

Chapter 4 Applications and Review Procedures

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Chapter 4.0 Administration of Land Use and Development Permit Applications

4.0 Introduction.

Chapter 4 provides all of the application requirements and procedures for land use and development permit applications required by this code.

Chapter 4.1 Types of Applications and Review Procedures

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4.1.1 Purpose.

The purpose of this Chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective manner.

4.1.2 Description of Procedures.

All land use and development permit applications, except building permits, shall be decided by using the procedures contained in this Chapter. General procedures for all land use and development permit applications are contained in Section 4.1.7 of this code. Specific procedures for certain types of land use and development permit applications are contained in Sections 4.1.2 – 6 of this code. These procedures are described in subsections A-D below. In addition, Table 4.1.2 lists the City's land use and development permit applications and their required procedure(s).

- A. **Type I Procedure (Ministerial).** Type I decisions are made by the City Recorder, or the City Recorder's designee, without a public notice and 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. The appeal of a Type I decision is heard by the Planning Commission.
- B. **Type II Procedure (Administrative).** Type II decisions are made by the City Recorder, or the City Recorder's designee, with public notice. The appeal of a Type II decision is heard by the Planning Commission.
- C. **Type III Procedure (Quasi-Judicial).** Type III decisions are made by the Planning Commission. Type III decisions generally use discretionary approval criteria. The appeal of a Type III decision is heard by the Council.
- D. **Type IV Procedure (Legislative).** Type IV procedures apply to legislative matters. Legislative matters involve creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments which apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

Table 4.1.2
Summary of Development Decisions/Permit by
Type of Decision-making Procedure*

Access Permit (public street)	Type I	Chapters 3.1,
Alternative Design Review (Detroit Avenue Corridor)	Type III	Chapter 2.3.7
Annexation	Type III/IV	Comprehensive Plan and City/County intergovernmental agreement(s), as applicable.
Building Permit	N/A	Building Code
Code Interpretation	Type II	Chapter 4.8
Code Amendment	Type IV	Chapter 4.7
Comprehensive Plan Amendment	Type IV	Comprehensive Plan
Conditional Use Permit	Type III	Chapter 4.4

Conditional Use Permit - Special		
Boat/Camper/Trailer Storage	Type III	Chapter 4.5.2
Manufactured Home Park	Type III	Chapter 4.5.3
Recreational Vehicle Park	Type III	Chapter 4.5.5
Extension of Approval	Type I	See Specific Land Use or Development Permit Type
Flood Plain Development Permit	Type I	Chapter 3.7
Grading Permit	Type I	Chapter 3.9.2
Home Occupation Permit	Type I	Chapter 4.9.2
Modification to Approval	Type I/II/III	Chapter 4.6
Land Use District Map Change		
Quasi-Judicial (no plan amendment required)	Type III	Chapter 4.7
Legislative (plan amendment required)	Type IV	Chapter 4.7
Lot Line Adjustment	Type I	Chapter 4.3
Partition	Type II	Chapter 4.3
Planned Unit Development	Type III	Chapter 4.5.5
Public Construction	Type	Public Works Design Standards
Signs		
Sign Conditional Use	Type III	Chapter 3.5.2.N
Sign Variance	Type III	Chapter 3.5.2.P
Sign Permit	Type I	Chapter 3.5.2
Site Design Review	Type I/Type II	Chapter 4.2
Subdivision	Type III	Chapter 4.3
Variance		
Class A	Type I	Chapter 4.10
Class B	Type II	Chapter 4.10
Class C	Type III	Chapter 4.10
Variance - Special		
Flood Plain		
Riparian Corridor Adjustment	Type III	Chapter 3.7.2.E
Wetland Protection	Type III	Chapter 3.7.3.F
Wireless Communication Facilities	Type III	Chapter 4.5.6

*Note: The Chapters referenced above in the right-hand column describe the types of land uses and development activity that require permits under each type of decision-making procedure.

4.1.3 Type I Procedure (Ministerial)

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the City.
2. Submittal Information. Type I applications shall contain:
 - a. The information requested on the application form;
 - b. Recorded deed/land sales contract with legal description;
 - c. Address the criteria and standards in sufficient detail for review and decision;
 - d. The required fee, and
 - e. Any additional information requested by the City Recorder, or the City Recorder's designee, to determine compliance with an applicable criterion or standard.

B. Administrative Decision Requirements. The City Recorder, or the City Recorder's designee's, decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the City Recorder, or the City Recorder's designee, 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. The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first.

D. Effective Day. The decision is effective the day after it is final.

E. Appeal. A Type I Ministerial decision may be appealed to the Planning Commission as follows:

1. Who may appeal. The following people have legal standing to appeal a Type I Ministerial Decision:
 - a. The applicant.

4.1.4 Type II Procedure (Administrative)

A. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the City.
2. Submittal Information. The Type II application shall contain:
 - a. Information requested on the application form;
 - b. Recorded deed/land sales contract with legal description;
 - c. A narrative statement that explains how the application satisfies the criteria and standards in sufficient detail for review and decision; and
 - d. The required fee;
 - e. Any additional information requested by the City Recorder, or the City Recorder's designee, to determine compliance with an applicable criterion or standard.

B. Notice of Application for Type II Administrative Decision.

1. Before making a Type II Administrative Decision, the City Recorder, or the City Recorder's designee, shall mail notice to:

- a. All owners of record or real property within 100 feet of the subject site;
 - b. Any person who submits a written request to receive a notice; and
 - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application.
2. Notice of a pending Type II Administrative Decision shall:
- a. Provide a 14-day period for submitting written comments before a decision is made on the application;
 - b. List the relevant approval criteria by name and number of code sections;
 - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
 - d. Include the name and telephone number of a contact person regarding the Administrative Decision;
 - e. Identify the specific permits or approvals required;
 - f. Describe the street address or other easily understandable reference to the location of the site;
 - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
 - h. State that all evidence relied upon by the City Recorder, or the City Recorder's designee, to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City.
 - i. State that after the comment period closes, the City Recorder, or the City Recorder's designee, shall issue a Type II Administrative Decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
 - j. Contain the following note: "Notice to mortgagee, lien holder, vendor, or seller: The Detroit Development Code requires that if you receive this notice, it shall be promptly forwarded to the purchaser."
- C. **Administrative Decision Requirements.** The City Recorder, or the City Recorder's designee, shall make Type II written decisions addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the City Recorder, or the City Recorder's designee, shall approve, approve with conditions, or deny the requested permit or action.
- D. **Notice of Decision.**
- 1. Within five (5) days after the City Recorder, or the City Recorder's designee, signs the decision, a Notice of Decision shall be posted on the property and sent by mail to:
 - a. Any person who submits a written request to receive notice, or provides comments during the application review period;
 - b. The applicant and all owners or contract purchasers of record of the site which is the subject of the application;

- c. Any person who submits a written request to receive notice, or provides comments during the application review period;
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.
- 2. The City Recorder, or the City Recorder's designee, shall cause an affidavit of mailing and posting of the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and posted, and shall demonstrate that the notice was mailed to the people and within the time required by law.
- 3. The Type II Notice of Decision shall contain:
 - a. A description of the applicant's proposal and the City's decision on the proposal (i.e., may be a summary);
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area., where applicable;
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed;
 - e. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;
 - f. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process; and
 - g. A statement that unless appellant (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period. Additional evidence related to the Notice of Appeal (See subsection F.2.a below) may be submitted by any person during the appeal hearing, subject to any rules of procedure adopted by the City Recorder, or the City Recorder's designee.
- E. **Final decision and effective date.** A Type II administrative decision is final for purposes of appeal when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.
- F. **Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:
 - 1. Who may appeal. The following people have legal standing to appeal a Type II Administrative Decision:
 - a. The applicant;
 - b. Any person who was mailed written notice of the Type II administrative decision;
 - c. Any other person who participated in the proceeding by submitting written comments.
 - 2. Appeal procedure.
 - a. Notice of appeal. Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures:

- i. Time for filing. A Notice of Appeal shall be filed with the City Recorder, or the City Recorder's designee, within 14 days of the date the Notice of Decision was mailed;
 - ii. Content of notice of appeal. The Notice of Appeal shall contain:
 - 1. An identification of the decision being appealed, including the date of the decision;
 - 2. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - 3. A statement explaining the specific issues raised on appeal;
 - 4. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - 5. Filing fee.
 - iii. The City shall establish the amount of the filing fee. The maximum fee for an initial hearing shall be the City's cost for preparing and for conducting the hearing or the statutory maximum, whichever is less.
 - b. Scope of appeal. The appeal of a Type II Administrative Decision by a person with standing shall be limited to the specific issues raised during the written comment period, unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The City Recorder, or the City Recorder's designee, may allow such additional evidence if they determine that such evidence is necessary to resolve the case.
 - c. Appeal procedures. Type III notice and hearing procedures shall be used for all Type II Administrative Appeals.
- G. **Appeal to Planning Commission.** The decision of the Planning Commission is the final decision of the City. Any person, firm, corporation or political subdivision of the State of Oregon, to the State Land Use Board of Appeals within 21 days from the date of mailing of the final Planning Commission decision, may file appeal of the Planning Commission decision.

4.1.5 Type III Procedure (Quasi-Judicial).

- A. **Pre-Application conference.** A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section Chapter 4.1 Section 5(C). This requirement may be waived by the City Planner.
- B. **Application requirements.**
 - 1. Submittal Information. Type III applications shall contain:
 - a. The information requested on the application form;
 - b. Recorded deed/land sales contract with legal description;
 - c. A narrative statement that explains how the application satisfies the relevant criteria and standards in sufficient detail for review and decision;
 - d. The required fee; and
 - e. An impact study for all Type III applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the noise impacts of the development. 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. In situations where this Code requires the dedication of real property to the City, the applicant shall either specifically agree to the dedication requirement, or provide evidence that show that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

- f. Any additional information requested by the City Recorder, or the City Recorder's designee, to determine compliance with an applicable criterion or standard.

C. Notice of Hearing.

1. **Mailed notice.** Notice of a Type III application hearing or Type II appeal hearing shall be given by the City in the following manner:
 - a. At least 20 days before the hearing date, notice shall be mailed to:
 - i. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
 - ii. All property owners of record within 250 feet of the site;
 - iii. Any governmental agency which has entered into an intergovernmental agreement with the City which includes provision for such notice, or who is otherwise entitled to such notice;
 - iv. Any person who submits a written request to receive notice; and
 - v. For appeals, the appellant and all persons who provided testimony.
 - b. The City Recorder, or the City Recorder's designee, shall have an affidavit of notice prepared and made a part of the file. The affidavit shall state the date that the notice was posted on the property and mailed to the persons who must receive notice;
 - c. At least ten (10) business days before the hearing, the applicant shall post notice of the hearing on the property per Subsection 2 below. The applicant shall prepare and submit an affidavit of posting of the notice that shall be made part of the administrative record.
2. **Content of Notice.** Notice of appeal of a Type II Administrative decision or a Type III hearing to be mailed, posted and published 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 applicable criteria and standards 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 at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
 - f. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;

- g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at City Hall at no cost and that copies shall be provided at a reasonable cost;
- h. A statement that a copy of the City's staff report and recommendation to the City Council shall be available at no cost at least seven (7) days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings;
- j. The following notice: "Notice to mortgagee, lienholder, vendor, or seller: The Detroit Development Code requires that if you receive this notice, it shall be promptly forwarded to the purchaser."

