

CHAPTER 3-1
APPLICATION REQUIREMENTS AND REVIEW PROCEDURES

3.100 APPLICATION REQUIREMENTS AND REVIEW CRITERIA

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3.101 SUMMARY OF APPLICATION TYPES AND REVIEW PROCEDURES

All development permits and land use actions are processed under the City's administrative procedures. There are four types of actions, each with its own procedures.

3.101.01 Type I Action

Type I actions are reviewed and decided by the City staff. They are divided into four categories:

- A. Type I-A actions are reviewed and decided by City staff based on objective standards that allow for no interpretation or the exercise of policy or legal judgment. Conditions may be placed on the decision provided they do not require an interpretation or the exercise of policy or legal judgment. Notice of the decision is provided consistent with Section 3.201.01. There is no appeal. The following are Type I-A actions:
 - 1. Property Line Adjustment
 - 2. Sign Permit
 - 3. Floodplain Development Permit

- B. Type I-B actions are reviewed and decided by City staff based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Conditions may be placed on the decision. Notice of the decision is provided consistent with Section 3.201.02. Appeal is to the Planning Commission. The following are Type I-B actions:
 - 1. Minor Variance.
 - 2. Home Occupation.
 - 3. Property Line Adjustment with discretion.
 - 4. Sign Permit with discretion.
 - 5. Floodplain Development Permit with discretion.
 - 6. Similar Use/Ordinance Interpretation as part of a Type I-B application.
 - 7. Similar Use/Ordinance Interpretation not part of an application.

- C. Type I-C actions are Limited Land Use actions reviewed and decided by City staff based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Conditions may be placed on the decision. Notice of the opportunity to comment is provided consistent with Section 3.201.024. Notice of the opportunity to appeal is provided consistent with Section 3.201.024. Appeal is to the Planning Commission. The following are Type I-C actions:
 - 1. Partition.
 - 2. Site Development Review.

- D. Type I-D actions are Expedited Land Division actions reviewed and decided by City staff based on objective and subjective standards that allow

interpretation or the exercise of policy or legal judgment. Notice of the opportunity to comment is provided consistent with 3.201.026. Conditions may be placed on the decision. Notice of the opportunity to appeal is provided consistent with Section 3.201.026. Appeal is to the Referee. The following are Type I-D actions:

1. Partition.
2. Site Development Review.

3.101.02 Type II Actions

A. Type II-A actions are reviewed and decided by the Planning Commission based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Notice of the public hearing is provided consistent with Section 3.201.03. Conditions may be placed on the decision. Appeal is to the City Council. The following are Type II actions:

1. Conditional Use Permit.
2. Non-Conforming Uses and Structures.
3. Planned Unit Development.
4. Major Variance.
5. Restricted Development Permit (reviewed in conjunction with other development applications).
6. Similar Use/Ordinance Interpretation as part of a Type II application.
7. Similar Use/Ordinance Interpretation not part of an application.

B. Type II-B actions are Limited Land Use actions reviewed and decided by the Planning Commission based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Notice of the opportunity to comment is provided consistent with Section 3.201.03. Conditions may be placed on the decision. Notice of the decision is provided consistent with Section 3.201.03. Appeal is to the City Council. The following is a Type II-B action:

1. Subdivision.

C. Type II-C actions are Expedited Land Division actions reviewed and decided by the Planning Commission based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Notice of the opportunity to comment is provided consistent with Section 3.201.03. Conditions may be placed on the decision. Notice of the decision is provided consistent with Section 3.201.03. Appeal is to the Referee. The following is a Type II-C action:

1. Subdivision.
2. Planned Unit Development.

3.101.03 Type III Actions

A. Type III actions are reviewed and decided by the City Council based on

objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. The Planning Commission makes a recommendation to the City Council. Public notice of the Planning Commission and City Council public hearings is provided consistent with Section 3.201.03. Conditions may be placed on the decision. Appeal is to the Oregon Land Use Board of Appeals (LUBA). The following are Type-III actions:

1. Annexation.
2. Comprehensive Plan Map and Text Amendments (quasi-judicial).
3. Vacation.
4. Zone Map Change and Zone Code Text Amendment (quasi-judicial).
5. Similar Use/Ordinance Interpretation as part of a Type III Application.
6. Similar Use/Ordinance Interpretation not part of an application.

3.101.04 Type IV Actions

A. Type IV actions are legislative actions reviewed and decided by the City Council based on objective and subjective standards that allow interpretation or the exercise of policy or legal judgment. Private parties cannot apply for a Type IV action. Type IV actions shall be initiated by City staff, Planning Commission, or City Council. The Planning Commission makes a recommendation to the City Council. Public notice of the Planning Commission and City Council public hearings is provided consistent with Section 3.207. Conditions may be placed on the decision. Appeal is to the Oregon Land Use Board of Appeals (LUBA) unless the decision is to deny a legislative action and then there is no appeal in accordance with Oregon Revised Statute 197.620. The following are Type-IV actions:

1. Comprehensive Plan Map or Text Amendments (legislative).
2. Zone Map Change or Zone Code Text Amendments (legislative).
3. Similar Use/Ordinance Interpretation as part of a Type IV Application.
4. Similar Use/Ordinance Interpretation not part of an application

3.102 ZONE MAP CHANGE AND TEXT AMENDMENT

3.102.01 Process

Quasi-judicial Zone Map and Zoning Ordinance text amendment applications shall be reviewed in accordance with the Type III procedures in Section 3.201. Legislative Zone Map and Zoning Ordinance Text amendment applications shall be reviewed in accordance with the Type IV procedures in Section 3.200.

