13. New Construction

Structures for which the "start of construction" commenced on or after the effective date of this amendment to the zoning ordinance.

14. Recreational Vehicle

A vehicle which is

- (a.) Built on a single chassis;
- (b.) 400 square feet or less when measured at the largest horizontal projections;
- (c.) Designed to be self-propelling or permanently towable by a light duty truck, and
- (d.) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel, or seasonal use.

15. Start of Construction

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

16. Structure

A walled and roofed building including a gas or liquid storage tank that is principally above ground.

17. Substantial Improvement

Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (a.) before the improvement or repair is started, or
- (b.) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first

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alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not however, include either:

- (1) Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

### Section 9.020. Purpose and Objectives.

It is the purpose of this Flood Hazard Overlay Zone to regulate the use of those areas subject to periodic flooding, to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions. In advancing these principles and the general purposes of the City of Wheeler Comprehensive Plan and Zoning Ordinance, the specific objectives of the FHO Zone are:

1. To combine with present zoning requirements certain restrictions made necessary for the known flood hazard areas to promote the general health, welfare and safety of the City;
2. To prevent the establishment of certain structures and land uses in areas unsuitable for human habitation because of the danger of flooding, unsanitary conditions or other hazards;
3. To minimize the need for rescue and relief efforts associated with flooding;
4. To help maintain a stable tax base by providing for sound use and development in flood-prone areas and to minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities located in flood hazard areas;
6. To ensure that potential home and business buyers are notified that property is in a flood area; and
7. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Section 9.030. General Provisions

(1.) Lands to which this Ordinance applies.

This ordinance shall apply to all areas of special flood hazards (Flood Hazard Overlay Zone) in combination with present zoning requirements within the jurisdiction of the City of Wheeler.

(2.) Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the City of Wheeler dated September, 1976, with accompanying Flood Insurance Rate Maps and Flood Boundary Maps and any revision thereto is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at Wheeler City Hall.

(3.) Compliance.

No structure or land shall hereafter be used and no structure shall be located, extended converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(4.) Warning and Disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Wheeler or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 9.040. Administration.

(1.) Establishment of Development Permit.

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 9.030(2). The permit shall be for all structures including manufactured homes as set forth in the "Definitions" and for all development including fill and other activities, also set forth in the "Definitions". Application for a Building/Development Permit shall be

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made on forms furnished by the Building Official and shall specifically include the following information:

- (a.) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
- (b.) Elevation in relation to mean sea level to which any structure has been flood-proofed.
- (c.) Certification by a registered professional engineer or architect that the flood-proofing method for any nonresidential structure meets the flood-proofing criteria in Section 9.050(6)(b).
- (d.) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

### (2.) Duties and Responsibilities.

The duties of the Building Official shall include, but not be limited to permit review:

- (a.) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (b.) Review all development permits to require that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (c.) Review all development permits in the area of special flood hazard to determine if the proposed development adversely affects the flood carrying capacity of the area.

### (3.) Use of Other Base Flood Data.

When base flood elevation data has not been provided in accordance with Section 9.030(2), Basis For Establishing The Areas Of Special Flood Hazard, the Building Official shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer Sections 9.050(6)(a), Specific Standards, Residential Construction, and Section 9.050(6)(b), Specific Standards, Nonresidential Construction.

### (4.) Information to be Obtained and Maintained by Building Official.

Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 9.040(3) obtain:

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(a.) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(b.) For all new or substantially improved flood-proofed structures:

1. Verify and record the actual elevation (in relation to mean sea level), and

2. Maintain the flood-proofing certifications required in Section 9.040(1)(c).

3. Maintain for public inspection all records pertaining to the provisions of this ordinance.

(5.) Alteration of Watercourses.

The Building Official shall:

(a.) Notify adjacent communities and the Oregon Water Resources Department prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(b.) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(6.) Interpretation of FIRM Boundaries.

The Building Official shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretations as provided in Section 9.040(7).

(7.) Appeals and Variance Procedures.

(a.) An appeal of a ruling or interpretation regarding a requirement of this ordinance shall be established in Section 18.020.

(b.) The Planning Commission shall hear and decide appeals when it is alleged there is an error in any interpretation, requirement, decision or determination in the enforcement or administration of this ordinance.

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- (c.) An action or ruling of the Planning Commission may be appealed pursuant to Section 13.070.
- (d.) Variances shall be issued or denied in accordance with Article 14 and any amendment thereto.
- (e.) When a variance is granted, the City Recorder shall give written notice that the structure or manufactured home will be allowed to be built or placed with the lowest floor elevation at or below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the lower floor elevation.

Section 9.050. Provisions for Flood Hazard Reduction.

General Standards.

In the Flood Hazard Overlay Zone (FHO Zone) the following provisions are required:

- (1.) Anchoring.
  - (a.) All new construction and substantial improvement shall be anchored to prevent flotation, collapse or lateral movement of the structure.
  - (b.) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)
- (2.) Construction Materials and Methods.
  - (a.) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (b.) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
  - (c.) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

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### (3.) Utilities.

- (a.) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (b.) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
- (c.) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (d.) The City will neither install nor extend water service lines to any future development located within the 100 year flood plain areas when practicable alternative, non-flood plain sites are available. Where water service lines already exist within the flood plain areas, service may be provided as long as this action is consistent with the rest of Section 9.050.

### (4.) Subdivision Proposals.

- (a.) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b.) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (c.) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (d.) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less.)

### (5.) Review of Building Permits.

Where elevation data is not available either through the Flood Insurance Study or from another administrative source (Section 9.040(3)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high-water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(6.) Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 9.030(2), Basis For Establishing The Areas Of Special Flood Hazards or Section 9.040(3), Use Of Other Base Flood Data, the following provisions are required:

(a.) Residential Construction.

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot above the base flood elevation. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than one foot above grade.
3. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(b.) Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot above the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

- (1) be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (3) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of

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the structural design, specification and plans. Such certifications shall be provided to the official as set forth in Section 9.040(4)(b)(2).

(4) Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in Section 9.050(6)(a).

(5) Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated at one foot below that level).

(c.) **Manufactured Homes.**

All manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation in order to be consistent with the current Oregon Manufactured Dwelling Standard and shall be securely anchored to an adequately anchored foundation system in accordance with the provision of subsection 9.050(1)(b).

(d.) **Recreational Vehicles.**

Recreational Vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM must either:

(1) Be on the site for fewer than 180 consecutive days,

(2) Be fully licensed and ready for highway use, be on their wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(3) Meet the requirements of Section 9.050(6)(b)2&3 above and the elevation and anchoring requirements for manufactured homes.

(7.) This Section number intentionally left blank.

(8.) **Floodways.**

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and erosion potential, the following restrictions apply:

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- (a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (b) If Section 9.050(8)(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 9.050, Provisions for Flood Hazard Reduction.

Section 9.060. Restrictions and Prohibited Uses.

1. Restrictions.

Restrictions regarding height, rear yards, side yards, front yard setback, minimum lot area, signs, vision clearance and parking space shall be the same as set forth in each specific zone located within the Flood Hazard Overlay Zone area.

2. Prohibited Uses.

It shall be unlawful to erect, alter, maintain or establish in a Flood Hazard Overlay Zone any building, use or occupancy not permitted or allowed in the foregoing provisions, except existing nonconforming uses, which may continue as provided in Article 17.

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### ARTICLE 9.2: HISTORIC RESOURCE OVERLAY ZONE

#### Section 9.210. Purpose.

This article provides incentives to preserve significant historic or cultural resources. The regulations implement the City of Wheeler's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the City of Wheeler. The regulations foster pride in the city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

#### Section 9.220. Where These Regulations Apply.

Sections 9.210 through 9.240 apply to all local historic landmarks in any zone.

#### Section 9.230. Designation of a Local Historic Landmark

A local landmark may be designated with the owner's consent by the City of Wheeler Planning Commission under the provisions of Article 15: Conditional Use/Activities. Approval requires proper notice and a public hearing in accordance with procedures described in Article 13 and where it can be shown:

1. The property and/or structures have historic and/or cultural value to the City of Wheeler.
2. The property and/or structures retain sufficient original design characteristics, craft work, or material.
3. The property and/or structures significantly contribute to the character and identity of the City of Wheeler.
4. Plans providing for historic areas shall consider as a major determinant the carrying capacity of the air, land, and water resources of the planning area. Projects proposed shall not exceed the carrying capacity of such resources.
5. An applicant shall utilize the National Register of Historic Places criteria and shall receive written comments from the State Advisory Committee on Historic Preservation when establishing historic sites.

#### Section 9.240. Incentives Allowed.

1. A local historic landmark may be allowed to reestablish or continue its intensity and character even if the use is destroyed or is vacant for more than two years consistent with Section 9.230.

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2. A local historic landmark may be allowed to intensify its use or establish new uses through a conditional use process with findings that the proposed use complies with the standards of Section 15.090 Basic Conditional Use Standards, and Section 9.230.

### Section 9.250. Other Conditions.

At the time a building permit is issued the following will apply:

1. Site specific geologic investigations may be required when appropriate to assure safe development. Site specific investigations shall be conducted when required by the city to assure public safety and welfare. Where a site specific report is required, the investigation shall be conducted by qualified geotechnical expert at the developer's expense. Results of the site investigations shall be made available to the city with the building permit application.
2. Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of an historical building may be made without conforming to all requirements of the Building Code when authorized by the Building Official, provided:
  - a. The building has been officially designated an historic building.
  - b. Unsafe conditions are corrected.
  - c. The restored building will be no more hazardous based on life, fire safety, and sanitation.
  - d. The Building Official seeks the advice of the State of Oregon Historic Preservation Office.
  - e. In case of appeals to historic buildings, the local appeals board or the appropriate state appeals board shall seek the advice of the State Historic Preservation Officer.

ARTICLE 10: PLANNED DEVELOPMENT

Section 10.010. Intent.

To provide for developments which are planned and developed as a unit. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long term value of the homes and other development. A planned development shall comply with Oregon Laws for the formation of planned communities.

Section 10.020. Purpose.

The purpose is to provide a more desirable environment through the application of an overall comprehensive site development plan and to ensure the provision of open space to serve the development.

Section 10.030. Permitted Building and Uses.

The following buildings and uses may be permitted either singly or in combination where they are permitted outright or conditionally in the parent zone:

1. Single family dwellings.
2. Duplexes.
3. Multiple family dwellings or attached dwelling units not exceeding four dwelling units per building.
4. Accessory buildings and uses where accessory to an approved primary use.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone within which the planned development is located.

Section 10.040. Development Standards.

1. Minimum Site Size. Planned Developments shall be established only on sites which are suitable for the proposed development and are determined by the Planning Commission to be in keeping with the intent of this ordinance.
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50 percent of the total area shall be devoted to open space. Of the required open space area, 75 percent shall be common or shared open space and 25 percent of said open space may be utilized privately by individual owners or uses of the planned development. Of the required open space area, 30 percent shall be green space.
3. Density. The density of a planned development shall not exceed the density of the parent zone. When calculating density in a planned development, the net area is used. In a planned development, net area is the total area including street dedications less open space requirements. When a

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- Planned Development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.
4. Setbacks. In a Planned Development where structures are not located on individual lots, a 20 foot setback shall be provided from all street rights of way, a 10 foot setback shall be provided between all structures, and a 10 foot setback shall be provided from all structures to the exterior boundary of the development.
  5. Subdivision Lot Sizes. Minimum area, width, depth, setbacks and frontage requirements for subdivision lots in a Planned Development may not be less than the minimums set forth elsewhere in City Ordinances.
  6. Off-Street Parking. Parking shall conform to provisions of Section 11.090.
  7. Signs. All signs of any type within a Planned Development are subject to design review and approval of the Planning Commission and shall be consistent with the approved planned development.
  8. Height Guidelines. The same restrictions shall prevail as in the zone in which such development occurs.
  9. Streets and Roads. Streets and roads within the planned development shall be dedicated to the public and constructed to City standards.
  10. Utilities. All utilities shall be underground.
  11. Dedication and Maintenance of Facilities.
    - a. Common Areas: An association of owners or tenants shall be created under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and Bylaws and Recorded Declaration consistent with this ordinance ORS Chapter 94, and adopt and impose such Declaration of Covenants and Restriction on common areas and commonly owned buildings for the purpose of maintaining common area and commonly owned buildings continuously consistent with their intended function. Such an association shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common area for the purposes intended.
    - b. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
  12. Approvals. The Planning Commission shall consider the recommendations of fire district, County Sanitarian, the power company, and other utilities which will serve the development in regard to

approval of the proposal.

13. Other Requirements. The Planning Commission may establish additional requirements which it deems necessary to assure that any development conforms to this section, the Zoning Ordinance and the Comprehensive Plan.

Section 10.050. Planned Development Review Procedures.

1. Planned Developments will be reviewed in two phases, a preliminary development plan phase and a final development plan phase. The preliminary development plan shall include the information specified in Section 10.060. Additional provisions for reviewing the preliminary development plan are set forth in Article 13 and where a subdivision is proposed, the Wheeler Subdivision Ordinance.
2. The Planning Commission shall consider the preliminary development application at a public hearing. Development in stages may be requested. If the planned development involves subdividing land, the subdivision tentative plat shall be reviewed concurrently with the planned development preliminary plan. If the planned development involves a conditional use, the conditional use application shall be reviewed concurrently with the planned development preliminary plan.
3. Within one year of the date of approval of a preliminary development plan the applicant shall file with the City a final development plan consistent with the approved preliminary development plan, and if applicable, the subdivision tentative plat, in a format suitable for site development. This final plan shall be for the entire development or for each stage if submission in stages has been authorized by the Planning Commission.
4. Prior to site development, the applicant shall submit an engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.
5. After site development, or development of each stage if development in stages has been approved and prior to final plat approval, infrastructure shall be certified in writing by the project engineer and as-built drawings showing all infrastructure as constructed and sealed by the project engineer shall be submitted to the written satisfaction of the City.
6. Prior to occupancy, a final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities shall be submitted for approval to the City and shall be recorded with the County.
7. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development

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plan to be reviewed using the same procedure used to review the original application.

