

Chapter 4

DEVELOPMENT APPLICATIONS AND REVIEW PROCEDURES

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Section 4.1

ADMINISTRATION OF LAND USE AND DEVELOPMENT PERMITS

4.1.100 Introduction. Chapter 4 provides all of the application requirements and procedures for obtaining permits required by this code. Please refer to Table 4.2.110 in section 4.2 for a key to determining which land use permits and procedures are required, and the decision-making body for a particular type of permit application.

4.1.110 Exclusions from Land Use Review. The following activities are permitted outright in each zone, subject to the applicable provisions of the subject zone, and are excluded from the requirement of obtaining a land use permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with applicable standards, conditions, and other provisions of this code.

- A. Operation, maintenance, and repair of existing transportation facilities identified in the Transportation System Plan;
- B. Dedication of right-of-way, authorization of construction, and construction of transportation facilities and improvements, where the improvements are planned improvements identified in the Transportation System Plan or are otherwise consistent with clear and objective dimensional standards; and
- C. Changes in transit service.

Section 4.2

TYPES OF APPLICATIONS AND REVIEW PROCEDURES

4.2.100 Purpose. The purpose of this section is to establish standard decision-making procedures that will enable the city, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way.

4.2.110 Description of Permit Procedures. All land use and development permit applications, except building permits, shall be considered by using the procedures contained in this chapter. There are four types of permit/decision-making procedures: Type I, II, III, and IV:

- A. **Type I (Ministerial) Procedure.** Type I decisions are made by the Community Development Director or someone he or she officially designates, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying city standards and criteria requires no use of discretion.
- B. **Type II (Administrative) Procedure.** Type II decisions are made by the Community Development Director after public notice and an opportunity to submit written testimony. The appeal of a Type II decision is heard by the planning commission.
- C. **Type III (Quasi-Judicial) Procedure.** Type III decisions are made by the planning commission after public notice and a hearing, with appeals reviewed by the city council.

- D. Type IV (Legislative) Procedure.** Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Type IV reviews are considered by the Planning Commission, which makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

Table 4.2.110 - Approvals by Type of Application and Decision-making Procedure

<i>Development Decision</i>	<i>Procedure Type</i>	<i>Code Reference</i>
Access Permit (public street)	Type I	Sections 3.2, 4.3, 4.4
Annexation	Type IV	Section 4.11
Code Amendment	Type IV	Section 4.11
Code Interpretation	Type II	Section 4.9
Comprehensive Plan Amendments and Urban Growth Boundary Amendments	Type IV	Section 4.11
Conditional Use Permit	Type III	Section 4.5
Development Review	Type I	Section 4.3, Building Code
Flood Plain Development Permit	Type I	Building Code
Home Occupation Permit	Type I	Section 2.7.150
Lot Line Adjustment	Type I	Section 4.4
Modification to Approval	Type II	Section 4.7
Non-Conforming Alteration	Type II	Section 5.3
Non-Conforming Use or Development Determination	Type I	Section 5.3
Partition		
Tentative Plan	Type II	Section 4.4
Final Plat	Type I	Section 4.4.120
Extension	Type I	Section 4.4.120
Plan Amendment	Type IV	Section 4.11
Planned Unit Development	Type III	Section 4.6
Sign Permit	Type I	Section 3.7
Site Plan Review	Type II	Section 4.3
Subdivision		
Tentative Plan	Type II	Section 4.4
Final Plat	Type I	Section 4.4.120
Extension	Type I	Section 4.4.120
Extension	Type I	Section 4.4.120
Temporary Use Permit	Type II	Section 4.10

Variances		
Class A	Type I	Section 5.2
Class B	Type II	Section 5.2
Class C	Type III	Section 5.2
Zoning District Map Change	Type III	Section 4.8

4.2.115 Exceptions to Table 4.2.110. Instead of the procedure type identified in Table 4.2.110, the Community Development Director may use a higher procedure type for an application where the Community Development Director determines that a greater amount of public process is needed in order to provide a consolidated review of applications for the same development proposal or in order to address legal requirements applicable to the application.

4.2.120 Type I Procedure.

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the city.
2. Application Requirements. Type I applications shall:
 - a. Include the information requested on the application form;
 - b. Address the criteria in sufficient detail for review and action;
 - c. Be accompanied by the required fee; and
 - d. Include the information required for the specific application request as set out in sections 4.3- 4.11.

B. Community Development Director Decision. The Community Development Director shall issue a decision addressing all of the relevant approval criteria. Based on the criteria and the facts contained within the record, the Community Development Director shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at city hall.

C. Final Decision and Effective Date. The Community Development Director decision shall be final and effective on the date it is mailed or otherwise provided in writing to the applicant, whichever occurs first. The decision is the final decision of the city.

4.2.130 Type II Procedure.

A. Preapplication Conference. A preapplication conference is required prior to submittal of a Type II application. Preapplication conference requirements and procedures are in section 4.2.160.

B. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the city.
2. Application Requirements. Type II applications shall:
 - a. Include the information requested on the application form;
 - b. Be filed with a narrative statement that explains how the application satisfies each of the relevant criteria in sufficient detail for review and action;
 - c. Be accompanied by the required fee;

- d. Include an impact study for all land division applications proposing ten (10) or more residential lots, and for all site plan applications proposing ten thousand (10,000) square feet or more site area. The impact study shall:
 - (1) Quantify/assess the effect of the development on public facilities and services;
 - (2) Address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development; and
 - (3) For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users;
- e. In situations where the dedication of real property to the city is required to satisfy a criterion, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development. (See also, chapter 3, Design Standards); and
- f. Include the information required for the specific application request as set out in sections 4.3 – 4.11.

C. Notice of Application.

- 1. Before making a Type II decision, the Community Development Director shall mail notice to:
 - a. The applicant and/or titleholder; and
 - b. All owners of record of real property within one hundred (100) feet of the subject site.
 - c. Any affected governmental agency; public school district, public utility (e.g. state or county agencies such as ODOT or public utility companies such as electric, gas, water, wastewater, etc.) whose property, services, or facilities may be affected by the decision.
- 2. The notice of a pending Type II decision shall:
 - a. Provide a fourteen (14) day period for submitting written comments before a decision is made on the application;
 - b. List the relevant approval criteria by commonly used citation;
 - c. State the place, date and time the comments are due;
 - d. Include the name and telephone number of a contact person regarding the decision;
 - e. Identify the specific permits or approvals requested;
 - f. Describe the street address or other easily understandable reference to the location of the site;

- g. State that issues which may provide the basis for an appeal shall be raised in writing prior to the expiration of the comment period and that issues must be raised with sufficient specificity to enable the planning director to respond;
- h. Briefly summarize the decision-making process; and
- i. State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost.

D. Community Development Director Decision. The Community Development Director shall issue a written decision addressing all of the relevant approval criteria. Based upon the criteria, and the facts contained within the record, the Community Development Director shall approve, approve with conditions, or deny the requested permit or action.

E. Notice of Community Development Director Decision.

- 1. Within five (5) business days after the Community Development Director signs the decision, a notice of decision shall be sent by mail to:
 - a. The applicant and/or titleholder;
 - b. All owners of record of real property within one hundred (100) feet of the subject property;
 - c. Any affected governmental agency; public school district, public utility (e.g. state or county agencies such as ODOT or public utility companies such as electric, gas, water, wastewater, etc.) whose property, services, or facilities may be affected by the decision.
 - d. Any person who submitted comments for the Community Development Director's consideration.
- 2. The Type II notice of decision shall contain:
 - a. A description of the applicant's proposal and the use or uses which could be authorized;
 - b. The address or other geographic description of the property proposed for development;
 - c. A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, the applicable criteria and the city's decision are available for inspection at no cost and copies will be provided at cost;
 - d. The date the decision shall become final, unless appealed;
 - e. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision as provided in section 4.2.130 G. and may not appeal directly to the State Land Use Board of Appeals; and
 - f. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, the name of a city representative to contact and telephone number and where further information can be obtained concerning the appeal process.

F. Final Decision and Effective Date. The Community Development Director's decision is final for purposes of appeal when it is mailed by the city. It is effective on the day after the local appeal period expires with no valid appeal filed.

- G. Appeal of a Type II Community Development Director Decision.** The Community Development Director's decision may be appealed to the planning commission as follows:
1. Who May Appeal. The following people have legal standing to appeal the Community Development Director's decision:
 - a. The applicant and/or titleholder;
 - b. Any person who was mailed written notice of the Community Development Director's decision;
 - c. Any person who is adversely affected or aggrieved by the Community Development Director's decision; or
 - d. Any other person who participated in the proceeding by submitting written comments.
 2. Notice of Appeal.
 - a. Time for Filing. A notice of appeal shall be filed with the planning director by 5 p.m. of the 14th day after the notice of decision was mailed;
 - b. Content of Notice of Appeal. The notice of appeal shall contain:
 - (1) The appeal form provided by the city;
 - (2) An identification of the Community Development Director decision being appealed, including the date of the decision;
 - (3) A statement demonstrating the person filing the notice of appeal has standing to appeal; and
 - (4) The filing fee.
 3. Appeal Procedures. The notice and hearing procedures for an appeal of the Community Development Director's decision on a Type II application shall be those used by the city to make an initial decision on a Type III application as provided in sections 4.2.140.C. – G.

4.2.140 Type III Procedure.

- A. **Preapplication Conference.** A preapplication conference is required for all Type III applications. The requirements and procedures for a preapplication conference are described in Section 4.2.160.
- B. **Application Requirements.**
 1. Application Forms. Type III applications shall be made on forms provided by the city.
 2. Application Requirements. Type III applications shall:
 - a. Include the information requested on the application form;
 - b. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;
 - c. Be accompanied by the required fee;
 - d. Include one set of pre-stamped and pre-addressed envelopes for all property owners of record as specified in section 4.2.140.C. (notice of hearing). The records of the Douglas County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current

assessment records have been used to produce the notice list. Alternatively, the applicant may pay a fee for the city to prepare the public notice mailing;

- e. Include the information required for the specific application request as set and in sections 4.3 – 4.11;
- f. Include an impact study for all Type III applications. The impact study shall:
 - (1) Quantify/assess the effect of the development on public facilities and services;
 - (2) Address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development; and
 - (3) For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users; and
- g. In situations where the dedication of real property to the city is required to satisfy a criterion, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development (See also, chapter 3, Design Standards).

C. Notice of Planning Commission Hearing.

- 1. Notice. The city shall give notice of the planning commission in the following manner:
 - a. At least twenty (20) days, but not more than 40 days, before the hearing date, notice shall be mailed to:
 - (1) Any affected governmental agency; public school district or public utility (e.g. state or county agencies such as ODOT or public utility companies such as electric, gas, water, wastewater, etc.) whose property, services, or facilities may be affected by the decision; and
 - (2) All property owners of record within one hundred (100) feet of the site;
 - (3) For Type II appeals, the appellant and persons who provided testimony during the Community Development Director’s proceedings; and
 - (4) Any governmental agency or public utility (e.g. state or county agencies such as ODOT or public utility companies such as electric, water, or wastewater) whose property, services, or facilities may be affected by the decision; and
 - (5) For a zoning district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175(8).