3.102.02 Application and Fee

Zone Map and Zoning Ordinance Text amendment applications shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.102.03 Criteria for Approval

- A. Zone Map change applications may be approved only if the applicant provides evidence substantiating the following:
 - 1. The proposed zone is appropriate for the Comprehensive Plan Map designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan Map designation.
 - 2. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
 - 3. Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance.
 - 4. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.
 - 5. The following additional criteria shall be used to review all nonconforming residential changes:
 - a. The supply of vacant land in the proposed zone is:
 - i. Not adequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years, or
 - ii. Not at the appropriate location for the proposed use, or

- iii. Not physically suited to the proposed use, or
 - iv. Lacks site specific amenities required by the proposed use.
 - b. The supply of vacant land in the existing zone is adequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years, assuming the zone change is granted.
 - c. If the proposed zone allows uses more intensive than other zones appropriate for the Comprehensive Plan's designation, the proposed zone's list of permitted uses will not destabilize the land use pattern of the area or significantly adversely affect adjacent properties.
- B. Zoning Ordinance text amendment applications may only be approved if the applicant provides evidence showing the proposed text amendment is consistent with applicable Comprehensive Plan Goals and Policies and applicable Statewide Planning Goals.

3.103 **CONDITIONAL USE PERMITS**

3.103.01 Process

Conditional Use Permit applications shall be reviewed in accordance with the Type II-A procedures in Section 3.201.

3.103.02 Application and Fee

Conditional Use Permit applications shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.103.03 Criteria for Approval

Conditional Use Permit applications may be approved only if the applicant provides evidence substantiating all the requirements of this Ordinance relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- A. The use is listed as a conditional use in the underlying district.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.
- C. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services, existing or planned for the area affected by the use.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.
- E. The proposal satisfies any applicable goals and policies of the Comprehensive Plan which apply to the proposed use.

3.103.04 Expiration of Approval

- A. Unless otherwise provided by the decision authority in the decision granting approval of the application, the approval shall automatically lapse one year after the effective date upon which it was granted unless one of the following events occur:
 - 1. The applicant or his successor in interest has secured a building

permit within said one year period, if a building permit is required, and has commenced construction of the structure authorized by the building permit within said one year period.

2. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the approval within said one year period.

B. The applicant may submit a request for an extension of time on the approval to avoid the approval lapsing. The request for extension and the required fee shall be filed with the City Administrator or designee at least 45-days prior to the expiration of the time established by Subsection A, above. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final. The decision authority may grant one 1-year extension.

3.104 VARIANCES - MINOR AND MAJOR

3.104.01 Purpose

The development standards in this Development Code protect the public health, safety and welfare by establishing standard setbacks, maximum building heights and other development standards that apply to various uses. For lands or uses with unique characteristics the intent and purpose of the development standards may be maintained while allowing for a variance to quantifiable requirements.

A minor variance may be approved for those requests resulting in no more than a 20% change in a quantifiable standard. Otherwise, any change to a quantifiable standard will require a major variance.

3.104.02 Application and Fee

Variance applications shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.104.03 Applicability

Under the following provisions, a property owner or his designate may apply to vary a standard or requirement of this Ordinance, except when one or more of the following applies:

- A. The proposed variance would allow a use which is not permitted in the district;
- B. Another procedure and/or criteria is specified in the Ordinance for varying the particular requirement or standard;
- C. Varying the requirement or standard is prohibited within the district; or
- D. A variance from the requirement or standard is not allowed in the district.

3.104.04 Criteria and Procedure - Minor Variance

The City Administrator or designee may allow a minor variance from a requirement or standard of this Ordinance in accordance with the Type I-B procedures provided the applicant provides evidence that the following circumstances substantially exist:

- A. The intent and purpose behind the specific provision sought to be varied is either clearly inapplicable under the circumstances of the particularly proposed development; OR,

- B. The particular development as proposed otherwise clearly satisfies the intent and purpose for the provision sought to be varied; and
- C. The proposed development will not unreasonably impact adjacent existing or planned uses and development; and
- D. The minor variance does not expand or reduce a quantifiable standard by more than 20 percent and is the minimum necessary to achieve the purpose of the minor variance; and
- E. There has not been a previous land use action approved on the basis that a minor variance would not be allowed.

3.104.05 Criteria and Procedure - Major Variance

The Planning Commission may allow a major variance from a requirement or standard of this Ordinance after a public hearing conducted in accordance with the Type II review procedures provided that the applicant provides evidence that the following circumstances substantially exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, topography, or other circumstances over which the applicant has no control.
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district.
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located, or otherwise conflict with the objectives of any City plan or policy.
- D. That the special conditions and circumstances on which the application is based do not result from the negligent or knowing violation of this Ordinance by the applicant.
- E. The variance requested is the minimum variance which would alleviate the hardship.