8. If the final development plan is not submitted within one year as required by this ordinance, a new application shall be required. The Planning Commission may approve one extension of one year where they determine that the application remains consistent with applicable city standards and the goals and policies of the comprehensive plan.

### Section 10.060. Preliminary Development Plan Submission Requirements.

The applicant shall submit a Planned Development application signed by the property owner(s) and twelve (12) copies of the following information drawn to a measurable scale and sealed by a qualified professional engineer:

1. Property boundary survey showing all existing structures to be removed and to remain.
2. Topographical survey with two (2) foot contours.
3. Map showing existing site features and topography.
4. Map showing the relationship of the proposed development to the surrounding area.
5. Plans showing proposed land uses and densities.
6. Plans showing the location, dimensions, and heights of structures
7. Preliminary architectural plans and elevations of typical structures including signage.
8. Plans for open space, common open space, and green space.
9. Preliminary planting and landscaping plan for the site.
10. Plans showing the street development and traffic circulation plan including off-street parking areas.
11. Plans showing the proposed method of utilities service and stormwater drainage.
12. A schedule, if it is proposed that the final development plan will be executed in stages. Documentation shall provide sufficient detail to show how each stage meets applicable criteria without reliance on subsequent stages.
13. A site- specific geologic investigation and engineering recommendations by a qualified geotechnical engineer.
14. Grading plan for the site showing future contours if existing grade is to be changed more than two (2) feet.
15. Drafts of the recorded declaration described in ORS Chapter 94 Planned Communities and any deed restrictions or protective covenants that provide for the maintenance of common areas and insure that the objectives of the Planned Development shall be followed.
16. Written recommendations regarding preliminary development plans from the fire district, county sanitarian, power company and other utilities proposed to serve the project identifying whether proposed facilities are adequate to serve the needs of the development.
17. Written comments from the authority from which access to the development is proposed.
18. Where requested by the City, County or State to determine the appropriate design for access to the development and mitigation of traffic impacts for the development, a traffic impact study may be required.

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19. Where requested by the City, a wetland delineation report and survey concurred with by the Oregon Department of State Lands.
20. Where a subdivision is proposed, a subdivision tentative plan application consistent with the Wheeler Subdivision Ordinance.
21. Where a commercial or industrial use is proposed, a design review application with supporting documentation.
22. Where a conditional use is proposed, a conditional use application(s) with supporting documentation.
23. Where a variance is requested, variance application(s) with supporting documentation.
24. Application fees and additional costs incurred in review of the application and thereafter during the public hearing and decision process as required by city ordinance.

### Section 10.070. Planning Commission Review Criteria.

The Planning Commission shall consider the preliminary development plan at a public hearing. The Planning Commission shall determine whether the proposal conforms to Section 10.030 and 10.040 and other City Ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:

1. Resulting development will be consistent with the comprehensive plan and the standards of the parent zone(s).
2. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes, streams or wildlife habitat.
3. The plan can be completed within a reasonable period of time. If development in stages is proposed, each stage is planned to meet the standards of applicable criteria.
4. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
5. Proposed utility and stormwater drainage facilities are adequate for the population densities and type of development proposed.

### Section 10.080. Final Development Plan - Submission Requirements.

1. Prior to site development, final plans shall be consistent with the approved preliminary development plan.
2. Plans shall be drawn to a measurable scale and shall be signed by an appropriate architect or engineer.

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3. The final plan shall include all information included in the preliminary development plan, if applicable the subdivision tentative plan, and as necessary to meet all conditions of approval plus detailed construction plans for all site development including the following:
  - (a) Proposed streets,
  - (b) Pedestrian walkways,
  - (c) Sidewalks,
  - (d) Utilities,
  - (e) Off-street parking spaces,
  - (f) Open space,
  - (g) Common open space,
  - (h) Green space,
  - (i) Clearing, cutting and filling, and
  - (j) Structures.
4. An engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.
5. Written certification of infrastructure by the project engineer and as-built drawings showing all infrastructures as constructed and sealed by the project engineer to the written satisfaction of the City.
6. A final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities and recorded with the County.
7. Application fees. Additional costs incurred in review of the application and thereafter during the public hearing and decision process shall be paid prior to final approvals for the project.

### Section 10.090. Adherence to Approved Plan.

1. Site development within a planned development shall be consistent with the approved planned development plan.
2. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.

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### ARTICLE 11: SUPPLEMENTARY PROVISIONS

#### Section 11.010. Intent.

The purpose of the supplementary provisions article is to provide for general zoning rules including suitable access, parking, and sign control and to make provisions for geologic investigations, home occupations, and criteria for approval of mobile home parks.

#### Section 11.020. Geologic Investigations.

1. Site-specific investigations by a qualified professional engineering geologist or qualified professional soils engineer licensed in the State of Oregon shall be a prerequisite for:
  - a. The issuance of any building permits where ground disturbing activities are proposed
  - b. All proposals for divisions of land;
  - c. Where required by the City prior to excavation for the installation of utilities; and
  - d. For the construction of roads and streets.
2. Site-specific investigations shall be conducted at the developer's expense. Results of the site investigations shall be made available to the city prior to scheduling of public hearings or prior to project commencement in cases where a public hearing is not required.
3. The site investigation report should make it possible for engineers, planners, and city officials to calculate and design for geologic risks. A complete site-specific report shall include the following types of information:
  - a. Identification of topographic elements: soil and bedrock topology; depth of soil to bedrock; permeability and other engineering characteristics of soil and bedrock; contour mapping or slope analysis, comparison of contour with geologic bedrock bedding planes; and other structural details important to engineering and geologic interpretations.
  - b. Identification of elements of the area water cycle including: identification and assessment of the surface water drainage pattern; characteristics of the area's groundwater including groundwater depth and rate of accumulation; projects storm drainage runoff and design; and probable changes of the water cycle.
  - c. Identification and location of any historic, existing or potential geologic hazard or major landslide activity affecting the proposed project, future landowners, adjacent properties, or public facilities.
  - d. Results of field and laboratory investigations, including use of drill-hole data, aerial photography, soils testing or field check as necessary to verify project safety.

- e. Discussion of possible project design techniques for control of erosion, slope stability and storm runoff.
  - f. The report should also contain a bibliography of references used, dates of field checks or other geologic literature pertinent to the site investigation.
4. The proposed use will be permitted only if:
- a. A feasible engineering solution to each potential building hazard is proposed which could eliminate the hazard to the proposed structure or surrounding properties.
  - b. The City may charge the applicant, owner, or developer a reasonable fee for the cost of reviewing the adequacy of the site investigation for any potentially hazardous area.
5. If site inspection reveals conditions which exceed those prescribed by this ordinance or by the approved permit, the City may require appropriate corrective measures at the cost of the developer to assure compliance with the purpose of this ordinance.
6. For any geologic investigation report and geotechnical engineering report submitted, both registered professionals of record shall be required to within their respective lawful scope of practice:
- (a) Review final plans for development and submit a signed and stamped certification report that all recommendations have been incorporated into development plans.
  - (b) Review sub-grade excavations, fills, and storm water drainage facilities and submit a signed and stamped certification report that all recommendations have been met.
  - (c) Perform a final inspection of the site and submit a signed and stamped certification report that all recommendations have been met.

Section 11.030. Survey Required.

Prior to the issuance of any building permit for new construction of a new dwelling or placement of a manufactured home, or any construction which expands the dimensions of a structure and may encroach into setbacks or other building limitations, the City Recorder will require a boundary survey of the property. All new construction and substantial renovation in the 100 year flood plain shall require a Certificate of Elevation by a registered surveyor.

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### Section 11.040. Manufactured Dwelling Standards.

1. The manufactured dwelling shall be multi-sectional and enclose a space of not less than 1,000 square feet.
2. The manufactured dwelling shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the manufactured dwelling is located not more than 18 inches above grade.
3. The manufactured dwelling shall have a pitched roof with a nominal pitch of at least three feet in twelve feet.
4. The manufactured dwelling shall have exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials commonly used on surrounding dwellings as determined by the City Recorder.
5. The manufactured dwelling shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single family dwellings constructed under the State Building Code as defined in ORS 455.010

### Section 11.050. Design Review.

1. All commercial and industrial development in any zone, any multifamily dwelling in any zone, is subject to design review by the Planning Commission.
2. When design review is required, no permit will be issued until site plans have been reviewed and approved under Comprehensive Plan Policies and Ordinance Provisions by the Planning Commission.
3. The site plan shall be drawn to a measureable scale and shall show the pre-construction or excavation condition of the site, and indicate any trees over 6 inches diameter at 4 feet above ground level, streams, lowlands, rock outcroppings, slopes, or other natural features. Building elevations shall indicate the type of materials to be used for roofing, siding, or other treatment. A plot plan with a complete landscape design shall indicate all retained mature vegetation, proposed plantings and ground covers, as well as other landscaping materials to be used, the extent and design of paved areas, culverts, and other proposed design features and functions.
4. The following guidelines shall be used by the Planning Commission in the evaluation of proposals:
  - a. Site Design

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- (1) Where existing natural or topographic features are present, they should be used to enhance the development. For example, incorporate small streams in the landscape design rather than placing them in a culvert and filling.
- (2) Existing trees should be left standing except where necessary for building placement, sun exposure, safety or other valid purpose. Landscaped vegetation buffers shall be provided along major streets or highways, or to separate adjacent uses. The use of native plants is encouraged.
- (3) Graded areas shall be replanted as soon as possible after construction to prevent erosion. In areas where planting will not thrive, other materials such as wood fences, decorative rock, stone walls, and paving of brick or stone shall be used.
- (4) Exterior lighting shall be restrained in design, and shielded so as not to cast glare on adjacent private or public property or the night sky.
- (5) Storage or mechanical equipment shall be screened from view. Trash enclosures and screening shall be carefully located and treated to integrate with the appearance of the site/building design. Screen all outdoor storage. Roof top equipment shall be screened a minimum of 1 foot higher than the highest point on the equipment and shall be setback a minimum of 10 feet from the building edge.
- (6) Primary building entrances shall open directly to the outside and shall have walkways connecting them to the street sidewalk. Create storefronts and entries that are visible and easily accessible from the street. Either orient the primary entrance to the building along a street facing property line or create an ADA accessible courtyard / plaza incorporating pedestrian amenities including street trees, outdoor seating and decorative pavers. Ensure a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site. In addition, provide for connections between adjacent sites, where feasible.
- (7) Community amenities such as patio/seating areas, water features, art work or sculpture, clock towers, pedestrian plazas with park benches or other features located in areas accessible to the public are encouraged and may be calculated as part of the landscaping requirement. Benches in public areas on private property, adjacent to public right of way shall comply with design review standards for architectural style.
- (8) A landscaping plan shall be submitted which shows existing and proposed vegetation, trees, landscaping materials, a timeline for installation and maintenance, and other features in order to permit the Planning Commission to review the plan. Landscaping shall be provided along project site boundaries where it does not interfere with access and clear

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vision. Landscaping is intended to soften the effects of built and paved areas. It also helps reduce storm water runoff by providing a surface into which storm water can percolate.

- (9) Parking lots shall be divided into groups of no more than 8 spaces with landscaping and walkways dividing the groups. [*Plantings and / or fences*] A walkway or sidewalk shall be provided to separate the parking from public streets and adjacent property. Parking shall be designed to be as unobtrusive as possible, through site location and landscaping.
- (10) Uses shall provide a hard-surfaced, well-marked and lighted pedestrian access system consistent with the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines.

### b. Building Design

- (1) The height and scale of the buildings should be compatible with the site and adjoining buildings. Use of materials should promote harmony with the surrounding structures and site. The materials shall be chosen and constructed to be compatible with the natural elements and applicable city ordinances.
- (2) Architectural style should not be restricted Evaluation of a project should be based on quality of design and the relationship to its surroundings. However, the use of styles characteristic of Wheeler and the coastal area are preferred. These include the use of natural wood siding such as cedar shingles. The City encourages the use of pitched roofs, large overhangs, wood fences and wood signs. Colors should be earth tones harmonious with the structure, with bright or brilliant colors used only for accent.
- (3) Monotony of design in single or multiple building projects shall be avoided. Variety of detail, form, and site design shall be used to provide visual interest. In a Planned Development, no more than 25% of all buildings in the development shall replicate the same roofline or footprint.
- (4) Restaurants or facilities with late entertainment shall not have an adverse noise impact on adjacent residential uses and shall employ appropriate sound-proofing techniques.
- (5) The impact that structures will have on views from adjacent or other areas will be taken into account.
- (6) New commercial or mixed-use residential / commercial structures shall have ground floor windows or window displays provided along at least 50 percent of the length of the building's ground floor / street-facing elevation(s). Architectural features or landscaping shall be provided for at least 30 percent of the wall length on the street facing elevation.

- (7) Multi-story commercial, mixed-use or multifamily dwellings shall have ground floors defined and separated from upper stories by architectural features that visually identify the transition from ground floor to upper story.
- (8) Provide recessed shielded lighting on street-facing elevations. Provide articulated facades for every 40 feet of building length. Articulated facades shall contain at least one of the following features: building offsets, projections, changes in elevation or horizontal direction, or a distinct pattern of divisions in surface materials. Large expanses of blank walls shall only be located in areas that are not visible to the public.
- (9) New commercial or mixed-use residential / commercial structures shall be encouraged to provide weather protection for pedestrians along street facing elevations.

