

## CHAPTER 3

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### **3.100 APPLICATION REQUIREMENTS AND REVIEW CRITERIA**

#### **3.101 SUMMARY OF APPLICATION TYPES AND REVIEW PROCEDURES**

All development permits and land use actions are processed under the administrative procedures provided for in this section. There are four types of actions, each with its own procedures.

##### **3.101.01 Type I Action**

A ministerial action reviewed by staff based on clear and objective standards. No conditions may be placed on the decision and notice of the decision is sent only to the applicant. Appeal is to the Planning Commission. The following actions are processed under the Type I procedure:

- A. Minor Variance
- B. Lot Line Adjustment
- C. Home Occupation
- D. Fence Permit
- E. Sign Permit
- F. Floodplain Permit
- G. Temporary Use Permit

##### **3.101.02 Type II Action**

A Type II action is a quasi-judicial review in which the Planning Commission applies a mix of objective and subjective standards that allow considerable discretion. Public notice and a public hearing is provided, see Section 3.202. Appeal of a Type II decision is to the City Council. The following actions are processed under a Type II procedure:

- A. Major Variance
- B. Conditional Use Permit
- C. Site Design Review
- D. Similar Use
- E. Nonconforming Uses
- F. Partitions
- G. Subdivision
- H. Planned Unit Development

**3.101.03 Type III Action**

A Type III action is a quasi-judicial process in which the City Council applies a mix of objective and subjective standards. The Planning Commission has an advisory role. Public notice is provided and public hearings are held at the Planning Commission and City Council, see Section 3.202. Appeal of the decision is to the Land Use Board of Appeals (LUBA). The following actions are processed under a Type III procedure:

- A. Zone Change
- B. Annexation
- C. Vacation

**3.101.04 Type IV Action**

A Type IV action is a legislative review in which the City considers and enacts or amends laws and policies. Private parties cannot request a Type IV action. It must be initiated by City staff, Planning Commission, or City Council. Public notice and hearings are provided in a Type IV process.

- A. Amendments and Revisions of the Comprehensive Plan
- B. City Plan Document Adoption, e.g. Water system Plan
- C. Zoning and Development Code amendments

## **3.102 VARIANCE**

### **3.102.01 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.

### **3.102.02 Applicability**

Under the following provisions, a property owner or his designate may propose a modification or variance from 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 modifying or waiving the particular requirement or standard; or
- C. Modification of the requirement or standard is prohibited within the district;

### **3.102.03 Application and Fee**

An application for a variance shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application, including findings that address relevant criteria, which addresses the review criteria of this Section.

### **3.102.04 Criteria and Procedure - Minor Variance**

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

- A. 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
- B. There has not been a previous land use action approved on the basis that a minor variance would not be allowed.

**3.102.05 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.





### **3.103            CONDITIONAL USE PERMITS**

#### **3.103.01        Process**

Conditional Use Permit applications shall be reviewed in accordance with the Type II review procedures.

#### **3.103.02        Application and Fee**

An application for a Conditional Use Permit shall be filed with the City 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 Permits shall be approved if the applicant provides evidence substantiating that 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.

## **3.104 SITE DESIGN REVIEW**

### **3.104.01 Purpose**

The Site Design 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 design review provisions are not intended to preclude uses that are permitted in the underlying zones.

### **3.104.02 Process**

Site Design Review applications shall be reviewed in accordance with the Type II review procedures.

### **3.104.03 Application and Fee**

An application for Site Design Review shall be filed with the City 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.

### **3.104.04 Applicability of Provisions**

- A. Site Design Review shall be applicable to all new developments and major expansion or remodel (25% or more increase in total square footage) of existing developments except:
  - 1. Single-family detached dwellings;
  - 2. A duplex or triplex.

- B. All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Code.

**3.104.05 Submittal Requirements**

- A. The following information shall be submitted as part of a complete application for Site Design 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;
- f. Existing structures, roadway access and utilities; and
- g. Fire flow information.
- h. Existing and proposed streets, bikeways, and pedestrian facilities within 300 feet.