3.104.06 Expiration of Approval

- A. Unless otherwise provided by the decision authority in the decision granting approval of the application, the approval shall automatically lapse one year after the effective date upon which it was granted unless one of the following events occur:

1. The applicant or his successor in interest has secured a building permit within said one year period, if a building permit is required, and has commenced construction of the structure authorized by the building permit within said one year period.
 2. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the approval within said one year period.
- B. The applicant may submit a request for an extension of time of the approval to avoid the approval lapsing. The request for extension and the required fee shall be filed with the City Administrator or designee at least 45-days prior to the expiration of the time established by Subsection A, above. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final. The decision authority may grant one 1-year extension.

3.105 SITE DEVELOPMENT REVIEW

3.105.01 Purpose

The Site Development Review Process is intended to:

- A. Guide future growth and development in accordance with the Comprehensive Plan and other related Ordinances;
- B. Provide an efficient process and framework to review development proposals;
- C. Ensure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment; and
- D. Resolve potential conflicts that may arise between proposed developments and adjacent uses.
- E. The site development review provisions are not intended to preclude uses that are permitted in the underlying zones.

3.105.02 Application and Fee

Site Development Review applications shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.105.03 Applicability of Provisions

- A. Site Development Review shall be required for the following:
 - 1. Any new development whereby a site development review is required to establish a permitted or conditionally permitted use.
 - 2. Any development which exceeds 25% of the total square footage of the structure or structures which existed as of January 1, 1998.
 - 3. Except for the uses in 3.105.03, B, any commercial, industrial or public and semi-public use interior modifications or change in use which meets one of the following
 - a. The modification or change in use requires a 25% increase in the number of required parking spaces (not existing) for the current use; or

- b. The modification or change in use generates an average of 100+ trips per day per 1000 gross square feet of building as documented in the Trip Generation Manual of the Institute of Transportation Engineers or other qualified source; or,
 - c. The modification or change in use includes daily shipping and delivery trips by vehicles over 20,000 pounds gross vehicle weight.
- B. Site Development Review shall not be required for the following:
- 1. Single family detached or attached dwelling on a lot or parcel.
 - 2. Duplex on a lot or parcel.
 - 3. Any commercial, industrial or public and semi-public use expansion that does not exceed 25% of the total square footage of the structure or structures which existed as of January 1, 1998.
- C. All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Code.

3.105.04 Review and Approval Process

Site Development Review applications shall be reviewed in accordance with the Type I-C or I-D review procedures in Section 3.201.

3.105.05 Submittal Requirements

- A. The following information shall be submitted as part of a complete application for Site Development Review:
- 1. Site Analysis
 - a. Existing site topography;
 - b. Identification of areas exceeding 10% slopes;
 - c. Site drainage, areas of potential flooding;
 - d. Areas with significant natural vegetation;
 - e. Classification of soil types; and
 - f. Existing structures, roadway access and utilities.
 - g. Traffic safety, internal circulation and parking, connectivity of

internal circulation to existing and proposed streets, bikeways and pedestrian facilities;

- h. Existing and proposed streets, bikeways, and pedestrian facilities within 200 feet.

2. Site Plan

- a. Proposed grading and topographical changes;
- b. All proposed structures including finished front and side floor elevations and setbacks;
- c. Vehicular, bicycle and pedestrian circulation patterns, parking, loading and service areas;
- d. Proposed access to public roads, highways, bikeways, pedestrian facilities, railroads or other commercial or industrial transportation systems;
- e. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services. Inverse elevations may be required for all underground transmission lines;
- f. Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with surrounding properties and uses;
- g. Proposed on-premise signs, fencing or other fabricated barriers, together with their heights and setbacks;
- h. Proof of ownership and signed authorization for the proposed development, if applicant is not the owner of the site; and
- i. A schedule of expected development.

3.105.06 Evaluation of Site Development Plan

The review of a Site Development Plan shall be based upon consideration of the following:

- A. Conformance with the General Development Standards contained in this Ordinance.
- B. Characteristics of adjoining and surrounding uses;

- C. Drainage and erosion control needs;
- D. Public health factors;
- E. Traffic safety, internal circulation and parking;
- F. Provision for adequate noise and/or visual buffering from non-compatible uses;
- G. Retention of existing natural features on site; and
- H. Problems that may arise due to development within potential hazard areas.
- I. Connectivity of internal circulation to existing and proposed streets, bikeways and pedestrian facilities.

3.105.07 Expiration of Approval

- A. Site Development Review approval shall be effective for one year from the date of approval. If substantial construction of the approved plan has not begun within one year from the date of approval, the approval shall lapse.
- B. Site Development Review approval shall be voided immediately if construction on the site is a departure from the approved plan.
- C. The City Administrator or designee may upon written request by the applicant submitted no later than 45-days prior to the lapsing of the approval period and payment of the required fee, grant no more than one extension of the approval for no more than six months provided that:
 - 1. No changes are made to the approved Site Development Plan;
 - 2. The applicant can show intent to initiate construction on the site within the six month extension period; and
 - 3. There have been no changes in the facts or applicable policies or ordinance provisions on which the original approval was based.
- D. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final.

3.105.08 Financial Assurances

If required site improvements cannot be completed prior to the issuance of an

occupancy permit, a performance bond or other guarantee acceptable to the City Attorney may be allowed, as provided for in Subsection 3.201.02, D, 3.

3.106 PARTITIONS

3.106.01 Area of Application

A partition is required for any land division which creates two or three parcels in a calendar year. The parcels shall meet the Development Standards for Land Division of Section 2.208, other applicable development standards and the following additional requirements:

- A. Access: Each parcel shall meet the access requirements of Subsection 2.208.03.
- B. Each parcel shall satisfy the dimensional standards of applicable zoning district, unless a variance from these standards is approved.
- C. Adequate public facilities shall be available to serve the existing and newly created parcels.