D. Conduct of the Public Hearing.

1. At the commencement of the hearing, the hearings body shall state to those in attendance that:
 - a. The applicable approval criteria and standards that apply to the application or appeal;
 - b. A statement that testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations which the person testifying believes to apply to the decision;
 - c. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue means that no appeal may be made to the State Land Use Board of Appeals on that issue;
 - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a "continuance") per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.
2. If the hearings body grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least (seven) 7 days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least (seven) 7 days, so that they can submit additional written evidence or testimony in response to the new written evidence.
3. If the hearings body leaves the record open for additional written evidence or testimony, the record shall be left open for at least (seven) 7 days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the City Council shall reopen the record per subsection E of this section;
 - a. When the hearings body re-opens the record to admit new evidence or testimony, any person may raise new issues which relates to that new evidence or testimony;
 - b. An extension of the hearing or record granted pursuant to Section D is subject to the limitations of ORS 227.178 ("120-day rule"), unless the continuance or extension is requested or agreed to by the applicant;

- c. If requested by the applicant, the City shall allow the applicant at least seven (7) days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.
- 4. The record.
 - a. The record shall contain all testimony and evidence that is submitted to the City and the hearings body and not rejected;
 - b. The hearings body may take official notice of judicially recognizable facts under the applicable law. If the hearings body takes official notice, it must announce its intention and allow persons participating in the hearing to present evidence concerning the noticed facts;
 - c. The hearings body shall retain custody of the record until the City issues a final decision.
- 5. Participants in the appeal of a Type II Administrative decision or a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts (see Section 6 below) as reasonably possible. The public has a countervailing right of free access to public officials. Therefore:
 - a. At the beginning of the public hearing, the hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined in Section 6 below) concerning the application or appeal. The Council member shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
 - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: Their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
 - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
 - d. If all members abstain or are disqualified, those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
 - e. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.
- 6. Ex parte communication.
 - a. Members of the hearings body shall not:
 - i. Communicate, directly or indirectly, with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing, except upon giving notice, per Section 5 above;
 - ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular

case, unless all participants are given the opportunity to respond to the noticed materials.

- b. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:
 - i. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
 - ii. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
 - c. A communication between City staff and the hearings body is not considered ex parte contact.
7. Presenting and receiving evidence.
- a. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section D;
 - c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the hearing and an opportunity is provided to dispute the evidence. In the alternative, a member of the hearing body may visit the property to familiarize their self with the site and surrounding area, but not to independently gather evidence. In the second situation, at the beginning of the hearing, they shall disclose the circumstances of the site visit and shall allow all participants to ask about the site visit.

E. The Decision Process.

- 1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary land use or development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
- 2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
- 3. Form of decision. The hearings body shall issue a final written order containing the findings and conclusions stated in Subsection 2, which either approves, denies, or approves with specific conditions. The hearings body may also issue appropriate intermediate rulings when more than one permit or decision is required;
- 4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Recorder, or the City Recorder's designee, within ten (10) business days after the close of the deliberation.

- F. **Notice of Decision.** Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within five (5) business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
- G. **Final Decision and Effective Date.** The decision on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires.
- H. **Appeal.** A Type III decision may be appealed to the City Council as follows:
1. Who may appeal. The following people have legal standing to appeal a Type III Decision:
 - a. The applicant;
 - b. Any person who was mailed written notice of the Type II administrative decision;
 - c. Any other person who participated in the proceeding by submitting written comments.
 2. Appeal procedure.
 - a. Notice of appeal. Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures:
 - i. Time for filing. A Notice of Appeal shall be filed with the City Recorder, or the City Recorder's designee, within 14 days of the date the Notice of Decision was mailed;
 - ii. Content of notice of appeal. The Notice of Appeal shall contain:
 1. An identification of the decision being appealed, including the date of the decision;
 2. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 3. A statement explaining the specific issues raised on appeal;
 4. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 5. Filing fee.
 - iii. The City shall establish the amount of the filing fee. The maximum fee for an initial hearing shall be the City's cost for preparing and for conducting the hearing or the statutory maximum, whichever is less.
 - b. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be limited to the specific issues raised during the written comment period, unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The City Recorder, or the City Recorder's designee, may allow such additional evidence if they determine that such evidence is necessary to resolve the case.
 - c. Appeal procedures. Type III notice and hearing procedures shall be used for all Type III Appeals.

4.1.6 Type IV Procedure (Legislative).

- A. **Pre-Application conference.** A pre-application conference is required for all Type IV applications. The requirements and procedures for a pre-application conference are described in Chapter 4.1 Section 7(C).
- B. **Timing of requests.** The City Recorder, or the City Recorder's designee, shall review proposed Type IV actions no more than twice yearly, based on the City's approved schedule for such actions.
- C. **Application requirements.**
1. Application forms. Type IV applications shall be made on forms provided by the City;
 2. Submittal Information. The Type IV application shall contain:
 - a. The information requested on the application form;
 - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. The required fee; and
 - d. A narrative statement that explains how the application satisfies the relevant approval criteria and standards in sufficient detail for review and decision.
- D. **Notice of Hearing.**
1. Required hearings. A minimum of two (2) hearings is required for all Type IV applications, except annexations where only one (1) hearing by the City Council is required.
 2. Notification requirements. Notice of public hearings for the request shall be given by the City Recorder, or the City Recorder's designee, in the following manner:
 - a. At least 20 days, but no more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - i. Each owner whose property would be rezoned in order to implement the ordinance (i.e., owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment.
 - ii. Any affected governmental agency;
 - iii. Any person who requests notice in writing;
 - iv. 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 ten (10) days before the scheduled initial public hearing and ten (10) days before the City Council's final hearing date, notice shall be published in a newspaper of general circulation in the City.
 - c. The City Recorder, or the City Recorder's designee, shall:
 - i. For each mailing of notice, file an affidavit of mailing in the record as provided by Subsection a; and
 - ii. For each published notice, file in the record the affidavit of publication in a newspaper that is required in Subsection b.

- d. The Department of Land Conservation and Development (DLCD) shall be notified in writing of the proposed comprehensive plan and development code amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.
 - e. Notifications for annexation shall follow the provisions of this Chapter, except as required for local government boundary commissions (ORS 199).
3. Content of notices. The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of City Hall where the additional information about the application can be obtained;
 - b. A description of the location of the proposal reasonably calculated to give notice of the location of the geographic area;
 - c. A description of the proposal in enough detail for people to determine that a change is proposed, and the place where all relevant materials and information may be obtained or reviewed;
 - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall (See Subsection E below); and
 - e. Each mailed notice required by Section D shall contain the following statement: “Notice to mortgagee, lien holder, vendor, or seller: The Detroit Development Code requires that if you receive this notice, it shall be promptly forwarded to the purchaser.”
4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:
- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
 - b. Published notice is deemed given on the date it is published.

E. Hearing Process and Procedure.

- 1. Unless otherwise provided in the rules of procedure adopted by the City Council:
 - a. The presiding officer of the City Council shall have the authority to:
 - i. Regulate the course, sequence, and decorum of the hearing;
 - ii. Direct procedural requirements or similar matters; and
 - iii. Impose reasonable time limits for oral presentations.
 - b. No person shall address the City Council without:
 - i. Receiving recognition from the presiding officer; and
 - ii. Stating their full name and residence address.
 - c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.

2. Unless otherwise provided in the rules of procedures adopted by the City Council, the presiding officer of the Council shall conduct the hearing as follows:
 - a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be the final decision of the Council;
 - b. The City Recorder's, or the City Recorder's designee's, report and other applicable staff reports shall be presented;
 - c. The public shall be invited to testify;
 - d. The public hearing may be continued to allow additional testimony or it may be closed; and
 - e. The City Council's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.
- F. **Continuation of the Public Hearing.** The City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.
- G. **Decision-Making Consideration.** The decision by the City Council shall be based on consideration of the following factors:
 1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for comprehensive plan amendments only);
 2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;
 3. Any applicable intergovernmental agreements; and
 4. Any applicable comprehensive plan policies and provisions of this Code that implement the comprehensive plan. Compliance with Chapter 4.7 shall be required for Comprehensive Plan Amendments, and Land Use Zone Map and Text Amendments.
- H. **Approval Process and Authority.** The City Council shall:
 1. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change; and
 2. Act by ordinance, which shall be signed by the Mayor after the Council's adoption of the ordinance.
- I. **Vote Required for a Legislative Change.** A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.
- J. **Notice of Decision.** Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within 5 business days after the City Council decision is filed with the City Recorder, or the City Recorder's designee. The City shall also provide notice to all persons as required by other applicable laws.
- K. **Final Decision and Effective Date.** A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.
- L. **Record of the Public Hearing.**

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

4.1.7 General Procedures.

- A. **120-day Rule.** The City shall take final action on land use or permit application which are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions - plan and code amendments - under ORS 227.178.)
- B. **Time Computation.** In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.
- C. **Pre-Application Conferences.**
 1. Participants. The applicant shall meet with the City Recorder, or the City Recorder's designee, and other City staff or officials as required by the City Recorder, or the City Recorder's designee;
 2. Information provided. At such conference, the City Recorder, or the City Recorder's designee, shall:
 - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
 - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - c. Provide available technical data and assistance 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 City Recorder, or the City Recorder's designee, to provide any of the information required by this Section C shall not constitute a waiver of any of the standards, criteria or requirements for the application;

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

D. Applications.

1. Initiation of applications:
 - a. Applications for approval under this Chapter may be initiated by:
 - i. Order of City Council;
 - ii. The Mayor
 - iii. A record owner of property (person(s) whose name is on the most recently-recorded deed), or contract purchaser with written permission from the record owner.
 - b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
2. Consolidation of proceedings. When an applicant applies for more than one (1) type of land use or development permit (e.g., Type II and III) for the same one (1) or more parcels of land, the proceedings shall be consolidated for review and decision.
 - a. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order.: The Council, Planning Commission, or the City Recorder.
 - b. When proceedings are consolidated:
 - i. The notice shall identify each application to be decided;
 - ii. The decision on a plan map amendment shall precede the decision on a proposed land-use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and
 - iii. Separate findings and decisions shall be made on each application.
3. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:
 - a. Acceptance. When the City receives an application, the City Recorder, or the City Recorder's designee, shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:
 - i. The required form;
 - ii. The required fee;
 - iii. 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.
 - i. Review and notification. After the application is accepted, the City Recorder, or the City Recorder's designee, shall review the application for completeness. If the application is incomplete, the City Recorder, or the City Recorder's designee, shall

notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days to submit the missing information;

- ii. When application deemed complete for review. In accordance with the application submittal requirements of this Chapter, the City Recorder, or the City Recorder's designee, of all required information shall deem the application complete upon the receipt. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Recorder, or the City Recorder's designee, in (i) above. For the refusal to be valid, the refusal shall be made in writing and received by the City Recorder, or the City Recorder's designee's, no later than 14 days after the date on the City Recorder's, or the City Recorder's designee's, letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on the 31st day after the City Recorder, or the City Recorder's designee, first accepted the application.
 - iii. Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first accepted.
4. Changes or additions to the application during the review period. Once an application is deemed complete:
- a. All documents and other evidence relied upon by the applicant shall be submitted to the City Recorder, or the City Recorder's designee, at least 7 days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by the City Recorder, or the City Recorder's designee, and transmitted to the City Council (when applicable) but may be too late to include with the staff report and evaluation;
 - b. When documents or other evidence are submitted by the applicant during the review period, but after the application is deemed complete, the City Recorder, or the City Recorder's designee, Planning Commission or City Council shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application;
 - c. If the assigned review determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see "d", below), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;
 - d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions, at the choice of the applicant:
 - i. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;

- ii. Suspend the existing application and allow the applicants to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (Section A., above) on the existing application. If the applicant does not consent, the City shall not select this option;
- iii. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its decision-making process without considering the new evidence.
- e. If the applicant submits a new application that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

E. City Recorder's Duties. The City Recorder, or the City Recorder's designee, shall:

- 1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions;
- 2. Accept all development applications which comply with Chapter 4.1 Section 7;
- 3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provide findings of conformance and/or nonconformance with the criteria. The staff report should also provide a recommended decision of: approval; denial; or approval with specific conditions that ensure conformance with the approval criteria;
- 4. Prepare a notice of the proposal decision:
 - a. In the case of an application subject to a Type I or II review process, the City Recorder, or the City Recorder's designee, shall make the staff report and all case-file materials available at the time that the notice of the decision is issued;
 - b. In the case of an application subject to a hearing (Type III or IV process), the City Recorder, or the City Recorder's designee, shall make the staff report available to the public at least seven (7) days before the scheduled hearing date. The case file materials shall be available when notice of the hearing is mailed.
- 5. Administer the hearings process;
- 6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law;
- 7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable: a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and
- 8. Administer the appeals and review process.

F. Amended Decision Process.

- 1. The City Recorder, or the City Recorder's designee, may issue an amended decision after issuing the notice of final land decision but before the appeal period has expired. If such a decision is amended, the decision shall be issued within ten (10) business days after the

original decision would have become final, but in no event beyond the 120-day period required by state law. A new 14-day appeal period shall begin on the issuance day of the amended decision.

2. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
3. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures contained in Chapter 4.6. All other requested changes to decisions that do not qualify as minor or major modifications shall follow the appeal process.

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 12 months from the date the final City action is made denying the application, unless, there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the Mayor.

4.1.8 Special Procedures.

A. **Expedited Land Divisions.** An Expedited Land Division (“ELD”) shall be defined and may be used as in ORS 197.360 that is expressly adopted and incorporated by reference here.

1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit their right to use it;
2. Review procedure. An ELD shall be reviewed in accordance with the procedures in ORS 197.365;
3. Appeal procedure. An appeal of an ELD shall be in accordance with the procedures in ORS 197.375.

Chapter 4.2 Site Design Review

Sections

- 4.2.1 Purpose**
- 4.2.2 Applicability**
- 4.2.3 Site Design Review – Application Submission Requirements**
- 4.2.4 Site Design Review – Approval Criteria**
- 4.2.5 Bonding and Assurances**
- 4.2.6 Development in Accordance with Land Use and Permit Approval**

4.2.1 Purpose.

The Site Design Review Process is intended to:

- A. Provide rules, regulations and standards for efficient and effective administration of site development review.
- B. Carry out the development pattern and plan of the City and its comprehensive plan policies;
- C. Promote the public health, safety and general welfare;
- D. 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 provisions 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, transportation options, and detailed, human-scaled design; and
- H. Protect and enhance water quality.

4.2.2 Applicability.

- A. Site Design Review shall be applicable to all new developments, major remodeling of existing developments, and change of occupancy, as defined by the Building Code, and/or change of use for commercial and industrial developments except:
 - 1. Single Family detached dwellings.
 - 2. A duplex.
 - 3. Any commercial or industrial remodel or expansion that does not exceed 25 percent of the total square footage of the existing structure.
 - 4. change of occupancy, or commercial or industrial remodel, that does not intensify the use of the property by increasing the number of customers, vehicle and pedestrian traffic to the site, parking requirements, etc.
- B. Site design review shall be decided using a Type II procedure except in the case of a site design review for a personal storage structure where the application shall be decided using a Type I procedure.

4.2.3 Site Design Review - Application Submission Requirements

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

- A. **General Submission Requirements.** The applicant shall submit an application containing all of the general information required by Chapter 4.1 Section 4 (Type II application), as applicable.
- B. **Site Design Review Information.** An application for site design review shall include the following information, as deemed applicable by the City Recorder, or the City Recorder's designee:
 - 1. Existing Conditions Plan. At a minimum the site map shall contain the following:
 - a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the City, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;

- b. Topographic contour lines at intervals determined by the City;
 - c. Identification of slopes greater than 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 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;
 - f. Resource areas, including riparian corridors, marsh and wetland areas, streams, wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection;
 - g. Site features, including existing structures, pavement, areas having unique views, and drainage ways, and ditches;
 - h. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
 - i. The location, size and species of trees and other vegetation having a caliper (diameter) of four (4) inches or greater at four (4) feet above grade;
 - j. North arrow, scale, names and addresses of all persons listed as owners on the most recently recorded deed;
 - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable;
 - l. Other information, as determined by the City Recorder, or the City Recorder's designee. 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. Features identified on the existing site analysis map which are proposed to remain on the site;
 - c. Features identified on the existing conditions Plan if any, which are proposed to be removed or modified by the development;
 - d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
 - e. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
 - f. A calculation of the total impervious surface before development and the total effective impervious surface after development;
 - g. The location and dimensions of all storm water or water quality treatment, infiltration and/or retention facilities.
 - h. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;
 - i. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops, as applicable);

- j. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
 - k. Loading and service areas for waste disposal, loading and delivery;
 - l. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements, as applicable;
 - m. Location, type, and height of outdoor lighting;
 - n. Location of mailboxes, if known;
 - o. Name and address of project designer, if applicable;
 - p. Locations, sizes, and types of signs.
 - q. Other information, determined by the City Recorder, or the City Recorder's designee. 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 with building height and width dimensions;
 - b. Building materials, color and type;
 - c. The name of the architect or designer.
 4. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for developments which would result in the grading (cut or fill) of 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 Chapter 3.4.
 5. Landscape plan. A landscape plan is required and shall show the following:
 - a. The location and height of existing and proposed fences and other buffering or screening material;
 - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
 - c. The location, size, and species (common & botanical names) of the existing and proposed plant materials (at time of planting);
 - d. Existing and proposed building and pavement outlines;
 - e. Specifications for soil at time of planting, irrigation if plantings are not drought tolerant (may be automatic or other approved method or irrigation) and anticipated planting schedule.
 6. Sign drawings shall be required in conformance with the City's Sign Code (Chapter 3.5 Section2).
 7. Copies of all existing and proposed restrictions and covenants.
 8. Letter or narrative report documenting compliance with the applicable approval criteria contained in Chapter 4.2 Section 4.

4.2.4 Site Design Review Approval Criteria.

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

- A. The application is complete, as determined in accordance with Chapter 4.1:Types of Applications and Chapter 4.2. Section 3, above.
- B. The application complies with all of the applicable provisions of the underlying Land Use Zone (Chapter 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, and other special standards as may be required for certain land uses;
- C. The applicant shall be required to upgrade any existing development that does not comply with the applicable land use zone standards, in conformance with Chapter 5.1 of this code;
- D. The application complies with the Design Standards contained in Chapter 3. All of the following standards shall be met:
 - 1. Chapter 3.1 - Access and Circulation;
 - 2. Chapter 3.2 - Vehicle and Bicycle Parking;
 - 3. Chapter 3.3 - Landscaping, Street Trees, Fences, and Walls;
 - 4. Chapter 3.4 - Accessory Structures;
 - 5. Chapter 3.5 – Other Development Standards;
 - 6. Chapter 3.6 – Surface Water management;
 - 7. Chapter 3.7 – Sensitive Lands (e.g. Flood Hazards);
 - 8. Chapter 3.8 – Public Facilities Standards;
 - 9. Chapter 3.9 – Grading and Erosion Control.
- E. Conditions required as part of a Land Division (Chapter 4.3), Conditional Use Permit (Chapter 4.4) or other approval shall be met.
- F. Exceptions to criteria D.1-8, above, may be granted only when approved as a Variance.

4.2.5 Bonding and Assurances.

- A. **Performance Bonds for Public Improvements.** On all projects where public improvements are required, the City shall require a bond in an amount not greater than 100 percent or other adequate assurances as a condition of site development approval in order to guarantee the public improvements.
- B. **Release of Performance Bonds.** The bond or assurance shall be released when the City Recorder, or the City Recorder's designee, finds the completed project conforms to the site development approval, including all conditions of approval.

4.2.6 Development in Accordance with Land Use Decision and Permit Approval.

Developments shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., site design review approval) and building permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Chapter 4.2 Section 6. Site Design Review approval shall be subject to all of the following standards and limitations:

- A. **Modifications to Approved Plans and Developments.** Minor modifications of an approved plan or existing development, as defined in Chapter 4.6, shall be processed as a Type I procedure and require only Site Review. Major modifications, as defined in Chapter 4.6, shall be processed as a Type II procedure and shall require site design review. For information on Type I, and Type II procedures, please refer to Chapter 4.1. For Modifications approval criteria, please refer to Chapter 4.6.
- B. **Approval Period.** Site Design Review approvals shall be effective for a period of one (1) year from the date of approval. The approval shall lapse if:
1. A building permit has not been issued within a one-year period; or
 2. Construction on the site is in violation of the approved plan.
- C. **Extension.** The City Recorder, or the City Recorder's designee, shall, upon written request by the applicant, grant an extension of the approval period not to exceed one (1) year; provided that:
1. No changes are made on the original approved site design review plan;
 2. The applicant can show intent of initiating construction on the site within the one (1) year extension period;
 3. No changes occurred to the applicable Code provisions on which the City based its approval. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site design review shall be required; and
 4. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one (1) year of site design approval was beyond the applicant's control.
- D. **Phased Development.** Phasing of development may be approved with the Site Design Review application, subject to the following standards and procedures:
1. A phasing plan shall be submitted with the Site Design Review application.
 2. The City 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 three (3) years without reapplying for site design review.
 3. Approval of a phased site design review proposal requires satisfaction of all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Chapter 4.2 Section 4. A temporary public facility is any facility not constructed to the applicable City or district standard, subject to review by the City Engineer.
 - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and an application for phasing may be approved after Site Design Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 4.6).

Chapter 4.3 Land Divisions, Replats and Property Line Adjustments

Sections

- 4.3.1 Purpose**
- 4.3.2 General Requirements**
- 4.3.3 Preliminary Plat Submission Requirements**
- 4.3.4 Approval Criteria: Preliminary Plat**
- 4.3.5 Final Plat Submission Requirements and Approval Criteria**
- 4.3.6 Public Improvements**
- 4.3.7 Performance Guarantee**
- 4.3.8 Filing and Recording**
- 4.3.9 Replats**
- 4.3.10 Property Line Adjustments**

4.3.1 Purpose.

The purpose of this Chapter includes all of the following and is to:

- A. Provide rules, regulations and standards governing the approval of property line adjustments/s, partitions, and subdivisions and planned unit developments. Units of land shall only be created or reconfigured in conformance with the standards of this Chapter and ORS 92.
- 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.

4.3.2 General Requirements.

- A. **Subdivision, Partition and Replat Approval through Two-step Process.** Applications shall be processed through a two-step process:
 - 1. Preliminary plats for partitions shall be processed as a Type II application. Preliminary plats for subdivision shall be processed as a Type III application. The preliminary plat shall be approved before the final plat can be submitted for approval consideration; and
 - 2. Upon approval of the preliminary plat and satisfaction of all applicable conditions, the final plat shall be processed as a Type I application.
- B. **Compliance with ORS Chapter 92.** All subdivision and partition proposals shall be in conformance with state regulations set forth in Oregon Revised Statutes (ORS) Chapter 92, Subdivisions and Partitions.
- C. **Future Re-division Plan.** When subdividing or partitioning tracts into large lots (i.e., greater than two (2) times or 200 percent the minimum lot size allowed by the underlying land use zone), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use zone and this Code. A re-division plan shall be submitted which identifies:
 - 1. Potential future lot division(s) in conformance with 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.
 - 3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the plan area may be required to provide needed secondary access and circulation.

- D. **Temporary Sales Office.** A temporary sales office in conjunction with a subdivision may be approved as set forth in Chapter 4.9 Section 1, Temporary Uses.
- E. **Modifications and Extension.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.6: Modifications. The City Recorder, or City Recorder's designee, shall, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one (1) year, provided that:
1. Any changes to the preliminary plat follow the procedures in Chapter 4.6;
 2. The extension request is made before the expiration of the original plan;
 3. The applicant has submitted written intent to file a final plat within the one-year extension period;
 4. An extension of time will not prevent the lawful development of abutting properties.
- F. **Phased Development.**
1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be greater than three (3) years without reapplying for a preliminary plat;
 2. The criteria for approving a phased land division proposal are:
 - a. Public facilities shall be constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements. A temporary public facility is any facility not constructed to the applicable City or district standard;
 - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
 - d. The application for phased development approval shall be reviewed concurrently with the preliminary plat application and the decision may be appealed in the same manner as the preliminary plat.