- b. At least fourteen (14) days before the first hearing, notice of the hearing shall be printed in a newspaper of general circulation in the city.
2. Content of Notice. Notice to be mailed, published, or posted per subsection 1 above shall contain the following information:
- a. The nature of the application and the proposed land use or uses which could be authorized for the property;
 - b. The criteria from the development code that apply to the application;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. The date, time, and location of the public hearing;
 - e. A statement that the failure to raise an issue in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
 - f. The name of a city representative to contact and the telephone number where additional information on the application may be obtained;
 - g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at city hall at no cost and that copies will be provided at reasonable cost;
 - h. A statement that a copy of the city's staff report will be available for review at no cost at least seven days before the hearing, and that a copy will be provided on request at reasonable cost; and
 - i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings.

D. Planning Commission Standard of Review and Conduct of the Public Hearing. The planning commission shall determine whether the application is consistent with the applicable criteria or can be made consistent through the imposition of reasonable conditions. The planning commission shall accept new evidence with respect to all applicable criteria.

- 1. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
 - a. The applicable approval criteria by Code chapter that apply to the application;
 - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may

- preclude appeal to the state Land Use Board of Appeals on that issue;
- d. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing; and
 - e. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
2. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to exparte contact are concerned, members of the hearing body shall follow the guidance for disclosure of exparte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.
 3. Presenting and receiving evidence.
 - a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
 - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
 4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.

5. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.
6. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:
 - a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
 - b. An extension of the hearing or record granted pursuant to this section is subject to the limitations of Section 4.2.160 (ORS 227.178 - 120-day rule), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and
 - c. If requested by the applicant, the hearing body shall grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.
7. The Notice of Quasi-Judicial Decision shall contain all of the following information:
 - a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the Planning Commission's decision to City Council pursuant to subsection 4.2.140.H, or may appeal the City Council's decision to the state Land Use Board of Appeals, as applicable.

- E. Planning Commission Decision.** The planning commission shall issue a final written decision containing findings and conclusions, which either approves, approves with specific conditions or denies the application.
- F. Notice of Planning Commission Decision.** Written notice of the planning commission decision shall be mailed to the applicant and to all participants of record within five (5) business days after the planning commission's written decision is signed. Failure of any person to receive mailed notice shall not invalidate the decision. The notice shall include an explanation of appeal procedures.
- G. Final Decision and Effective Date.**
1. The decision of the planning commission on any Type III application is final for purposes of local appeal on the date the notice of decision is mailed by the city. In these cases, the planning commission decision is effective on the day after the local appeal period expires with no valid appeal filed.
 2. The planning commission decision on appeal from any Type II decision is both effective and final for purposes of appeal on the date the notice of decision is mailed by the city.
- H. Appeal of Type III Planning Commission Decision.**
1. Who May Appeal. The following people have legal standing to appeal the planning commission decision:
 - a. The applicant and/or titleholder;
 - b. Any other person who participated in the proceeding before the planning commission.
 2. Notice of Appeal.
 - a. A notice of appeal shall be filed with the Community Development Director by 5 p.m. of the 14th day after the date the notice of decision was mailed.
 - b. The notice of appeal shall include:
 - (1) The appeal form provided by the city;
 - (2) An identification of the planning commission decision being appealed, including the date of the decision;
 - (3) A statement demonstrating the person filing the notice of appeal has standing to appeal;
 - (4) A statement of the issue(s) on appeal that explains specifically how the planning commission failed to properly evaluate the application or make a decision consistent with the applicable criteria; and
 - (5) The filing fee.
 - d. Appeals from Type III decisions are limited to the issues raised during the planning commission proceedings and specified in the notice of appeal.
 3. Appeal Procedures.
 - a. Notice. At least twenty (20) days, but not more than forty (40) days, before the city council hearing date, the city shall mail notice of the appeal hearing to the following:

- (1) The applicant and/or titleholder;
 - (2) The appellant; and
 - (3) Persons who provided testimony during the planning commission proceedings.
- b. Content of Notice. Notice of the appeal hearing mailed per subsection 2.a. above shall contain the following information:
- (1) Identification of the application on appeal;
 - (2) The criteria from the development code that are identified in the notice of appeal as the basis for the appeal;
 - (3) The street address or other easily understood geographical reference to the subject property;
 - (4) The date, time, and location of the public hearing;
 - (5) A statement that the failure to raise an issue in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
 - (6) The name of a city representative to contact and the telephone number where additional information on the application may be obtained;
 - (7) A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at city hall at no cost and that copies will be provided at reasonable cost;
 - (8) A statement that a copy of the city's staff report will be available for review at no cost at least seven days before the hearing, and that a copy will be provided on request at reasonable cost; and
 - (9) A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings.
- c. Standard of Review and Conduct of the Public Hearing. The city council shall determine whether the planning commission erred. The city council shall limit its review to those issues identified in the notice of appeal and accept argument and new evidence only with respect to the criteria and issues identified in the notice of appeal.
1. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
 - a. The applicable approval criteria by Code chapter that apply to the application;

- b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the state Land Use Board of Appeals on that issue;
 - d. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing; and
 - e. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
2. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing exparte (outside the hearing) contacts as reasonably possible. Where questions related to exparte contact are concerned, members of the hearing body shall follow the guidance for disclosure of exparte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.
3. Presenting and receiving evidence.
- a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;

- b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
 - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.
5. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.
6. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:
- a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;

- b. An extension of the hearing or record granted pursuant to this section is subject to the limitations of Section 4.2.160 (ORS 227.178 - 120-day rule), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and
 - c. If requested by the applicant, the hearing body shall grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.
7. The Notice of Quasi-Judicial Decision shall contain all of the following information:
- a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the Planning Commission's decision to City Council pursuant to subsection 4.2.140.H, or may appeal the City Council's decision to the state Land Use Board of Appeals, as applicable.

I. Record of the Public Hearing.

- 1. The official public hearing record shall include all of the following information:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the City Planning Official to the hearings body regarding the application;
 - c. The minutes of the hearing;
 - d. The final written decision; and
 - e. Copies of all notices given as required by this chapter, and correspondence regarding the application that the City mailed or received.
- 2. The meeting minutes shall be filed in hardcopy form with the City Planning Official. The minutes and other evidence presented as a part of the hearing shall be part of the record.

3. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.

- J. City Council Decision.** The city council shall issue a final written decision containing findings and conclusions addressing the issues on appeal and which either approves, approves with specific conditions or denies the application.
- K. Notice of City Council Decision.** Written notice of the city council’s decision shall be mailed to the applicant, the appellant and to all persons who participated in the city council proceedings within five (5) business days after the city council’s written decision is signed. Failure of any person to receive mailed notice shall not invalidate the decision. The notice shall include an explanation of appeal procedures.
- L. Final Decision and Effective Date.** The city council’s decision is both effective and final for purposes of appeal on the date the notice of decision is mailed by the city.
- M. Effective Date and Appeals to State Land Use Board of Appeals.** A Quasi-Judicial Decision or Appeal Decision, as applicable, is effective the date the City mails the decision notice. Appeals of City Council decisions under this chapter shall be filed with the state Land Use Board of Appeals pursuant to ORS 197.805 - 197.860.

4.2.150 Type IV Procedure.

- A. Pre-Application Conference.** A pre-application conference is required for Type IV applications. The requirements and procedures for a preapplication conference are described in Section 4.2.160.
- B. Timing of Requests.** The City may establish a schedule specifying at least two times per year at which applications for Type IV actions will be accepted.
- C. Application Requirements.**
 - 1. Application Forms. Type IV applications shall be made on forms provided by the city.
 - 2. Application Requirements. Type IV applications shall:
 - a. Include the information requested on the application form;
 - b. Include a map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. Be accompanied by the required fee;
 - d. Be filed with a narrative statement that explains how the application satisfies each of the relevant approval criteria in sufficient detail for review and action; and
 - e. Include the information required for the specific application request as set out in sections 4.3 – 4.11.
- D. Notice of Planning Commission Hearing.**
 - 1. Required Hearings. A minimum of two hearings, one before the planning commission and one before the city council, are required for all Type IV applications, except annexations. Annexations only require one hearing by the city council.

2. Notice. Except as provided in subsection D.4. of this section, the city shall give notice of the planning commission public hearing in the following manner:
 - a. At least twenty (20) days, but not more than forty (40) days, before the date of the planning commission's hearing, a notice shall be mailed to:
 - (1) The applicant and/or titleholder;
 - (2) Any affected governmental agency, public school or public utility (e.g. state or county agencies such as ODOT or public utility companies such as electric, gas, water, wastewater, etc.) whose property, services, or facilities may be affected by the decision;
 - (3) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
 - b. At least fourteen (14) days before the scheduled planning commission public hearing date, notice shall be published in a newspaper of general circulation in the city;
 - c. The city shall mail a notice of the proposed comprehensive plan amendment to the Department of Land Conservation and Development (DLCD) at least thirty-five (35) days before the first public hearing at which public testimony or new evidence will be received; and
 - d. Notifications for annexation shall follow the provisions in ORS 222.
3. Content of Notice. Except as provided in subsection D.4. of this section, the mailed and published notices shall include the following information:
 - a. The name of a city representative to contact and the telephone number where additional information about the application can be obtained;
 - b. A general description of the proposal and the place where all relevant materials and information may be obtained or reviewed;
 - c. The time, place, and date of the planning commission public hearing; and
 - d. The criteria that will be applied to the proposal.
4. Notice for Site-Specific Type IV Applications. When a Type IV application proposes a site-specific, legislative action, notice of the planning commission hearing shall be provided as set out in section 4.2.140.C.

- E. Planning Commission Standard of Review and Conduct of the Public Hearing.** The planning commission shall determine whether the application is consistent with the applicable criteria or can be made consistent through the imposition of reasonable conditions. The planning commission shall accept new evidence with respect to all applicable criteria.

1. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
 - a. The applicable approval criteria by Code chapter that apply to the application;
 - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the state Land Use Board of Appeals on that issue;
 - d. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing; and
 - e. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
2. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing exparte (outside the hearing) contacts as reasonably possible. Where questions related to exparte contact are concerned, members of the hearing body shall follow the guidance for disclosure of exparte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.
3. Presenting and receiving evidence.
 - a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
 - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is

- disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.
 5. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.
 6. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:
 - a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
 - b. An extension of the hearing or record granted pursuant to this section is subject to the limitations of Section 4.2.160 (ORS 227.178 - 120-day rule), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and
 - c. If requested by the applicant, the hearing body shall grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.
 7. The Notice of Quasi-Judicial Decision shall contain all of the following information:
 - a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;

- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the Planning Commission's decision to City Council pursuant to subsection 4.2.140.H, or may appeal the City Council's decision to the state Land Use Board of Appeals, as applicable.
- F. Planning Commission Recommendation.** The planning commission shall issue a final written recommendation containing findings and conclusions and recommending that the city council either approve, approve with specific conditions or deny the application.
- G. Notice of City Council Hearing.**
- 1. Notice. At least twenty (20) days, but not more than forty (40) days, before the city council hearing date, the city shall mail notice of the hearing to the following:
 - a. The applicant and/or titleholder;
 - b. Persons who provided testimony during the planning commission proceedings; and
 - c. Persons who requested notice of the planning commission recommendation.
 - 2. Content of Notice. Notice of the city council hearing mailed per subsection 1. above shall contain the following information:
 - a. Identification of the application on appeal;
 - b. The applicable criteria from the development code;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. The date, time, and location of the public hearing;
 - e. A statement that the failure to raise an issue in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
 - f. The name of a city representative to contact and the telephone number where additional information on the application may be obtained;
 - g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at city hall at no cost and that copies will be provided at reasonable cost;
 - h. A statement that a copy of the city's staff report will be available for review at no cost at least seven days before the hearing, and that a copy will be provided on request at reasonable cost; and

- i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings.
- H. **City Council Standard of Review and Conduct of Public Hearing.** The city council shall consider, but not be bound by, the planning commission recommendation. The decision shall be based on whether the application is consistent with the applicable criteria or can be made consistent through the imposition of reasonable conditions. The city council shall conduct a de novo hearing and shall accept new evidence.
 - 1. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
 - a. The applicable approval criteria by Code chapter that apply to the application;
 - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the state Land Use Board of Appeals on that issue;
 - d. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing; and
 - e. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
 - 2. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing exparte (outside the hearing) contacts as reasonably possible. Where questions related to exparte contact are concerned, members of the hearing body shall follow the guidance for disclosure of exparte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.

3. Presenting and receiving evidence.
 - a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
 - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.
5. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.
6. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:
 - a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
 - b. An extension of the hearing or record granted pursuant to this section is subject to the limitations of Section 4.2.160 (ORS 227.178 - 120-day rule), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and

- c. If requested by the applicant, the hearing body shall grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.
7. The Notice of Quasi-Judicial Decision shall contain all of the following information:
- a. A description of the applicant’s proposal and the City’s decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor’s map may be used);
 - c. A statement of where the City’s decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the Planning Commission’s decision to City Council pursuant to subsection 4.2.140.H, or may appeal the City Council’s decision to the state Land Use Board of Appeals, as applicable.
- I. Record of the Public Hearing.**
- 1. The official public hearing record shall include all of the following information:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the City Planning Official to the hearings body regarding the application;
 - c. The minutes of the hearing;
 - d. The final written decision; and
 - e. Copies of all notices given as required by this chapter, and correspondence regarding the application that the City mailed or received.
 - 2. The meeting minutes shall be filed in hardcopy form with the City Planning Official. The minutes and other evidence presented as a part of the hearing shall be part of the record.
 - 3. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.
- J. City Council Decision.** The city council shall issue a final written decision containing findings and conclusions and either approving, approving with specific conditions, or denying the application. The city council may remand the application to the planning commission for rehearing or reconsideration on all or part of the application. Unless the decision is a denial, the council shall act by ordinance. The city council’s final decision shall be filed with the planning director within fourteen (14) business days after the close of the council deliberation.
- K. Notice of City Council Decision.** Written notice of the city council’s decision shall be mailed to the applicant, all participants of record, and (if

legally required) the Department of Land Conservation and Development, within five (5) business days after the city council decision is signed by the mayor or city council president. The city shall also provide notice to all persons as required by ORS 197.615. Failure of any person to receive mailed notice shall not invalidate the decision. The notice shall include an explanation of appeal procedures.

- L. Final Decision and Effective Date.** A Type IV decision, if approved, shall take effect and shall become final as specified in the city charter or the enacting ordinance, or if denied, upon mailing of the notice of decision to the applicant.

4.2.160 General Provisions.

- A. Time Computation.** Time Limit - 120-day Rule. The City shall take final action on Administrative and Quasi-Judicial land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the City Planning Official deems the application complete for purposes of processing, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (Note: The 120-day rule does not apply to Legislative Land Use decisions.)
- B. Time Periods.** In computing time periods prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is not on a weekend or legal holiday.
- C. Consolidated Review of Applications.** When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings shall be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.
- D. Pre-application Conferences.**
1. Participants. When a preapplication conference is required, the applicant shall meet with the Community Development Director or his/her designee(s).
 2. Information Provided. At such conference, the Community Development Director shall:
 - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
 - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - c. Provide available technical data and assistance which will aid the applicant;
 - d. Identify other governmental policies and regulations that relate to the application; and

- e. Reasonably identify other opportunities or constraints concerning the application.
- 3. Disclaimer. Failure of the Community Development Director or his/her designee to provide any of the information required by this subsection shall not constitute a waiver of any of the standards, criteria or requirements for the application.
- 4. Changes in the Law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

E. Applications.

- 1. Initiation of Applications:
 - a. Applications may be initiated by:
 - (1) Order of city council;
 - (2) Resolution of the planning commission;
 - (3) The planning director;
 - (4) A record owner of the property that is the subject of the application (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner; or
 - (5) Public agencies that have statutory rights of eminent domain for projects they have the authority to construct.
 - b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
- 2. Consolidation of Proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same parcel(s) of land, the proceedings shall be consolidated for review and the city shall follow the process for the highest applicable type.
- 3. Check for Acceptance and Completeness. In reviewing an application for completeness, the following procedure shall be used:
 - a. Acceptance. When an application is received by the city, if the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:
 - (1) The required form;
 - (2) The required fee; and
 - (3) The signature of the applicant on the required form, and signed written authorization of the property owner of record, if the applicant is not the owner.
 - b. Completeness.
 - (1) Review and Notification. After the application is accepted, the Community Development Director shall review the application for completeness. If the application is complete as submitted, the Community Development Director shall mail the applicant a notice deeming the application complete. If the application is incomplete, the Community

Development Director shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application

- (2) When Application Deemed Complete for Review. The application shall be deemed complete upon the receipt by the Community Development Director of:
 - (a) All of the missing information;
 - (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (c) Written notice from the applicant that none of the missing information will be provided.
- (3) Standards and Criteria that Apply to the Application. If the application was complete with first submitted or the applicant submits the requested additional information within one hundred, eighty (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.

F. Scrivener's Errors.

1. The Community Development Director has the authority to correct scrivener's errors in adopted findings of fact and decision documents.

2. Minor Text Corrections.

The Community Development Director may correct the Zoning and Subdivision Ordinances, the Comprehensive Plan and the Transportation System Plan, without prior notice or hearing, so long as the Community Development Director does not alter the sense, meaning, effect, or substance of any adopted ordinance and, within such limitations, the Community Development Director may:

- a. Renumber chapters, articles, sections, subsections, findings, goals, objectives, and policies, and parts of chapters, articles, sections, subsections, findings, goals, objectives, and policies of Zoning and Subdivision Ordinances, the Comprehensive Plan and the Transportation System Plan;
- b. Rearrange chapters, articles, sections, subsections, findings, goals, objectives, and policies, and parts of chapters, articles, sections, subsections, findings, goals, objectives, and policies;
- c. Change reference numbers to agree with renumbered chapters, articles, sections, subsections, findings, goals, objectives, and policies, and parts of chapters, articles, sections, subsections, findings, goals, objectives, and policies;
- d. Delete references to repealed chapters, articles, sections, subsections, findings, goals, objectives, and policies, and parts of chapters, articles, sections, subsections, findings, goals objectives, and policies;

- e. Substitute the proper chapter, article, section, subsection, finding, goal, objective, or policy numbers;
- f. Change capitalization and spelling for the purpose of uniformity;
- g. Correct manifest clerical, grammatical or typographical errors; and,
- h. Change the name of an agency by reason of a name change prescribed by law.

The Community Development Director shall maintain a record, available for public access, of all corrections made under this Section.

Corrections to the Zoning and Subdivision Ordinances, the Comprehensive Plan and the Transportation System Plan made by the Community Development Director pursuant to this Section are prima facie evidence of the law, but they are not conclusive evidence. If any correction to the Zoning and Subdivision Ordinances, the Comprehensive Plan and the Transportation System Plan made pursuant to this Section differs in sense, meaning, effect, or substance from any adopted ordinance, the adopted ordinance shall prevail.

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

4.2.170 Special Procedures.

- A. Fast Track Permitting Process. A one-hundred day maximum review period from the date at which the application is deemed complete applies for affordable housing projects where:
- 1. The project includes five or more residential units, including assisted living facilities or group homes;
 - 2. At least 50% of the residential units will be sold or rented to households with incomes equal to or less than 60% of the median family income for Douglas County or for the state, whichever is greater; and
 - 3. Development is subject to a covenant restricting the owner and successive owner from selling or renting any of the affordable units as housing that is not affordable for a period of 60 years from the date of the certificate of occupancy.

Section 4.3

DEVELOPMENT REVIEW AND SITE PLAN REVIEW

- 4.3.100 Purpose.** The purpose of this Section is to:
- A. Provide rules, regulations and standards for efficient and effective administration of development review and site plan review.
 - B. Carry out the development pattern and plan of the comprehensive plan policies.
 - C. Promote the public health, safety and general welfare.
 - D. Lessen or avoid congestion in the streets, and secure safety from fire, flood, pollution and other dangers.
 - E. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage.
 - F. Encourage the conservation of energy resources.
 - G. Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.
- 4.3.110 Applicability.**
- A. **Development Review or Site Plan Review.** Development review or site plan review is required for building permits proposing new construction or modifications of existing construction, except that regular maintenance, repair and replacement of materials (e.g., replacement or reconditioning of like roofs, siding, windows, awnings, paint etc.), parking resurfacing and similar maintenance and repair shall be exempt. The criteria for each type of review are as follows:
 - B. **Site Plan Review.** Site plan review follows Type II procedures as set out in section 4.2.130. It applies to all developments in the city, except those specifically listed under subsection A above. Site plan review ensures compliance with zoning and development standards (e.g., use, building setbacks, lot coverage, maximum building height, etc.) in chapter 2, as well as the more detailed design standards and public improvement requirements in chapter 3 (e.g., access, public infrastructure, parking, landscaping, signs).
 - C. **Development Review.** Development review follows Type I procedures as set out in section 4.2.120. Development review is required for all developments, except for non-attached single family dwellings built on individual lots. It is based on clear and objective standards and ensures compliance with zoning and development standards, such as building setbacks, lot coverage, maximum building height, and similar provisions of chapter 2. Development review is required for all of the types of development listed below:
 1. Accessory dwellings of any size;
 2. Developments on less than ten thousand (10,000) square feet of site area, which are not part of a larger project;
 3. Building additions and accessory structures containing not more than two thousand (2,000) square feet, except as required under subsection 1, above;
 4. Minor modifications to development approvals as defined by Section 4.7, except this does not apply to non-attached single family dwellings;

5. Any proposed development that has a valid conditional use permit and meeting the criteria in 1-4, above. Major modifications to a development with a conditional use permit shall require review and approval in accordance with section 4.5 - Conditional Use Permits;
6. Home occupation, subject to review under section 4.10;
7. Temporary use, except that temporary uses shall comply with the procedures and standards for temporary uses as contained in section 4.10; and
8. Other developments when development review is required by a condition of approval.