3.106.02 General Provisions

- A. Partition approval is valid in perpetuity, upon recording of the final surveyed plat.
- B. No parcel within an approved partition may be redivided within the same calendar year in which it was recorded, except through the subdivision process.
- C. A master plan for development is required for any application which leaves a portion of the subject property capable of replatting.

3.106.03 Submittal Requirements for Tentative Plan Review

- A. Applications for partitions shall be submitted on forms provided by the City to the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.
- B. Each application shall be accompanied by a tentative partition plan drawn to scale of not less than one inch equals fifty (50) feet nor more than one inch equals 200 feet, and containing at a minimum, the following:
 - 1. Appropriate identification stating the drawing is a tentative plan.
 - 2. North point, scale and date.

3. Name and addresses of land owner, applicant, engineer, surveyor, planner, architect or other individuals responsible for the plan.
4. Map number and tax lot or tax account number of subject property.
5. The boundary lines and approximate area of the subject property.
6. Dimensions and size in square feet or acres of all proposed parcels.
7. All adjacent roads, bikeways, pedestrian facilities, public or private, easements or right-of-way to, or within the subject property, including name and road width, where applicable.

3.106.04 Process for Preliminary Review

Partition applications shall be reviewed in accordance with the Type I-C or I-D review procedures in Section 3.201.

3.106.05 Process for Final Plat Approval

- A. Final Plat Recorded: Within 1 year of the final decision approving a tentative plan, a final plat shall be recorded. If the final plat is not recorded within 1 year, the tentative plan approval shall lapse. The City Administrator or designee, consistent with the Type I-C or I-D process, and providing notice of the 15-day comment period to those who established standing before the initial decision was issued, may extend the tentative plan approval period once for not more than one (1) year. Requests for extension of the original one year approval period shall be submitted in writing and accompanied by the required fee at least 45-days prior to the expiration date of the approval period. The City Administrator or designee may approve the extension provided the applicant shows intent to initiate construction on the site, or if construction has been initiated, complete the project thereby complying with the tentative plan approval within the one year extension period, and there have been no changes in the facts, and there have been no significant changes in the applicable ordinance provisions on which the tentative plan approval was based. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final.
- B. Final Approval: If the partition final plat is consistent with the approved tentative plan and if the conditions of approval have been satisfied, the City Administrator or designee and City Engineer shall sign the original final plat indicating the final plat is approved by the City. The applicant shall provide the City Administrator or designee one copy of the recorded final plat within 30-days of recording.

- C. No building permit shall be issued, or parcel sold, transferred or assigned until the final Plat has been signed by the City Administrator or designee and City Engineer, filed at the County Surveyor's Office, and recorded at the County Clerk's Office. The applicant shall be responsible for all recording fees.

- D. Improvements/Bonding: All conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant provides information demonstrating it is not practicable to fulfill all conditions prior to issuance of such permit, the City Administrator or designee may allow a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions consistent with Section 3.201.02, D, 3.

3.107 SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS

3.107.01 General Provisions

- A. All subdivisions and planned unit developments (PUDs) shall conform to all applicable Zoning District Standards, development standards and other provisions of this Ordinance.
- B. A Master Plan for development is required for any application which leaves a portion of the subject property capable of redevelopment.

3.107.02 Submittal Requirements

- A. The following submittal requirements shall apply to tentative plan applications for subdivisions and PUDs.
 - 1. All applications shall be submitted on forms provided by the City to the City Administrator or designee along with the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.
 - 2. In addition to the information listed in Subsection 3.106.03 of this ordinance, applicants for subdivisions and PUDs shall submit the following:
 - a. The name, address and phone number of the applicant engineer, land surveyor, or person preparing the application;
 - b. Name of the PUD or subdivision.
 - c. Date the drawing was made.
 - d. Vicinity sketch showing location of the proposed land division.
 - e. Identification of each lot or parcel and block by number.
 - f. Gross acreage of the subject property, including contiguous properties under the same ownership.
 - g. Direction of drainage and approximate grade of abutting streets.
 - h. Streets proposed and their names, approximate grade, and radius of curves.
 - i. Any other legal access to the subdivision or PUD other than a public street.

- j. Contour lines at two foot intervals if 10% slope or less, five foot intervals if exceeding 10% slope, and a statement of the source of contour information.
 - k. All areas to be offered for public dedication.
- B. The following supplemental information shall be required for PUD tentative plan applications:
 - 1. Calculations justifying the proposed density of development as required by Subsection 2.302.05, C.
 - 2. Proposed uses of the property, including sites, if any, for attached dwelling units, recreational facilities, parks and playgrounds or other public or semi-public uses, with the purpose, condition and limitations of such reservations clearly indicated.
 - 3. The approximate location and dimensions of all commercial or multi-family structures proposed to be located on the site.
 - 4. Statement of improvements to be made or installed including streets, sidewalks, bikeways, trails, lighting, tree planting, landscaping, and time such improvements are to be made or completed.
 - 5. Written statement outlining proposals for ownership and maintenance of all open space areas, outdoor recreation areas, private streets and any commonly owned facilities.