4.3.3 Preliminary Plat Submission Requirements.

- A. **Preliminary Plat Information.** A preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:
1. General information;
 2. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in Marion County (please check with County Surveyor);
 3. Date, north arrow, and scale of drawing;
 4. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
 5. Names, addresses and telephone numbers of the owners, designer, and engineer or surveyor if any, and the date of the survey; and

6. Identification of the drawing as a “preliminary plat”.
7. Site analysis:
 - a. Streets: Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;
 - b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
 - c. Utilities: Location and identity of all utilities on and abutting the site. If water mains are not on or abutting the site, indicate the direction and distance to the nearest ones;
 - d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding ten (10) percent and at 2-foot intervals for ground slopes of less than ten (10) percent. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than five (5) percent;
 - e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
 - f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
 - g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, Chapter 3.7 and relevant portions of the Comprehensive Plan);
 - h. Site features, including existing structures, pavement, areas having unique views, drainage ways, and ditches;
 - i. Designated historic and cultural resources on the site and adjacent parcels or lots;
 - j. The location, size and species of trees having a caliper (diameter) of four (4) inches or greater at four (4) feet above grade in conformance with Chapter 3.3;
 - k. North arrow, scale, name and address of owner;
 - l. Name of address of project designer, if applicable; and
 - m. Other information, as deemed appropriate by the City Recorder, or the City Recorder’s designee, to address required standards or applicable criteria. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
8. Proposed improvements:
 - a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts which are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
 - b. Easements: location, width and purpose of all easements;
 - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all lots and tracts;

- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use;
 - e. 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.);
 - f. The proposed source of domestic water;
 - g. The location and dimension of all storm water or water quality treatment, infiltration and/or retention facilities;
 - h. The proposed method of sewage disposal, and method of surface water drainage and treatment if required;
 - i. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
 - j. Changes to navigable streams or other watercourses. Provision or closure of public access to these areas shall be shown on the preliminary plat, as applicable;
 - k. Identification of the base flood elevation for development greater than three (3) lots or one (1) acre, whichever is less. Evidence of contact with the Federal Emergency Management Agency to initiate a flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain; and
 - l. Evidence of contact with the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 3.7.
- B. **Method of Sewage Disposal.** Documentation of an adequate method of sewage disposal available to serve each lot or parcel shall be provided. If the sewage disposal system utilizes septic tanks, there shall be an approved site for subsurface sewage disposal for each and every lot or parcel prior to final plat approval.
- C. **Impact Study for Subdivisions.** The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the noise impacts of the development. 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. In situations where this Code requires the dedication of real property to the City, 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.
- D. **Determination of Base Flood Elevation.** Where a development site consists of three (3) 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 City Recorder, or the City Recorder's designee.
- E. **Future Re-division Plan.** When creating large lots or parcels (i.e., greater than two (2) times or 200 percent the minimum lot size allowed by the underlying land use zone), the City shall require that the lots or parcels be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use zone and this Code. A re-division plan shall be submitted which identifies:

1. Potential future land division(s) in conformance with 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.
3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the plan area may be required to provide needed secondary access and circulation.

4.3.4 Approval Criteria: Preliminary Plat.

- A. **General Approval Criteria.** The City shall not approve a preliminary plan for a proposed subdivision, partition or replat without findings that the following criteria are satisfied:
 1. The proposal complies with applicable provisions of the underlying land use district;
 2. All lots or parcels have sufficient area for intended structures and uses considering setbacks, access, terrain, and spacing required for water supply and sewage disposal.
 3. The proposal allows for the development of adjacent property in accordance with the provisions of this code;
 4. The proposal complies with the applicable provisions of Chapter 3: Design Standards.
 5. Required public facilities have adequate capacity, as determined by the City, to serve the proposed subdivision, partition or replat.
- B. **Conditions of Approval.** The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties.
- C. **Modifications and Extension.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.6: Modifications. The City Recorder, or the City Recorder's designee, shall, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one (1) year, provided that:
 1. Any changes to the preliminary plat follow the procedures in Chapter 4.6;
 2. The extension request is made before the expiration of the original plan;
 3. The applicant has submitted written intent to file a final plat within the one-year extension period;
 4. An extension of time will not prevent the lawful development of abutting properties.

4.3.5 Final Plat Submission Requirements and Approval Criteria.

- A. **Submission Requirements.** Final plats shall be reviewed and approved by the City before recording with Marion County. The applicant shall submit the final plat within one (1) year of the approval of the preliminary plat. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the City Recorder, or the City Recorder's designee.

- B. **Approval Criteria.** By means of a Type I procedure, the City Recorder, or the City Recorder's designee, 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 preliminary plat, and all conditions of approval have been satisfied;
 2. All public improvements required by the preliminary plat have been installed and approved by the City. Alternatively, the developer has provided a performance guarantee in accordance with Chapter 4.3 Section 6.
 3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
 4. The streets and roads held for private use have been approved by the City as conforming to the preliminary plat;
 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, storm drainage, and water supply systems;
 6. The applicant has provided copies of all recorded homeowners association Codes, Covenants, and Restrictions (CC&Rs); 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. Certification by the City or service district, as applicable, that water service is available to each and every lot depicted on the plat; or bond, contract or other assurance has been provided by the developer to the City that such services will be installed in accordance with Chapter 3.8: Public Facilities.
 8. If the sewage disposal system of the subdivision utilizes septic tanks, there shall be an approved site for subsurface sewage disposal by Marion County Building Inspection for each and every lot or parcel prior to final plat approval.

4.3.6 Public Improvements.

Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the developer may provide a performance guarantee, which shall comply with the following:

4.3.7 Performance Guarantee.

- A. **Performance Guarantee Required.** A performance guarantee shall consist of 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.
- B. **Determination of Sum.** The sum of the assurance of performance shall be determined by a registered professional engineer, subject to review and approval by the City, as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

- C. **Itemized Improvement Estimate.** The developer shall furnish to the City an itemized improvement estimate, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.
- D. **Agreement.** An agreement between the City and developer shall be recorded with the final plat that stipulates all of the following:
1. Specifies the period within which all required improvements and repairs shall be completed;
 2. A provision that if work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the applicant;
 3. Stipulates the improvement fees and deposits that are required.
 4. Provides for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.
- The agreement may be prepared by the City, or in a letter prepared by the applicant. It shall not be valid until signed and dated by both the applicant and the Mayor.
- E. **When Developer Fails to Perform.** In the event the developer fails to carry out all provisions of the agreement and the City has un-reimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.
- F. **Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

4.3.8 Filing and Recording.

- A. **Filing plat with County.** Within 60 days of the City approval of the final plat, the applicant shall submit the final plat to Marion 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 before 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 the County surveyor in the manner provided by ORS Chapter 92 approves it.

4.3.9 Replats.

The reconfiguration of lots, parcels and easements in an existing subdivision or partition plat may be granted in accordance with the provisions of this section. The relocation of a common boundary line between two lots or parcels within a recorded subdivision or partition shall be considered a property line adjustment subject to Chapter 4.3 Section 9.

- A. A replat shall comply with the provisions of Chapter 4.3. Sections 3 through 4.3.7 with the following exceptions:
1. The word "Replat" shall be shown in the title block;
 2. The name or reference number of the previous plat and any additional recording information shall be retained in the title of the replat;

3. Blocks, lots/parcels and portions thereof which are being replatted shall be identified where applicable; and
4. Original plat information being deleted, abandoned or changed by the replat shall be shown lightly sketched or dotted on the drawing with a note of explanation.

4.3.10 Property Line Adjustments.

The relocation or elimination of all or a portion of a common property line between abutting properties may be granted in accordance with the provisions of this section. The property line adjustment provisions of this section shall not apply to a property line adjustment affecting more than two abutting units of land. A property line adjustment is not considered a development action for purposes of determining whether right-of-way dedication or improvement is required.

- A. **Submission Requirements.** Property Line Adjustments shall be processed as a Type I application. The application shall include the following:
 1. A scale drawing prepared by a licensed surveyor or engineer showing all existing and proposed property lines and dimensions, footprints of existing structures with setbacks to the existing and proposed property lines noted, location and dimensions of driveways and public and private streets within or abutting the subject lots; location of significant vegetation as defined and mapped in Chapter 3.2. Section 3; and
 2. A copy of the deed or other recorded instrument showing ownership of the affected properties; and
 3. Documentation from Marion County Building Inspection that each lot or parcel retains, or can accommodate, adequate subsurface sewage disposal; and
 4. Other information as deemed appropriate by the City Recorder, or the City Recorder's designee, to address required standards or applicable criteria.
- B. **Criteria for Preliminary Approval.** The City shall not grant preliminary approval for a property line adjustment without findings that the following criteria are satisfied:
 1. Land Use District. All lots and parcels comply with applicable provisions of the underlying land use district.
 2. Sufficient Area. All lots and parcels have sufficient area for existing and intended structures and uses considering setbacks, access, and spacing required for water supply and sewage disposal.
 3. Nonconforming Properties. Lots, parcels, and structures that do not meet minimum dimensional standards of the underlying zone are not made more nonconforming.
 4. Access. All lots and parcels comply with Chapter 3.1: Access and Circulation.
- C. **Final Approval.** In order to obtain final approval of a property line adjustment, the following requirements shall be completed:
 1. Within one (1) year of the preliminary approval, a survey or plat (as required by the Marion County Surveyor) conforming to the preliminary approval and complying with ORS 209.250 must be submitted to the City for approval by the City Recorder, or the City Recorder's designee.
 2. The survey or plat must be filed with the County Surveyor and recorded with the County Recorder within 60 days of final approval by the City. A copy of the filed and recorded survey or plat must be submitted to the City within 15 days of recording, and prior to issuance of any building permits on the adjusted properties.

- D. **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 (1) year provided that:
1. No substantive changes are made to the preliminary plan, as approved by the City;
 2. No changes occurred in the applicable Code or plan provisions on which the City based its approval. In the case where the property line adjustment conflicts with a code change, the extension shall be denied; and
 3. The extension request is made before expiration of the original one (1) year preliminary approval.

Chapter 4.4 Conditional Use Permits

Sections

- 4.4.1 Purpose**
- 4.4.2 Approval Process**
- 4.4.3 Application Submission Requirements**
- 4.4.4 Criteria, Standards and Conditions of Approval**
- 4.4.5 Additional Development Standards for Conditional Use Types**
- 4.4.6 Expiration of Approval – Standards for Extension of Time**
- 4.4.7 Discontinuance of a Conditional Use**
- 4.4.8 Transfer of Conditional Use**

4.4.1 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: Land Use Zones. The purpose of Chapter 4.4 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

4.4.2 Approval Process.

- A. **Initial Application.** An application for a new conditional use shall be processed as a Type III procedure (Chapter 4.1 Section 5). The application shall meet submission requirements in Chapter 4.4 Section 3, and the approval criteria contained in Chapter 4.4. Section 4.
- B. **Modification of Approved or Existing Conditional Use.** Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 4.5: Modifications.

4.4.3 Application Submission Requirements.

In addition to the submission requirements required in Chapter 4.1, an application for conditional use approval must include the following information (A-H), as applicable. For a description of each item, please refer to Chapter 4.2 Section 3: Site Design Review Application Submission Requirements.

- A. Existing site conditions;
- B. Site plan;
- C. 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.
- H. Narrative report or letter documenting compliance with all applicable approval criteria in Chapter 4.4 Section 4.

4.4.4 Criteria, Standards and Conditions of Approval.

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

A. Criteria.

- 1. The proposed use is identified as a conditionally permitted use in the zone;
- 2. 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;
- 3. 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 or approval; and
- 4. All required public facilities have adequate capacity to serve the proposal.

5. The proposed use, as conditioned, will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood, or adversely affect the health or safety of persons working or residing in the neighborhood of the property of the applicant.
- B. **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 of lot coverage, and/or location on the site;
 5. Designating the size, number, location and/or design of vehicle access points or parking areas;
 6. Requiring street right-of-way to be dedicated and street(s) sidewalks, curbs, planting strips, pathways, or trails to be improved;
 7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
 8. Limiting the number, size, location, height and/or lighting of signs;
 9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
 10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
 11. Requiring and designating the size, height, location and/or materials for fences;
 12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands (Chapter 3.7);

4.4.5 Additional Development Standards for Conditional Use Types.

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

4.4.6 Expiration of Approval--Standards for Extension of Time.

- A. Conditional use permit approval shall be effective for a period of one (1) year from the date of approval. If the conditional use has not begun within the one-year period, the approval shall expire.
- B. Conditional use permit approval shall be voided immediately if the use established on site does not substantially conform to the approval granted by the Planning Commission.
- C. The City Recorder, or the City Recorder's designee, shall, upon request by the applicant and payment of the required fee, grant an extension of the approval for a period not to exceed six

(6) months. Requests for extension of approval shall be submitted in writing 30 days before the expiration date of the approval period.

4.4.7 Discontinuance of a Conditional Use.

Discontinuance of a conditional use for a period of six (6) consecutive months shall render the conditional use permit approval null and void.