**Section 11.053. Clearing, Cutting and Filling.**

1. Corner elevations of a lot may not be altered such that they will increase the permitted maximum building height of a lot without approval of a variance by the City Planning Commission.
2. Uses Permitted Outright:  
Brush clearing, tree removal, and the removal of ground cover, except in a wetland or natural drainage way, as long as the existing soils and the general contour of the lot are retained.
3. A Clearing, Cutting and Filling Permit is required when:
  - a. Fill or excavation alters the general contour of the lot; or
  - b. Cutting or filling is within an area where the slope exceeds 29%; or
  - c. Cutting or filling will alter lot corner elevations; or
  - d. Clearing, cutting or filling is within wetland or natural drainage way including surface and subsurface water.
4. Standards:
  - a. A Geologic Investigation Report is required where cutting and filling is within an area that exceeds a 29% slope or will result in an alteration of a wetland or natural drainage way including surface and subsurface water. The report shall demonstrate that the proposed activity will not increase the risk of soil destabilization and will not have an adverse impact on the site and surrounding property.
  - b. Best management practices for erosion prevention and sediment control such as those provided by the DEQ Erosion and Sedimentation Control Manual shall be utilized on areas of exposed soils and continuously maintained to prevent adverse impacts on adjacent and downslope properties. Bare soils shall be vegetated or covered to prevent soil erosion.
  - c. Where brush is cleared or trees are removed, debris shall be disposed of (mulched, burned, or removed) within 30 days from the start of the activity unless an alternate timeline is approved in writing by the city.

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- d. Stormwater drainage systems shall carry runoff to drainage ways such as storm drains, drainage swales and culverts, and shall be designed to avoid flooding of adjacent and downslope properties.
- e. Whenever erosion, or sedimentation of adjacent or downslope properties is caused by stripping vegetation, grading or other development, it shall be the responsibility of the property owner, person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems and repair damage to property.
- f. The property owner shall be responsible for the repair of slope instability or slope failure caused by adding water runoff to downslope properties, the stabilization of up-slope properties caused by cutting into the toe of a slope, and the repair of existing streets, public facilities, and surrounding properties damaged in the development of the property.
- g. City staff may make periodic inspections to ensure erosion prevention, sediment control, and stormwater drainage measures are working effectively.
- h. The City shall have the right to require the property owner to pay for additional measures to assure compliance with this ordinance.
- i. Filling of wetlands shall only be permitted after a permit has been issued by the Division of State Lands and U.S. Army Corps of Engineers.

### Section 11.060. Home Occupations.

1. Purpose: This section attempts to recognize the need for people to conduct appropriate small-scale business activities at home. Provisions for home occupations in the section are also intended to achieve compatibility with other permitted uses and the residential character of the neighborhood and insure that the home occupation is only an accessory use to the property.
2. Standards: All home occupations shall comply with the following standards:
  - a. No person other than a person who resides in the dwelling unit shall be engaged in the home occupation.
  - b. The home occupation shall be an accessory use conducted in the same structure as the dwelling unit.
  - c. The exterior appearance of the residential dwelling in which the home occupation is located shall not be altered in a manner which would cause the premises to differ from its residential character by the use of colors, materials, construction, or lighting.
  - d. The home occupation may have a nameplate not over two square feet in area attached to the building.
  - e. There shall be no outside storage of any kind related to the home occupation.
  - f. occupation shall not generate traffic, parking, noise, vibration, glare, fumes, or odors, beyond what normally occurs in the applicable zoning district.

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Section 11.065. Bed and Breakfast Establishments.

Bed and Breakfast establishments shall conform to the following standards:

- (1) The number of guest bedrooms shall be limited to three (3).
- (2) The dwelling shall be owner occupied.
- (3) In addition to the required parking for the residents of the dwelling one off-street parking space for each guest bedroom shall be provided.
- (4) Signs shall be limited to one non-illuminated wall sign not exceeding three (3) square feet in area. The Planning Commission shall approve the placement of the sign.
- (5) Establishments with more than two (2) guest bedrooms shall be licensed and inspected according to the State Health Division requirements.

Section 11.070. Access.

Each lot and parcel shall abut a street other than an alley for a width of at least 25 feet or have vehicular access by means of a recorded easement for a width of 25 feet.

Section 11.075. Maintenance of Public Access.

The City shall review, under ORS 368.326 - 368.366, proposals for the vacation of public easements or rights-of-way which provide access to estuarine waters. Existing rights-of-way and similar public easements which provide access to coastal water shall be retained or replaced if they are sold, exchanged or transferred. Rights-of-way may be vacated so long as equal or improved access is provided as part of a development project.

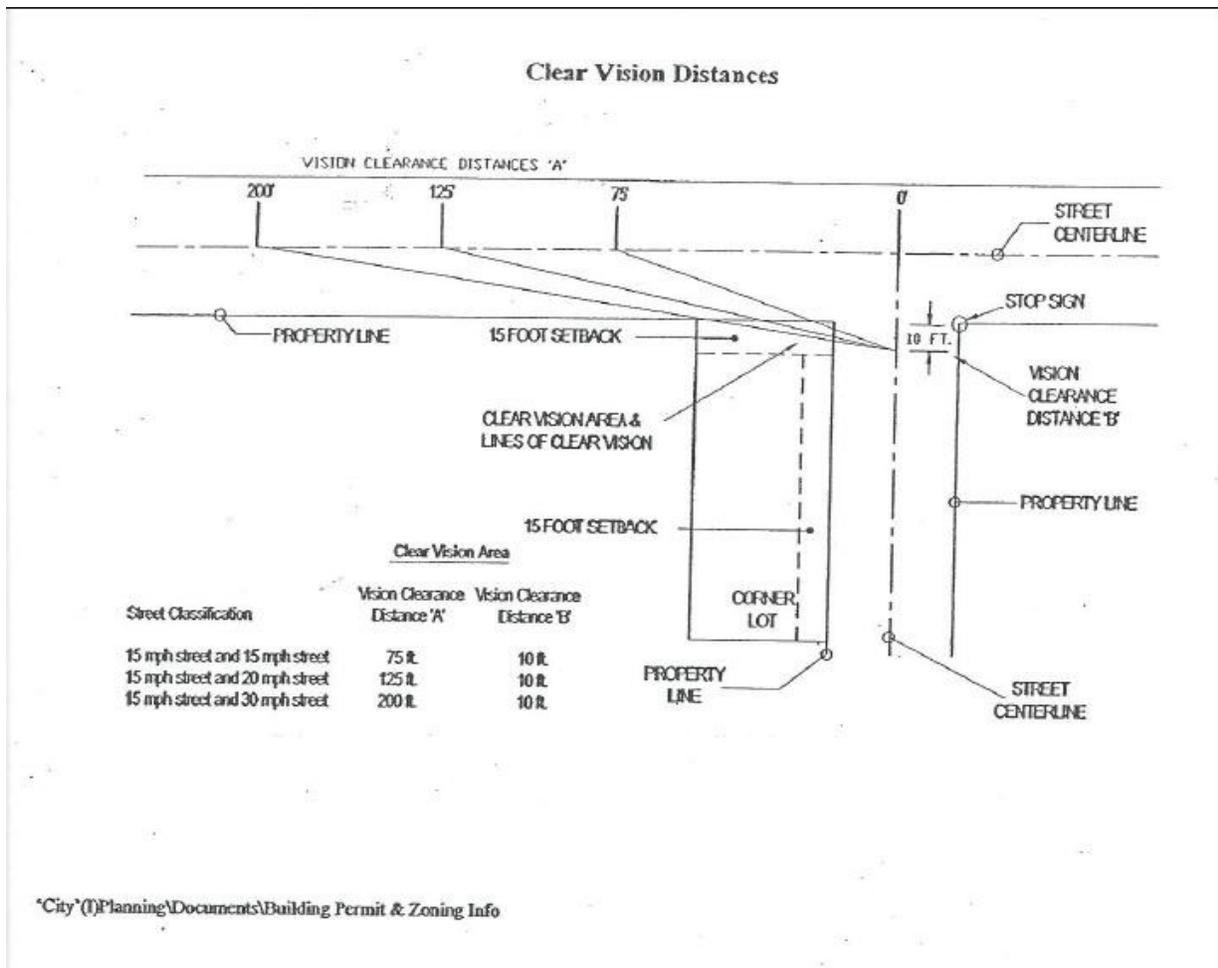
Section 11.080. Clear Vision Areas.

A clear-vision area shall be maintained on the corners of all property at the intersection of two streets.

1. A clear-vision area shall consist of a triangular area, two sides of which are lot lines measured from the corner intersection of the street lot lines for a distance specified in this regulation, or, where the lot lines have rounded corners the lot lines extended in a straight line to a point of intersection and so measured, and the third side of each is a line across the corner of the lot joining the non-intersecting ends of the other two sides.
2. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding 3 feet in height, measured from the top of the curb, or, where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of 8 feet above the grade.

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3. The following measurements shall establish clear-vision areas:
  - a. In a residential zone the minimum distance shall be 25 feet, or, at intersections including an alley, 10 feet.
  - b. In all other zones where yards are required, the minimum distance shall be 15 feet, or, at intersections including an alley, 10 feet, except that when the angle of intersection between streets, other than an alley, is less than 30 degrees, the distance shall be 25 feet.
  - c. In the General Commercial Zone, Clear Vision line of sight shall be maintained consistent with 'Clear Vision Distances' diagram. See below.



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Section 11.090. Off-Street Parking and Loading Requirements.

At the time a new structure is erected or the use of an existing structure is changed or enlarged, off-street parking spaces, loading areas and access thereto shall be provided as set forth in this section unless greater requirements are otherwise established. If such facilities have been provided in connection with an existing use, they shall not be reduced below the requirements of this ordinance.

1. Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission, based upon the requirements of comparable uses listed.
2. In the event several uses occupy a single structure or parcel of land, the total requirements shall be the sum of the requirements of the several uses computed separately.
3. Owners of two or more uses, structures, or parcels of land may agree to utilize the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the Planning Commission in the form of deeds, leases, or contracts to establish the joint use. Where permitted, an appropriate directional sign to such parking shall be provided.
4. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located not farther than 200 feet from the building or use they are required to serve, measured in a straight line from the building.
5. The area bounded by US Highway 101, Pine Street, First Street and Hall Street, generally referred to as the downtown area, shall be exempt from off street parking and loading requirements.

OFF-STREET PARKING AND LOADING REQUIREMENTS

USE	REQUIREMENT
(a) Dwelling unit	Two spaces for each dwelling
(b) Boarding, lodging, rooming house, motel, hotel, group cottage, or time share condominium	One space for each guest accommodation and one space for each two employees
(c) Hospital, nursing home or similar institution employees on the largest shift	One space for each three beds, plus one space per two
(d) Church, club, or similar place of assembly	One space for each six seats, or one space for each 50 square feet of floor area used for assembly

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| (e) | Library  | One space for each 400 square feet of floor area plus one space for each two employees  |
| (f) | Retail store, eating or drinking establishment   | One space for each 200 square feet of floor area, plus one space for each two employees on the largest shift                                |
| (g) | Service or repair shop, artist studio, or retail store handling bulky merchandise such as automobiles or furniture | One space for each 800 square feet of floor area, plus one space for each two employees on the largest shift                                |
| (h) | Bank or professional offices, not including medical or dental clinics  | One space for each 600 square feet of floor area, plus one space for each two employees   |
| (i) | Medical, dental, or veterinary clinic  | One space for each 400 square feet of floor area plus one space for each two employees  |
| (j) | Day care center  | One space per employee  |
| (k) | Marina   | One half of a parking stall per slip  |
| (l) | Warehouse, storage and wholesale business  | One space for each 1000 square feet of floor area or one space for each storage unit, plus one space for each employee on the largest shift |
| (m) | Manufacturing uses the largest shift   | One space for each employee on  |
| (n) | Cottage industry   | One additional space for each employee outside the family   |
| (o) | Caretaker, owner, or proprietor occupied dwelling when attached to a principle use                                 | Two spaces for the dwelling plus the parking requirement of the principal use   |



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Section 11.110. Shoreland & Estuarine Development Standards.

Shoreland and estuarine development standards are requirements that apply to uses in the following zones: Water-Related Commercial (WRC), Water-Related Industrial (IND), Water-Dependent Development (WDD), Estuarine Natural (EN), and Estuarine Development (ED). The following general standards shall apply to all shoreland uses.

1. Setback. The shoreline setback for non-water dependent uses shall be 30 feet. In cases where a proposed use would be located between two existing structures that infringe on the 30 foot setback line, the Planning Commission, after a public hearing, may allow the structure to extend up to the setback of the adjacent structures, but in no case less than ten feet from the shoreline. The setback shall be measured horizontally upland from the line of non-aquatic vegetation or mean higher-high water.
2. Riparian Vegetation. All uses and structures shall be set back fifteen (15) feet from Vosberg Creek unless direct water access is required in conjunction with a water-dependent use. All uses and structures shall be set back twenty-five (25) feet from the estuarine area located east of Highway 101, at the north end of the City (designated EN/mp) unless direct water access is required in conjunction with a water-dependent use. Riparian vegetation shall be protected and retained within the required setback with the following exceptions:
  - a. The removal of trees which pose an erosion or safety hazard;
  - b. Vegetation removal necessary to provide direct water access for a water-dependent use; or
  - c. Vegetation removal necessary to place structural shoreline stabilization when other forms of shoreline stabilization are shown to be inadequate.
3. Waterfront Access. Waterfront access for the public such as walkways, trails and landscaped areas will be provided, whenever possible and where consistent with public safety.
4. Signs. Signs for commercial and industrial uses shall be constructed against a building.
5. Lot Area. Marsh and other aquatic areas will not be used to compute lot area or density, except when a conditional use permit allowing filling or pilings has been granted.
6. Utilities. Whenever feasible, utility lines will be located underground and along existing rights-of-way. Above ground utilities are subject to design review by the Planning Commission. All above ground utilities should be designed to minimize view interference and the amount of land clearing.