4.3.120 Development Review Approval Criteria. Applications for development review shall be conducted as a Type I procedure, as described in section 4.2.120. Prior to issuance of building permits, the following standards shall be met:

- A. The proposed land use is permitted by the underlying zoning district (chapter 2);
- B. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying zoning district and any overlay zone are met (chapter 2);
- C. All applicable building and fire code standards are met; and
- D. Approval shall lapse, and a new application shall be required, if a building permit has not been issued within one (1) year of development review approval.
- E. Traffic impacts from the proposed development are consistent with the traffic impacts for the subject parcel prescribed in Table 9 of the Interchange Area Management Plan or the development will mitigate for the increased traffic beyond that described in Table 9 of the IAMP. Those zone changes within the Interchange 136 IAMP area that deferred compliance with OAR 660-012-0060 must demonstrate consistency with OAR 660-012-0060.

4.3.130 Site Plan Review – General Requirements. Site plan review is required for projects that exceed the thresholds for development review, as provided in section 4.3.110. Site plan reviews are processed using Type II procedures, as provided in section 4.2, and using the approval criteria contained in section 4.3.150.

4.3.140 Site Plan Review - Application Submission Requirements. All of the following information is required for site plan review application submittal:

- A. **General Submission Requirements.** The applicant shall submit an application containing all of the general information required by section 4.2.130 B and 4.3.140 B.
- B. **Site Plan Review Application Requirements.** An application for site plan review shall include the following information, unless specifically waived by the planning director:
 1. Site analysis map. At a minimum the site analysis map shall contain the following:
 - a. The property that is the subject of the application, all contiguous property in common ownership and the surrounding property to a distance sufficient to determine the location of the development in

- the city, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;
- b. Topographic contour lines at intervals determined by the city;
 - c. Identification of slopes greater than fifteen (15) percent;
 - d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
 - e. Potential natural hazard areas, including any areas identified as subject to a one hundred (100) year flood, areas subject to high water table, and areas mapped by the City, County, or state as having a potential for geologic hazards;
 - f. Resource areas, such as marsh and wetland areas, streams, wildlife habitat identified by the city or other State of Oregon or federal resource regulatory agencies as requiring protection;
 - g. Existing site features, such as existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
 - h. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
 - i. The location, size and species of trees and other vegetation having a twelve (12) inch caliper (at four (4) feet above grade) or greater;
 - j. North arrow, scale, names and addresses of all persons listed as owners on the most recently recorded deed(s) for the property(s) that are the subject of the application;
 - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable; and
 - l. Other information, as determined by the planning director: The city may require studies or exhibits prepared by qualified professionals to address specific site features.
2. Proposed site plan. The site plan shall contain the following information, if applicable:
- a. The proposed development site, including boundaries, dimensions, and gross area;
 - b. Natural features and/or existing structures identified on the site analysis map which are proposed to remain on the site;
 - c. Natural features and/or existing structures identified on the site analysis map which are proposed to be removed or modified by the development;
 - d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
 - e. The location and dimensions of all existing and proposed utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;

- f. The location and dimensions of proposed entrances and exits to the site for vehicular, pedestrian, and bicycle access;
 - g. The location and dimensions of all proposed parking and vehicle circulation areas (show striping for parking stalls and wheel stops, as applicable);
 - h. Proposed pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
 - i. Proposed loading and service areas for waste disposal, loading and delivery;
 - j. Proposed outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements, as applicable;
 - k. Location, type, and height of proposed outdoor lighting;
 - l. Location of proposed mail boxes, if known;
 - m. Location of bus stops and other public or private transportation facilities;
 - n. Locations, sizes, and types of proposed signs; and
 - o. Other information, determined by the planning director: The city may require studies or exhibits prepared by qualified professionals to address specific site features (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this code.
3. Architectural drawings. Architectural drawings shall be submitted showing:
- a. Building elevations for all sides of building(s) with finished floor elevations, building height, and width dimensions;
 - b. Building materials, color and type. The city may require color board sample for projects in the downtown to ensure compatibility with existing buildings; and
 - c. The name of the architect or designer.
4. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for developments which would result in the grading (cut or fill) of one thousand (1,000) cubic yards or greater. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with section 3.5.
5. Landscape plan. A landscape plan pursuant to section 3.3 is required and shall show the following:
- a. The location and height of existing and proposed fences and other buffering or screening materials;
 - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
 - c. The location of the existing and proposed plant materials;
 - d. Existing and proposed building and pavement outlines;

- e. Irrigation plan (may be automatic or other approved method of irrigation); and
 - f. Other information as deemed appropriate by the Community Development Director.
6. Sign drawings shall be required in conformance with the city's sign code (section 3.7).
 7. Copies of all existing and proposed restrictions or covenants.
 8. Letter or narrative report documenting compliance with the applicable approval criteria contained in section 4.3.150.

4.3.150 Site Plan Review Approval Criteria. The Community Development Director shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying a site plan review application:

- A. Zoning District.** The application complies with all of the applicable provisions of the underlying zoning district (section 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;
- B. Design Standards.** The application complies with the following design standards contained in chapter 3:
 1. Access and circulation (section 3.2)
 2. Landscaping, street trees, fences and walls (section 3.3)
 3. Vehicle and bicycle parking (section 3.4)
 4. Infrastructure (section 3.5)
 6. Signs (section 3.7)
- C. Non-Conforming Development.** Existing non-conforming development may require development standard upgrade in conformance with section 5.3, Non-Conforming Uses and Development.
- D. Existing Conditions of Approval.** Conditions required as part of a previously approved Land Division (section 4.4), Conditional Use Permit (section 4.5), Planned Unit Development (section 4.6), or other approval for the site have been met.
- E. Phased Development.** Phasing of development may be approved with the Site Plan Review application, subject to the following standards and procedures:
 1. A phasing plan shall be submitted with the site plan review application.
 2. The reviewing authority shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than two (2) years without reapplying for site plan review.
 3. Approval of a phased site plan review proposal requires satisfaction of all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require city receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with section 4.3.160. A temporary

public facility is any facility not constructed to the applicable city standard;

- c. The phased development shall not result in requiring the city or other property owners to construct public facilities that were required as part of the approved development proposal; and
 - d. An application for phasing may be approved after site plan review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (section 4.7).
4. Time limitations for the various phases must meet the following requirements:
- (1) Phase 1 final plat shall be approved within twenty-four (24) months of preliminary approval.
 - (2) Phase 2 final plat shall be approved within forty-eight (48) months of preliminary approval.
 - (3) Phase 3 final plat shall be approved within sixty (60) months of preliminary approval.
- F. Variances.** Exceptions to the criteria above, may be granted only when approved as a Variance (section 5.2).

4.3.160 Bonding and Assurances.

- A. Performance Bonds for Public Improvements.** On all projects where public improvements are required, the city shall require an irrevocable letter of credit or a bond in an amount not greater than one hundred (100) percent of a city approved engineer's estimate equaling the city's cost of performing the public improvement, or other adequate assurances to guarantee the public improvements.
- B. Release of Performance Bonds.** The bond or other assurance shall be released when the planning director finds the completed project conforms to the site development approval, including all conditions of approval.
- C. Completion of Landscape Installation.** Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping as determined by a certified landscape architect is filed with the city assuring such installation within six (6) months after occupancy. If the installation of the landscaping is not completed within the six (6) month period, the security may be used by the city to complete the installation.

4.3.170 Development in Accordance With Permit Approval. Development shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., site plan review approval) and building permits. Construction of public improvements shall not commence until the city has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The city may require the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with section 4.3.160. Development review and site plan review approvals shall be subject to all of the following standards and limitations:

- A. Modifications to Approved Plans and Developments.** Modifications to approved plans and/or conditions of approval shall be processed under section 4.7.120, Major Modifications, and 4.7.130, Minor Modifications, as applicable.
- B. Approval Period.** Development review and site plan review approvals shall be effective for a period of one (1) year from the date of approval. Unless extended pursuant to C., below, the approval shall lapse if:
1. A building permit has not been issued within a one (1) year period; or
 2. The city has determined that construction on the site is in violation of the approved plan.
- C. Extension.** The Community Development Director shall, upon written request submitted by the applicant before the expiration date, grant an extension of the approval period not to exceed one year; provided that:
1. No modifications are or have been made to the original approved site plan review plan;
 2. The applicant can show intent of initiating construction on the site within the one year period;
 3. There have been no changes to the applicable code provisions on which the approval was based. If there have been changes to the applicable code provisions then a new site plan review shall be required; and
 4. The applicant demonstrates that failure to obtain building permits within one (1) year of site plan approval was beyond the applicant's control.

Section 4.4

LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

- 4.4.100 Purpose.** The purpose of this section is to:
- A. Provide rules, regulations, and standards governing the approval of subdivisions, partitions and property line adjustments.
 - B. Carry out the city's development pattern, as envisioned by the comprehensive plan.
 - C. Encourage efficient use of land resources, full utilization of urban services, and transportation options.
 - D. Promote the public health, safety and general welfare through orderly and efficient urbanization.
 - E. Lessen or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers.
 - F. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage.
 - G. Encourage the conservation of energy resources.
- 4.4.110 General Provisions.**
- A. **Subdivision and Partition Approval Through Two-step Process.** Applications for subdivision or partition approval shall be processed through a two (2) step process: the tentative plan and the final plat.
 - B. **Compliance With ORS Chapter 92.** All subdivision and partition proposals shall be in conformance to state regulations set forth in ORS Chapter 92, Subdivisions and Partitions.
- 4.4.120 Approval Procedures.**
- A. **Review of Tentative Plan.** Review of a tentative plan for a subdivision or partition shall be processed using the Type II procedure, as provided in section 4.2.130. All tentative plans shall be reviewed using approval criteria contained in 4.4.140. An application for subdivision may be reviewed concurrently with an application for a planned unit development under section 4.6.
 - B. **Review of Final Plat.** Review of a final plat for a subdivision or partition shall be processed by means of a Type I procedure under section 4.2.120, using the approval criteria in section 4.4.160.
 - C. **Tentative Plan Expiration.** Tentative plan approval shall be effective for a period of two (2) years from the date approval is final. Approval of the tentative plan shall expire if a final plat has not been submitted or the tentative plan has not been extended within two (2) years from the date the tentative plan approval became final.
 - D. **Modifications and Extensions.**
 - 1. The applicant may request changes to the approved tentative plan or conditions of approval following the procedures and criteria provided in section 4.7.