4.4.8 Transfer of Conditional Use.

Unless otherwise provided in the final decision granting the conditional use, an approved conditional use shall run with the land, and shall automatically transfer to any new owner or occupant.

Chapter 4.5 Special Standards for Certain Conditional Uses

Sections

- 4.5.1** Purpose
- 4.5.2** Boat, Camper and Trailer Storage
- 4.5.3** Manufactured Home Parks
- 4.5.4** Recreational Vehicle Parks
- 4.5.5** Planned Unit Developments
- 4.5.6** Wireless Communication Facilities

4.5.1 Purpose.

The purpose of this chapter is to provide additional requirements and development standards for certain conditionally permitted uses. Development of these specific conditional uses requires compliance with the identified standards contained in this chapter; otherwise, a variance is necessary.

4.5.2 Boat, Camper and Trailer Storage. Where permitted as a conditional use, storage areas shall meet the following use and development standards:

1. No sales, or retail business or service may be operated in connection therewith, nor shall any substantial maintenance or repair of any vehicle or equipment stored thereon be conducted on the premises, whether by the owner or otherwise, unless such work be performed wholly within a building.
2. An ornamental sight-obscuring fence, or wall, having a height of at least five (5) feet, or a compact evergreen hedge not less than three (3) feet in height when planted and capable of reaching at least six (6) feet within three (3) years, shall be placed at the front yard setback line and at the setback line of any other yards adjacent to a street, and along all other property lines. Provided, however, that the Planning Commission or City Council may require additional screening and landscaping where topography or other special conditions indicate such to be necessary to adequately screen the area.
3. Outdoor lighting shall be directed away from residential property and public streets.
4. At a minimum, the lot shall be surfaced with an oiled mat or graveled and maintained in a manner so that the dust shall be reasonably controlled.
5. Buildings used in conjunction with storage shall conform to all yard setbacks for the main buildings in an RS zone, and buildings shall be architecturally designed and constructed of materials compatible with the residential development of the subdivision or neighborhood.

4.5.3 Manufactured Home Parks. Where identified as a conditional use, manufactured home parks shall comply with the following standards. The Planning Commission or City Council may prescribe such additional conditions for manufactured home parks as the particular circumstances may require for the protection of the health, safety and welfare of the residents in the vicinity of the development consistent with the intent and provisions of this ordinance.

- A. **Application.** Any person wishing to establish, enlarge or alter a manufactured home park shall file written application with the City setting forth the description of the property, a layout or plat plan, a statement indicating how the requirements of Chapter 4.5 Section 3, section B of this Ordinance will be met, and any other information requested by the City. A fee shall be paid upon filing the application. The application is processed as a Conditional Use (Type III) application.
- B. **General Development Standards.** Unless otherwise approved as a variance, the following standards shall apply:
 1. Density. The maximum density of a manufactured home park shall not exceed six (6) units per gross acre.
 2. Area. The minimum manufactured home space shall be 3,500 square feet, provided a public sewage system is available. Otherwise, the Oregon Health Department and the Oregon Department of Environmental Quality shall determine the minimum area.

3. Yards. Yards adjacent to a public street shall be a minimum of fifteen (15) feet. Yards adjacent to any property line other than along a street shall be a minimum of at least five (5) feet.
4. Driveways. Access drives shall be provided to each space, shall be continuous, shall connect with a public street, shall have a minimum width of 20 feet, and shall be paved with an asphalt or concrete surface to the same cross-sectional requirements established for local City streets. In addition, if parking is permitted along the driveway, a minimum width of 30 feet is required. All driveways shall be adequately designed to permit safe, easy access by emergency vehicles.
5. Parking. A minimum of two (2), off-driveway parking spaces shall be provided for each manufactured home space, or one (1) community parking space shall be provided for second vehicles
6. Accessory Buildings. Accessory Buildings shall not be placed closer than five (5) feet to any property line. Accessory buildings placed on a manufactured home space shall be sited in a manner so as not to hinder or restrict access to the side and rear yard areas adjacent to the manufactured home.
7. Walks. Provisions shall be made for a walk from each manufactured home to each driveway. All walks must be hard-surfaced, well-drained and not less than 36 inches in width. All walks adjacent to driveways and thoroughfares shall be curb line walks.
8. Lighting. Common driveways and walkways must be adequately lighted. Such lighting shall be under the control of park management.
9. Open Space. A minimum of at least 5,000 square feet per 25 manufactured home spaces or portion thereof shall be provided for a recreational play area, group and/or community activities. Perimeter landscaping may be required by the City who may require these areas to be protected from streets, parking areas, or the like, by a fence or the equivalent, at least 30 inches in height. Unless otherwise approved, no required open space area shall contain less than 5,000 square feet. Building or other structures specifically designed for community activities shall occupy no more than 40 percent of the designated open space.
10. Fences. The City may require the placement of a sight-obscuring fence, wall or hedge between the manufactured home park and adjacent properties.
11. Signs. All signs must follow the standards stated in Chapter 3.5 Section 2.
12. Patios. Each manufactured home space shall have a slab or patio of concrete asphalt, or flagstone or similar substance not less than 20 feet in length and ten (10) feet in width adjacent to each manufactured home parking site.
13. Minimum Width and Length. The minimum manufactured home space width shall be 30 feet. The minimum length shall be 40 feet.
14. Boundaries Of Space. The boundaries of each manufactured home space shall be clearly marked by a fence, landscaping, or by permanent markers.
15. Water, Sewer, And Surface Drainage. Adequate provisions shall be made for an ample supply of safe and potable water, and for sewage disposal and surface drainage. These plans shall have the approval of the Oregon Health Division, Oregon Department of Environmental Quality, Public Works Superintendent and the City Engineer before the City approves a manufactured home park. All meters, sewer and water lines shall be inspected while being installed and the installation shall meet normal City standards.

16. Manufactured Home Space Coverage. Not more than 45 percent of a manufactured home space may be occupied by a manufactured home and its accessory structures, whether or not it is attached to the manufactured home.
17. Storage Area. A storage space in a building having a gross floor area of at least 60 square feet shall be constructed and completed prior to occupancy of the manufactured home for storing the outdoor equipment and accessories necessary to residential living. Such structures shall comply with all setback requirements, and shall be subject to all of the applicable provisions of State Statutes and the Uniform Building Code. Accessory buildings that are placed on a manufactured home space shall be sited in a manner to not hinder or restrict access to the side and rear yard areas adjacent to the manufactured home.
18. Appearance. A caretaker, owner or manager shall be responsible for ensuring that the manufactured home park, its facilities and equipment are kept in a clean, orderly and sanitary condition.
19. Skirting. All manufactured homes shall either be situated on a continuous foundation meeting the approval of the Building Code, or have skirting placed around the exterior of the home.
20. Utilities. All utility services shall be placed underground. The applicant shall furnish the City with proper easements for reading the meters and for inspecting water and sewer lines. The park owner to City standards shall maintain all meters and water and sewer lines.
21. No part of any manufactured home park shall be used for the parking or storage of any heavy equipment, or trucks with a rated capacity exceeding two (2) tons.

C. Siting Requirements. The minimum distance between a manufactured home and:

1. Any other manufactured home shall be 15 feet.
2. Any building or accessory structure on an adjacent space shall be ten (10) feet.
3. Any property line (excluding manufactured home space boundaries) shall be five (5) feet.
4. Any public street shall be 15 feet.
5. Any common driveway or common walk (excluding those in a manufactured home space) shall be five (5) feet.

D. Additions to Manufactured Homes. Carports, cabanas, ramadas, awnings, or other attached structures, whether defined herein or not, which are attached to the manufactured home, shall conform to Building Code requirements. Such additions shall be considered as a portion of the manufactured home for determining the extent of lot coverage, setback lines and other applicable provisions.

E. Option Siting. In lieu of the minimum requirements set forth in Section C, the developer may show how the manufactured home and any accessory structure will be located on any or all sites that do not conform to such requirements, except the required lot area shall not be diminished. Optional siting may include locating the manufactured homes and structures on manufactured home space boundary lines and manufactured homes and accessory structures may be attached under this provision. When the City has approved the siting plans, such plans shall be the basis on which the permits for the manufactured homes and accessory structures will be issued. Optional sitings will be shown on the plan that is to be used as the basis for the public hearing.

- F. **Parking of Manufactured Homes.** Manufactured home parks in an RS or RM, zone may accommodate only manufactured homes, RVs, and tiny homes that meet the definitional requirements in Chapter 1.3. A manufactured home shall not remain overnight in a manufactured home park unless it is parked in a manufactured home space or in an area specifically designated for such use. Not more than one (1) manufactured home will be parked at one time in a manufactured home space.
- G. **Expansion or Alteration of Manufactured Home Parks.** The following shall apply for the expansion of an existing manufactured home park:
1. Existing parks may be expanded or altered after conditional use approval is obtained. An application for the expansion of a park shall be processed in the same manner as an application for a new manufactured home park.
 2. In granting approval of a manufactured home park expansion, those portions of the existing park that do not comply with the current standards may be required to be improved to these current standards.
- H. **Building Code and Building Permits.** All structures within a manufactured home park shall comply with the provisions of the City building code. Building permits shall be obtained before construction of any portion of the manufactured home park facilities.

4.5.4 Recreational Vehicle Parks.

Where identified as a conditional use, recreational vehicle parks shall comply with the following standards. Further compliance with the following standards is evidence the proposal complies with Sections 6.030 (C), Chapter 4.4 of this zone code.

- A. **Application.** The establishment, enlargement or alteration of a recreational vehicle park shall require a conditional use permit. Application procedures shall comply with the requirements in Chapter 4.4.
- B. **General Development Standards.** Unless otherwise approved as a variance, the following standards shall apply:
1. Recreational vehicle parks shall not be occupied by manufactured homes, except for one manufactured home for an operator/owner.
 2. Access roads shall be paved or gravel, and shall have direct access to a paved or gravel street.
 3. Park roadways shall be a minimum of 20 feet in width, curb to curb, provided that if parking is to be allowed on either side of the street, the minimum width shall be increased by seven (7) feet for each side of the street on which parking is to be allowed. Parking shall be parallel.
 4. Camping supplies and convenience foods may be sold within a building with proper licensing and signage.
 5. The entrance shall be designed with an adequate parking area for those registering, checking out, or stopping at the convenience store without blocking access to the designated recreational vehicle spaces; and without causing congestion on adjacent streets.
 6. All outdoor lighting shall be directed away from adjacent residential property and streets.

7. A dump station for discharging wastewater-holding tanks shall be provided unless each space is equipped with a septic/sewer connection.

4.5.5 Planned Unit Developments.

A planned unit development may be permitted in RS and RM zones as a conditional use, subject to the conditions and provisions as herein set forth. The City may prescribe such additional conditions for the planned unit developments as the particular circumstances may require for the protection of the health, safety and welfare of the residents in the vicinity of the development consistent with the intent and provision of this Ordinance.

- A. **Purpose.** The purpose of a planned unit development (PUD) is to add flexibility in development of land to address topographic, economic or aesthetic factors encountered in the development process. It is intended to encourage variety in the development pattern of the community and the use of a creative approach to land development. It is further intended to facilitate adequate and economical provisions for roads and public facilities, and to preserve the natural and scenic features of a site.
- B. **Application Procedure.** The application is processed as Type III application.
 1. **Letter of Intention.** The applicant shall inform the City in writing of the intention to apply for a PUD. A sketch plan and narrative must accompany the letter of intention with sufficient detail to outline the proposed PUD.
 2. **Pre-Application Conference.** The City Recorder, or the City Recorder's designee, shall schedule a pre-application conference with the applicant no more than 14 days following receipt of the letter of intention. Representatives of public and private agencies may attend or may submit such information and recommendations that will assist the applicant in preparing the development plan. The applicant or City Recorder, or the City Recorder's designee, may request additional meetings.
- C. **Submittal Requirements.** A complete application shall include the applicable fee and shall include the following documentation.
 1. PUD map that illustrates the following information.
 - a. Name of the development tract.
 - b. North point, scale and date of preparation. The scale of drawing shall be not less than one (1) inch to 20 feet or more than one (1) inch to 200 feet.
 - c. Names, addresses and telephone numbers of the owner and developer, as well as project planners, surveyor, landscape architect, engineer or any other persons involved with the development.
 - d. A legal description of property boundary.
 - e. Location, width, surface type and names of all existing or platted streets within or adjacent to the property, together with other rights of way, easements, and land subdivision lines.
 - f. Location of existing and proposed utilities on and abutting the tract, including sanitary sewer, storm sewer, and water. Statement of availability of utilities such as telephone, gas and electricity.
 - g. Existing grade and contour (and proposed grade and contour) with contour intervals not exceeding ten (10) feet, also existing location and direction of water courses, wooded areas, ravines, and other nature features as may be pertinent.