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7. Parking. Parking facilities shall not be located over the water, or within 20 feet of the line of non-aquatic vegetation.
8. Architectural Design. All proposals for structural development will be subject to design review standards of Section 11.050.
9. Erosion Control. Non-structural solutions to erosion and flood control problems will be used whenever practical.

The following specific standards shall also apply to proposed estuarine and shoreland development.

1. Aquaculture Facilities.
  - a. Evidence shall be provided by the applicant and findings made by the city that aquaculture facilities do not prevent access to navigation channels, and that obstruction of access to publicly owned lands and recreation use areas is minimized.
  - b. Aquaculture facilities should be designed to minimize their visual impact (view obstruction). Whenever feasible, submerged structures are preferred over floating structures.
  - c. The design and construction of an aquaculture facility should consider reclamation and re-use of waste water.
  - d. Water diversion structures or man-made spawning channels shall be constructed so as to maintain required stream flows for aquatic life in adjacent streams and avoid significant reduction or acceleration of average water flow in an associated marsh. Water Quality policies shall apply.
  - e. Water discharge from an aquaculture facility shall meet all federal and state water quality standards and any conditions attached to a waste discharge permit. Water Quality policies shall apply.
  - f. All state and federal laws governing environmental quality, resource protection, public health and safety, and engineering standards shall be met in the design, siting, construction and operation of aquaculture facilities. This determination shall be made by the Oregon Department of Fish and Wildlife or other state or federal agencies with regulatory authority over aquaculture facilities.
  - g. Aquaculture facilities in Estuary Natural (EN) Zones will not require dredging or fill other than incidental dredging for harvest of benthic species or removal of in-water structures.

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- h. Aquaculture in the Estuary Natural (EN) Zone shall be permitted only if the Oregon Department of Fish and Wildlife or the Oregon Department of Agriculture determines that it is consistent with the resource capabilities and purpose of the management unit(s) in which it is to be located.
  - i. Aquaculture in the Estuary Development (ED) Zone shall be permitted only if it will not preclude the provision of maintenance or navigation or other needs for commercial and industrial water-dependent uses, and will not preempt the use of shorelands especially suited for water-dependent development.
  - j. Leasing of publicly owned estuarine waters, intertidal areas or tidal wetlands for aquaculture shall be subject to the requirements of the Division of State Lands.
  - k. Dredge, fill, shoreline stabilization, piling/dolphin installation or other activities in conjunction with an aquaculture facility shall be subject to the respective standards for these activities.
2. Siting, Design, Construction, Maintenance or Expansion of Dikes.
- a. Diking policy requirements in the Wheeler Comprehensive Plan shall be met.
  - b. Proposals for new dike construction or dike maintenance or repair shall be accompanied by a brief statement from the local Soil and Water Conservation Service or a certified engineer stating that:

    - (1) The project is in conformance with good engineering practices and any applicable rules and regulations set forth by the Oregon Division of State Lands and the U.S. Army Corps of Engineers; and
    - (2) Provides for suitable erosion protection for the dike face; and
    - (3) Will produce no appreciable flood and erosion potential upstream or downstream of the proposed project.
  - c. When temporary dikes are constructed in intertidal areas or tidal wetlands, notice must be given to the Division of State Lands within 24 hours following the start of such activity and their approval for continuation of the project must be obtained (ORS 541.615(4)). Intertidal areas and tidal wetlands shall be restored by the sponsor of the dike to pre-dike conditions after the removal of temporary dikes.
  - d. Fill, shoreline stabilization or other activities in conjunction with dike construction, maintenance or repair shall be subject to the respective standards for these activities.

- e. Repair and maintenance of existing dikes, and construction of new dikes involving fill in intertidal areas and tidal wetlands is subject to the requirements of the State Fill and Removal Law (ORS 541.605-541.665) and the Clean Water Act of 1977 (P.L. 95-217) (applies to fill only).

### 3. Docks and Moorages.

- a. Docks and Moorages policy requirements in the Wheeler Comprehensive Plan shall be met.
- b. When new construction or expansion of docks and moorages is proposed, evidence shall be provided by the applicant and findings made by the city that:
  - (1) The size of the facility is the minimum necessary to accommodate the number and size of boats using the facility. Maximum size limit for single purpose private docks (excluding walkways) shall be 150 square feet;
  - (2) Alternatives such as dryland storage, launching ramps or mooring buoys are impracticable.
- c. To ensure that consideration is given to the beneficial economic and social impacts of moorages on local communities, proposals for new or expanded moorages should include statements on the impacts to local communities derived from increases in employment or increases in commercial or recreational activity.
- d. Open pile piers or secured floats shall be used for dock construction. Piers and floats shall extend no further out into the water than is needed to provide navigational access.
- e. Floating docks shall be designed so that they do not rest on the bottom at low water.
- f. Single purpose docks shall be permitted if evidence is provided by the applicants and findings made by the city that cooperative use facilities (marinas or community docks or mooring buoys) are unavailable, impractical or will not satisfy the need.
- g. Covered or enclosed moorages shall be limited to 10% (in number) of the total moorage spaces of a given moorage.
- h. To avoid contamination of estuarine waters, intertidal areas or tidal wetlands, public docks and moorages should provide enclosed facilities on shorelands for public dumping of oil and emptying of holding tanks.

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- i. Moorages with a capacity greater than 25 boats shall be subject to Port Facility and Marina standards.
- j. Dredging, fill, piling/dolphin installation, shoreland stabilization or other activities in conjunction with the construction of docks and moorages shall be subject to the respective standards for these activities.

4. Dredged Material Disposal.

- a. Dredged material disposal shall occur only in approved dredged material disposal sites, or for fill of development sites which have received appropriate local, state and federal permits. All Dredged Material Disposal policy requirements and Fill standards shall apply.
- b. State and federal water quality standards shall be met during all phases of dredged material disposal. Water Quality policies shall apply.
- c. The timing of dredged material disposal shall be coordinated with state and federal resource agencies to ensure adequate protection of wildlife habitat, bird nesting areas, fish runs and fish spawning activity and to minimize interference with fishing activities.
- d. Ocean disposal of dredged material shall be permitted only in an ocean disposal site approved by the U.S. Army Corps of Engineers and the Environmental Protection Agency.
- e. With regard to in-water disposal in the river, estuary and ocean:
  - (1) Consideration shall be given to the need for the proposed disposal, and the availability and desirability of alternate sites and methods of disposal that might be less damaging to the environment.
  - (2) The physical and chemical characteristics of the dredged material should be compared with those of the disposal site, and consideration should be given to matching the dredged material to the capabilities of the site.
  - (3) In-water disposal requires either an EPA/DEQ water quality certification or a short-term exemption. Polluted materials that cannot meet EPA/DEQ requirements for ocean disposal shall be disposed of on non-aquatic sites designed to properly settle out all pollutants prior to discharge back into the aquatic system. Dredge material disposal shall not be permitted in the vicinity of a public water supply intake.

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(4) Flow lane disposal of dredged material shall be monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

f. Ocean disposal of dredged material shall be conducted to ensure that U.S. Army Corps of Engineers and Environmental Protection Agency standards are met, and that:

1. The amount of material deposited at a site will not seriously impact local ocean resources; and
2. Interference with sport and commercial fishing is minimized; and
3. Disposal is confined to the authorized disposal site; and
4. The sediment transport of the materials after disposal will not return to the bar or to the estuary.

This determination shall be made by the U.S. Army Corps of Engineers and the Environmental Protection Agency during their review of permit applications for ocean disposal of dredged material.

g. Land disposal of dredged materials shall be conducted to ensure that the integrity of estuarine waters, streams, underground springs and waterways is maintained. To ensure this:

- (1) U.S. Army Corps of Engineers guidelines for design of containment areas at dredged material disposal sites shall be followed. The U.S. Army Corps of Engineers shall be responsible for determining that these guidelines have been met.
- (2) All surface water runoff from disposed dredged materials shall be controlled and shall enter the waterway or estuary directly through an approved outfall. Outfalls shall be designed so that effluent is routed as directly as practicable to the main channel or deep water for dilution.
- (3) When necessary, dikes shall be constructed around land dredged material sites.
- (4) Dredged material disposal settling ponds shall be designed to maintain at least one foot of standing water at all times to encourage proper settling of suspended solids. Secondary dredged material disposal settling ponds may be necessary to ensure the proper treatment of overflow waters, particularly in area used for disposal of spoils containing toxic materials.
- (5) Runoff from disposed dredged materials must pass over an appropriately designed and operated weir. Weir design and size shall be dependent upon the size of the disposal site and the physical and chemical characteristics of the dredged material.

- h. The final height and slope after each use of a land dredged material site shall be such that:
    - (1) The site does not enlarge itself by sloughing and erosion at the expense of adjacent aquatic areas; and
    - (2) Loss of material from the site during storms and freshets is minimized; and
    - (3) Interference with the view from nearby residences, scenic viewpoints and parks is avoided.
  - i. Revegetation of land disposal sites shall occur as soon as is practicable in order to retard water or wind induced erosion and to restore agricultural or wildlife habitat value to the site. Native species or non-native species approved by the Soil Conservation Service shall be used, and reference shall be made to the Inter-Agency Seeding Manual prepared by the Soil Conservation Service.
  - j. Disposal of dredged material should occur on the smallest practicable land area consistent with the use of the property and the characteristics of the dredged material. Clearing of the land should occur in stages on an as-needed basis. Reuse of existing disposal sites is preferred over creation of new sites in order to minimize the total land area covered by dredged material.
  - k. Before dredged materials are disposed of on land areas for use as fill in approved fill projects, a determination shall be made that the structural characteristics of the material are suitable for this use.
  - l. Dredging project proposals shall provide at least a 5 year program for disposal of dredged material, consistent with the standards listed above. Disposal programs shall provide a mechanism for establishing stockpile sites of fill material suitable for use in approved fill projects.
5. Dredging in Estuarine Waters, Intertidal Areas & Tidal Wetlands.
- a. The following standards shall apply only to dredging in excess of 50 c.y. within a 12 month period or dredging of 50 c.y. or less which requires a Section 10 permit from the U.S. Army Corps of Engineers.
  - b. When dredging in estuarine water, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the City that:

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- (1) The dredging is necessary for navigation or other water dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and,
  - (2) A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
  - (3) No feasible alternative upland locations exist; and,
  - (4) Adverse impacts are minimized.
- c. Dredging projects shall meet all requirements of the State Fill and Removal Law (ORS 541.605-541.665), Section 10 of the Rivers and Harbors Act of 1899, and other applicable State and Federal laws. These requirements shall be enforced by State and Federal agencies with regulatory authority over dredging projects.
  - d. Existing water quality, quantity and rate of flow shall be maintained or improved. Minimum stream flow requirements shall be maintained. Water Quality policies shall apply.
  - e. Flushing capacity of estuaries shall be maintained. A hydrologic report from a professional registered hydrologist or engineer may be required by the Planning Commission to ensure that this standard has been met.
  - f. Dredging shall be timed in order to minimize the effects of sedimentation and turbidity and to minimize impacts on fish, shellfish and recreational commercial fishery activities. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish & Wildlife Resources (ODFW, 1976) shall be followed unless approval of alternative work periods has been obtained from ODFW.
  - g. Evidence shall be provided by the applicant and findings made by the City that projects requiring dredging are sited and designed so that initial and maintenance dredging are minimized.
  - h. Dredging proposals shall provide at least a 5 year program for disposal of dredged materials. Programs for disposal of dredged material shall be consistent with Dredged Material Disposal standards.
  - i. Dredging proposals requiring mitigation shall include a mitigation plan consistent with Mitigation standards.
  - j. New dredging projects shall not be allowed in areas where insufficient data is available to assess the relative biological value. Under these circumstances, the applicant may arrange

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to provide the necessary information with the technical assistance of state and federal resource agencies.

- k. When dredging for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be presented by the applicant and findings made by the city that:
  - (1) The dredging is necessary to maintain proper operation of the facility; and
  - (2) The amount of dredging proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.
  
- l. Excavation to create new water surface area shall be subject to the standards listed above and to the following standards:
  - (1) Provision shall be made for stabilization of new banklines prior to the connection of the new water body to existing water bodies. Excavation of as much as is practical of the new water body shall be completed before it is connected to existing water bodies;
  - (2) Toxic substances or other pollutants shall not leak into the water as a result of the excavation.
  - (3) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;
  - (4) Excavation shall occur at a time that will minimize its impact on aquatic life;
  - (5) Excavated materials shall not be disposed of in estuarine water, intertidal areas or tidal wetlands, except as part of an approved fill project subject to Fill standards.
  
- m. Dredging for the purpose of bankline or stream alteration (i.e. realignment of a stream bank or the entire stream either within or without its normal high water boundaries) shall be subject to the standards listed above and to the following standards:
  - (1) Alignments should make maximum use of natural or existing deep water channels provided that pockets of stagnant water are not created;
  - (2) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided;

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- (3) Temporary stabilization (mulching or sodding), sediment basins or other performance equivalent structures may be required at the discretion of the Planning Commission;
  - (4) Provision shall be made for stabilization of new banklines. Shoreline Stabilization standards shall apply;
  - (5) Adverse impacts on fish spawning, feeding, migration, and transit routes and wildlife habitat shall be evaluated and minimized.
- n. An impact assessment shall be conducted during local, state and federal review of permit applications for dredging in estuarine water, intertidal areas or tidal wetlands. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.
6. Energy Facilities and Utilities.
- a. When new energy facilities are proposed within estuarine waters, intertidal areas of tidal wetlands, evidence shall be provided by the applicant and findings made by the City that:
    - (1) A public need (i.e. a substantial public benefit) exists and the use or alteration does not unreasonably interfere with public trust rights; and
    - (2) Alternative non-aquatic locations are unavailable or impractical; and
    - (3) Dredging, fill, and other adverse impacts are avoided or minimized.
  - b. Electrical or communication transmission lines shall be located under-ground or along existing rights-of-way unless economically unfeasible.
  - c. Above-ground utilities shall be located to have the least adverse effect on visual and other aesthetic characteristics of the area. Interference with public use and public access to the estuary shall be minimized.
  - d. Whenever practicable, new utility lines and crossings within estuarine waters, intertidal areas or tidal wetlands shall follow the same corridors as existing lines and crossings.
  - e. Water discharge into estuarine waters, intertidal areas and tidal wetlands from an energy facility or utility shall meet EPA and DEQ standards, and shall not produce increases in

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temperature in the receiving waters which would have adverse impacts on aquatic life. Water Quality policies shall apply.