2. The Community Development Director shall, using the Type I procedures, grant one extension of the approval period not to exceed one year; provided that:
 - a. The applicant has submitted written intent to file a final plat within the one-year extension period;
 - b. There have been no changes to the applicable code provisions on which the approval was based; and
 - c. The extension request is made before expiration of the original approved plan.
 - d. Additional one-year extensions may be granted, up to a maximum of three (3) extensions, provided the criteria of the above section D.2 are met for the extension.

4.4.130 Subdivision Tentative Plan Application Requirements. The applicant shall submit an application containing drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

A. General Information:

1. Name of subdivision. This name must not duplicate the name of another subdivision in the county in which it is located (please check with county surveyor);
2. Date, north arrow, and scale of drawing;
3. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;
4. Names, addresses and telephone numbers of the owners, project designer, engineer(s), and or surveyor, and the date of the survey; and
5. Identification of the drawing as a “tentative plan.”

B. Site Analysis:

1. Streets: Location, name, present width of all existing streets, alleys and rights-of-way on and abutting the site;
2. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
3. Utilities: Location and identity of all existing utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest ones;
4. Ground elevations shown by contour lines at five (5) foot vertical intervals for ground slopes exceeding ten (10) percent and at two (2) foot intervals for ground slopes of less than ten (10) percent. Such ground elevations shall be related to some established bench mark or other datum approved by the county surveyor;
5. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
6. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;

7. Wetland and floodplain, including wetland areas, streams, wildlife habitat, and other areas identified by the city or natural resource regulatory agencies as requiring protection;
8. Site features, including existing structures, pavement, areas having unique views, drainage ways, and ditches;
9. Designated historic and cultural resources on the site and adjacent parcels or lots; and
10. The location, size and species of existing trees having a caliper (diameter) of twelve (12) inches or greater at four (4) feet above grade.

C. Proposed improvements:

1. Proposed public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts which are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
2. Location, width and purpose of all proposed easements and dedications;
3. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all lots and tracts;
4. Proposed uses of the property, including all proposed common areas or improvements, areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use;
5. Proposed improvements, as required by chapter 3, Design Standards, and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
6. The proposed source of domestic water;
7. The proposed method of sewage disposal, and method of surface water drainage and treatment if required;
8. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
9. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with Oregon Department of Transportation (ODOT) related to proposed railroad crossing(s);
10. Proposed changes to navigable streams, or other water courses. Provision or closure of public access to these areas shall be shown on the tentative plan, as applicable;
11. Identification of the base flood elevation, if applicable to the site;
12. Grading plan, if site is larger than five (5) acres;
13. Evidence of contact with ODOT for any development requiring access to a highway under the state's jurisdiction; and
14. Evidence of contact with the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands.

- D. Future Re-division Plan.** When subdividing or partitioning tracts into large lots (i.e., greater than two times or two hundred (200) percent the minimum lot size allowed by the underlying zoning district), re-division plan showing:
1. Potential future lot division(s) addressing the housing and density standards of chapter 2;
 2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way; and
 3. A disclaimer that the re-division plan is a conceptual plan intended to show potential future development. It shall not be binding on the city or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

4.4.140 Approval Criteria - Tentative Plan. The city shall approve, approve with conditions or deny a tentative plan based on the following approval criteria:

- A.** The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
- B.** The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to uniformly transition to such facilities in existing or approved subdivisions and partitions on adjoining property as to width, general direction and in all other respects.
- C.** Lot Size and Residential Density. The subdivision meets the lot size and residential density standards required by the zoning district (chapter 2)
- D.** When dividing a tract into large lots or parcels (i.e. greater than two times or 200 percent the minimum lot size allowed in the underlying zoning district, the lots parcels are of such size, shape and orientation as to facilitate future re-division in accordance with the requirements of the zoning district and this code.
- E.** Block and lot standards. All proposed blocks (i.e., one (1) or more lots bound by public streets), lots and parcels conform to the specific requirements below:
 1. All lots and blocks shall comply with the lot area, setback, and dimensional requirements of the applicable zoning district (chapter 2), and the standards of section 3.2 Access and Circulation, and the flag lot standards of section 3.2.110 (Q), if applicable.
 2. Setbacks shall be as required by the applicable zoning district (chapter 2).
 3. Every lot shall conform to the standards of section 3.2, Access and Circulation.
 4. The applicant may be required to install landscaping, walls, fences, or other screening as a condition of subdivision approval. See also, chapter 2 Zoning Districts, and section 3.3, Landscaping, Street Trees, Fences and Walls.

5. In conformance with the International Fire Code and Oregon Fire Code, a twenty (20) foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than one hundred fifty (150) feet from a public right-of-way or approved access drive. See also, section 3.2 Access and Circulation.
 6. Where a common private drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat and the county clerk's reference number shown on the face of the plat.
- F. Minimize Flood Damage.** All subdivisions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway. Development in a one hundred (100) year flood plain shall comply with federal emergency management agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before city approval of the final plat.
- G. Determination of Base Flood Elevation.** Where a development site consists of ten (10) or more lots, or is located in or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, it shall be prepared by a qualified professional, as determined by the Director.
- H. Need for Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to prevent or minimize flood damage to the extent practicable.
- I. Need for Adequate Drainage.** All subdivision proposals shall have adequate surface water drainage provided to reduce exposure to flood damage. Water quality or quantity control improvements may be required.
- J. Floodplain, Park, and Open Space Dedications.** Where land filling and/or development is allowed within or adjacent to the one hundred (100) year flood plain outside the zero-foot rise flood plain, and the comprehensive plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway adjoining or within the flood plain. When practicable, this area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the flood plain in accordance with the city's adopted trails plan or pedestrian and bikeway plans, as applicable. The city shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, consistent with section 3.5, and section 3.5.100.D in particular.
- K. Phased Development.** The city may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be greater than two (2) years without reapplying for a tentative plan approval. The criteria for approving a phased land division proposal are:

1. Public facilities shall be constructed in conjunction with or prior to each phase;
2. The development and occupancy of any phase dependent on the use of temporary public facilities shall require city receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Section 4.4.180. A temporary public facility is any facility not constructed to the applicable city standard;
3. The phased development shall not result in requiring the city or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal.
4. Time limitations for the various phases must meet the following requirements:
 - (1) Phase 1 final plat shall be approved within twenty-four (24) months of preliminary approval.
 - (2) Phase 2 final plat shall be approved within forty-eight (48) months of preliminary approval.
 - (3) Phase 3 final plat shall be approved within sixty (60) months of preliminary approval.

L. Lot Size Averaging. The city may allow residential lots less than the minimum lot size under the applicable zoning district for projects that provide common open space or active recreation land and facilities. Such open space shall provide public access easements containing paved trails. The lot sizes shall meet the following:

1. The average area for all residential lots shall not be less than that allowed by the underlying zone; and
2. No lot created under this provision shall be less than eighty (80) percent of the minimum lot size allowed in the underlying zone.
For example, if the minimum lot size is seven thousand (7,000) square feet, the following three (3) parcels could be created as part of a single partition application: six thousand (6,000) square feet, seven thousand five hundred (7,000) square feet, and nine thousand (9,000) square feet.

M. Temporary Sales Office. A temporary sales office in conjunction with a subdivision may be approved as set forth in section 4.10.100, Temporary Uses.

N. Conditions of Approval. The city may attach such conditions as are necessary to carry out provisions of this code, and other applicable ordinances and regulations, and may require landscape screening between uses, or access reserve strips granted to the city for the purpose of controlling access to adjoining undeveloped properties. See also, section 3.5.100.D (Infrastructure).

4.4.150 Variances Authorized. Adjustments to the standards of this section shall be processed in accordance with section 5.2 Variances. Applications for variances shall be submitted at the same time as an application for a subdivision is submitted.

4.4.160 Final Plat Submission Requirements and Approval Criteria.

A. Submission Requirements. Final plats shall be reviewed and approved by the city prior to recording with Douglas County. The applicant shall submit the final

plat within two (2) years of the approval of the tentative plan as provided by section 4.4.120. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the city. The city will not accept as complete an application for final plat until the tentative plan has been approved.

B. Approval Criteria. By means of a Type I procedure, the Community Development Director shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:

1. The final plat complies with the approved tentative plan, and all conditions of approval have been satisfied;
2. All public improvements required by the tentative plan have been installed and approved by the Community Development Director. Alternatively, the developer has provided a performance guarantee in accordance with section 4.4.180;
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities;
4. The streets and roads held for private use have been approved by the city as conforming to the tentative plan and, where applicable, the associated PUD;
5. Surface Water Management. When a paved surface is used, all driveways, parking areas, aisles and turn-arounds shall have on-site collection or infiltration of surface waters to minimize sheet flow of such waters onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with city standards.
6. The plat contains a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, and sewage disposal, storm drainage, and water supply systems;
7. The applicant has provided copies of all recorded homeowners association Codes, Covenants, and Restrictions (CC&R's), deed restrictions, private easements and agreements (e.g., for access, common areas, parking, etc.), and other recorded documents pertaining to common improvements recorded and referenced on the plat;
8. Water and sanitary sewer service is available to each and every lot, is provided; or bond, contract or other assurance has been provided by the subdivider to the city that such services will be installed in accordance with section 3.5, Infrastructure Standards, and the bond requirements of section 4.4.180. The amount of the bond, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to review and approval by the city; and
9. The plat contains an affidavit by the surveyor who surveyed the land represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by

the U.S. Geological Survey or giving two or more permanent objects for identifying its location.

4.4.170 Public Improvements Approval. Before city approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved, or the subdivider shall provide a performance guarantee, in accordance with section 4.4.180.

4.4.180 Performance Guarantee.

- A. Performance Guarantee Required.** When a performance guarantee is required under section 4.4.170, the subdivider shall file an assurance of performance with the city supported by one (1) of the following:
 - 1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
 - 2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the city in writing that it may be terminated; or
 - 3. Cash; or
 - 4. Cash deposit with an escrow company.
- B. Determination of Sum.** The assurance of performance shall be for a sum determined by the city as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.
- C. Itemized Improvement Estimate.** The developer shall furnish to the city an itemized improvement estimate, certified by a registered civil engineer, to assist the city in calculating the amount of the performance assurance.
- D. Agreement.** At a minimum an agreement shall include all of the following:
 - 1. A specific period within which all required improvements and repairs shall be completed;
 - 2. A provision that, if work is not completed within the period specified, the city may complete the work and recover the full cost and expenses from the applicant; and
 - 3. The improvement fees and deposits that are required.
- E. Failure to Perform.** In the event the developer fails to carry out all provisions of the agreement and the city has un-reimbursed costs or expenses resulting from such failure, the city shall call on the bond, cash deposit or letter of credit for reimbursement.
- F. Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the city.