- h. A statement of provisions for ultimate ownership and maintenance of all parts of the development, including streets, structures, and open spaces.
 - i. The location of existing structures, vegetation and natural features
 - j. Delineation of development phasing, if any.
 - k. A tabulation of the total land area and percentage thereof designated for various uses.
 - l. Location and approximate dimensions of proposed lots and proposed lot and block numbers.
- D. **Final Plan.** If said preliminary plan is approved, the applicant may proceed to finalize or revise as made necessary by the conditions of approval established by the Planning Commission or City Council. If the applicant proceeds with the final plan, they must simultaneously plat the tract according to the subdivision regulations. The approval of the preliminary planned unit development shall be considered as approval of a preliminary plat, and the applicant shall proceed with the submission of a final subdivision plat as prescribed by the subdivision ordinance for final approval..
- E. **Evaluation Criteria.** Evaluation of the proposed planned unit development shall consider the following and any other considerations it deems necessary in review of the application:
- 1. The capacity of the sanitary sewer system to adequately collect and treat the wastes of the proposed development.
 - 2. Sufficient water is available for the foreseeable needs of the development, and that the development will not cause an unreasonable depreciation of an existing water supply, or deprive or interfere with neighboring users of their water supply.
 - 3. The capacity of the storm drainage system is adequate to dispose of surface runoff.
 - 4. The Idanha-Detroit Rural Fire Protection District is able to provide fire protection with regard to the number and location of fire hydrants, access for fire equipment, placement of structures, and availability of adequate water pressure.
 - 5. The capacity of the school system is adequate to absorb the children expected to inhabit the proposed development without necessitating double sessions, unusual scheduling, or classroom overcrowding.
 - 6. The circulation plan conforms to the City of Detroit Comprehensive Plan and that the capacity of the street system is adequate to provide for the needs of the proposed development without substantially altering existing patterns or overloading the existing street system beyond its planned capacity.
 - 7. The adequacy of parks and playgrounds, whether provided within the proposed development or public parks system, to meet the recreation demands of its inhabitants.
 - 8. The design characteristics of the proposed development conform to the general character of the City or its neighborhood.
 - 9. That there will not be an undesired adverse impact on existing, unique, and irreplaceable life forms such as plants, trees, shrubs, birds, animals, fish or endangered species of any kind.
 - 10. It may also request reports from other agencies, departments or special districts.
- F. **General Development Standards and Requirements.**
- 1. Permitted Uses.

- a. In addition to permitted uses and uses allowed by a conditional use permit in the underlying zone, commercial uses may be allowed in a residential PUD, subject to approval of a conditional use permit. The Planning Commission shall approve a conditional use permit for a commercial use in an approved PUD.
 - b. In addition to satisfying the conditional use permit requirements of this Ordinance, an application for a conditional use permit in a PUD shall demonstrate that:
 - i. The use is primarily for the service and convenience of residents within the PUD; and
 - ii. Such use shall not change or alter the predominate character of the PUD.
 - c. Recreational facilities, including, but not limited to tennis courts, swimming pools and playgrounds.
 - d. Open space uses.
 - e. School, libraries, community halls, and churches.
 - f. Offices, buildings and facilities required for the operation, administration and maintenance of the Planned Unit Development.
2. Minimum Area. The owner or owners of any contiguous tract of land not less than three (3) acres may make application to the City for a planned unit development. The City may permit application on tracts of less acreage where the City determines such proposed development is in consonance with the objectives for development of underutilized tracts within the City.
 3. Density. The total number of dwelling units in a planned unit development in an RS zone shall not exceed 4.64 units per net acre. Net acreage is determined by subtracting the area within the development comprised of interior streets, rights-of-way, open space, etc. In an RM and RC zone, 12 dwelling units per gross acre shall be used in determining the total number of dwelling units allowed.
 4. Height, Lot Coverage, Lot Width, and Setbacks. Structures within a planned unit development must maintain the requirements for height, lot width, and lot coverage of the underlying zoning district. Assumed lot lines between buildings within the interior area of a planned unit development may be partially relieved of setback requirements for the district. The setback of buildings at the perimeter of the planned unit development must maintain the setback requirements for the district.
 5. Off-Street Parking and Loading Areas and Driveways. These features shall be provided as prescribed by Chapter 3.2 of this Ordinance.
 6. Access. Lots or parcels may be accessed via public or private streets, in accordance with the following standards:
 - a. Internal local streets or drives may be private.
 - b. Collector and arterial streets shall be public.
 - c. Local streets that are needed to provide access to adjoining properties shall be public.
 7. Signs. The type, size, and location of signs shall be as required by this ordinance.
 8. Utilities. All utility services shall be underground.

9. Dedication of Facilities. The City may require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for at least the following uses:
 - a. Streets. The City may require that the right-of-way width of streets necessary for the proper development of adjacent properties be dedicated to the City.
 - b. Easements. Easements or rights-of-way necessary for to the orderly extension of public utilities, streets and pedestrian access or walkways may be required as a condition of approval.
10. Required Open Space. A minimum of 15 percent of the gross site area included in the PUD shall be devoted to open space. Such open space may include:
 - a. Areas determined by the City to be suited for park use which are dedicated to the City for public park use;
 - b. Tracts of land owned and maintained by a homeowners' association as private open space; and/or
 - c. Areas of individual lots in which significant features, such as trees, stream corridors, wildlife habitat areas, etc., are preserved through conservation easements or other means deemed suitable by the City Attorney.
11. Maintenance of Open Space Area.
 - a. A homeowners' association shall provide the perpetual maintenance of private open space. Property owners within the planned unit development shall automatically be members of the association. The Articles of such Association that apply to maintenance of the PUD's open space area shall be approved by the Planning Commission prior to final approval of the development.
 - b. Such Articles shall provide for the maintenance of the open space and other common areas by stating how maintenance costs are to be assessed. The Articles shall prescribe the permitted uses of the open space.
 - c. In the event that the entire planned unit development is to remain under one ownership, the developer shall then file a deed restriction between the owners and the City in the deed records of the county providing for a homeowners' Association in the event the property is divided, or any part thereof is sold.
 - d. In lieu of a, b, and c above, the City may require the dedication of all or part of the required open space for public park use when such land is reasonably suited for such purposes in consideration of such factors as size, shape, topography, geology, access, location and applicable Comprehensive Plan policies.
12. The final development plan shall also comply with the following minimum standards:
 - a. Access shall be designed to cause minimum interference with traffic movement on abutting streets.
 - b. The plan shall provide for adequate landscaping and effective screening for off-street parking areas and for areas where the residential use may not be in character with adjacent residential areas. Required yards shall be maintained in grass, trees, and shrubbery.
 - c. The arrangement of buildings, parking area, signs, and other facilities shall be designed and orientated to minimize noise and glare relative to adjoining property.

- d. Artificial lighting, including illuminated signs and parking area lights, shall be so arranged and constructed not to produce direct glare on adjacent property or otherwise interfere with the use and enjoyment of adjacent property.
- G. **Modification of Approved Plan.** Minor modifications of an approved plan that does not deviate by more than ten (10) percent from approved lot size or dimensions, may be approved by the City Recorder, or the City Recorder's designee, without resubmitting an application or requiring a public hearing. The City Recorder, or the City Recorder's designee, may approve a plat modification that exceeds this standard but otherwise substantially conforms to the approved PUD plan subject to a public hearing. All other modifications which do not substantially conform to the approved PUD plan shall be reviewed pursuant to the procedures for initial PUD approval
- H. **Limitations of Resubmission.** No application which has been denied by the Planning Commission shall be resubmitted for a period of one (1) year from such denial, except on approval by a two-thirds (2/3) majority vote of the members of the Planning Commission present and voting.
- I. **Revocation of Permit.** Failure to comply with the final development plan, any condition of approval prescribed, or to comply with a phased development schedule, shall constitute a violation of this Ordinance. In this event, the City may, after providing notice and conducting a public hearing, revoke a Planned Unit Development Permit.
- J. **Expiration.** If substantial construction of a planned unit development has not taken place within two (2) years from the effective date of its approval, the Planning Commission shall review the planned unit development at a public hearing, after notifying the original applicant or their successor, to determine if the permit is to become null and void.

4.5.6 Wireless Communication Facilities.

- A. **Purpose.** The location of Wireless Communication Facilities (WCFs) in the City can and should be accomplished in a manner that minimizes visual impacts, and thereby maintains the rural and natural character of the landscape, by making maximum use of natural vegetative screening; use of colors, textures and other design elements that blend with the site and setting; avoiding locations subject to FAA-required coloring and lighting; encouraging co-location; employing height limitations and setbacks; and avoiding major view corridors.
- B. **Prohibited locations.** All Wireless Communication Facilities are prohibited in all residential zones and within 350 feet of any residential zones. Any existing facilities at the time of annexation or rezoning must be phased out over a period of five (5) years from the date of annexation or rezoning.
- C. **Application process.** In addition to the standard conditional use permit application materials, any request for a wireless communication facility shall include the following items:
 - 1. Eight (8) photo simulations of the proposed facility and equipment enclosure as viewed from residential properties and public right-of-ways at varying distances at locations within a 1,000-foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.
 - 2. Map showing the location and service area of the proposed wireless communication facility and an explanation of the need for the facility.
 - 3. Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant that are close enough to affect service.

4. Site/landscaping plan; showing the specific placement of the wireless communication facility on the site; showing the location of existing structures, trees, and other significant site features; showing type and locations of proposed screening; and the proposed color(s) for the wireless communication facility and equipment enclosure.
5. Signed agreement providing that the applicant shall remove the facility and equipment enclosure within six (6) months of the date it ceases to be operational
6. Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within six (6) months of the date it ceases to be operational, the responsibility for removal falls upon the landowner or contract purchaser.
7. Anticipated capacity of the wireless communication facility (including number and types of antennae which can be accommodated); and the number of additional wireless communication facilities attached that may be co-located on the proposed tower.
8. Evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:
 - a. Written verification or other documentation revealing the availability and /or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.
 - b. Compliance with the requirements of 8a. above may be demonstrated by providing evidence of mailing the following co-location request letter to all other wireless providers licensed to provide service within the City: “Pursuant to the requirements of Chapter 4.5 Section 7 (8a), (*wireless provider*) is hereby providing you with notice of our intent to make application with the City of Detroit to locate a wireless communication facility that will be located at (*location*). In general, we plan to construct a support structure of (*height*) feet in height for providing (*service type*) service. Please inform us whether you have any wireless facilities located within (*distance*) of the proposed facility that may be available for possible co-location opportunities. Please provide us with this information within 15 business days after the date of this letter. Your cooperation is appreciated.”
 - c. Tower type and height of potential co-location facilities.
 - d. Specific reasons why co-location is or is not feasible. Reasons may include but are not limited to the following:
 - i. A statement from a qualified radio engineer indicated whether the necessary service can or cannot be provided by co-location at the identified site(s) by the other provider(s).
 - ii. Evidence that the lessor of the site(s) identified by the other provider(s) either agrees or disagrees to co-location on their property.
 - iii. Evidence that adequate site area exists or does not exist at the site(s) identified by the other provider(s) to accommodate needed equipment and meets all of the site development standards.
9. A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards
 - a. All lattice, monopole, guyed or other freestanding support structures shall be limited to a total height, including antennae, of 150 feet above natural grade.