3.107.03 Review Procedures

- A. Tentative plans for reviewed consistent with Section 3.101.02, A, for Type II-A actions, or 3.101.02, C, for Expedited Land Division actions. Tentative plans for subdivisions shall be reviewed consistent with Section 3.101.02, B, for Type II-B Limited Land Use actions or 3.101.02, C, for Expedited Land Division actions.
- B. A subdivision or PUD tentative plan approval shall be valid for one and one-half years from the date of the written decision and the final plat shall be recorded within the one and one-half year period. If the final plat is not recorded within the one and one-half year period and an extension has not been granted in accordance with 3.107.03, C, the tentative plan approval shall lapse. PUDs which do not involve the subdivision of property shall show substantial progress toward the construction of the project within the one and one-half year period or the approval shall lapse.
- C. The Planning Commission, consistent with the Type II-B or II-C process for subdivisions and the Type II-A or II-C process for PUDs, and providing notice

of the 15-day comment period to those who established standing before the initial decision was issued, may extend the tentative plan approval period for any subdivision or PUD once for not more than one (1) year. Requests for extension of the one and one-half year approval period shall be submitted in writing to the City Administrator or designee and accompanied by the required fee at least 45 days prior to the expiration date of the approval period. The Planning Commission may approve the extension provided the applicant shows intent to initiate construction on the site, or if construction has been initiated, complete the project thereby complying with the subdivision or PUD approval within the one year extension period, and there have been no changes in the facts, and there have been no significant changes in the applicable ordinance provisions on which the tentative plan approval was based. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one and one-half year approval period until a decision, and all appeals of the extension decision, are final.

- D. If the approval period lapses, the applicant may submit a new application, including all applicable fees, for review consistent with the Type II-B or II-C process for subdivisions and the Type II-A or II-C process for PUDs. The application will be subject to all applicable standards in effect on the day the new application is submitted.

3.107.04 Form of Final Plat

- A. The final plat shall be prepared in a form and with information consistent with ORS Chapters 92, Subdivisions and Partitions, and 209, County Surveyors, and approved by the County Surveyor.
- B. Where applicable, all Homeowners Association Articles and By-Laws shall be submitted with the final plat for review and approval by the City.
 - 1. The final plat shall not be approved until the Homeowners Association Articles and By-Laws are approved.
 - 2. The Homeowner's Association Articles and By-Laws shall be consistent with ORS Chapter 94, Real Property Development.
 - 3. A Certificate of Formation of a non-profit corporation, with a State seal, for the Homeowners Association, shall be submitted with the final plat for review.
 - 4. Signed, original documents of the Homeowners Association Articles and By-Laws and the Certificate of Formation described in (3) above, shall be recorded with the final plat.
- C. All plat names shall conform to ORS Chapter 92, Subdivisions and Partitions.

3.107.05 Final Plat Review

- A. The final plat shall be submitted to the City for review. The Planning Commission shall review the plat to ensure compliance with the approved tentative plan and the conditions of approval. The City Engineer shall sign the final plat. The Planning Commission Chairperson shall signify City approval of the final plat by signing the final plat and any duplicate.

- B. The final plat shall be filed with the Yamhill County Surveyors Office and the Department of Assessment and Taxation and recorded at the County Clerk's Office. The applicant shall provide the City Administrator or designee one copy of the recorded final plat within 30-days of recording.

3.108 SIMILAR USES

3.108.01 Purpose and Scope

- A. The purpose of this Section is to provide a process for interpreting the Zoning and Development Ordinance provisions, including those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein.
- B. It is anticipated that some terms or phrases may be ambiguous and therefore subject to two or more reasonable meanings. Because it is not possible to identify or remove all ambiguities, a process is established for resolving ambiguities in advance of or concurrent with applying for a particular action.

3.108.02 Application and Fee

An application for a similar use or an interpretation shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.108.03 Process

Similar use and interpretation applications shall be reviewed in accordance with the Type I-B procedures for requirements and uses related to Type I-B actions, the Type II-A, II-B and II-C procedures for requirements and uses related to Type II actions, the Type III procedures for requirements and uses related to Type III actions, and the Type IV procedures for requirements and uses related to Type IV actions. A separate Similar Use or Interpretation application shall be reviewed in accordance with the Type I-B procedures or staff may submit it to the Planning Commission for a decision in accordance with Type II-A procedures.

3.108.04 Review Criteria

- A. Use Ambiguities. A similar use may be authorized provided the applicant demonstrates the proposed use satisfies the following criteria:
 - 1. The use is substantially similar to a permitted or conditional use in the underlying zoning district and is similar in character, scale and performance to permitted or conditional uses in the underlying zoning district.
 - 2. The use conforms with the applicable standards and limitations of the underlying zoning district.

- B. Requirement Ambiguities. The terms or words used in this Ordinance shall be interpreted as follows where the context demands; words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; the word "shall" is mandatory and not discretionary; the word "may" is permissive; the masculine gender includes the feminine and neuter. Terms defined in Section 1.200, Definitions, have specifically stated meanings unless the context clearly requires otherwise. Terms not defined in Section 1.200, Definitions, shall have the meaning set forth in a dictionary, a copy of which is available for reference in the City Administrator's or designee's office. The Zoning and Development Ordinance shall be interpreted reasonably, reading questioned regulations in relation to other sections such that an Interpretation most fully reflects the intent and purpose of the regulations.