- f. When new energy facilities and utilities are proposed in EN Zones, evidence shall be provided by the applicant and findings made by the city that the proposed use is consistent with the resource capabilities of the area and the preservation of areas needed for scientific, research or educational needs.
- g. When new energy facilities and utilities are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the proposed facility will not preclude the provision or maintenance of navigation and other public, commercial and industrial water dependent uses.
- h. Storm water and sewer outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or inter-tidal wetlands. Effluent from outfalls must meet DEQ and EPA water quality standards. Water quality policies shall apply.
- i. Dredge, fill, shoreline stabilization or other activities in conjunction with construction of energy facilities or utilities shall be subject to the respective standards for these activities.
- j. Energy facilities and utilities shall be sited so that they do not and will not require structural shoreline stabilization methods.

7. Fill in Estuarine Waters, Intertidal Areas and Tidal Wetlands.

- a. The following standards shall apply only to fill in excess of 50 c.y. or fill of less than 50 c.y. which requires a Section 10 or 404 permit from the U. S. Army Corps of Engineers.
- b. When fill in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the City that:
  - (1) The fill is necessary for navigation or other water dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and,
  - (2) A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
  - (3) If no feasible alternative upland locations exist; and
  - (4) If adverse impacts are minimized.

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- c. When fill for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be provided by the applicant and findings made by the city that:
  - (1) There are no alternatives to fill to maintain proper operation of the facility; and
  - (2) The amount of fill proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the need.
- d. Where existing public access is reduced, suitable access as part of the development project shall be provided.
- e. The fill shall be placed at a time that will minimize sedimentation and turbidity. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to protect Fish and Wildlife Resources (ODFW, 1976) shall be followed unless approval of alternative work periods has been obtained from the ODFW.
- f. Only non-polluted materials may be used for fill. Materials which would create water quality problems are not permitted.
- g. The perimeters of the fill shall be provided with erosion prevention measures, consistent with Shoreline Stabilization standards.
- h. Fills shall be placed so that adjacent or nearby property is not adversely impacted by increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment.
- i. Fill proposals requiring mitigation shall include a mitigation plan consistent with Mitigation standards.
- j. Fill in estuarine waters, intertidal areas and tidal wetlands shall be subject to the requirements of the State Fill and Removal Law (ORS 541.605-541.665), the Rivers and Harbors Act of 1899, the Clean Water Act of 1977 (PL 95-217), and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.
- k. An impact assessment shall be conducted during the local, state and federal review of permit applications for fill in estuarine waters, intertidal areas or tidal wetlands according to the provision outlined in Section 2.238. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

8. Forestry and Forest Products Industry.

- a. Log storage, sorting and processing areas in shorelands adjacent to estuaries or waterways shall be designed, constructed and operated to control leachates and prevent the loss of bark, chips, sawdust and other wood debris into public waters.
- b. In-water log handling, sorting, and storage areas, and log storage, sorting and processing areas in shorelands adjacent to estuaries or other water bodies shall be subject to the requirements of the water quality program administered by the Department of Environmental Quality. Under the Clean Water Act of 1977 (PL 92-500). DEQ, in conjunction with other affected resource agencies, shall be responsible for determining that the flushing characteristics of in-water log handling, sorting and storage areas, the number of logs and duration of storage, and the bark and debris controls for both in-water and shoreland sites are such that state and federal clean water standards are met.
- c. Leasing of publicly owned aquatic areas for the purpose of in-water log handling, sorting and storage shall be subject to the requirements of the Division of State Lands.
- d. When new in-water log handling, sorting and storage areas are proposed in estuarine waters, evidence must be presented by the applicant and findings made by the City that:
  - (1) The proposed use is an integral part of the process of water-borne transportation of logs (i.e. is water-dependent);
  - (2) There is a need (i.e. a substantial public benefit) for the proposed use and the use or alteration does not unreasonably interfere with public trust rights;
  - (3) Alternative non-aquatic locations are unavailable, impracticable or do not meet the need;
  - (4) Conflicts with navigation, aquaculture and commercial and recreational fishing have been avoided or minimized;
  - (5) Easy let-down facilities for transfer of logs from land to water have been provided for (free fall logs dumps shall not be permitted); and
  - (6) Sites are located to avoid shellfish beds, shallow spawning areas, or areas where grounding of logs will occur.

9. Industrial and Commercial Uses in Estuarine Waters, Intertidal Areas and Tidal Wetlands.

- a. Evidence shall be provided by the applicant and findings made by the city that:
- (1) The amount of estuarine surface area occupied is the minimum required to meet the need; and
  - (2) Provision has been made for public access, view-points and recreational use, consistent with safety and security considerations; and
  - (3) Multipurpose and cooperative use of piers, wharves, parking areas or handling and storage facilities have been provided for, or is impracticable; and
  - (4) Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves; and
  - (5) Alteration of productive intertidal areas and tidal marshes has been avoided or minimized; and
  - (6) Adverse impacts on the following have been avoided or minimized to be consistent with the resource capabilities and purposes of the area:
    - (a) Water quality;
    - (b) Hydrographic characteristics;
    - (c) Aquatic life and habitat;
    - (d) Bird and wildlife habitat;
    - (e) Fish transit and migration routes.
- b. Removal of riparian vegetation shall be permitted only if direct access to water is required in conjunction with a water-dependent use. Replacement of riparian vegetation, or enhancement of existing riparian vegetation shall be required, where consistent with water-dependent use, to enhance attractiveness or assist in bank stabilization.
- c. Visual access to the water shall not be impaired by the placement of signs. When feasible, signs shall be constructed on or against existing buildings to minimize visual obstruction of the shoreline and water bodies. Off-premise outdoor advertising signs shall not be allowed within estuarine waters, intertidal areas or tidal wetlands.
- d. The design and construction of new industrial and commercial facilities should consider reclamation and re-use of waste water.

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- e. Provision for the prevention and control of contaminants from entering the water shall be made. A contingency plan to provide for containment of cleanup of spills of contaminants shall be provided.
  - f. Industrial outfalls, sewer outfalls, and storm water outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or salt marshes. Effluent from outfalls must meet DEQ and EPA water quality standards. Water Quality policies shall apply.
  - g. When water-related or non-dependent, non-related industrial or commercial uses are proposed in Estuary Development (ED) Zones, evidence must be presented that:
    - (1) The use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses; and
    - (2) The use will not preempt the use of shorelands especially suited for water-dependent development; and
    - (3) Non-water dependent and non-water related uses which permanently alter estuarine resources and values shall include evidence of the public benefits derived from the project, which shall include:
      - (a) The beneficial economic impacts generated by increases in employment; and/or
      - (b) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
  - h. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.
  - i. Dredging, fill, piling/dolphin installation, shoreline stabilization, disposal or dredged material or other activities in conjunction with industrial and commercial uses shall be subject to the respective standards for these activities.
10. Land Transportation Facilities.
- a. Proposals for new county or state highways, or for railroads, shall provide an evaluation of the proposed project on the following:

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- (1) Land use patterns;
  - (2) Energy use;
  - (3) Air and water quality;
  - (4) Estuarine habitat, functions and processes;
  - (5) Existing transportation facilities;
  - (6) Physical and visual access to estuaries and shorelands.
- b. Evidence shall be provided by the applicant and findings made by the city that the siting, design, construction and maintenance of land transportation facilities will be conducted to avoid mass soil wasting or excessive surface erosion.
  - c. Land transportation facility proposals shall include a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Site rehabilitation plans shall provide for replacement of riparian vegetation.
  - d. Vegetated buffer strips shall be maintained, whenever practicable, along roadways to manage storm drainage runoff.
  - e. When culverts are used in association with bridge crossings, spring line natural bottom culverts are preferred over box culverts.
  - f. All bridge crossings and culverts shall be positioned and maintained to allow fish passage, avoid interference with anadromous fish runs and to prevent any constriction of natural streams which would result in increases in flood or erosion potential. When culverts are used, no fill shall be allowed in streams, rivers or estuaries.
  - g. When new land transportation facilities are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the proposed use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
  - h. Dredging, fill, piling/dolphin installation, shoreline stabilization, dredged material disposal or other activities in conjunction with land transportation facilities shall be subject to the respective standards for these activities.
  - i. When new bridge crossing support structures are proposed in Estuary Natural (EN) Zones, evidence shall be provided by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities and purposes of the area.

11. Mining and Mineral Extraction.

- a. Mining and Mineral Extraction policy requirements in the Wheeler Comprehensive Plan shall be met.
- b. Mining and mineral extraction proposals shall include a mining plan and a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Any necessary rehabilitation of mining and/or mineral extraction sites shall be completed within two years of the completion of the mining or mineral extraction operation.
- c. Evidence shall be provided by the applicant and findings made by the city that mining and mineral extraction projects are sited, designed, operated and maintained to ensure that adverse impacts on the following are minimized:
  - (1) Aquatic life and habitat, including but not limited to the spawning, rearing and passage requirements of anadromous fish;
  - (2) Bird and wildlife habitat;
  - (3) Hydrographic characteristics, including but not limited to the alteration of local currents that may affect adjacent properties by causing erosion, accretion or increased flooding.
  - (4) Water Quality. (Water Quality policies shall apply.)
- d. Temporary removal of riparian vegetation shall be permitted in cases where direct water access is required as part of a mining or mineral extraction operation. Site rehabilitation plans shall provide for replacement of riparian vegetation.
- e. Spoils and stockpiles shall not be placed within estuarine water, intertidal areas or tidal wetlands, unless as part of an approved fill project, subject to Fill standards.
- f. When mining and mineral extraction projects are proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
- g. Dredging, fill or other activities in conjunction with mining and mineral extraction shall be subject to the respective standards for these activities.
- h. The location and operation of mining and mineral extraction projects shall be in conformance with the requirements of the Division of State Lands (ORS 541.605 - 541.665; ORS 273.551; ORS 273.775 - 273.780), the Department of Geology and Mineral Industries (ORS 520.005 -

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520.095) and other applicable state and federal laws governing environmental quality, resource protection, and public Health and safety. These requirements shall be enforced by state and federal agencies with regulatory authority over mining and mineral extraction projects.

### 12. Mitigation.

- a. Mitigation for dredge or fill within intertidal areas or tidal wetlands shall be required by the Director of the Division of State Lands (under the provisions of ORS 541.605-541.665). The suitability of a mitigation proposal for a given proposed project shall be determined by the Director of the Division of State Lands, according to the procedure established in Administrative Rule 85-245 (Chapter 141.)
- b. Mitigation projects shall go into effect prior to or at the same time as the development project.

### 13. Navigational Structures and Navigational Aids.

- a. When navigational structures are proposed, evidence shall be provided by the applicant and findings made by the city that:
  - (1) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use; and
  - (2) The project will not interfere with the normal public use of fishery, recreation or water resources; and
  - (3) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Department as a result of the impact assessment required in Section 3.120.
  - (4) Non-structural solutions are unavailable, impractical or do not meet the need.
- b. Navigational structures shall meet all applicable U.S. Army Corps of Engineers engineering standards. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards have been met.
- c. An impact assessment shall be conducted during local, state and federal review of permit applications for navigational structures. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purpose of the area.

- d. Dredging, fill or other activities in conjunction with navigational structures and navigational aids shall be subject to the respective standards for these activities.

14. Piling/Dolphin Installation.

- a. When piling or dolphin installation is proposed, evidence shall be provided by the applicant and findings made by the city that:
  - (1) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;
  - (2) The project will not unduly interfere with the normal public use of fishery, recreational or water resources; and
  - (3) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.
- b. When new piling or dolphin installation is proposed in Estuary Natural (EN) Zones, evidence shall be provided by the applicant and findings made by the City, that the project is consistent with the resource capabilities and purposes of the area.
- c. When proposals for new piling or dolphin installation in conjunction with a non-water-dependent or non-water related use within Estuary Development (ED) Zones are made, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
- d. Piling/dolphin replacement and new installation shall meet all applicable U.S. Army Corps of Engineers engineering standards and permit requirements. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards and permit requirements have been met.
- e. An impact assessment shall be conducted during local, State and Federal review of permit applications for piling/dolphin installation. The impact assessment shall follow the procedures outlined in Section 11.115. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

15. Restoration and Enhancement.
- a. Restoration and enhancement policy requirements in the Wheeler Comprehensive Plan shall be met.
  - b. Proposals for restoration projects shall present evidence that:
    - (1) The restored area is a shallow subtidal or an inter-tidal or tidal marsh area after alteration work is performed; and
    - (2) The restored area may not have a functioning part of the estuarine system when alteration work begins; and
    - (3) The restored area is revitalizing, returning or replacing original attributes and amenities which have been diminished or lost by past alterations, activities or catastrophic events.
  - c. Estuarine enhancement project proposals shall identify:
    - (1) The original conditions to be enhanced.
    - (2) The cause of the loss or degradation.
    - (3) The location and extent of actions necessary to achieve the restoration enhancement objective.
  - d. Estuarine enhancement project proposals shall present evidence that the project will result in an overall improvement in the cultural, historic, economic or navigation features of an estuary, which will outweigh any adverse impact identified in (b) above.
  - e. When active restoration and enhancement projects are proposed in the Estuary Natural (EN) zone, evidence shall be provided by the applicant and findings made by the City that the project is consistent with the protection of significant fish and wildlife habitats, biological productivity, and scientific, research and educational needs.
  - f. When passive or active restoration or enhancement projects are proposed in Estuary Development (ED) zones, evidence shall be provided by the applicant and findings made by the City that the project will not interfere with the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses, and will not interfere with the use of adjacent shorelands especially suited for water-dependent development:
  - g. Dredge, fill, shoreline stabilization, shoreland development, installation of energy facilities or utilities, dredged material disposal and other uses and activities proposed as part of a restoration or enhancement project shall be subject to the respective standards for these uses and activities.