- 2. Site Plan

- a. Proposed grading and topographical changes;
- b. All proposed structures including finished floor elevations, setbacks, exterior elevations, and exterior finishing.
- c. Vehicular and pedestrian circulation patterns, parking, loading and service areas;
- d. Proposed access to public roads and highways, railroads or transportation systems;

- e. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services. Invert 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.
- k. A traffic impact analysis if requested by the City Administrator.
- l. Other appropriate studies and information that may be required by the City Administrator to adequately evaluate the project.

**3.104.06 Evaluation of Site Plan**

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

- A. Conformance with the General Development Standards contained in this Ordinance including:
  - 1. Streets
  - 2. Off-street parking
  - 3. Public facilities, including storm drainage, and utility lines
  - 4. Signs
  - 5. Site and landscaping design

- B. Characteristics of adjoining and surrounding uses;
- C. Drainage and erosion control needs;
- D. Public health factors;
- E. Parking, traffic safety, and connectivity of internal circulation to existing and proposed streets, bikeways and pedestrian facilities.
- 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.

**3.104.07 Access**

As part of the design review process, the City may impose the following conditions on a new or expanding development:

- A. Limit or prohibit access to local streets which principally serve residential uses
- B. Require a traffic impact analysis
- C. Limit or prohibit access to Highway 99W
- D. Require the dedication of additional right-of-way and/or street improvements where necessary to meet City street standards

**3.104.08 Expiration of Approval**

- A. Site Design Review approval shall be effective for a period of eighteen (18) months from the date of approval. If substantial construction of the approved plan has not begun within eighteen months, the approval shall expire.
- B. Site Design Review approval shall be voided immediately if construction on the site is a departure from the approved plan.

- C. The City Administrator shall upon written request by the applicant and payment of the required fee, grant an extension of the approval for a period not to exceed six months provided that:
1. No changes are made to the approved Site Design 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 existing conditions, facts, or applicable policies or ordinance provisions on which the original approval was based.

**3.104.09 Financial Assurances**

All public utility improvements required by this ordinance or as conditions of approval shall be completed prior to the issuance of an occupancy permit, unless there exists a performance guarantee acceptable to the City Attorney, as provided for in Subsection 3.208.

**3.105 SIMILAR USES**

**3.105.01 Purpose**

The purpose of this Section is to provide for 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.

**3.105.02 Process**

Similar uses requests shall be reviewed in accordance with the Type I review procedures

**3.105.03 Application and Fee**

Any application for a similar use shall be filed with the City Administrator 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.

**3.105.04 Review Criteria**

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

- A. The use is consistent with the purpose of the underlying zoning district and is similar in character, scale and performance to uses specified in the underlying district, and
- B. The use conforms with the applicable standards and limitations of the underlying zoning district, or

**3.105.05 Determination**

- A. In approving an application for a similar use, the Planning Commission may:
  - 1. Determine whether the use is prohibited, permitted or conditionally permitted in the specified zone.



2. Determine whether the use is permitted or conditionally permitted in a different zone.
  3. Consistent with the development requirements of the identified zone, determine whether additional land use actions, such as conditional use approval or a site plan review, are required.
- B. The determination by the Planning Commission that a proposed similar use cannot be accommodated in a given zone does not preclude an appeal to the City Council, by the appropriate party, for an amendment to the text of the Comprehensive Plan and/or Development Code. The City Council will evaluate such appeals based on the following criteria:
1. It's similarity to approved uses;
  2. It's likely impact on surrounding existing uses;
  3. It's likely public benefit.

## **3.106 NONCONFORMING USES AND STRUCTURES**

### **3.106.01 Purpose**

Within the zoning districts established by this Ordinance and amendments thereto, uses and structures may 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. 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. Nonconforming lots are addressed in Section 2.301.03 Lots of Record, and are not subject to the criteria of this Section.

### **3.106.02 Process**

Nonconforming uses shall be reviewed in accordance with Type II review procedures

### **3.106.03 Application and Fee**

An application for an alteration, expansion or continuation of a nonconforming use shall be filed with the City Administrator 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.

### **3.106.04 Discontinuation of Use**

If a nonconforming use is discontinued for a period of more than six (6) consecutive months, the use shall not be resumed unless the new or resumed use conforms with the requirements of this Ordinance. This does not apply to nonconforming single-family dwellings.