3.108.05 Decision

- A. In deciding an application for a similar use interpretation, the decision authority may:
1. Determine whether the use is prohibited, permitted or conditionally permitted in the specified district.
 2. Determine whether the use is permitted or conditionally permitted in a different district.
 3. Consistent with the development requirements of the identified district, determine whether additional land use actions, such as conditional use permit or a site plan review application, are required.
- B. The decision that a proposed similar use cannot be accommodated in a given district does not preclude an application, by the appropriate party, for an amendment to the text of the Comprehensive Plan and/or Zoning and Development Ordinance.

3.109 NONCONFORMING USES

3.109.01 Purpose and Scope

Within the zoning districts established by this Ordinance and amendments thereto, uses and structures exist which were lawful before the date of adoption or amendment of this Ordinance but which would be prohibited or restricted under the terms of this Ordinance. The general purpose of this Section is to encourage the conversion of such nonconforming uses to conforming uses. However, this Section allows nonconforming uses and structures to be continued, altered, restored or replaced subject to satisfaction of the review criteria specified in Subsection 3.109.06. Nothing contained in this Ordinance shall require any change in the plans, construction, or designated use of any structure for which a building permit was issued and actual construction commenced prior to the date of adoption of this Ordinance or any amendment thereto. However, no alteration of a nonconforming use shall be permitted except in compliance with the provisions of this Section.

3.109.02 Application and Fee

An application for an alteration, restoration or replacement of a nonconforming use shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Nonconforming use and structure applications shall be reviewed consistent with the Type II-A procedures in Section 3.201.03, A.

3.109.03 Discontinuation of Use

If a non-conforming use is discontinued for a period of more than twelve (12) consecutive months, the use shall not be resumed unless the resumed use conforms with the requirements of the Ordinance and other regulations applicable at the time of the proposed resumption.

3.109.04 Alterations Required by Law

The alteration of any nonconforming use when necessary to comply with any lawful requirement for alteration of the use or structure shall be permitted, subject to all other laws, ordinance and regulations.

3.109.05 Maintenance

Normal maintenance of a nonconforming use is permitted provided there are not major structural alterations as determined by the City Building Inspector.

3.109.06 Alteration, Restoration, or Replacement

- A. Restoration, alteration or replacement of a nonconforming use or structure may be approved when restoration, alteration or replacement is made necessary by fire, casualty, or natural disaster, provided the physical restoration, alteration or replacement is lawfully commenced within one (1) year of the damage or destruction.
- B. Alteration of a nonconforming use or structure may be approved provided the applicant demonstrates the proposal satisfies the following criteria:
 - 1. The alteration of the use or structure would result in a reduction in the nonconformity of the use or structure, or would have no greater adverse impact on the neighborhood
 - 2. If a change in use is requested, the non-conforming use would not be replaced by another non-conforming use. Replacement of a non-conforming use by a use in the same land use category shall not be considered a change of use.

3.109.07 Conditions of Approval

In approving the alteration, restoration, or replacement of a nonconforming use or structure, the decision may include conditions appropriate to ensure the approval criteria are met. Such conditions shall be reasonably related to the criteria set forth in Subsection 3.109.06.

3.109.08 Exemptions from Nonconforming Use Provisions

Nonconforming single family homes and their accessory structures and uses, created as a result of a legislative zone change, shall be exempt from the provisions in Sections 3.109.01 to 3.109.07. Owners of these homes shall be allowed to expand, modify or replace an existing residence subject to compliance with the development provisions of the zone existing prior to the legislative zone change action. Nothing in this provision shall permit the establishment of new non-conforming uses nor exempt nonconforming uses from provisions in this Section as a result of a non-legislative zone change.

3.109.09 Expiration of Approval

- A. Unless otherwise provided by the decision authority in the decision granting approval of the application, the approval shall automatically lapse one year after the effective date upon which it was granted unless one of the following events occur:
 - 1. The applicant or his successor in interest has secured a building

permit within said one year period, if a building permit is required, and has commenced construction of the structure authorized by the building permit within said one year period.

2. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the approval within said one year period.

B. The applicant may submit a request for an extension of time of the approval to avoid the approval lapsing. The request for extension and the required fee shall be filed with the City Administrator or designee at least 45-days prior to the expiration of the time established by Subsection A, above. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final. The decision authority may grant one 1-year extension.

3.110 PROPERTY LINE ADJUSTMENTS

3.110.01 Area of Application

A property line adjustment is a change to a property boundary that only modifies one common property line and does not create a new parcel of land or reduce the number of lots.

3.110.02 Standards

- A. A property line adjustment cannot create or vacate a parcel. Creation or vacation of a parcel requires approval of a land division.
- B. Following the property line adjustment, all lots must comply with lot size and dimensional standards of the applicable land use district. For non-conforming lots, the adjustment shall not increase the degree of non-conformance of the subject properties or surrounding properties.
- C. If there are existing structures on the parcels, the property line adjustment may not result in a setback violation.
- D. The adjustment should not reorient or significantly reconfigure the lots or parcels.

3.110.03 Submittal Requirements

The following information and material must be submitted by the applicant:

- A. Applications shall be submitted on forms provided by the City to the City Administrator or designee and accompanied by the appropriate fee. Applications shall be signed by the owners of all properties whose property lines will be adjusted by the application.
- B. Applications shall be accompanied by a preliminary map drawn to scale of not less than one inch equals fifty (50) feet nor more than one inch equals 200 feet, and at a minimum, contain the following:
 - 1. Appropriate identification stating the drawing is a preliminary map.
 - 2. North point, scale and date.
 - 3. Name and addresses of land owners, applicants, engineer, surveyor, planner, architect or other individuals responsible for the plan.
 - 4. Map number and tax lot or tax account number of the subject properties.