16. Shallow Draft Port Facilities and Marinas.

- a. Evidence shall be provided by the applicant and findings made by the city that:
  - (1) Facilities have been sited and designed to minimize initial and maintenance dredging;
  - (2) Dryland boat storage has been provided for, or is impracticable;
  - (3) Provision has been made for public access, view-points and recreational use, consistent with safety and security considerations;
  - (4) Multipurpose and cooperative use of piers, wharves, parking areas and cargo handling and storage has been provided for, or is impracticable;
  - (5) Floating structures are designed so as not to rest on the bottom at low water, and are protected against currents and waves;
  - (6) The amount of water surface occupied is the minimum required to meet the need;
  - (7) Provision has been made for maintenance of riparian vegetation, except where direct access to water is required;
  - (8) Natural or man-made protection from wind, waves, storm or tidal currents or ship wakes has been provided for;
  - (9) Adverse impacts on the following have been avoided or minimized:
    - (a) Navigation;
    - (b) Water quality;
    - (c) Hydrographic characteristics;
    - (d) Natural processes of erosion and sedimentation;
    - (e) Aquatic life and habitat.
- b. Marina access channels shall be designed to maximize water circulation and avoid dead spots. Dead-end channels or confined basins should be avoided. Demonstration shall be made that state and federal clean water standards can be maintained. A field study of water circulation patterns may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.
- c. Safe navigational access to port facilities and marinas shall be provided and maintained.

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- d. Covered or enclosed moorages shall be limited to 25% (in number) of the total moorage spaces of a given port facility or marina. Where new water surface area is created by a marina or port facilities project, there shall be no limitation on the amount of such new water surface area that is used for covered moorage.
- e. The following provisions for the prevention and control of contaminants from entering the water shall be made:
  - (1) Enclosed shoreland facilities for public dumping of oil and emptying of holding tanks shall be provided;
  - (2) A contingency plan to provide for containment and clean-up of spills of contaminants shall be provided.
- f. Proposals for expansion or creation of port and marina facilities shall be accompanied by a demonstration of the public benefits derived from the project, which shall include:
  - (1) Information on why the capacity of existing facilities is inadequate; and
  - (2) The beneficial economic impacts to local communities derived from increases in employment; and/or
  - (3) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
- g. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.
- h. Dredge, fill, piling/dolphin installation, navigational structures, shoreline stabilization or other activities in conjunction with expansion or creation of new port facilities and marinas shall be subject to the respective standards for these activities.

17. Shoreline Stabilization.

- a. Within estuarine waters, intertidal areas and tidal wetlands, and along shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:
  - (1) Proper maintenance of existing riparian vegetation;
  - (2) Planting of riparian vegetation;

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- (3) Vegetated rip-rap;
- (4) Non-vegetated rip-rap;
- (5) Groins, bulkheads or other structural methods.

Shoreline protection proposals shall include justification for the use of a lower priority method over a higher priority method.

- b. Vegetative shoreline stabilization shall utilize native species, or non-native species approved by the Soil Conservation Service. Reference shall be made to the Inter-Agency Seeding manual prepared by the Soil Conservation Service.
- c. When structural shoreline stabilization methods are proposed, evidence shall be presented by the applicant and findings made by the City that:
  - (1) Flooding or erosion is threatening an established use on a subject property or a need (i.e. a substantial public benefit) is demonstrated in conjunction with navigation or water dependent use, and
  - (2) Land use management practices or non-structural solutions are inappropriate or will not meet the need; and
  - (3) The proposed structural stabilization method is the minimum size needed to accomplish the desired stabilization;
  - (4) The proposed project will not restrict existing public access to publicly owned lands or interfere with the normal public use of fishery, recreation or water resources; and
  - (5) The proposed project will not adversely impact adjacent aquatic areas or nearby property through increased erosion, sedimentation, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer, hydrologist, or geologist may be required by the Planning Commission as a result of the impact assessment required in Section 11.115.  
A brief statement from the local Soil and Water Conservation Service may serve as evidence that Standards c(2) and c(3) have been met.
- d. Shoreline stabilization projects shall be timed to minimize impacts on aquatic life.
- e. Proposals for rip-rap shall include evidence that the rock to be used will be effective, and will provide justification for use of a slope steeper than 1½ feet horizontal to one foot vertical.

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- f. When bulkheads are proposed, evidence shall be provided by the applicant and findings made by the city that other forms of structural stabilization are inappropriate or will not meet the need. Bulkheads should be designed to be permeable to groundwater and runoff. Fill policies and standards shall apply to bulkhead projects which involve fill within estuarine waters, intertidal areas or tidal wetlands.
- g. When riprap is proposed in Estuary Natural (EN) Zones, a resource capability determination shall be required for riprap for purposes other than the protection of unique natural resources, historical and archaeological values, public facilities and uses existing as of October 7, 1977.
- h. When structural shoreline stabilization is proposed in Estuary Development (ED) Zones, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
- i. An impact assessment shall be conducted during local, state and federal review of permit applications for structural shoreline stabilization seaward of the line of non-aquatic vegetation or the Mean Higher High Water (MHHW) line. The impact assessment shall follow the procedure outlined in Section 11.115. Identified adverse impacts shall be avoided or minimized to be consistent with the resource capabilities and purposes of the area.

### 18. Riparian Vegetation Protection

Riparian vegetation within identified riparian zones, shall be protected and retained. A twenty-five foot riparian zone (measured from the ordinary high water line) is established on each bank of Zimmerman, Jarvis and Vosberg Creeks. A fifty foot riparian zone (measured from the mean higher high water line or line of non-aquatic vegetation, whichever is most landward) is established adjacent to Nehalem Bay.

### 19. Conditional Non-Water Dependent Uses

- a. The development is demonstrably compatible with Comprehensive Plan Policies in terms of use priorities of the zone.
- b. The development shall not obstruct access to publicly owned lands and recreation use areas.
- c. The development design and construction shall not obstruct panorama views of the shorelands.

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- d. The development is to be compatible with other public, commercial developments in the zone.
- e. The development shall be subject to all applicable design review criteria in Section 11.050.
- f. The development shall utilize underground utilities whenever possible.

### Section 11.115. Regulated Activities and Impact Assessment.

Purpose. The purpose of this section is to provide an assessment process and criteria for local review and comment on state and federal permit applications which could potentially alter the estuarine ecosystems.

### Section 11.116. Regulated Activities.

Regulated activities are those actions which require state and/or federal permits, and include the following:

1. Fill (either fill in excess of 50 c.y. or fill of less than 50 c.y. which requires a Section 10 or Section 404 permit from the U.S. Army Corps of Engineers);
2. Dredging (either dredging in excess of 50 c.y. within a 12 month period, or dredging of less than 50 c.y. which requires a Section 10 permit from the U.S. Army Corps of Engineers);
3. Dredged material disposal; including flow-lane disposal.
4. Piling/dolphin installation;
5. Shoreline stabilization, bankline or stream alteration involving fill or dredging in excess of 50 c.y.;
6. In-water log storage.

### Section 11.117. Procedure for Reviewing Regulated Activities.

State and Federal permit notices shall be reviewed by the Planning Commission. Regulated activities and any associated use or uses as a whole shall be reviewed according to the requirements of the zone(s) in which the proposed uses and activities are to be located (Section 8.010 to 8.080), standards relevant to the proposed uses and activities (Section 11.110), an impact assessment (Section 11.119) resource capability and purpose determinations where applicable (Section 11.1191), requirements for degradations or reductions of estuarine natural values where applicable (Section 11.1192), and comments from State and Federal agencies having responsibility for permit review (Section 11.1193). Based on this review, the Planning Commission will decide whether the proposed uses and activities comply with this ordinance and will forward

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this decision to the appropriate permitting agencies and the permit applicant prior to the final date set for comments. Decisions of the Planning Commission may be appealed to the City Council (Section 18.020).

### Section 11.118. Zone Requirements.

Uses and activities shall be allowed only if they are allowed in the zones in which they are to be located. Accessory uses proposed for adjacent upland areas must be allowed in the upland zones in which they are to be located. Uses that are permitted with standards must comply with the standards of Section 11.110. Uses listed as conditional uses shall be reviewed according to the procedures of Article 15 and the standards of Section 11.110. If a conditional use is required, the city shall notify the applicant and state and federal permitting agencies, and shall request an extension of the comment period.

### Section 11.119. Impact Assessments.

The city shall, with the assistance of affected state and federal agencies, develop impact assessments for regulated activities. Federal Environmental Impact Statements or Assessments may be substituted if made available to the Planning Department. The following considerations must be addressed in the impact assessment:

1. The type and extent of alterations expected.
2. The type of resource(s) affected including but not limited to aquatic life and habitats, riparian vegetation, water quality and hydraulic characteristics.
3. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary.
4. The methods which could be employed to avoid or minimize adverse impacts.

### Section 11.1191. Requirements for Resource Capability Determinations.

Uses and activities for which a resource capability determination is required by Section 11.110, shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposes of the zone(s) in which they are to be located. An activity will be found to be consistent with the resource capabilities of a management unit (as described in Section 2 of the Estuarine Resources Element of the Tillamook County Comprehensive Plan) when either (1) the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or; (2) that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.

Section 11.1192. Significant Degradations or Reductions of Estuarine Natural Values:

1. Definition: Significant degradations or reductions of estuarine natural values include dredging, fill, and other activities which will cause significant offsite impacts as determined by the impact assessment (Section 1.119).
2. Requirements: Dredging and fill must comply with the standards in Section 11.110. Other reductions and degradations of estuarine natural values shall be allowed only if:
  - a. A need (i.e. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
  - b. No feasible alternative upland locations exist; and
  - c. Adverse impacts are minimized as much as feasible.

Section 11.1193. State and Federal Reviewing Agency Comments.

In the review of regulated activities, the City shall notify the following agencies: Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U.S. Fish and Wildlife Service, National marine Fisheries Service, Environmental Protection Agency and U.S. Army Corps of Engineers.

Notice will be mailed within 7 days of the City's receipt of the State or Federal permit notice. The notice will include permit reference, identification of the local decisions to be made, reference to applicable policies and standards, and notification of comment and appeal periods. The City shall consider any comments received no later than seven days before the closing date for comments on the State or Federal permit notice.

Section 11.1194. Appeals.

The Planning Commission decisions on regulated activities may be appealed according to the requirements of Section 18.020. If the decision of the Planning Commission is appealed, the City shall notify the appropriate State and Federal permitting agencies and shall request an extension of the comment period to allow for the local appeals process.

Section 11.120. Protection of Riparian Vegetation.

All uses and structures shall be set back fifteen (15) feet from Zimmerman Creek, Jarvis Creek, and the portion of Vosberg Creek not located within the Coastal Shoreland Boundary unless direct water access is required in conjunction with a water-dependent use. Riparian vegetation shall be protected and retained within the required setback with the following exceptions:

1. The removal of trees which pose an erosion or safety hazard;
2. Vegetation removal necessary to provide direct water access for a water dependent use; or
3. Vegetation removal necessary to place structural shoreline stabilization when other forms of shoreline stabilization are shown to be inadequate.
4. Vegetation removal necessary to place the following permitted uses when no other alternatives are available.
  - a. Bridge crossings and bridge crossing support structures.
  - b. Water, gas, sewer, or phone lines.
  - c. Electrical distribution line or line support structures.
  - d. Storm water or sewer outfalls.

Section 11.130. Accessory Uses.

An accessory use shall comply with all requirements for a principal use, except as this ordinance specifically allows otherwise, and shall comply with the following limitation:

1. An accessory structure separated from the main building may be located in the required rear and side yard, except in the required street side yard of a corner lot, provided it is not closer than five feet to a property line.

Section 11.140. Prevention of Air, Water & Noise Pollution.

All uses permitted by this ordinance shall be in conformance with applicable Federal and State air and water quality standards, and noise standards.

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### ARTICLE 12: EXCEPTIONS TO ZONING RULES

#### Section 12.010. Intent.

The purpose of the exceptions article is to specify cases of exemptions from zoning rules and to assist in administrative interpretation of the zoning ordinance.

#### Section 12.020. Zone Boundaries.

If a zone boundary as shown on the official zoning map divides a lot between two zones, the entire lot shall be deemed to be in the zone in which the greater area of the lot lies. Except as otherwise described, zone boundaries follow property lines, street rights-of-way, or city limits lines.

#### Section 12.030. Authorization of Similar Uses.

The Planning Commission may permit in a particular zone a use not listed in this ordinance provided the use is of the same general type as the uses permitted there by this ordinance, or provided the use is required by state or federal law, such as pollution control equipment.

#### Section 12.040. Projections from Buildings.

Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, and flues shall not project more than 18 inches into a required yard. Awnings may extend no more than 5 feet into the public right-of-way or the width of the sidewalk, whichever is less.

#### Section 12.050. General Exception to Lot Size Requirements.

If a lot platted prior to the adoption of this Ordinance (December 1979) has an area no less than 4,000 square feet, but does not meet the lot size requirement or lot dimension requirements of the zone in which the property is located, the property may be occupied by a use permitted in the zone subject to the other requirements of the zone provided that if there is an area deficiency, residential use shall be limited to a single family dwelling or to the number of dwelling units consistent with the density requirements of the zone. If a lot has an area of less than 5,000 square feet, application for a building permit shall include evidence that the lot was platted and recorded in the office of the County Clerk prior to the passage of this Ordinance (December 1979).