**3.106.05 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; or to bring the use or structure into closer compliance with this Ordinance; shall be permitted, subject to all other laws, ordinance and regulations.

**3.106.06 Maintenance**

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

**3.106.07 Alteration, Restoration, or Replacement**

- A. No alteration of a nonconforming use shall be permitted except in compliance with the provisions of this Section.
- B. The alteration, restoration, or replacement of a nonconforming use or structure may be authorized by the Planning Commission, subject to the Type II review procedure, provided that the applicant demonstrates that the proposal satisfies the following criteria:
  - 1. That the alteration of structures would result in a reduction in nonconformity of the use, or would have no greater adverse impact on the neighborhood
  - 2. A change in use to another nonconforming use may be permitted if it is of the same or less intensity of use.
- C. In approving the alteration, restoration, or replacement of a nonconforming use, the Planning Commission may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.
- D. The applicant must make application for a restoration or replacement within six (6) months of damage or destruction.
- E. Planning Commission approval shall be valid for six (6) months. This approval period shall be satisfied by the issuance of building permits for the approved work.
- F. The Planning Commission, subject to the Type II review procedure, may extend the approval period for an additional six (6) months.

Requests for extension of approval period shall be submitted in writing thirty (30) days prior to the expiration date of the approval period. In no case shall the total approval period exceed one (1) year from a final decision.

**3.106.08 Nonconforming Single-Family Residential Structures**

A nonconforming single-family dwelling may be continued, altered, expanded, replaced, or restored for residential purposes without Planning Commission review. A single-family dwelling does not lose its nonconforming status due to vacancy. The alteration of a nonconforming single-family dwelling, that does not involve a change in use, is authorized without Planning Commission approval, provided current building codes are met by the replaced or restored structure, and all required permits are secured. A nonconforming single-family dwelling shall not expand into less than five (5) foot setbacks from all side and rear property lines.

### **3.107 LOT LINE ADJUSTMENTS**

#### **3.107.01 Applicability**

A lot line adjustment is a change to a property boundary that only modifies existing lots and does not create a new parcel of land.

#### **3.107.02 Standards**

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

#### **3.107.03 Submittal Requirements**

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

- A. Applications for lot line adjustments shall be submitted on forms provided by the City to the City Recorder and accompanied by the appropriate fee. The application must be signed by the owners of all lots affected by the application.
- B. Each application shall be accompanied by a preliminary map drawn to scale of not less than one inch equals fifty (50) feet, and containing at a minimum, the following:
  - 1. A written statement which explains the applicants reasons for adjusting the boundaries and demonstrating that the adjustment conforms to City land use regulations of the applicable zone.
  - 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 subject property.
5. Dimensions and size in square feet or acres of all proposed parcels.
6. The approximate location and identification of existing streets, easements or right-of-ways adjacent to, or within, the subject property, and, existing improvements on the property and important features such as section or political boundary lines.

#### **3.107.04 Process**

A lot line adjustment is subject to Type I review. After a lot line adjustment is approved, the new boundary becomes effective only after the following steps are completed:

- A. A metes and bounds legal description of the adjusted lots is recorded with the Yamhill County Clerk.
- B. If required by ORS Chapter 92 or the requirements of this ordinance, or the Yamhill County Surveyor, a final plat and boundary survey are prepared and all new boundaries are monumented as required by ORS Chapters 92 and 209. The final plat is submitted to the City for signatures and approval as outlined in Sections 3.108.04 and 3.108.05.

### **3.108 PARTITIONS**

#### **3.108.01 Applicability/Review Criteria**

A partition is required for any land division which creates two or three parcels in any three (3) year period. The parcels shall meet the Development Standards for Land Division of Section 2.208, other applicable development standards and the following additional requirements:

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

#### **3.108.02 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 next three (3) calendar years in which it was recorded, except through the subdivision process.

#### **3.108.03 Process**

Preliminary plats for partitions shall be reviewed in accordance with the Type II review procedures.

#### **3.108.04 Application and Fee**

- A. Applications for partitions shall be submitted on forms provided by the City to the City Recorder 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. The applicant shall prepare and submit a preliminary plan and other supplemental information as may be required by staff to indicate the

intent of the development. The preliminary plan should show pertinent information to scale to facilitate the review of the proposed development.