- b. Lattice, monopole, guyed or other freestanding support structures, antennae associated enclosures and all exterior mechanical equipment, shall be surfaced to be nonreflective. For the purposes of this requirement, a galvanized metal monopole shall be considered nonreflective.
- c. The wireless communication facility including equipment enclosures shall be fenced by a six (6) foot high fence, wall or hedge.
- d. The exterior base of a lattice, monopole, guyed or other freestanding support structure shall be separated from all dwellings and residential accessory structures, not located on the subject property, and residential zones boundaries by a distance equal to one (1) foot greater than the total height of the support structure and antennae. A freestanding support structure may be placed closer to a residential zone boundary where it is demonstrated that location of the proposed facility closer to the boundary will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.
- e. WCFs, associated enclosures, and all exterior mechanical equipment, shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
- f. WCFs up to 70 feet in height shall have provisions that will allow for co-location of at least one (1) additional user or wireless communication provider. Structures exceeding 70 feet in height shall have provisions that will allow for co-location of at least two (2) additional users or wireless communication providers.
- g. A permittee shall cooperate with other wireless communication providers and others in co-locating additional antennae on support structures. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided such shared use does not result in substantial technical impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Good faith shall include sharing technical information sufficient to evaluate the feasibility of co-location. In the event a dispute arises, as to whether a permittee has exercised good faith in accommodating other users, the county may require a third-party technical study at the expense of either or both the applicant and permittee.
- h. Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.
- i. The facility owner or property owner shall remove WCFs within six (6) months of the date it ceases to be operational.

D. Esthetics.

- 1. WCFs requiring construction of a support structure must be located on a portion of a site that is effectively isolated from view of residential areas by structures or terrain features unless they are integrated or act as an architectural element of the structure, such as a flagpole.
- 2. Whip and tubular antennas shall be camouflaged and located to minimize views from residential structures and rights-of-way.
- 3. Parabolic, ancillary and other antennas shall be completely screened from residential views and public rights-of-way in a manner that is architecturally compatible with the building on which it is located.

E. Radio Frequency Standards.

1. The applicant shall comply with federal standards for radio frequency emissions. Within six months after the issuance of its operational report, the applicant shall submit a project implementation report that provides cumulative field measurements of radio frequency emission of all antennas installed at the subject site and compares the results with established federal standards. Said reports shall be subject to review and approval of the City for consistency with federal standards. If on review, the City finds that the WCF does not meet federal standards, the City may revoke or modify this Conditional Use permit.
2. The applicant shall ensure that the WCF will not cause interference with the reception of area television or radio broadcasts. If, on review, the City finds that the WCF interferes with such reception, and such interference is not cured within 60 days, the City may revoke or modify this Conditional Use permit.
3. At the time of the application and at all other times, the applicant shall supply information as to the number of channels capable of being employed at the site, their individual and combined potential capacities and all other information requested by the City.

Chapter 4.6 Modifications to Approved Plans and Conditions

Sections

4.6.1 Purpose

4.6.2 Applicability

4.6.3 Major Modifications

4.6.4 Minor Modifications

4.6.1 Purpose.

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

4.6.2 Applicability.

- A. This Chapter applies to all development applications approved through the provisions of Chapter 4, including:
 - 1. Site Design Review approvals;
 - 2. Planned Unit Developments, Subdivisions, Partitions, and Lot Line Adjustments;
 - 3. Variances;
 - 4. Conditional Use Permits; and
 - 5. Conditions of approval on any of the above application types.
- B. This Chapter does not apply to land use zone changes, text amendments, temporary use permits, or other permits.

4.6.3 Major Modifications.

- A. **Major Modification Defined.** The City Recorder, or the City Recorder's designee, shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:
 - 1. A change in land use beyond the use established for an approved Conditional Use Permit;
 - 2. An increase in the number of dwelling units for a multi-family development or Planned Unit Development;
 - 3. A change in the type and/or location of access ways, drives or parking areas that affect off-site traffic after a Site Design Review has been completed;
 - 4. An increase in the floor area proposed for nonresidential use by more than 25 percent where previously specified;
 - 5. A reduction of more than 30 percent of the area reserved for common open space and/or usable open space in a Planned Unit Development or Subdivision;
 - 6. A reduction to specified setback requirements by more than 25 percent, or to a degree that the minimum setback standards of the land use zone 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 Request.** An applicant may request a major modification as follows:
 - 1. Upon the City Recorder, or the City Recorder's designee, determining that the proposed modification is a major modification, the applicant shall submit an application for the major modification.
 - 2. The modification request shall be subject to the same review procedure (Type I, II, or III) and approval criteria used for the initial project approval; however, the review shall be limited in scope to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated pathways, lighting and landscaping. Notice shall be provided in accordance with the applicable review procedure.

4.6.4 Minor Modifications.

- A. **Minor Modification Defined.** Any modification to a land use decision or approved development plan that is not within the description of a major modification as provided in Chapter 4.6 Section 3, above, shall be considered a minor modification.
- B. **Minor Modification Request.** An application for approval of a minor modification is reviewed using Type I procedure in Chapter 4.1 Section 3. A minor modification shall be approved, approved with conditions, or denied by the City Recorder, or the City Recorder's designee, 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 Chapter 4.6 Section 3, above.

Chapter 4.7 Land Use Zoning Map and Text Amendments

Sections

- 4.7.1 Purpose**
- 4.7.2 Legislative Amendments**
- 4.7.3 Quasi-Judicial Amendments**
- 4.7.4 Conditions of Approval**
- 4.7.5 Record of Amendments**

4.7.1 Purpose.

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the City's zoning map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

4.7.2 Legislative Amendments.

Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV procedure.

4.7.3 Quasi-Judicial Amendments.

- A. **Quasi-Judicial Amendments.** Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or Code revision. Quasi-judicial map amendments shall follow the Type III procedure and Quasi-Judicial comprehensive plan amendments shall follow the Type IV procedure, using standards of approval in Subsection C below. The approval authority shall be as follows:
1. The Planning Commission shall decide land use district map changes which does not involved comprehensive plan map amendment;
 2. The Planning Commission shall decide on comprehensive plan map amendment; and
 3. The City Council shall decide on a land use district map change which also involves a comprehensive plan map and plan amendment.
- B. **Initiation of Quasi-judicial Amendments.** A quasi-judicial amendment may be initiated in any one of the following ways:
1. By resolution of the City Council.
 2. By motion of the Planning Commission, followed by a public hearing before the Commission and submission of a recommendation to the Council.
 3. By petition of property owners or persons purchasing property under contract, according to procedures outlined herein.
- C. **Criteria for Quasi-Judicial Amendments.** A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:
1. Demonstrations 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 of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances;
 3. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
 4. Allowed uses in the proposed zone can be established in compliance with the applicable Zoning Ordinance development standards without the need for adjustments or variances.
 5. Adequate public facilities, services and transportation networks are in place, or planned to be provided concurrently with the development of the property.

6. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use zoning map regarding the property which is the subject of the application; and the provisions of 4.7.4, as applicable.

4.7.4 Conditions of Approval.

A quasi-judicial decision may be for denial, approval, or approval with conditions.

4.7.5 Record of Amendments.

The City Recorder, or the City Recorder's designee, shall maintain a record of amendments to the text of this Code and the land-use zoning map in a format convenient for public use.

Chapter 4.8 Code Interpretations

Sections

4.8.1 Purpose

4.8.2 Code Interpretation Procedure

4.8.1 Purpose.

Some terms or phrases within the Code may have two (2) or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text. A Type II process shall be followed.

4.8.2 Code Interpretation Procedure.

- A. **Requests.** A request for a code interpretation (“interpretation”) shall be made in writing to the City Recorder, or the City Recorder’s designee. The City Council may develop written guidelines for the application process.
- B. **Decision to Issue Interpretation.** The City Recorder, or the City Recorder’s designee, shall have the authority to review a request for an interpretation. The City Recorder, or the City Recorder’s designee, shall advise the requester in writing within 14 days after the request is made, on whether or not the City will issue the requested interpretation.
- C. **Declining Requests for Interpretations.** The City Recorder, or the City Recorder’s designee, is authorized to issue or decline to issue a requested interpretation. Basis for declining may include, but is not limited to, a finding that the subject Code section affords only one reasonable interpretation and the interpretation does not support the request. The City Recorder’s, or the City Recorder’s designee’s, decision to issue or decline to issue an interpretation is final when the decision is mailed to the party requesting the interpretation and the decision is not subject to any further local appeal.
- D. **Written Interpretation.** If the City Recorder, or the City Recorder’s designee, decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy of the interpretation. The written interpretation shall be issued within 12 days after the City advises the requester that an interpretation shall be issued. The decision shall become effective 12 days later, unless an appeal is filed in accordance with E-G below.
- E. **Appeals.** The applicant and any party who received such notice or who participated in the proceedings through the submission of written or verbal evidence of an interpretation may appeal the interpretation to the City Council within 12 days after the interpretation was mailed or delivered to the applicant. The appeal may be initiated by filing a notice of appeal with the City Recorder, or the City Recorder’s designee.
- F. **Appeal Procedure.** Planning Commission shall hear all appeals of a City Recorder, or the City Recorder’s designee, interpretation using a Type III procedure, except that written notice of the hearing shall be provided to the applicant, any other party who has filed a notice of appeal, and any other person who requested notice.
- G. **Final Decision/Effective Date.** The decision of the Planning Commission on an appeal of an interpretation shall be final and effective when it is mailed to the applicant. If an appeal of the Planning Commission’s decision is filed, the decision remains effective unless or until the Land Use Board of Appeals modifies it or a court of competent jurisdiction.
- H. **Interpretation on File.** The City Recorder, or the City Recorder’s designee, shall keep on a file a record of all code interpretations.

Chapter 4.9 Miscellaneous Permits

Sections

- 4.9.1** Temporary Use Permits
- 4.9.2** Home Occupation Permits
- 4.9.3** *[Reserved for “Sensitive Land Permits”]*

4.9.1 Temporary Use Permits.

Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Interim development in the Detroit Avenue Corridor overlay zone is not subject to this section and shall be subject to Chapter 2.3 Section 7(G). Three types of temporary uses require permit approval (See A, B and C):

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

1. The use is permitted in the underlying land use zone and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property owner's permission to place the use on their property;
3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under Chapter 3.2: Vehicle and Bicycle Parking;
4. The use provides adequate vision clearance, as required by Chapter 3.1 Section 2, 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 Chapter 3.1 Section 2 - 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 zone do not affect the adjoining use; and
7. The use is adequately served by 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, 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 Chapter 4.1 Section4, 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 the 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 Chapter 3.1 Section2: Vehicular Access and Circulation;
 4. There is adequate parking for the customers or users of the temporary use as required by Chapter 3.2:- Bicycle and Vehicle Parking;
 5. The use will not result in vehicular congestion on streets;
 6. The use will pose not 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 zone do not affect the adjoining use;
 8. The building complies with applicable building codes;
 9. The use can be adequately served by septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
 10. The length of time that the temporary building will be used does not exceed 6 months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit.

4.9.2 Home Occupation Permits.

The purpose of this section is to encourage those who are engaged in small commercial ventures which could not necessarily be sustained if it were necessary to lease commercial quarters or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. Home occupations are encouraged for their contribution in reducing the number of vehicle trips often generated by conventional businesses. Using the Type I procedure, the City shall approve or deny a home occupation permit based on findings that all of the following criteria are satisfied::

A. Appearance of Residence:

1. The home occupation shall be restricted to lawfully built enclosed structures and be conducted in such a manner as not to give an outward appearance of a business.
2. The home occupation shall not result in any structural alterations or additions to a structure that will change its primary use or building code occupancy classification.
3. The home occupation shall not violate any conditions of development approval (i.e., prior development permit approval).
4. No products and or equipment produced or used by the home occupation may be displayed to be visible from outside any structure.

B. Storage:

1. Outside storage, visible from the public right-of-way or adjacent properties, is prohibited.

2. On-site storage of hazardous materials (including toxic, explosive, noxious, combustible or flammable) beyond those normally incidental to residential use is prohibited.
3. Storage of inventory or products and all other equipment, fixtures, and activities associated with the home occupation shall be allowed in any structure.

C. Employees:

1. Other than family members residing within the dwelling located on the home occupation site, there shall be no more than one full-time equivalent employee at the home occupation site at any given time. As used in this chapter, the term “home occupation site” means the lot on which the home occupation is conducted.
2. Additional individuals may be employed by or associated with the home occupation, so long as they do not report to work or pick up/deliver at the home.
3. The home occupation site shall not be routinely used as a headquarters for the assembly of employees for instruction or other purposes, including dispatch to other locations.