#### Section 12.060. General Exceptions to Yard Requirements.

The required front yard for a dwelling need not exceed the average depth of the nearest front yards of dwellings within 100 feet on both sides of the proposed dwelling, but in no case shall the front yard setback be less than 12 feet.

Section 12.070. General Exception to Building Height Limitations.

Projections such as chimneys, single pole antennae, flagpoles and similar projections shall not be subject to building height limitations. Satellite receiving dishes larger than 3 feet in diameter shall not be placed on the roof of a structure, nor in the front or side yards.

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ARTICLE 13: MATTERS SUBJECT TO REVIEW AND APPROVAL BY PLANNING  
COMMISSION; PUBLIC DELIBERATIONS AND HEARINGS

Section 13.010. General.

This article shall apply to variances, conditional use permits, and planned developments, all of which are to be reviewed and approved by the Planning Commission.

Section 13.020. Application.

Applications for review by the Planning Commission shall be submitted on an appropriate form as developed by the Planning Commission, or in lieu of an approved form, in writing, and shall be accompanied by a legal description, plans and documents as required in this ordinance, and such other information as the Planning Commission may deem appropriate.

Section 13.030. Fees.

The Planning Commission shall not consider, nor shall any authorized city official commence processing, any matter for which a fee is assigned, until such fee is paid in full. Fees shall not be required where the city, or any official acting on behalf of the city, is the applicant. The amount of required fees shall be established by resolution of the City Council.

Section 13.040. Report of City Recorder.

The City Recorder shall assemble and coordinate the reviews of various applicable city officials, government agencies, public utilities, and citizens and may prepare or cause to be prepared, a report summarizing preliminary findings and recommendations. The report shall be filed with the Planning Commission at least seven days prior to the scheduled public hearing on the application, and copies of the report shall be mailed to the applicant and shall be made available for use by interested persons.

Section 13.050. Procedure for Mailed Notice.

1. Mailed notice shall be sent to property owners within the following distances from the exterior boundary of the subject property:
  - a. Legislative change to the zoning ordinance: none;
  - b. Quasi-judicial change to the zoning ordinance: two hundred fifty feet;
  - c. Conditional use: two hundred fifty feet.
  - d. Variance and setback reduction: one hundred feet.
  - e. Design review plans: one hundred feet;
  - f. Clearing, cutting and filling, pursuant to Article 11.053: Abutting property owners.

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2. Mailed notice shall be sent to the applicant.
3. Addresses for a mailed notice required by this title shall be obtained from the county assessor's Real Property Tax records. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this title for notice.
4. Mailed notice shall contain the information contained in of Section 13.070.

### Section 13.060. Procedure for Published Notice.

1. Notice shall be given for the proposed actions described below by publication in a newspaper of general circulation in the city:
  - a. Legislative change to this zoning ordinance.
2. Published notice shall contain the information contained in Section 13.070.

### Section 13.070. Notice of Hearing.

1. Notice of a hearing shall contain the following information:
  - a. The name of the property owner and applicant, if different from the property owner, and the city's case file number;
  - b. The date, time, place of the hearing, and who is holding the public hearings;
  - c. A description of the location of the property for which a permit or other action is pending, including the street address and a subdivision lot and block designation, or the tax map designation of the County Assessor;
  - d. A concise description of the proposed actions;
  - e. A listing of the applicable criteria from this title and the Comprehensive Plan known to apply to the application at issues;
  - f. A statement that a failure, by the applicant or other parties to the hearing, to raise an issue in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to the issue precludes appeal based on that issues;

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- g. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at the reasonable costs;
- h. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable costs;
- i. The name of a city representative to contact and the telephone number where additional information may be obtained; and
- j. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

### Section 13.080. Time of Notice.

1. Where required, notice shall be mailed, published, and posted twenty days prior to the hearing requiring the notice.
2. Where required by Section 13.060, notice shall be mailed, published, and posted thirty days prior to the hearing requiring the notice.

### Section 13.090. Date of Public Hearing.

A public hearing shall be held within forty days of the filing of a complete application.

### Section 13.100. Availability of Staff Reports.

Any staff report to be used at a public hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. This continuance period shall not be counted as part of the one hundred twenty day time limit required by Oregon Revised Statutes (ORS 227.178) and the Planning Commission By-laws.

### Section 13.110. Hearing Procedures.

All hearings shall be conducted according to the Planning Commission By-laws.

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### ARTICLE 14: VARIANCES

#### Section 14.010. Intent.

The purpose of the variance article is to allow for the granting of a Variance Permit from specified site-development requirements of this ordinance where it can be shown that owing to special and unusual circumstances related to a specific lot, strict interpretation of the ordinance's site development requirements would cause undue or unnecessary hardship. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or vicinity or otherwise achieve the purpose of this ordinance.

#### Section 14.020. Conditions for Granting a Variance.

No variance shall be granted by the Planning Commission unless it can be shown that all of the following conditions exist:

1. Exceptional or extraordinary circumstances apply to the property and result from lot size or shape, topography, or other circumstances over which the owners of the property have no control.
2. The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess.
3. The variance would not be materially detrimental to the purposes of the ordinance, the comprehensive plan, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city policy.
4. The variance request is the minimum variance which would alleviate the hardship.

#### Section 14.030. Application.

A request for a variance may be initiated by a property owner, or his authorized agent, by filing an application with the City Recorder. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. The City Recorder may request other drawings or materials essential to an understanding of the proposed use and its relationship to surrounding properties.

#### Section 14.040. Time Limit.

Authorization of a variance shall be void after one year unless substantial construction has taken place. Upon request, the Planning Commission may grant a six month extension.

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### ARTICLE 15: CONDITIONAL USE/ACTIVITIES

#### Section 15.010. Intent.

In certain districts, conditional uses or activities may be permitted subject to the granting of a Conditional Use Permit. Because of their unusual characteristics or potential disruption of the area in which they are to be located, conditional uses require special considerations, so they may be properly located with respect to the comprehensive plan and to the objectives of this ordinance.

#### Section 15.020. Authorization.

Uses designated in this ordinance as conditional uses may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission. A conditional use may be authorized if the Planning Commission finds that it is in conformity with the comprehensive plan, that the proposed use of the site and design of the project will be compatible with permitted uses in the area, and the proposed use of the site and design of the project minimizes adverse impacts to the site and adjacent areas. The burden is on the applicant to demonstrate that these requirements can be met. In granting a conditional use, the city may impose the following conditions:

1. Increasing the required lot size or yard dimensions;
2. Reducing the required height and size of buildings;
3. Controlling the location and number of vehicle access points;
4. Increasing the required off-street parking spaces;
5. Increasing the required street width;
6. Limiting the number, size, location, and lighting of signs;
7. Requiring diking, fencing, screening, landscaping, berms, or other items to protect adjacent or nearby property;
8. Designating sites for open space; and
9. Increasing pipe size or other public facility installment requirements, such as for fire protection, waterflow, sewerage, or storm drainage.

#### Section 15.030. Preexisting Conditional Uses.

In the case of a use existing prior to the effective date of this ordinance and classified in the ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements for a conditional use.

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### Section 15.040. Application.

Any person seeking a conditional use permit shall provide the Planning Commission such information as they require to determine whether the permit is authorized by law. At minimum the proposed conditional use description shall include:

1. Legal description of the affected property.
2. Site plan and elevations, drawn to scale, indicating the subject property, the location of all structures, walkways, driveways, landscaped areas, fences, walls, all parking and loading spaces and railroad tracks.
3. A sketch, showing the location of existing trees and vegetation proposed to be removed and to be retained on the site, the location and design of landscaped areas, the varieties and sizes of trees and plant materials to be planted on the site.
4. Site analysis data indicating square footage of the site, building coverage, landscaped areas, and parking.
5. Other information, as requested by the Planning Commission.

### Section 15.050. Performance Bond.

The Planning Commission may require that the applicant for a conditional use furnish to the town a performance bond, or an acceptable substitute, up to, and not to exceed, the value of the cost of the required improvements in order to assure that the conditions imposed are completed in accordance with the plans and specifications as approved by the Planning Commission and that the standards established in granting the conditional use are observed.

### Section 15.060. Compliance with Conditions of Approval.

Compliance with conditions established for a conditional use and adherence to the submitted plans, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of this ordinance.

### Section 15.070. Time Limit for Conditional Uses.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, when requested, the Planning Commission may extend authorization for an additional period not to exceed six months, provided such a request is submitted to the Planning Commission at least 10 days prior to the expiration of the permit.

Section 15.080. Limitations on Refiling of Application.

Applications for which a substantially similar application has been denied will be heard by the Planning Commission only after a period of six months has elapsed from date of the earlier decision.

Section 15.090. Basic Conditional Use Standards.

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

1. A need exists for the use at the proposed location.
2. The use will not overburden the following public facilities and services: water, sewer, storm drainage, electrical services, fire protection, and schools.
3. The site layout shall provide an adequate amount of space for yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities, or other facilities which are required by city ordinances or desired by the applicant.
4. The topography, soils, and other physical characteristics of the site are appropriate for the use.
5. The use will not create traffic congestion on nearby streets.
6. The proposed use will be compatible with the general character of the area due to the architectural style, building materials and colors, landscaping, fencing, and/or other building or site characteristics.

Section 15.100. Specific Conditional Use Standards.

In addition to the standards of the zone in which the conditional use is located and the general standards of Section 15.090, specific conditional uses shall meet the following standards, where applicable:

1. Church, Meeting Hall, Government Structure, Community Center, Health Facility, or Retirement Home. The primary structure and related buildings shall be at least 30 feet from a side or rear lot line.
2. Day Care Centers. Day care centers or nursery schools shall provide and maintain at least 100 square feet of outdoor play area per child. A sight-obscuring fence (except in clear vision areas) at least 4 feet but not more than 6 feet high shall separate the play area from abutting lots and from a street.

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3. Public Utility or Communication Facility.
  - a. When located in or adjacent to a residential zone, suitable fencing or landscaping shall be provided.
  - b. When located in or adjacent to a residential zone, all equipment storage shall be in an enclosed building.
  - c. The minimum lot size may be waived on a finding that a reduced lot size will not have a detrimental affect on adjacent property.
4. Mobile Homes on Individual lots. Mobile homes shall comply with the standards of Section 11.040.
5. Mobile Home Parks. A mobile home park shall be built to State standards in effect at the time of construction and shall comply with the following additional provisions:
  - a. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by State law.
  - b. The space provided for each mobile home shall be provided with city water, and sewage connections.
  - c. The park shall abut and have direct access to an arterial or collector street and shall not have access to minor residential streets.
  - d. A centralized storage area for boats, campers, camping trailers shall be provided. Such storage area shall contain a minimum of 160 square feet for each mobile home space and be enclosed by a sight-obscuring fence.
  - e. Mobile homes shall be located no less than twenty feet from side or rear property lines and twenty- five feet from a street providing access.
  - f. Streets which are to be dedicated to the city, if any, shall be dimensioned and improved in accordance with the Subdivision Ordinance. For other streets, required rights-of-way shall be as follows:

Minor one-way street serving less than 20 spaces 25 feet  
Minor two-way street serving less than 40 spaces 30 feet  
Street serving 40 or more spaces 40 feet

For other streets, required pavement widths shall be as follows:

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Minor one-way street serving less than 20 spaces 15 feet  
Minor two-way street serving less than 40 spaces 22 feet  
Street serving 40 or more spaces 28 feet

At a minimum, connection to a public street shall be provided by a minor, two-way street. Aside from the pavement widths set forth above, private streets shall conform to the design and improvement standards of the Subdivision Ordinance.

- g. Walkways, not less than 4 feet in width, shall be provided from each mobile home space to service buildings and along one side of all streets.
  - h. Sight-obscuring fences or evergreen plantings, at least six feet in height, surrounding the mobile home park, except at entry and exit points, shall be provided.
  - i. Signs are limited to one identification sign with a maximum area on one side of 24 square feet and limited to eight (8) feet in height above ground. Such signs may be indirectly illuminated.
  - j. Mobile homes placed in the park shall conform to the provisions of Section 11.040.
  - k. Applications for mobile home parks shall be accompanied by complete plans and specifications of the proposed park and all permanent buildings indicating the proposed methods of compliance with the requirements. Such plans shall be to a scale of not less than one inch to fifty feet. A performance bond may be required, or an acceptable alternative, in an amount to be determined by the Planning Commission, to insure that a development proposal is completed as approved and within the time limit agreed to.
6. Recreational Vehicle Park. A recreation vehicle park shall be built to the standards of the Oregon State Building Codes Agency in effect at the time of construction and shall comply with the following additional provisions:
- a. The space provided for each recreational vehicle shall be at least 1,500 square feet.
  - b. All recreational vehicles and structures shall be located at least 25 feet from all park property lines.
  - c. Except for access roadways into the Park, the Park shall be screened on all exterior boundaries except the waterfront by a sight-obscuring hedge or fence not less than six feet in height.
  - d. The recreation vehicle pad shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide runoff of surface water.