4.4.190 Filing and Recording.

- A. Filing Plat with County.** Within sixty (60) days of the city approval of the final plat, the applicant shall submit the final plat to Douglas County for signatures of county officials as required by ORS Chapter 92.
- B. Proof of Recording.** Upon final recording with the county, the applicant shall submit to the city a mylar copy and two (2) paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly-created lots.

C. Prerequisites to Recording the Plat.

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

4.4.200 Partition - Tentative Plan Application Requirements. The applicant shall submit an application containing drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

A. General Information:

1. Date, north arrow, and scale of drawing;
2. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;
3. Names, addresses and telephone numbers of the owners, project designer, engineer(s), and or surveyor, and the date of the survey; and
4. Identification of the drawing as a “tentative plan.”

B. Site Analysis:

1. Streets: Location, name, present width of all existing streets, alleys and rights-of-way on and abutting the site;
2. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
3. Utilities: Location and identity of all existing utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest ones;
4. Ground elevations shown by contour lines at five (5) foot vertical intervals for ground slopes exceeding ten (10) percent and at two (2) foot intervals for ground slopes of less than ten (10) percent. Such ground elevations shall be related to some established bench mark or other datum approved by the county surveyor;
5. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
6. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
7. Wetland and floodplain, including wetland areas, streams, wildlife habitat, and other areas identified by the city or natural resource regulatory agencies as requiring protection;
8. Site features, including existing structures, pavement, areas having unique views, drainage ways, and ditches;
9. Designated historic and cultural resources on the site and adjacent parcels or lots; and
10. The location, size and species of existing trees having a caliper (diameter) of twelve (12) inches or greater at four (4) feet above grade.

C. Proposed improvements:

1. Location, width and purpose of all proposed easements and dedications;
2. Parcel dimensions, area calculation (e.g., in square feet), and identification numbers for all parcels;
3. Proposed improvements, as required by chapter 3, Design Standard;
4. The proposed source of domestic water;
5. The proposed method of sewage disposal, and method of surface water drainage and treatment if required;
6. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
7. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with Oregon Department of Transportation (ODOT) related to proposed railroad crossing(s);
8. Proposed changes to navigable streams, or other water courses. Provision or closure of public access to these areas shall be shown on the tentative plan, as applicable;
9. Identification of the base flood elevation, if applicable to the site;
10. Grading plan, if site is larger than five (5) acres;
11. Evidence of contact with ODOT for any development requiring access to a highway under the state's jurisdiction; and
12. Evidence of contact with the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands.

D. Future Re-division Plan. When partitioning tracts into large parcels (i.e., greater than two times or two hundred (200) percent the minimum lot size allowed by the underlying zoning district), re-division plan showing:

1. Potential future parcel/lot division(s) addressing the housing and density standards of chapter 2;
2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way; and
3. A disclaimer that the re-division plan is a conceptual plan intended to show potential future development. It shall not be binding on the city or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

4.4.210 Approval Criteria - Tentative Plan. The city shall approve, approve with conditions or deny a tentative plan based on the following approval criteria as applicable:

- A. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to uniformly transition to such facilities in existing or approved partitions on adjoining property as to width, general direction and in all other respects.
- B. Lot Size and Residential Density. The land partition meets the lot size and residential density standards required by the zoning district (chapter 2)

- C. When dividing a tract into large parcels (i.e. greater than two times or 200 percent the minimum lot size allowed in the underlying zoning district, the parcels are of such size, shape and orientation as to facilitate future re-division in accordance with the requirements of the zoning district and this code.
- D. Parcel standards. All proposed parcels (i.e., one (1) or more parcels bound by public streets), parcels conform to the specific requirements below:
 - 1. All parcels shall comply with the lot coverage, setback, and dimensional requirements of the applicable zoning district (chapter 2), and the standards of section 3.2 Access and Circulation, and the flag lot standards of section 3.2.110.Q, if applicable.
 - 2. Setbacks shall be as required by the applicable zoning district (chapter 2).
 - 3. Every parcel shall conform to the standards of section 3.2, Access and Circulation.
 - 4. The applicant may be required to install landscaping, walls, fences, or other screening as a condition of subdivision approval. See also, chapter 2 Zoning Districts, and section 3.3, Landscaping, Street Trees, Fences and Walls.
 - 5. In conformance with the international fire code and Oregon fire code, a twenty (20) foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than one hundred fifty (150) feet from a public right-of-way or approved access drive. See also, section 3.2 Access and Circulation.
 - 6. Where a common private drive is to be provided to serve more than one parcel, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition plat and the county clerk's reference number shown on the face of the plat.
- E. Minimize Flood Damage. All partitions shall be designed based on the need to minimize the risk of flood damage. No new building parcels shall be created entirely within a floodway. All new parcels shall be buildable without requiring development within the floodway. Development in a one hundred (100) year flood plain shall comply with federal emergency management agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before city approval of the final plat.
- F. Need for Adequate Utilities. All parcels created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to prevent or minimize flood damage to the extent practicable.
- G. Need for Adequate Drainage. All partition proposals shall have adequate surface water drainage provided to reduce exposure to flood damage. Water quality or quantity control improvements may be required.
- H. Conditions of Approval. The city may attach such conditions as are necessary to carry out provisions of this code, and other applicable ordinances and regulations, and may require landscape screening between uses, or access reserve strips granted to the city for the purpose of controlling access to adjoining undeveloped properties. See also, section 3.5.100.D (Infrastructure).

4.4.220 Variances Authorized. Adjustments to the standards of this section shall be processed in accordance with section 5.2 Variances. Applications for variances shall be submitted at the same time an application for land division is submitted.

4.4.230 Final Plat Submission Requirements and Approval Criteria.

- A. Submission Requirements. Final plats shall be reviewed and approved by the city prior to recording with Douglas County. The applicant shall submit the final plat within two (2) years of the approval of the tentative plan as provided by section 4.4.120. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the city. The city will not accept as complete an application for final plat until the tentative plan has been approved.
- B. Approval Criteria. By means of a Type I procedure, the Community Development Director shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria as applicable:
 - 1. The final plat complies with the approved tentative plan, and all conditions of approval have been satisfied;
 - 2. All public improvements required by the tentative plan have been installed and approved by the Community Development Director. Alternatively, the developer has provided a performance guarantee in accordance with section 4.4.180;
 - 3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities;
 - 4. The streets and roads held for private use have been approved by the city as conforming to the tentative plan;
 - 5. The plat contains a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, and sewage disposal, storm drainage, and water supply systems;
 - 6. The applicant has provided copies of all recorded homeowners association Codes, Covenants, and Restrictions (CC&R's), deed restrictions, private easements and agreements (e.g., for access, common areas, parking, etc.), and other recorded documents pertaining to common improvements recorded and referenced on the plat;
 - 7. Water and sanitary sewer service is available to each and every parcel, is provided; or bond, contract or other assurance has been provided by the partitioner to the city that such services will be installed in accordance with section 3.5, Infrastructure Standards, and the bond requirements of section 4.4.250. The amount of the bond, contract or other assurance by the partitioner shall be determined by a registered professional engineer, subject to review and approval by the city; and

8. The plat contains an affidavit by the surveyor who surveyed the land represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Geological Survey or giving two or more permanent objects for identifying its location.

4.4.240 Public Improvements Approval. Before city approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved, or the partitioner shall provide a performance guarantee, in accordance with section 4.4.250 as applicable.

4.4.250 Performance Guarantee.

- A. Performance Guarantee Required. When a performance guarantee is required under section 4.4.240, the partitioner shall file an assurance of performance with the city supported by one (1) of the following:
 1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
 2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the city in writing that it may be terminated; or
 3. Cash; or
 4. Cash deposit with an escrow company.
- B. Determination of Sum. The assurance of performance shall be for a sum determined by the city as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.
- C. Itemized Improvement Estimate. The developer shall furnish to the city an itemized improvement estimate, certified by a registered civil engineer, to assist the city in calculating the amount of the performance assurance.
- D. Agreement. At a minimum an agreement shall include all of the following:
 1. A specific period within which all required improvements and repairs shall be completed;
 2. A provision that, if work is not completed within the period specified, the city may complete the work and recover the full cost and expenses from the applicant; and
 3. The improvement fees and deposits that are required.
- E. Failure to Perform. In the event the developer fails to carry out all provisions of the agreement and the city has un-reimbursed costs or expenses resulting from such failure, the city shall call on the bond, cash deposit or letter of credit for reimbursement.
- F. Termination of Performance Guarantee. The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the city.

4.4.260 Filing and Recording.

- A. Filing Plat with County. Within sixty (60) days of the city approval of the final plat, the applicant shall submit the final plat to Douglas County for signatures of county officials as required by ORS Chapter 92.
- B. Proof of Recording. Upon final recording with the county, the applicant shall submit to the city a mylar copy and two (2) paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly-created lots.
- C. Prerequisites to Recording the Plat.
 - 1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;
 - 2. No plat shall be recorded until it is approved by the county surveyor in the manner provided by ORS Chapter 92.

4.4.270 Replatting and Vacation of Plats.

- A. **Replatting and Vacations.** Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners as appearing on the deed.
- B. **Procedure.** All applications for a replat or vacation shall be processed in accordance with the procedures and criteria for a subdivision or partition (i.e., the same process used to create the plat shall be used to replat or vacate the plat). The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See section 4.2, Types of Applications and Review Procedures.)
- C. **Additional Criteria.** A replat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys or if it fails to meet any applicable criteria.
- D. **Recording of Vacations.** All approved plat vacations shall be recorded in accordance with 4.4.190 and the following procedures:
 - 1. Once recorded, a replat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
 - 2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described on the plat.
- E. **After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.
- F. **Vacation of Streets.** All street vacations shall comply with the procedures and standards set forth in section and ORS Chapter 271.

4.4.280 Property Line Adjustments. Property line adjustments include the relocation or elimination of a common property line between abutting properties when no new parcels or lots are created. The application submission and approvals process is as follows:

- A. Application Requirements.** All applications for property line adjustment shall be made on forms provided by the city and shall include information required for a Type I application, as governed by section 4.2.120. The application shall include:
1. A preliminary lot line map identifying all existing and proposed lot lines and dimensions;
 2. Footprints and dimensions of existing structures (including accessory structures);
 3. Location and dimensions of driveways and public and private streets within or abutting the subject lots;
 4. Location of significant vegetation;
 5. Existing fences and walls; and
 6. Any other information deemed necessary by the Community Development Director for ensuring compliance with city codes.
- B. Approval Procedures.** Property line adjustments shall be processed using the Type I procedure, as provided by section 4.2.120, using approval criteria contained in subsection C, below.
- C. Approval Criteria.** The Community Development Director shall approve or deny a request for a property line adjustment in writing based on findings that all of the following criteria are satisfied:
1. No additional parcel or lot is not created by the property line adjustment, however the number of lots or parcels may be reduced;
 2. Lot standards. All lots and parcels comply with the applicable lot standards of the zoning district (chapter 2) including lot area and dimensions and the flag lot standards of section 3.2.110.Q, if applicable;
 3. Access. All lots and parcels comply with the standards or requirements of section 3.2 – Access and Circulation;
 4. Setbacks. The resulting lots, parcels, tracts, and building locations comply with the setback standards of the zoning district (chapter 2); and
 5. Exemptions from dedications and improvements. A property line adjustment is not considered a development action for purposes of determining whether right-of-way dedication or improvement is required.
- D. Recording Property Line Adjustments.**
1. Expiration of approval. The property line adjustment approval shall be effective for a period of one (1) year from the date approval is final. The property line adjustment approval shall lapse if:
 - a. The property line adjustment is not recorded within the time limit set out above;
 - b. The property line adjustment has been improperly recorded with Douglas County without the satisfactory completion of all conditions attached to the approval; or
 - c. The final recording is a departure from the approved plan.