1. General Information. The following general information shall be shown on the tentative plan:

- a. Vicinity map showing all streets, property lines, streams, and other pertinent data to locate the proposal.
- b. North arrow and scale of drawing.
- c. Tax map and tax lot number or tax account of the subject property.
- d. Dimensions and size in square feet or acres of the subject property and of all proposed parcels.

2. Existing Conditions:

- a. Location of all existing easements within the property.
- b. Location of City utilities (water, sanitary sewer, storm drainage) within or adjacent to the property proposed for use to serve the development.
- c. The location and direction of water courses or drainage swales on the subject property.
- d. Existing uses of the property, including location of existing structures on the property. It should be noted whether the existing structures are to be removed or to remain on the property.

3. Proposed Plan:

- a. Locations, approximate dimensions and area in square feet of all proposed parcels. All parcels shall be numbered consecutively.
- b. Location, width and purpose of any proposed easements.



4. Supplemental Information

Proposed deed restrictions, if any, in outline form.

**3.108.05 Final Plat Approval**

- A. Within one 18 months of the final decision approving a preliminary plat, a final survey of the approved plat shall be recorded. If the final survey is not recorded within one 18 months, the preliminary approval shall lapse. Final plats shall conform with the requirements of Section 3.108.04 and shall be reviewed in accordance with Section 3.201.02.
- B. The Planning Commission may extend the approval period for any partition for not more than one (1) additional year at a time. Requests for extension of approval time shall be submitted in writing thirty (30) days prior to the expiration date of the approval period.
- C. If the approval period is allowed to lapse, the applicant must resubmit the proposal, including all applicable fees, for public hearing before the Planning Commission. The applicant will be subject to all applicable standards currently in effect.

**3.108.06 Expedited Land Division**

- A. Definition. An expedited land division:
  - 1. Is an action of the City that:
    - a. Includes land that is zoned for residential uses and is within an urban growth boundary.
    - b. Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.
    - c. Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that

protect open spaces, scenic historic areas, natural resources, and estuarine resources.

- d. Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.
- e. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site.

2. Is a land division that:

- a. Will create three or fewer parcels; and
- b. Meets the criteria set forth for an action under subsection 3.101.02.

B. Exclusion.

- 1. Property and process exclusions include properties specifically mapped and designated in the Comprehensive Plan or Development Ordinance for full or partial protection of natural features under the statewide planning goals that protect open space, scenic and historic areas and natural features and not eligible for the construction of dwelling units or accessory buildings.
- 2. The expedited land division process is not a land use or limited land use decision and is not subject to the permit requirements of City enabling legislation. Decisions are not subject to the Comprehensive Plan and not eligible for appeal to the Land Use Board of Appeals (LUBA).

C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.

- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 150 feet of the site proposed for the land division. The notice shall include the following:
1. A 14 day deadline for submission of written comments.
  2. The time and place where all copies of evidence submitted by the applicant will be available for review.
  3. The name, address, and telephone number of the City's staff person available to comment on the application.
  4. Summary of the local decision making process for such a decision.
  5. Applicable decision criteria.
  6. Notification that participants must raise all issues during the written comment period.
- E. Initial Decision. The Planning Commission shall allow at least 14 days for written comments and shall render a decision within 63 days of a complete application. No public hearing may be held during the initial decision making phase.
- F. Notice of Final Decision. A notice of decision must be given to the applicant and other participants of the decision. The notice of decision shall state the appeal process.
- G. Time Extension.
1. Applicant: If a decision is not made within 63 days, the applicant may seek review by writ of mandamus.
  2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in applications makes the 63 day period impracticable. Following a 7-day notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That

determination is specifically declared not to be a land use decision or limited land use decision.

- H. Decision Criteria. Criteria for approving the partition shall be as follows:
  - 1. The criteria established in Section 3.108.01.
  - 2. Density. The application must be able to establish at least 80 percent of the allowable density of the applicable residential zone.
  - 3. Street Standards. The application must comply with the most recent Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards.
- I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within 14 days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.
- J. Appeal Fee. Filing an appeal requires a deposit of \$300.00 to cover costs. An appellant faces the possibility of an assessment of \$500.00 for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded.
- K. Basis of an Appeal of the Initial Decision. The local appeal shall be based on the following:
  - 1. The failure to meet local substantive and procedural requirements,
  - 2. Unconstitutionality,
  - 3. The decision was not within the expedited land division category, or
  - 4. A party's substantive rights have been substantially prejudiced by an error in procedure of the local government.