5. The proposed boundary lines and approximate area of the subject properties before and after the adjustment.
6. Dimensions and size in square feet or acres of all proposed properties.
7. The approximate location of existing streets, easements or rights-of-way adjacent to, or within, the subject properties, and, existing improvements on the properties and important features including, but not limited to, the City Limits and urban growth boundary.

3.110.04 Review Process

The application shall be reviewed consistent with the Type I-A procedure in Section 3.201 or the Type I-B procedure if discretion is exercised in making the decision.

After a property line adjustment is approved, the new boundary becomes effective only after the following steps are completed:

- A. A boundary survey is recorded at the Yamhill County Surveyor's Office and/or legal descriptions of the adjusted properties are recorded at the Yamhill County Clerk's Office. The applicant shall provide the City Administrator or designee a copy of the boundary survey and/or the legal descriptions within 30-days of recording.
- B. If required by ORS Chapter 92, Subdivisions and Partitions, a final plat and boundary survey are prepared and all new boundaries are monumented as required by ORS Chapters 92, Subdivisions and Partitions, and 209, County Surveyors. The final plat is submitted to the City for review and approval. After approval the applicant files the final plat at the County Clerk's office and Surveyor's Office and return three (3) copies to the City.

3.110.05 Expiration of Approval

- A. Unless otherwise provided by the decision authority in the decision granting approval of the application, the approval shall automatically lapse one year after the effective date upon which it was granted unless one of the following events occur:
 1. The applicant or his successor in interest records a final plat at the County Clerk's Office within said one year period.
 2. The applicant or his successor in interest records a land sale deed with a legal description within said one year period.
- B. The applicant may submit a request for an extension of time of the approval

to avoid the approval lapsing. The request for extension and the required fee shall be filed with the City Administrator or designee at least 45-days prior to the expiration of the time established by Subsection A, above. Submittal of the request for extension to the City Administrator or designee shall stay the expiration of the one year approval period until a decision, and all appeals of the extension decision, are final. The decision authority may grant one 1-year extension.

3.111 ANNEXATIONS

3.111.01 Authority of City to Annex

The boundary of the City may be extended by the annexation of territory not then within the City and which territory is within the urban growth boundary and contiguous to the City or separated from it by a stream or right-of-way only.

3.111.02 General Annexation Procedure

- A. Following submission of an annexation application, or initiation by the City, the City Administrator or designee shall set a date for a Planning Commission public hearing. Notice shall be pursuant to the proposed method of annexation.

- B. The Planning Commission shall hear testimony and shall recommend approval or denial of the proposed annexation to the City Council. The Planning Commission may recommend approval only if the applicant provides evidence and written justification showing the factors in Subsection B, 1 – 12, have been addressed and they support approving the annexation, and showing the annexation is in conformance with the City's comprehensive plan. The recommendation shall be submitted to the City Council within 45 days of the Planning Commission Chair signing the Planning Commission Order of Recommendation. The Planning Commission's recommendation shall be written and state the rationale used in justifying the recommendation, and how the decision is in conformance with the City's comprehensive plan and that the applicant's evidence and written justification show the factors in Subsection B, 1 – 12, have been addressed and how the proposed annexation is consistent with them.
 - 1. Affect on the community's air resources;
 - 2. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands;
 - 3. Relate to areas with natural hazards;
 - 4. Affect on the fish and wildlife in the proposed annexation;
 - 5. Utilize energy resources and conserve energy use;
 - 6. Protect open spaces and scenic views and areas;
 - 7. Provide for transportation needs in a safe, orderly and economic manner;

8. Provide for an orderly and efficient arrangement of public services;
 9. Provide for the recreation needs of the citizens;
 10. Affect on identified historical sites and structures and provide for the preservation of such sites and structures;
 11. Improve and enhance the economy of the City; and
 12. Provide quality, safe housing through a variety of housing types and price ranges.
- C. Following submission of the annexation application, or initiation by the City, the City Administrator or designee shall recommend the City Council set a date for a public hearing pursuant to the proposed method of annexation. Notice shall be pursuant to the proposed method of annexation. After considering all testimony the City Council shall approve, approve with conditions or deny the application. The City may enter into an annexation contract. The City Council decision shall be written and state the rationale used in justifying the decision, and how the decision is in conformance with the City's comprehensive plan and that the applicant's evidence and written justification show the factors in Subsection B, 1 – 12, have been addressed and how the proposed annexation is consistent with them.