2. Covenant. Where all lots involved in a property line adjustment are under the same ownership, the owner shall sign and record a covenant accompanying the property line adjustment. The purpose of the covenant shall be to affect the completion of necessary tax lot adjustments in the Douglas County Assessor's Records to reflect the new boundaries.
 3. Filing with City. The applicant shall submit the copy of the recorded property line adjustment survey map to the city, Douglas County Assessor's office, and Douglas County surveyor's office within fifteen (15) days of recording and prior to the issuance of any building permits on the re-configured lots.
- E. Extension.** The city shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year provided that:
1. No changes are made on the original plan as approved by the city;
 2. The applicant has submitted a written intent of recording the approved property line adjustment within the one (1) year extension period;
 3. The extension request is made before expiration of the original approved plan.

Section 4.5

CONDITIONAL USE PERMITS

4.5.100 Purpose. There are certain uses which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as "conditional uses" in chapter 2, Zoning Districts. The purpose of section 4.5 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

4.5.110 Approval Procedures.

- A. Initial Application.** Review of an application for a new conditional use shall be processed using the Type III procedure (section 4.2.140). The application shall meet the requirements of section 4.5.120, and the approval criteria contained in section 4.5.130.
- B. Modification of Approved or Existing Conditional Use.** Modifications to approved or existing conditional uses shall be processed in accordance with section 4.7, Modifications.

4.5.120 Application Requirements. In addition to the application requirements required in section 4.2.140, the applicant for a conditional use permit shall include the following information, as applicable (for a description of each item, please refer to section 4.3.140, Site Plan Review Application Requirements):

- A.** A site analysis map;
- B.** A proposed site plan;
- C.** A preliminary grading plan;
- D.** A landscape plan;

- E. Architectural drawings of all structures;
- F. Drawings of all proposed signs;
- G. A copy of all existing and proposed restrictions or covenants; and
- H. Narrative report or letter documenting compliance with all applicable approval criteria in section 4.5.130.

4.5.130 Criteria, Standards and Conditions of Approval. The planning commission shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the following:

- A. **Use Criteria.**
 - 1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
 - 2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval; and
 - 3. Public facilities have adequate capacity to serve the proposal or will be made adequate by the applicant.
- B. **Site Plan Criteria.** The criteria for site plan review approval (section 4.3.150) shall be met.
- C. **Conditions of Approval.** The city may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:
 - 1. Limiting the hours, days, place and/or manner of operation;
 - 2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
 - 3. Requiring larger setback areas, lot area, and/or lot depth or width;
 - 4. Limiting the building height, size or lot coverage, and/or location on the site;
 - 5. Designating the size, number, location and/or design of vehicle access points or parking areas;
 - 6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs', planting strips, pathways, or trails to be improved;
 - 7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
 - 8. Limiting the number, size, location, height and/or lighting of signs;
 - 9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
 - 10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
 - 11. Requiring and designating the size, height, location and/or materials for fences;

12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or wetlands and floodplain; and
13. Requiring the dedication of sufficient land to the public, and/or construction of a pedestrian/bicycle pathways in accordance with the adopted plans. Dedication of land and construction shall conform to the provisions of section 3.2, and section 3.2.100.D in particular.

4.5.140 Additional Development Standards for Conditional Uses.

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

Section 4.6

PLANNED UNIT DEVELOPMENTS

4.6.100 Purpose. The purposes of this section are to:

- A. Provide a means for master planning large or unusual development sites;
- B. Encourage innovative planning that results in more mixed use development, improved protection of open spaces, and greater housing and transportation options than what is typical under standard code requirements;
- C. Encourage developments that recognize the relationship between buildings, their use, open space, and transportation options, providing varied opportunities for innovative and diversified living environments;
- D. Facilitate the efficient use of land through flexible development standards;
- E. Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F. Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development; and
- G. Encourage energy conservation and improved air and water quality.

4.6.110 Applicability. The planned unit development procedures and criteria apply when an applicant submits an application for approval of a planned unit development.

4.6.120 Review and Approvals Process.

- A. **Review Steps.** There are three (3) required steps to planned unit development approval:
 1. The approval of a planned unit development concept plan;
 2. The approval of a detailed development plan; and
 3. The approval of a land division, development review and/or site plan review application(s).

B. Approval Process.

1. The planned unit development concept plan shall be reviewed using the Type III procedure in section 4.2.140, the application requirements in section 4.6.160, and the approval criteria in section 4.6.170.
2. The detailed development plan shall be reviewed using the Type III procedure in section 4.2.140, the application requirements in section 4.6.190, and the approval criteria in section 4.6.200.
3. Land division and development review or site plan review for approved planned unit developments shall be reviewed using applicable procedures, as governed by this code.
4. Steps 1-3, in subsection A. above, may be combined in any manner, so long as the decision-making sequence follows that in subsection A. Notification and hearings may be combined.

4.6.130 Allowed Uses.

- A. In the Residential Zoning Districts.** In the residential zones, the following uses are allowed outright when they are included in an approved planned unit development as outlined in the underlying zoning district (Section 2).
- B. In the Commercial Zoning Districts.** In the C-1 and C-3 districts, a planned unit development shall contain only those uses allowed outright in the underlying district (Section 2).
- C. In the Light Industrial, Heavy Industrial and Mixed Use Zoning Districts.** In M-1, M-2 and MU districts, a planned unit development shall contain only those uses allowed outright in the underlying district (Section 2).

4.6.140 Applicability of the Zoning District Standards.

- A. Zoning District Standards.** Planned unit developments shall conform to the provisions of the underlying zoning district, as follows:
 1. Land use and residential density standards of the zone shall not be modified through the planned unit development procedure;
 2. The floor area, lot coverage, building size, building height, lot area and dimensional standards of the district may be modified through the planned unit development procedure without a variance, except:
 - a. Front yard and rear yard setbacks for structures on the perimeter of the project shall be the same as that required by the underlying district, unless increased through the master plan review;
 - b. All structures shall meet building and fire code requirements;
 - c. A minimum front yard setback of twenty (20) feet is required for any garage structure which opens facing a public or private street; and
 - d. Increases to building height shall be limited to twenty-five (25) percent over the standard height, and shall in no event exceed sixty (60) feet.
- B. Other Provisions of the District.** All other provisions of the zoning district shall apply, except as modified by this section.

4.6.150 Applicability of Design Standards (Chapter 3).

The design standards of chapter 3 apply to all planned unit developments.

4.6.160 Concept Plan Submission.

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by Section 4.2.140. In addition, the applicant shall submit the following:

1. A statement of planning objectives to be achieved by the planned unit development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.
2. A development schedule indicating the approximate dates when construction of the planned unit development and its various phases are expected to be initiated and completed.
3. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the planned unit development.
4. A narrative report or letter documenting compliance with the applicable approval criteria contained in section 4.6.170.
5. Special studies prepared by qualified professionals may be required by the Community Development Director, planning commission or city council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

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

1. A site analysis map, as described in section 4.3.140, Site Plan Review Application Requirements;
2. A conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
3. A grading plan concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. A landscape concept (e.g., shows retention of existing vegetation and general planting types and areas);
5. An architectural concept (e.g., information sufficient to describe architectural styles, building heights, and general materials);
6. A sign concept (e.g., locations, general size, style and materials of signs); and
7. A copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

4.6.170 Concept Plan Approval Criteria. The planning commission shall make findings addressing the following criteria when considering a concept plan:

- A. **Consistency with the Purpose.** The plan is consistent with the purposes of the planned unit development code, as provided under section 4.6.100, and it provides superior design and amenities as compared to a typical development built under the standard code requirements;
- B. **Comprehensive Plan.** The plan is consistent with the policies contained in the city's comprehensive plan;
- C. **Land Division Section.** All of the requirements for proposed land divisions, as applicable, are met (section 4.4);
- D. **Open Space Requirement.** Planned unit developments in residential districts shall contain at least twenty-five (25) percent open space. Where common open space is designated, the following standards apply:
 - 1. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument; and
 - 2. The open space shall be conveyed in accordance with one of the following methods:
 - a. By dedication to the city as publicly-owned and maintained open space. Open space proposed for dedication to the city must be acceptable to the city with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities;
 - b. By leasing or conveying title (including beneficial ownership) to a corporation, home owners association or other legal entity, with the city retaining the development rights to the property. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, enforcement, property tax payment, etc.) suitable to the city; or
 - c. Homeowners Association bylaws and CC&Rs shall specifically recognize that the city has open space maintenance, enforcement, and assessment capabilities.

4.6.180 Administrative Procedures.

- A. **Time Limit on Filing of Detailed Development Plan.** Within one (1) year after the date of approval of the concept plan, the applicant or his or her successor shall prepare and file with the city a detailed development plan, in conformance with Section 4.6.190. The detailed development plan may be for one (1) or more phases of the project.
- B. **Extension.** The Community Development Director shall, upon written request by the applicant and payment of the required fee; grant an extension of the approval period not to exceed one (1) year provided that:
 - 1. No changes have been made on the original conceptual development plan as approved;
 - 2. The applicant has submitted a written intent to apply for detailed development plan review within the one (1) year extension period;
 - 3. There have been no changes to the applicable comprehensive plan policies or code provisions on which the approval was based; and

4. The extension request is made before expiration of the original approval period.
5. Additional one-year extensions may be granted, up to a maximum of three (3) extensions, provided the criteria of the above section B are met for the extension.

4.6.190 Detailed Development Plan Application Requirements. The contents of the detailed development plan shall be determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features.

4.6.200 Detailed Development Plan Approval Criteria. The planning commission shall approve the detailed development plan upon finding that the final plan conforms with the concept plan and required conditions of approval. Minor changes to the approved concept plan may be approved with the detailed plan, so long as the proposed modification does not:

- A. Increase residential density;
- B. Reduce the amount of open space or landscaping by more than five (5) percent;
- C. Increase lot coverage (by buildings or changes in the amount of parking) by more than ten (10) percent.
- D. Change the proposed land use;
- E. Place development within environmentally sensitive areas or areas subject to a potential hazard;
- F. Change the location of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements proposed on the concept plan, or modified through conditions of approval by more than sixty (60) feet.