- L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.
  
- M. Hearings Officer Notification. Within 7 days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.
  
- N. Appeal Hearing. The hearings officer conducts a hearing that:
  - 1. Follows the Commission proceeding requirements,
  - 2. Allows the local government's explanation of its decision, and
  - 3. May consider evidence not previously considered.
  
- O. Hearings Officer Decision. In all cases , not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.
  
- P. Appeal of Hearings Officer Decision. Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.
  
- Q. Basis of an Appeal of the Hearings Officer Decision. The grounds for review of a hearings officer's decision are limited to:
  - 1. Whether the decision followed the process for an expedited land division and appellant raised that issue,
  - 2. Unconstitutionality, and

3. Certain bias or interest on the part of the hearings officer or local government.
- R. Process for Final Plat Approval. Final plats for expedite land divisions shall be reviewed consistent with the requirements in Section 3.108.05.

**3.109 SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS**

**3.109.01 General Provisions**

- A. All subdivisions and 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.

**3.109.02 Application and Fee**

- A. The following submittal requirements shall apply to all Preliminary Plan applications for subdivisions and PUDs.
  - 1. All applications shall be submitted on forms provided by the City to the City Recorder 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 3.108.04, applicants for subdivisions, and planned unit developments shall submit the following:
    - a. Name of the PUD or subdivision.
    - b. Identification of each lot or parcel and block by number.
    - c. Direction of drainage and approximate grade of abutting streets.
    - d. Streets proposed and their names, approximate grade, and radius of curves.
    - e. Any other legal access to the subdivision or PUD, other than a public street.
    - f. Contour lines related to an established bench mark, having the following minimum intervals:
      - (1) Areas with less than 5% slope: One foot contours

- (2) Areas with slope between 5% and 10%: Two foot contours.
    - (3) Areas with slope greater than 10%: Five foot contours.
  - g. All areas to be offered for public dedication.
  - h. A vicinity map as described in Subsection 3.108.04 extending 1,200 feet in each direction.
- B. The following supplemental information shall be required for all PUD Preliminary 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, private streets and any commonly owned facilities.

**3.109.03 Process**

- A. Preliminary plats for subdivisions and PUDs shall be reviewed in accordance with the Type II review procedures.
- B. Approvals of any preliminary plats for a subdivision or PUD shall be valid for 18 months after the date of the written decision. A Final Plat for a subdivision shall be recorded within this time period or the



approvals shall lapse. PUDs which do not involve the subdivision of property shall show substantial progress toward the construction of the project within 18 months or the approval shall lapse.

- C. The Planning Commission may extend the approval period for any subdivision or PUD for not more than one (1) additional year at a time. Requests for extension of approval time shall be submitted in writing thirty (30) days prior to the expiration date of the approval period.
- D. If the approval period is allowed to lapse, the applicant must resubmit the proposal, including all applicable fees, for public hearing before the Planning Commission. The applicant will be subject to all applicable standards currently in effect.

#### **3.109.04 Final Plat Requirements**

- A. Preparation: The final plat shall be submitted to the City in a form and with information consistent with this ordinance, County survey and map standards and State laws including ORS 92.010-160 for plats of record and ORS 209.250 for surveys.
- B. Number of Copies: The applicant shall submit three (3) identical reproducible copies of the final plat for signature. The plats shall be mylar, meeting the requirements of the County Recorder and the County Surveyor.
- C. Information Required: In addition to any information specified by current State law or County regulations, the following information shall be shown on the final plat:
  - 1. The area of each lot shall be shown in square feet. For parcels larger than one acre, the area shall be shown to the nearest hundredth of an acre.
  - 2. Identification of land to be dedicated for any purpose, public or private, to distinguish it from lots or parcels intended for sale. The following phrases shall be used when identifying open space dedications:
    - a. **COMMON OPEN SPACE**: Used to identify those parcels of land created for the purpose of common ownership, enjoyment and maintenance by an approved

homeowner's association or is listed as being held in common ownership, with appropriate deed restrictions and responsibilities, by owner's of property within the development.

b. PUBLIC OPEN SPACE: Used when identifying those parcels of land dedicated to the City for open space purposes.