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- e. No recreational vehicle shall remain in the park for more than thirty (30) days in a sixty (60) day period with the following exception. The permanent placement of a recreational vehicle is to be used only for recreational or vacation purposes by members of the recreational vehicle park. There can be no more than seven (7) spaces or ten percent (10%) of the total RV park spaces, whichever is less, with permanently placed recreational vehicles. Permanently placed recreational vehicles shall be provided with state-approved tie-down devices which can withstand, at a minimum, ninety (90) mile per hour winds.
  - f. Signs are limited to one identification sign with a maximum area of one side of 32 square feet and limited to eight feet in height above the ground. Such signs may only be indirectly illuminated.
  - g. Application for a recreational vehicle park shall be accompanied by preliminary plans, showing layout of spaces, buildings, roadways, walkways, drainage, sewers, water lines, and electric lines, along with building floor plans of the proposed park and all permanent buildings indicating the proposed method of compliance with requirements. Such plans shall be to a scale of not less than one (1) inch to fifty (50) feet. A performance bond or an acceptable alternative, may be required, in an amount to be determined by the City Planning Commission, to insure that a development proposal is completed as approved and within the time limits agreed to.
  - h. A Conditional Use Permit will be applied for prior to any grading or construction being undertaken.
7. ~~Cottage Industries~~. Cottage industries may be allowed in order to promote a local economic base consistent with the character of the city. Allowable uses include crafts, small scale services, and other activities which have little impact on the neighborhoods in terms of traffic generation, noise, appearance, operating hours or other factors. Activities are to be allowed on a limited conditional use basis, with the primary condition that the permit can be revoked for violation of the standards.

The standards are:

- a. No more than four employees including members of the family.
- b. Signs shall not exceed 2 square feet in area.
- c. The use shall be carried out in the dwelling or in a structure attached thereto.
- d. Uses involving non-resident employees and the delivery of materials shall limit their hours of operation to between 8 A.M. and 6 P.M.

- e. There shall be no outdoor storage of materials or equipment.

The Planning Commission shall review cottage industries upon receipt of three written complaints from three separate households within 250 feet of the boundary of the affected property, or a complaint from the Planning Commission. The City Recorder shall schedule a public hearing to review the complaints.

The Planning Commission shall hear the evidence presented, and may, with adequate findings of fact, 1) approve the use as it exists, 2) require that it be terminated, and 3) impose restrictions, such as limiting hours of operation. Decisions of the Planning Commission may be appealed to the city council.

New complaints which are substantially similar to those previously acted upon will be heard by the Planning Commission only after a period of six months has elapsed from the date of the earlier decision - unless the Planning Commission believes that any restrictions it has imposed have not been followed.

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### ARTICLE 16: AMENDMENTS

#### Section 16.010. Purpose.

Periodically, as local goals and needs change and new information is obtained, the zoning ordinance should be updated. The purpose of the zoning ordinance amendment process is to provide a method for carefully evaluating potential changes to ensure that they are beneficial to the city.

#### Section 16.020. Authorization to Initiate.

An amendment to the text of the ordinance codified by this title may be initiated by the City Council, Planning Commission, a person owning property in the city, or a city resident. An amendment to a zone boundary may only be initiated by the City Council, Planning Commission, or the owner or owners of the property for which the change is proposed.

#### Section 16.030. Application.

Property owners or local residents which are eligible to initiate an amendment, or their designated representatives, may begin a request for an amendment by filing an application with the City Recorder, using forms prescribed by the city.

#### Section 16.040. Investigation and Report.

The City Recorder shall make or cause to be made an investigation to provide necessary information on the consistency of the proposal with the Comprehensive Plan and the criteria in this section. The report shall provide a recommendation to the Planning Commission on the proposed amendment.

#### Section 16.050. Classification of Actions.

- A. The following amendment actions are considered legislative under this title:
1. An amendment to the text of the ordinance in this title;
  2. A zone change action that the City Recorder has designated as legislative after finding the matter at issue involves such a substantial area and number of property owners or such broad public policy changes that processing the request as a quasi-judicial action would be inappropriate.
- B. The following amendment actions are considered quasi-judicial under this title: a zone change that affects a limited area or a limited number of property owners.

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Section 16.060. Procedures.

- A. The following procedures shall be followed for amendments determined to be legislative:
1. Notice of public hearings shall be in accordance with Article 13. However, notice of the hearing need not include a mailing to property owners when the matter at issue does not relate to a specific geographic area. Where such mailing is omitted, the City Recorder shall prepare a notice program designed to reach persons believed to have a particular interest and to provide the general public with a reasonable opportunity to be aware of the hearings on the proposal.
  2. The review of the proposed amendment shall be in accordance with Section 16.040. Both the Planning Commission and the City Council shall hold a public hearing on the proposal. After the Planning Commission hearing, the Planning Commission shall forward its recommendation to the City Council.
- B. The following procedures shall be followed for amendments determined to be quasi-judicial:
1. Notice of public hearing shall be in accordance with Article 13.
  2. The review of the proposed amendment shall be in accordance with Section 16.040. The Planning Commission shall hold a public hearing on the proposal. The City Council may hold a public hearing on the proposal. After the Planning Commission hearing, the Planning Commission shall forward its recommendation to the City Council.

Section 16.070. Criteria.

- A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:
1. The amendment is consistent with the Comprehensive Plan;
  2. The amendment will not adversely affect the ability of the city to satisfy land and water use needs.
- B. Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:
1. The amendment is consistent with the Comprehensive Plan;

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2. The amendment will either:
  - a. Satisfy land and water use needs; or
  - b. Meet transportation demands; or
  - c. Provide community facilities and services.
3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.
4. Resource lands, such as wetlands are protected.
5. The amendment is compatible with the land use development pattern in the vicinity of the request.

### Section 16.080. Conditional Zone Amendment.

Purpose. The purpose of the conditional zone amendment provision is to enable the City Council to attach specific conditions to a request for a zone boundary change where it finds that such conditions are necessary to achieve a stated public purpose.

- A. The City Council, with or without the recommendation of the Planning Commission, shall have the authority to attach conditions to the granting of amendments to a zone boundary. These conditions may relate to any of the following matters:
  1. The uses permitted;
  2. Public facility improvements such as street improvements, dedication of street right-of-way, sewer, storm drainage, and water;
  3. That all or part of the development or use be deferred until certain events, such as the provision of certain public facilities to the property, occur;
  4. The time frame in which the proposed use associated with the zone boundary change is to be initiated.
- B. Conditions, applied to potential uses other than needed housing types as defined by OAR 660-08-005, may be imposed upon a finding that:
  1. They are necessary to achieve a valid public purpose; and

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2. They are designed to achieve their intended purpose and are reasonably related to the land or its proposed use.

Conditions applied to property with the potential to be used for needed housing types as defined by OAR 660-08-005 may be imposed upon a finding that:

3. They are necessary to achieve a valid public purpose;
  4. They are designed to achieve their intended purpose and are reasonably related to the land or its proposed use; and
  5. They shall not have the effect, either singly or cumulatively, of discouraging or preventing the construction of needed housing types.
- C. Conditions attached to a zone boundary change shall be completed within the time limitations set forth. If no time limitations are set forth, the conditions shall be completed within two years from the effective date of the ordinance enacting the zone boundary change.
  - D. The City Council may require a bond from the property owner or contract purchasers in a form acceptable to the city in such an amount as to assure compliance with the conditions imposed on the zone boundary change. Such a bond shall be posted prior to the issuance of the appropriate development permit.
  - E. Conditions shall not be imposed which would have the effect of limiting use of the property to one particular owner, tenant or business. Conditions may limit the subject property as to use, but shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.
  - F. Conditions that are imposed under the provisions of this section shall be construed and enforced as provisions of this zoning code relating to the use and development of the subject property. The conditions shall be enforceable against the applicant as well as their successors and assigns.
  - G. Requests for modification of conditions shall be considered by the zone amendment application and review procedure of Sections 16.010 through 16.070 of this ordinance.
  - H. Failure to fulfill any condition attached to a zone boundary change within the specified time limitations shall constitute a violation of this section and may be grounds for the city to initiate a change in the zone boundary pursuant to the procedures of Section 16.020.

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### Section 16.090. Limitations on Reapplications.

No application of a property owner or local resident for an amendment to the text of the ordinance codified in this title or to the zone boundary shall be considered by the Planning Commission within the one year period immediately following a previous denial of such request. The Planning Commission may permit a new application if, in the opinion of the Planning Commission, substantial new evidence or a change of circumstances warrant reconsideration.

### Section 16.100. Changes of Zone for Manufactured Dwelling Parks.

If an application would change the zone of property which includes all or part of a manufactured dwelling park as defined by ORS 446.003, the city shall give written notice by first class mail to each existing mailing address for tenants of the manufactured dwelling park at least twenty days but not more than forty days before the date of the first hearing on the application. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.

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### ARTICLE 17: NONCONFORMING USES

#### Section 17.010 Continuation of a Nonconforming Structure or Use

Subject to the provisions of ORS 215.130 and subsequent provisions of this article, a nonconforming use or structure may be continued.

#### Section 17.020 Enlargement or Expansion of a Nonconforming Use

- (a) For a nonconforming use that is a structure, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 20% of total floor area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.
- (b) For a nonconforming use that does not involve a structure, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 10% in total land area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.
- (c) The City shall grant a permit to allow an expansion or enlargement of a nonconforming use where the expansion or enlargement is required to conform to another law, such as a pollution control requirement.

#### Section 17.025 Enlargement or Expansion of a Nonconforming Structure

The City shall grant a permit to allow the enlargement or expansion of a nonconforming structure where the enlargement or expansion is consistent with current ordinance requirements. Any enlargement or expansion of a nonconforming structure inconsistent with current ordinance standards shall be regulated as a variance request.

#### Section 17.030 Discontinuance of a Nonconforming Use

If a non-conforming use is discontinued for a period of one year, further use of the property shall conform to city ordinance.

#### Section 17.040 Destruction of a Nonconforming Structure

If a nonconforming structure is destroyed by any cause to an extent exceeding 80% of its real market value as indicated by the records of the County Assessor and restoration is not commenced within one year from the date of destruction, a future structure on the site shall conform to city ordinance.

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ARTICLE 18: ADMINISTRATIVE PROVISIONS

Section 18.010. Building Permits.

No permit shall be issued by the building official for the construction, reconstruction, alteration or change of use of a structure or lot that does not conform to the requirements of this Ordinance.

Section 18.020. Appeals.

1. An appeal from a ruling of a City Administrative Officer regarding a requirement of the Ordinance may be made to the Planning Commission.
2. The City Council may consider any action or ruling of the Planning Commission on its own initiative provided 2 or more members of the City Council file a written request for such consideration with the City Recorder within 15 days after the Planning Commission has rendered its decision. Such an appeal shall follow the procedures of Section 13.070.
3. A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing a written request with the City Recorder within 15 business days after the Planning Commission has rendered its decision. Such an appeal shall follow the procedure of Section 13.070.

Section 18.030. Filing Fees.

The amount of required fees shall be established by resolution of the City Council.

Section 18.035. Consolidated Application Procedure.

Where a proposed development requires more than one development permit or a zone change request from the City, the applicant may request that the City consider all necessary permit requests in a consolidated manner. If the applicant requests that the City consolidate his permit review, all necessary public hearings before the Planning Commission shall be held on the same date.

Section 18.040. Final Action on Application for Permit or Zone Change Request.

The City shall take final action on an application for a permit or zone change within 120 days of the receipt of a complete application. However, the 120 day limitation does not apply to amendments to the Comprehensive Plan or Land Use regulations or the adoption of new Land Use regulations that was forwarded to the Director under ORS 197.610(1). At the request of the applicant, the 120 day period may be extended for a reasonable period of time.

Section 18.045. Consideration of a Complete Application.

If an application for a permit or zone change is incomplete, the City shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete for the purposes of Section 18.040 upon receipt of additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete for the purpose of Section 18.040 on the 31st day after the governing body first received the application. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

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### ARTICLE 19: GENERAL PROVISIONS

#### Section 19.010. Interpretation.

Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this ordinance or any other ordinance, the provision which is more restrictive shall govern.

#### Section 19.020. Severability.

The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not effect the validity of the remaining portions of this ordinance.

#### Section 19.030. Enforcement Duties.

1. It shall be the duty of the City Council to enforce this ordinance. Appropriate authorities including but not limited to the County Sheriff and authorized representatives, the Manzanita Police Department, the Building Official, and Code Enforcement shall have the power, upon request, to assist in the enforcement of this ordinance.
2. The City Manager and designees shall assist the City Council in the administration of this ordinance
3. The City Council may conduct an investigation if the City Council is of the opinion that a violation does exist. If the City Council is of the opinion that a violation does exist, the City Council shall direct the City Manager to either intervene administratively consistent with the administrative response plan or to summon the owner, occupant, developer, or agent of the property to show cause why said violation should not cease. These remedies of enforcement shall be in addition to and not in lieu of other remedies directed by the City.
4. The City Attorney shall institute any necessary legal proceedings to enforce this ordinance.

#### Section 19.040. Abatement and Penalty.

1. A person violating a provision of the ordinance shall, upon conviction, be punished by a fine of not more than \$250 dollars. A violation of this ordinance shall be considered a separate offence for each day the violation continues.
2. In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or land is, or is proposed to be used, in violation of this ordinance, the structure or land thus in violation shall constitute a nuisance and the city may, as an alternative to

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other remedies that are legally available for enforcement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration or use.

Section 19.050. Repeal and Continuity.

Zoning Ordinance No. 76-2, known as the City of Wheeler Zoning Ordinance, and Ordinance 77-3, known as the City of Wheeler Flood Hazard Ordinance, are hereby repealed effective upon the effective date of this ordinance. All violations of Ordinances 76-2 and 77-3 shall continue as violations of this ordinance unless specifically authorized herein. All permits granted under Ordinances 76-2 and 77-3 shall continue in effect. No rights shall be acquired by the repeal of Ordinances 76-3 and 77-3 that are not specifically approved herein.

The City Council does hereby declare an emergency exists and it is necessary for the immediate preservation of the peace, health and safety of the city that this ordinance should become effective immediately upon its passage by the City Council and approval by the Mayor.

PASSED BY THE CITY COUNCIL

APPROVED BY THE MAYOR

This 28th day of December, 1979 this 28th day of December, 1979

/s/ Virgil L. Staben  
City Recorder

/s/ Paul Steele  
Paul Steele, Mayor