Other modifications to the approved conceptual development plan shall require approval of either a minor modification or major modification, in conformance with section 4.7.

4.6.210 Land Division, Development Review, Site Plan Review and Building Permit Approvals. Upon receiving detailed development plan approval, the applicant may apply for applicable land division, development review or site plan review approval. Building permits shall not be issued until all required development permits have been issued and appeal periods have ended.

Section 4.7

MODIFICATIONS TO APPROVED PLANS AND CONDITIONS OF APPROVAL

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

4.7.110 Applicability.

- A.** This section applies to modification of the following development approvals:
 1. Site plan review approvals;
 2. Subdivisions, partitions, and lot line adjustments;
 3. Conditional use permits;
 4. Planned unit developments; and
 5. Conditions of approval on any of the above application types.
- B.** This section does not apply to zoning district changes, text amendments, temporary use permits, or other permits.

4.7.120 Major Modifications.

- A. Major Modification Defined.** A major modification(s) to a land use decision or approved development plan is required if one or more of the changes listed below are proposed:
 1. A change in land use;
 2. An increase in the number of dwelling units;
 3. A change in the type and/or location of access ways, drives or parking areas that affect off-site traffic;
 4. An increase in the floor area proposed for non-residential use by more than ten (10) percent where previously specified;
 5. A reduction of more than ten (10) percent of the area reserved for common open space and/or usable open space;
 6. A reduction to specified setback requirements by more than ten (10) percent, or to a degree that the minimum setback standards of the zoning district cannot be met; or
 7. Changes similar to those listed in 1-6, which are likely to have an adverse impact on adjoining properties.
- B. Major Modification Approval Procedures.** An application for approval of a major modification shall be subject to the same review procedure (Type I, II, or III) and approval criteria applicable to the type of development at issue, however, the review shall be limited in scope to the modification request. For example, a request to modify a parking lot shall require site plan review only for the proposed parking lot and any changes to associated pathways, lighting and landscaping. If that parking lot was part of a planned unit development, modification would be considered through planned unit development, but only as to the proposed parking lot and any changes to associated pathways, lighting and landscaping.

4.7.130 Minor Modifications.

- A. Minor Modification Defined.** Any modification to a land use decision or approved development plan which is not within the description of a major modification as provided in section 4.7.120, above, shall be considered a minor modification.
- B. Minor Modification Approval Procedures.** An application for approval of a minor modification is reviewed using Type I procedures. A minor modification shall be approved, approved with conditions, or denied by the Community Development Director based on written findings on the following criteria:

1. The proposed development is in compliance with all applicable requirements of the development code; and
2. The modification is not a major modification as defined in section 4.7.120, above.

Section 4.8

ZONING DISTRICT MAP AMENDMENTS

4.8.100 Purpose. The purpose of this section is to provide standards and procedures for legislative and quasi-judicial amendments to the zoning district map. These will be referred to as “zoning map amendments.” Map amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

4.8.110 Approval Procedures.

- A. **Review.** Review of an owner-initiated or city-initiated zoning map amendment. Quasi-judicial amendments are those that involve they shall follow the Type III procedure (section 4.2.140). The application shall meet the criteria of approval in subsection C, below.
- B. **Application.** An application for a zoning map amendment shall address the application requirements in section 4.2.140.
- C. **Criteria for Amendment.** The planning commission shall approve, approve with conditions or deny an application for a quasi-zoning map amendment based on all of the following criteria:
 1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;
 2. Demonstration that the most intense uses and density that would be allowed, outright in the proposed zone, considering the sites characteristics, can be served through the orderly extension of urban facilities and services, including a demonstration of consistency with OAR 660-012-0060. The determination of consistency with OAR 660-012-0060 can be deferred to development review pursuant to 4.3.120 for those zone changes that are located within the approved interchange 136 IAMP area and do not require a comprehensive plan amendment; and
 3. Evidence of change in the neighborhood or community, or a mistake or inconsistency between the comprehensive plan or zoning district map regarding the subject property which warrants the amendment.

Section 4.9

CODE INTERPRETATION

4.9.100 Purpose. Some terms or phrases within the development code may have two (2) or more reasonable meanings. This section provides a process for resolving differences in the

interpretation of the Code text or for determining whether a proposed use not specifically listed in a use table in chapter 2, Zoning Districts is similar to a use on such a list and, therefore, in a zone.

4.9.110 Code Interpretation Procedure.

- A. Review.** Review of a request for code interpretation shall follow the Type II procedure (section 4.2.130).
- B. Application.** In lieu of the Type II requirements for a preapplication conference and the application requirements in section 4.2.130, an application for code interpretation shall:
 - 1. Identify the section of the development code to be interpreted; and
 - 2. Include a narrative identifying the perceived ambiguity in the code section.
- C. Notice.** In cases where the interpretation is not a quasi-judicial land use decision, in lieu of the Type II notice requirements at Section 4.2.130.C. and E., the planning director shall mail notice to any person who has requested notice of planning director's interpretation or who submitted comments for the planning director's consideration.
- D. Community Development Director Decision.** The Community Development Director's interpretation shall be based on consideration of the text, context and intent of the code section.

Section 4.10

MISCELLANEOUS PERMITS

4.10.100 Temporary Use Permits. Temporary uses are characterized by their short term or seasonal nature.

- A. Seasonal and Special Events.** These types of uses occur only once in a calendar year and for no longer a period than 30 days. Using the Type II procedure under section 4.2.130, the Community Development Director shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:
 - 1. The use does not violate any conditions of approval for the property (e.g., prior development permit approval);
 - 2. The applicant has proof of the property-owner's permission to place the use on his/her property;
 - 3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under section 3.4, Parking;
 - 4. The use provides adequate vision clearance, as required by section 3.2.110, and shall not obstruct pedestrian access on public streets;
 - 5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by section 3.2.110 Vehicular Access and Circulation;

6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use; and
7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

B. Temporary Sales Office or Model Home. Using a Type II procedure under section 4.2.130, the City may approve, approve with conditions or deny an application for the use of any real property within the city as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the city, but for no other purpose, based on the following criteria:

1. Temporary sales office:
 - a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold; and
 - b. The property to be used for a temporary sales office shall not be permanently improved for that purpose.
2. Model house:
 - a. The model house shall be located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and
 - b. The model house shall be designed as a permanent structure that meets all relevant requirements of this code.

C. Temporary Building. Using a Type II procedure, as governed by section 4.2.130, the city may approve, approve with conditions or deny an application for a temporary trailer or prefabricated building for use on any real commercial or industrial property within the city as a temporary commercial or industrial office or space associated with the primary use on the property, but for no other purpose, based on following criteria:

1. The temporary trailer or building shall be located within the boundaries of the parcel of land on which it is located;
2. The primary use on the property to be used for a temporary trailer is already developed;
3. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by section 3.2.110, Vehicular Access and Circulation;
4. There is adequate parking for the customers or users of the temporary use as required by section 3.4, Vehicle and Bicycle Parking;
5. The use will not result in vehicular congestion on streets;
6. The use will pose no hazard to pedestrians in the area of the use;
7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;

8. The building complies with applicable building codes;
9. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
10. The length of time that the temporary building will be used does not exceed six (6) months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit.

4.10.110 Temporary Manufactured Dwelling Medical Hardship Permit.

- A. **Purpose.** These regulations are intended to ensure adequate provisions exist to accommodate small scale temporary housing on individual lots in residential areas to allow for the care of a family member.
- B. **Review.** Review of an application for a temporary manufactured dwelling medical hardship permit shall follow the Type II procedure (section 4.2.130).
- C. **Approval Criteria.** A temporary manufactured dwelling medical hardship permit shall be granted if all of the following are met:
 1. The person(s) residing in the additional dwelling shall be member(s) of the immediate family of the resident(s) of the permanent residence.
 2. There shall be no compensation involved in the hardship case.
 3. The manufactured home shall:
 - a. Meet the requirements of and be approved by the building department;
 - b. Be connected to the public sewer and water systems as directed by the public works director and shall pay fees for such connections as required by city ordinance;
 - c. Have a permanent electrical installation;
 - d. Meet all setbacks and coverage requirements pertaining to the zone and shall be a minimum of six feet from the main building and all other buildings;
 - e. Be manufactured after June 15, 1976, and exhibit the "Oregon Department of Commerce Insignia of Compliance;"
 - f. Not be structurally connected to the principal residence; and
 - g. Meet all requirements for manufactured home standards in section 2.7.160 except where they conflict with this section. The requirement that a garage or carport be attached to the manufactured home may be waived.
 4. The manufactured home and accessory building foundations, pads, and support blocking shall be of sufficient strength to support the required live-loads and actual dead-loads imposed by the manufactured home and any attached or supported structure based on accepted engineering design standards. Foundations, tie-downs or other supports shall be provided to withstand the specified horizontal, u-lift, and overturning and wind forces on the manufactured home and any attached or supported structures based on accepted engineering design standards.

- D. Expiration and Reapplication:**
1. The temporary permit shall expire upon termination of the hardship or one (1) year from the date of issuance, whichever comes first. Renewals of the permit will require reapplication two months prior to the expiration date.
 2. The permits are not transferable. If ownership of the property is transferred or the occupant changes, the permit is void. If the person who is the subject of the hardship relocates, the permit is void and a new application must be submitted for any new hardship or any new location.
 3. The manufactured home must be removed within thirty (30) days of the date that the hardship ceases or of the date the permit expires, whichever occurs first.
- E. Permit to Be a Deed Restriction.** The requirements of this article and any conditions imposed by the hearings body shall be recorded with the county clerk and made a deed restriction. This shall be required prior to installation of the additional dwelling.

Section 4.11

AMENDMENTS TO THE SUTHERLIN DEVELOPMENT CODE AND LAND USE PLANS

4.11.100 Purpose and Applicability. These regulations provide the procedures and criteria the city will follow when it considers making an amendment to the city's development code or a land use plan, including amendments to the comprehensive plan text or map, annexations and amendments to the urban growth boundary.

4.11.110 Approval Procedures.

- A. Review Process.** Review of a request for an amendment to the city's development code or a land use plan shall follow the Type IV procedure (4.2.150).
- B. Application Requirements.** A legislative proposal requesting to change the comprehensive plan map designation of a site under common ownership or to annex or bring into the urban growth boundary such a site may be initiated by the owner(s) of the subject site. Only the city can initiate the other amendments regulated by section 4.11. An owner-initiated application shall include the information required for a Type IV procedure under section 4.2.150.
- C. Approval Criteria.** The planning commission's recommendation and the city council's decision shall be based on the following approval criteria.
1. For a proposed amendment to the city's development code, the proposed amendment is consistent with applicable provisions of the comprehensive plan, including inventory documents and facility plans incorporated therein.
 2. For a proposed amendment to a land use plan's text or map:
 - a. The proposed amendment is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission; and

- b. The proposed amendment is consistent with the remainder of the comprehensive plan, including inventory documents and facility plans incorporated therein.