3. Water rights (ORS 92.120):

a. If there are not water rights appurtenant to the tract, a statement shall be placed on the final plat which states that the parcels identified within this development DO NOT have a water right.

b. If any portion of the tract does have water rights, a water rights statement with the water rights certificate number shall be placed on the final plat. A copy of the plat shall be provided to the Water Resources Department by the person offering the plat for filing.

4. Location, dimensions, bearing and purpose of all recorded and proposed public and private easements along with the County Clerk's recording reference if the easement has been recorded with the County Clerk. Easements shall be denoted by fine dashed lines. The conditions of all easements shall be noted on the final plat or recorded on separate easement forms as approved by the City.

D. Endorsements required: The following endorsements represent the minimum required for a final plat. Additional endorsements required by State or County, laws, ordinances or regulations shall also be supplied. Signature blanks for these endorsements shall be provided on the final plat.

1. City Administrator.

2. Mayor.

3. City Engineer.

4. Planning Commission Chair
5. Signature blanks for the Mayor with acceptance declaration for dedications of land to public use (other than public utility easements).
6. The County Board of Commissioners.

E. Supplemental Information with Final Plat:

1. An amended title report or subdivision guarantee, as appropriate, issued by a title insurance company in the name of the owner of the land, showing all parties with a title or interest in the property and whose consent is necessary, as well as all existing easements, restrictions, covenants and other encumbrances pertaining to the subject property.
2. Copy of any dedication requiring separate documents.
3. Where applicable, all Homeowner's Agreements, Articles and By-Laws shall be submitted with the final plat for review by the City Attorney.
  - a. The final plat shall not be approved by the City until the Homeowner's Association Agreement, Articles and By-Laws are approved.
  - b. The Homeowner's Association Agreement shall be consistent with State law, including ORS Chapter 94.
  - c. A Certificate of Formation of a non-profit corporation for the Homeowner's Association, with a State Seal, shall be submitted with the final plat for review by the City.
  - d. Signed, original documents of the Homeowner's Association Agreement, Articles and By-Laws and the certificate of Formation shall be recorded with the final plat.
4. Maintenance Agreements for common property or common access easements shall be submitted with the final plat for review by the City Attorney.

### 3.109.05

#### **Final Plat Approval**

- A. Within 18 months of the final decision approving a preliminary plat, a final approved plat shall be recorded with the County Recorder. If the final plat is not recorded within 18 months, the preliminary approval shall lapse.
- B. A final plat shall be submitted to the City Administrator. After the final plat has been submitted, the City Staff shall review and compare it with the approved tentative plan to ascertain whether the final plat conforms substantially to the approved tentative plan and with such conditions of approval as may have been imposed. The Planning Commission Chairman shall signify Planning Commission approval of the final plat by signing the recorder's plat sheet and exact duplicate.
- C. No final plat shall be approved unless:
  - 1. The plat is in substantial conformance with this Ordinance and the provisions of the tentative plan as approved, including any conditions imposed in connection therewith;
  - 2. The plat contains free and clear of all liens and encumbrances a donation to the public of all common improvements, including but not limited to streets, roads, sewage disposal and water supply systems, the donation of which is required by this Ordinance or was made a condition of the approval of the tentative plat;
  - 3. Explanations of all common improvements required as conditions of approval of the tentative plan have been recorded and referenced on the plat;
  - 4. All reserve blocks shown on the tentative plan or required as conditions of tentative plan approval have been deeded in fee simple to the City;
  - 5. The City has received adequate assurances that the applicant has agreed to make all public improvements which are

required as conditions of approval of the tentative plan, including but not limited to streets, alleys, pedestrian ways, storm drainage, sewer and water systems. The following constitute acceptable adequate assurances:

- a. Certification by the City Engineer that all required public improvements are completed and approved by the City; or
  - b. An improvement agreement between the City and the developer, executed and filed with the City requiring the subdivider to complete all required improvements, both public and private, within a time specified by the City after approval of the preliminary plan. The agreement shall be accompanied by a performance guarantee acceptable to the City. If all improvements are not completed within the term of the agreement or its extension, the City shall estimate the cost of completing the work, call upon the bond or deposit for funds necessary to cover the cost, and complete the improvement from funds collected under the performance guarantee. If the funds collected under the performance guarantee are insufficient to install the required improvements, the City may either hold the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvements as determined reasonable by the City Administrator.
- D. If the City Recorder finds that conditions specified in subsection (C) of this section have not been met, the applicant shall be advised of the changes that must be made and afforded the opportunity to comply. Rejection of a final plat shall not affect the tentative plan approval.
- E. When the City Recorder finds that the final plat is in substantial conformity to the approved tentative plan and is otherwise in lawful form, the City Recorder shall sign and date all three reproducible copies of the plat.
- F. Following endorsement of the plat by the City Recorder, the Mayor and the City Engineer, the applicant shall:

1. Pay all required review fees.
  2. Complete all action required by ORS 92.100.
  3. Obtain any other approval signature required by State, County or City laws, ordinances or regulations.
  4. Deliver the approved subdivision plat and accompanying documents to the County Recorder for recording.
  5. Deliver a signed mylar copy and three blueprints of the approved subdivision plat to the City Recorder's office.
- G. Effective Date of Final Plat. An approved subdivision shall become effective upon recording of the final plat at Yamhill County, together with any documents required by the County Recorder.

**3.110 ZONE CHANGE**

**3.110.01 Process**

Zone change shall be reviewed in accordance with the Type III review procedures.

**3.110.02 Application and Fee**

An application for a zone change shall be filed with the City Recorder 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.

**3.110.03 Criteria for Approval**

Zone change proposals shall be approved if the applicant provides evidence substantiating the following:

- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
- B. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
- C. Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance.
- D. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.
- E. For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met.
- F. The following additional criteria shall be used to review all non-residential changes:
  - 1. The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses

allowed in the zone during the next 5 years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed use.

2. The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.



### **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 City's 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 annexation proposal or initiation, the City Recorder shall set a date for hearing with the City. 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 and submit such recommendation to the Council within 10 days for the hearing. The Planning Commission's decision shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan. For all annexations the decision shall state how the proposal will:
  - 1. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands;
  - 2. Relate to areas with natural hazards;
  - 3. Protect open spaces and scenic views and areas;
  - 4. Provide for transportation needs in a safe, orderly and economic manner;
  - 5. Provide for an orderly and efficient arrangement of public services;
  - 6. Affect identified historical sites and structures and provide for the preservation of such sites and structures;
  - 7. Improve and enhance the economy of the City; and

8. Provide quality, safe housing through a variety of housing types and price ranges.
- C. The City Recorder shall set a date for a public hearing with the Council upon receipt of the Planning Commission's recommendation. Notice shall be pursuant to the proposed method of annexation. After considering all testimony the Council shall sustain or reverse the Planning Commission's recommendation. The Council shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan. The decision shall state how the proposed annexation will address the criteria stated in 3.111.02 (B).

### **3.111.03 Annexation by Election**

- A. The Council, upon approval of the annexation proposal, has the authority to submit, or as allowed by State law, to dispense with submitting the proposal for annexation to the registered voters of the City.
- B. Annexation proposals that are submitted to the voters 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 150 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.

#### **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 that 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 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 and 3.111.04.
- 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, County Assessor and Oregon Department of Revenue. 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 State law. 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 zoning, in conformance to the comprehensive plan, upon annexation of property to the City.

**3.112 RESERVED**

### **3.113 TEMPORARY USES**

#### **3.113.01 Purpose**

The purpose of this Section is to grant opportunities for seasonal and short-term businesses to provide local residents and visitors access to new products and markets. Emerging businesses may also benefit from the opportunity to test and promote their products with lower overhead, prior to investing in a permanent location. Examples of temporary uses include Christmas tree sales, firework stands, farmers markets, food carts, etc.

#### **3.113.02 Process**

Temporary uses requests shall be reviewed in accordance with the Type I review procedures

#### **3.113.03 Application and Fee**

Any application for a temporary use shall be filed with the City Administrator 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.