3.111.03 Annexation by Election

- A. The Council, upon approval of the annexation proposal, has the authority to submit, except when not required under ORS. 222.850 to 222.915, to dispense with submitting the proposal for annexation to the registered voters of the City.
- B. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose. The proposal for annexation may be voted upon by the voters of the City and of the territory simultaneously or at different times not more that twelve months apart.
- C. Two or more proposals for annexation may be voted upon simultaneously; however in the City each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.
- D. The Council shall give notice of each annexation election by publication prior to such election one each week for four successive weeks in a newspaper of general circulation in the City. Whenever simultaneous elections are held, the same notice and publication shall fulfill the requirements of publication for the City election and the election held in the territory. Notice shall also be

given by posting notices of the election in four public places within the City if votes are to be cast therein and four public places in each territory proposed to be annexed for a like period as provided in this section for publication of notice. The notice shall distinctly state the proposition to be submitted, shall contain a legal description of, and a map indicating the boundaries of each territory proposed to be annexed, and the registered voters shall be invited thereby to vote upon such annexation. The Council shall also designate and the notice shall state the hours during which the polls will be open within the City and each territory proposed to be annexed. If the election is to be held at the usual precinct polling places designated for a general election held at that time, or if the election is not held at the same time as a general election, but is held at the same polling places used for the last preceding general election, the notice shall so state; if any polling place is to be different than the regular polling places, the notice shall describe the location of the polling places to be used in the area or precincts in which the polling places are different.

3.111.04 Annexation Procedure Without City Election

- A. By ordinance, the Council may elect to dispense with submitting the annexation proposal to the registered voters of the City, set a date for public hearing, at which time the registered voters of the City can be heard on the annexation proposal.
- B. Notice of the public hearing shall be published once a week for two successive weeks prior to the day of the hearing, in a newspaper of general circulation in the City, and posted in four public places in the City for a like period.
- C. Written notice shall be given to all property owners within the boundaries of the proposed annexation and within 500 feet of the external boundaries of the proposed annexation.
- D. After the public hearing the Council, by ordinance subject to referendum, and containing a legal description of the proposed annexation:
 - 1. Declare that the territory is annexed to the City upon the condition that the majority of the votes cast in the territory is in favor of annexation;
 - 2. Declare that the territory is annexed to the City where persons with land ownership in the proposed territory consent in writing to such annexation as provided in Section 3.200.

3.111.05 Annexation Procedure with Election in Proposed Territory

- A. The Council need not call or hold an election in any contiguous territory proposed to be annexed, or post notice in the contiguous territory, if more than half the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file the annexation proposal on or before the day:
 - 1. The public hearing procedure shall be pursuant to Subsections 3.111.02 (A) and (B); and Subsections 3.111.04 (B), and (C). If the Council dispenses with submitting the question to the registered voters of the City; or
 - 2. The Council takes the necessary action to call the annexation election in the City under Subsection 3.111.03 (D), if the Council submits the question to the registered voters of the City.

3.111.06 Island Annexation

- A. It is within the power and authority of the City by ordinance subject to referendum, to annex land, provided it is not an incorporated City that is surrounded by the corporate limits or boundaries of the City, with or without consent of any property owner or resident in the territory.
- B. Notice and procedure for public hearing shall be provided pursuant to the provisions of Section 3.111.02.
- C. If the Council elects to submit the questions to the registered voters of the City, procedure shall be pursuant to Subsection 3.111.03.

3.111.07 Submission of Annexation Reports

- A. The City shall report all changes in the boundaries or limits of the City to the County Clerk and County Assessor. The report shall contain a legal description of the new boundaries and shall be filed within 10 days from the effective date of the change of any boundary lines.
- B. With the exception of "Island Annexation" the City Recorder shall submit to the Secretary of State:
 - 1. A copy of the annexation ordinance;

2. An abstract of the vote within the City if votes were cast therein, which shall show the whole number of registered voters voting therein on the annexation, the number of votes cast against annexation;
3. A copy of the statement of consent of landowners in the territory annexed;
4. A copy of the ordinance of the City declaring that no election is required in the City; and
5. An abstract of the vote upon the referendum if a referendum petition was filed with respect to the deferred ordinance.

3.111.08 Effective Date of Annexation

The annexation shall be complete from the date of filing with the Secretary of State as provided in ORS 222.150, 222.160, 222.170, 111.900, and Subsection 3.111.07 (B). Thereafter, the annexed territory shall be and remain part of the City. The date of such filing shall be the effective date of annexation, provided such filing is not made later than 90 days prior to any general or primary election; otherwise, the effective date of such annexation shall be the day after the primary or general election next following the date of filing.

3.111.09 Zone Designation of Annexed Property

The City Council shall establish the appropriate Comprehensive plan designation and Zoning district upon annexation of the property to the City.

3.112 VACATIONS

3.112.01 Purpose

To provide a process and criteria to review and decide vacation applications.

3.112.02 Application and Fee

An application for a vacation shall be filed with the City Administrator or designee and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.112.03 Process

Vacation requests shall be reviewed in accordance with the Type III procedures and State Statute (ORS 271.080 to 271.170).

3.112.04 Review Criteria

A vacation may be authorized provided the applicant demonstrates the proposed use satisfies the following criteria:

- A. In accordance with State Statute (ORS 271.080) the application materials contain the signatures of the owners of all properties abutting the area to be vacated indicating they consent to the vacation;
- B. In accordance with State Statute (ORS 271.080) the application materials contain the signatures of the owners of not less than two-thirds in area of the real property affected by the vacation indicating they consent to the vacation;
- C. The proposed vacation will not adversely affect street connectivity;
- D. The proposed vacation will not adversely affect police, fire, or emergency service to the area; and
- E. The proposed vacation will not hinder accessibility to above-ground or below-ground public utility facilities or private utility facilities.

3.112.05 Conditions of Approval

The decision authority may impose conditions on the approval of a vacation request consistent with Section 3.201.03, H, Conditions for Type II and III Actions.