D. Signs: Signs shall comply with Chapter 3.5 Section 2. In no case shall a sign exceed the Residential Zone standard of 6 square feet (e.g., 2 feet by 3 feet).

E. Vehicles, Parking and Traffic:

1. One commercially licensed vehicle associated with the home occupation is allowed at the home occupation site. It shall be of a size that would not overhang into the public right-of-way when parked in the driveway or other location on the home occupation site.
2. There shall be no more than three commercial vehicle deliveries to or from the home occupation site daily. There shall be no commercial vehicle deliveries during the hours of 7 p.m. to 7 a.m.
3. There shall be no more than one client or customer’s vehicle at any one time and no more than eight per day at the home occupation site.

F. Business Hours. There shall be no restriction on business hours, except that clients or customers are permitted at the home occupation from 6 a.m. to 10 p.m. only, subject to Sections A and E, above.

G. Prohibited Home Occupation Uses:

1. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, state or federal standards, or that can be detected beyond the property line is prohibited.
2. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music from music teachers, art or craft supplies from arts or crafts instructors, computer software from computer consultants, and similar incidental items for sale by home business are allowed subject to A-F, above.
3. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as:
 - a. Ambulance service;
 - b. Animal hospital, veterinary services, kennels or animal boarding;
 - c. Auto and other vehicle repair, including auto painting;

- d. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on site.
- H. Enforcement. The City Recorder, or the City Recorder's designee, may visit and inspect the site of home occupations in accordance with this chapter periodically to insure compliance with all applicable regulations, during normal business hours, and with reasonable notice. Code violations shall be processed in accordance with Chapter 1.4: Enforcement.

Chapter 4.10 Variances

Sections

- 4.10.1** Purpose
- 4.10.2** Class A Variances
- 4.10.3** Class B Variances
- 4.10.4** Class C Variances
- 4.10.5** Variance Application and Appeals
- 4.10.6** Expiration of Approval – Standards for Extension of Time

4.10.1 Purpose.

Flexibility, adaptability, and reasonableness in the application and administration of development standards is necessary where special conditions exist. For lands, or uses with unique characteristics, the intent and purpose of the development standard may be maintained while allowing adjustments to requirements. No variance shall be approved which permits the establishment of a use, or activity not identified in a zone.

Because some variances are granted using “clear and objective standards,” they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or Type III procedure because they involve discretionary decision-making.

4.10.2 Class A Variance.

A. **Class A Variances.** The following variances are reviewed using a Type I procedure, as governed by Chapter 4.1, using the approval criteria in Subsection B, below:

1. Front yard setbacks. Up to a ten (10) percent change to the front yard setback standard in the land use zone.
2. Interior setbacks. Up to a ten (10) percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use zone.
3. Lot coverage. Up to ten (10) percent increase of the maximum lot coverage required in the base zone.
4. Landscape area. Up to ten (10) percent reduction in landscape area (overall area or interior parking lot landscape area).
5. Access.
 - a. Temporary access for RV parking during the time period of May 1st through September 30th based upon a City approved location.
 - b. Access for turn-around driveway based upon a maximum driveway and approach width of 10th feet.
 - c. Access to a second subdivided parcel or lot under the same ownership (or for such parcels or lots combined based upon City approval of a lot consolidation or lot line adjustment application.)

B. **Class A Variance Approval Criteria.** A Class A Variance shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;
3. The variance will not result in violation(s) of Chapter 3, or other design standards.

4.10.3 Class B Variances.

C. **Class B Variances.** Due to their discretionary nature, the following types of variances shall be reviewed using a Type II procedure, in accordance with Chapter 4.1:

1. Variance to Minimum Housing Density Standard (Chapter 2). The city may approve a variance after finding that the minimum housing density provided in Chapter 2 cannot be achieved due to physical constraints that limit the division of land or site development.

“Physical constraint” means steep topography, sensitive lands (Chapter 3.7), unusual parcel configuration, or a similar constraint. The variances approved shall be the minimum variance necessary to address the specific physical constraint on the development.

2. Variance to Minimum Dwelling Living Space Area. The city may approve a dwelling with less than 700 square feet of living space if all of the following criteria are satisfied:
 - a. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands, or other similar circumstances related to the property over which the applicant has no control.
 - b. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use zone or vicinity.
 - c. The variance requested is the minimum variance that would alleviate the hardship.
3. Variance to Vehicular Access and Circulation Standards (Chapter 3.1). Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the city may grant a variance to the access requirements after finding the following:
 - a. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
 - b. There are no other alternative access points on the street in question or from another street;
 - c. The access separation requirements cannot be met;
 - d. The request is the minimum adjustment required to provide adequate access;
 - e. The approved access or access approved with conditions will result in a safe access; and
 - f. The visual clearance requirements of Chapter 3.1 will be met.
4. Variances to Street Tree Requirements (Chapter 3.3). The city may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 3.3, after finding the following:
 - a. Installation of the tree would interfere with existing utility lines;
 - b. The tree would cause visual clearance problems; or
 - c. There is not adequate space in which to plant a street tree; and
 - d. Replacement landscaping is provided elsewhere on the site (e.g., parking lot area trees).
5. Variance to Parking Standards (Chapter 3.2).
 - a. The city may approve variances to the minimum or maximum standards for off-street parking in Chapter 3.2 Section 1 upon finding the following:
 - i. The individual characteristics of the use at the location require more or less parking than is generally required for a use of this type and intensity;
 - ii. The need for additional parking cannot reasonably be met through provisions of on-street parking or shared parking with adjacent or nearby uses; and
 - iii. All other parking design standards are met, in conformance with the standards in Chapter 2 and Chapter 3.

- b. The city may approve a reduction of required bicycle parking per Chapter 3.2, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
 - c. The city may allow a reduction in the amount of vehicle stacking area required in for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
- D. Variance to Maximum or Minimum Yard Setbacks to Reduce Tree Removal or Impacts to Wetlands** (Chapter 2 and 3.2). The city may grant a variance to the applicable setback requirements of this Code for the purpose of preserving a tree or trees on the site of proposed development or avoiding wetland impacts. Modification shall not be more than is necessary for the preservation of trees on the site.
- E. Variances to Transportation Improvement Requirements** (Chapter 3.8). The city may approve, approve with conditions, or deny a variance to the transportation improvement standards of Section 3.4.1, based on the criteria for granting variances provided in Section 3.4.1.B. When the provisions of that Section cannot support a variance request, then the request shall be reviewed as a Class C Variance.

4.10.4 Class C Variance.

- A. Purpose.** The purpose of this section is to provide standards for variances that exceed the Class A and Class B Variance criteria in Chapter 4.10. Section 2 and 4.12.3. Class C Variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use zone would create a hardship to development that is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone); except that no variances to “permitted uses” shall be granted.
- B. Applicability.**
- 1. The variance standards are intended to apply to individual platted and recorded lots only.
 - 2. An applicant who proposes to vary a specification standard for lots yet to be created through a subdivision process may not utilize the Class C Variance procedure.
 - 3. Variances to allow a use not otherwise allowed in the underlying land use district are prohibited.
- C. Approval Process and Criteria.**
- 1. Class C Variances shall be processed using a Type III procedure, as governed by Chapter 4.1 Section 5, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Chapter 4.1 Section 5, the applicant shall provide a written narrative or letter describing their reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in Subsection 2.
 - 2. The city shall approve, approve with conditions, or deny an application for a variance based on finding that all of the following criteria are satisfied:
 - a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use zone or vicinity.

- b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);
- c. The use proposed will be the same as permitted under this title and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
- d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
- e. The hardship is not self-imposed; and
- f. The variance requested is the minimum variance that would alleviate the hardship.

4.10.5 Variance Application and Appeals.

The variance application shall conform to the requirements for Type I, II, or III applications, as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for their request, alternatives considered, and why the subject standard cannot be met without the variance. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.

4.10.6 Expiration of Approval--Standards for Extension of Time.

- A. Variance approval shall be effective for a period of one (1) year from the date of approval. If the variance request has not been implemented within the one (1) year period, the approval shall expire.
- B. Variance approval shall be voided immediately if the use established on site does not substantially conform to the approval granted by the City.
- C. The City Recorder, or the City Recorder's designee, shall, upon request by the applicant and payment of the required fee, grant an extension of the approval for a period not to exceed six (6) months. Requests for extension of approval shall be submitted in writing thirty (30) days before the expiration date of the approval period.

Chapter 4.11 Vacation of Right-of-Way and Public Places Variances

Sections

4.11.1 Introduction

4.11.2 Applicability

4.11.3 Procedure

4.11.4 Recordation of vacation resolution; notice; effective date.

4.11.5 Delegation of authority.

4.11.1 Purpose.

The purpose of this Chapter is to provide an efficient process for vacated dedicated right-of-way or public place when the right-of-way or public place is no longer needed by the City.

4.11.2 Applicability. All requests to vacate right-of-way or to vacate the dedication of any other public place, or any part thereof, shall be made in accordance with this section.

A. Classes.

1. A Class A vacation is a proceeding initiated by a petitioner to vacate right-of-way, or any part thereof.
2. A Class B vacation is a proceeding initiated by the City to:
 - a. Vacate right-of-way, or any part thereof; or
 - b. Vacate the dedication of any other public place, or any part thereof.

4.11.3 Procedure. Proceedings to vacate a street, alley, or dedication of any other public place shall follow the procedures set forth in ORS 271.080—271.230 and this chapter.

A. Initiation.

1. A Class A vacation is initiated by petition of a person owning real property abutting the right-of-way, or any part thereof, to be vacated.
2. A Class B vacation is initiated by resolution of the City Council.

B. Submittal requirements.

1. A petition for a Class A vacation shall be made on forms provided by the City Recorder, or the City Recorder's designee, contain everything required by ORS 271.080, and be accompanied by the following:
 - a. A title report verifying ownership of the property abutting the area proposed to be vacated;
 - b. A map showing the area proposed to be vacated and the area encompassing the affected area, with tax lots labeled;
 - c. A list of all properties and owners, by tax lot, within the affected area;
 - d. An application form; and
 - e. The application fee, as set by the City Council.
2. A resolution initiating a Class B vacation shall include the legal description of the proposed area to be vacated.

C. Notice and hearing. Notice for Class A and Class B vacations shall comply with ORS 271.110 and ORS 271.130. The hearing shall be conducted using Type IV procedures.

D. Criteria. A Class A or Class B vacation shall be approved only if the vacation meets the following criteria:

1. The area proposed to be vacated is not presently, or will not in the future be, needed for public services, facilities, or utilities;
2. The vacation does not prevent the extension of, or the retention of public services, facilities, or utilities;
3. Public services, facilities, or utilities can be extended in an orderly and efficient manner in an alternate location;

4. The vacation does not impede the future best use, development of, or access to abutting property;
5. The vacation does not conflict with provisions of the development code including the street connectivity standards and block lengths;
6. All required consents have been obtained;
7. Notices required by ORS 271.080—271.130 have been duly given; and
8. The public interest would not be prejudiced by the vacation.

E. Decision; conditions and reservations; assessment of special benefit.

1. Form of decision. After the hearing, the City Council may enact a resolution granting the vacation, in whole or in part, or adopt a resolution rejecting the proposed vacation.
2. Conditions and reservations. The City Council may impose such conditions or make such reservations as it deems to be in the public interest, including, but not limited to, reservation of easements for municipal and public utilities in the area vacated.

4.11.4 Recordation of vacation resolution; notice; effective date. The City Recorder, or the City Recorder's designee, shall:

- A. Record and file a copy of the vacation resolution as required by ORS 271.150; provided, however, that the vacation resolution shall not be recorded until:
 1. All required legal documents have been signed, filed, and, if required, recorded; and
 2. The petitioners have complied with all conditions attached to the vacation.
- B. Mail a certified copy of the vacation resolution to each public utility that provided responses to the City Recorder, or the City Recorder's designee.
- C. No vacation shall be effective until the vacation resolution is filed by the City Recorder, or the City Recorder's designee, with the county clerk, assessor, and county surveyor.

4.11.5 Delegation of Authority. The City Mayor is hereby delegated the authority to sign the consents required by ORS 271.080(2) where the City is the owner of the property abutting the area proposed to be vacated or the property within the affected area.