#### **3.113.04 Review Criteria**

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

- A. The use is authorized by the property owner.
- B. The use conforms with the dimensional standards of the underlying zoning district.
- C. The use is consistent with all City municipal code policies related to nuisance and noise.
- D. The use has secured all applicable State and County permits for operation.
- E. The use does not involve in any type of development activities or site alteration which would otherwise require land use review.

- F. The use either does not require or has secured Oregon Department of Transportation (ODOT) permits, if located along a right-of-way within ODOT jurisdiction.

**3.113.05 Determination and Appeals**

- A. Upon reviewing an application for a temporary use, the City Administrator may determine whether the temporary use is prohibited or permitted at the specified location.
- B. A determination by the City Administrator may be appealed to the Planning Commission by the appropriate party, through a Type II review process.

**3.113.06 Extensions**

- A. Temporary Uses may be approved for a period of 90 consecutive days, regardless of how many of those days are used.
- B. Extensions of an approved temporary use may be granted by the City Administrator if requested in writing not less than fifteen (15) days prior to the approval expiration. In no case shall the temporary use exceed 180 consecutive days in a 12-month period of time, as measured from the start of operation.

**3.200 ADMINISTRATIVE PROCEDURES**

**3.201 APPLICATION PROCEDURES**

**3.201.01 Procedures for Type I Action**

Applications subject to administrative review shall be reviewed and decided by the City Administrator.

- A. Upon receipt of an application for a Type I land use action, the City staff shall review the application for completeness.
  - 1. Incomplete applications shall not be reviewed until all required information has been submitted by the applicant.
  - 2. If incomplete, the applicant shall be notified and provided additional time of up to 30 days to submit supplemental information as necessary.
- B. The application shall be deemed complete either:
  - 1. Upon receipt of the additional information; or, if the applicant refuses to submit the information;
  - 2. On the 31st day after the original submittal the application shall be deemed complete for review purposes.
- C. Referrals may be sent to interested agencies such as City departments, Fire District, the school district, utility companies, and applicable state agencies. If a county road or state highway might be impacted, referrals should be sent to Yamhill County Public Works and/or ODOT.
- D. If the staff finds that the facts of the particular case require interpretation of existing standards, then a public hearing before the Planning Commission shall be scheduled. The procedures for conducting the public hearing shall comply with the standards in Sections 3.203.
- E. Within thirty (30) days of receipt of a complete application, or such longer period mutually agreed to by both staff and the applicant, staff



shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria;

- F. Written notice shall be mailed to the applicant.
- G. A Type I land use decision may be appealed by the applicant to the Planning Commission. The appeal shall be filed, pursuant to the provisions of Section 3.205, within twelve (12) days from the date of the decision.
- H. The timing requirements established in this Section are intended to allow a final action, including resolution of any appeals, within one hundred twenty (120) days of receipt of a complete application. If for any reason it appears that such final action may not be completed within the 120 day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.
  - 1. The City staff shall notify the City Council of the timing conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120 day period.
  - 2. Public notice shall be mailed to affected parties as specified in Section 3.202.
  - 3. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Section 3.204 and render a decision approving or denying the request within the 120 day period.

**3.201.02 Procedures for Type II and Type III Actions**

- A. Upon receipt of an application for Type II or Type III land use action, the City staff shall review the application for completeness.
  - 1. Incomplete applications shall not be scheduled for Type II or Type III review until all required information has been submitted by the applicant.
  - 2. If incomplete, the applicant shall be notified and provided additional time of up to 30 days to submit supplemental information as necessary.

- B. The application shall be deemed complete for the purposes of scheduling the hearing and all related timing provisions either:
  - 1. Upon receipt of the additional information; or, if the applicant refuses to submit the information;
  - 2. On the 31st day after the original submittal the application shall be deemed complete for scheduling purposes only.
- C. Applications for more than one Type II or Type III land use action for the same property may, at the applicant's discretion, be combined and heard or reviewed concurrently.
- D. Referrals may be sent to interested agencies such as City departments, the school district, utility companies, and applicable state agencies. If a county road or state highway might be impacted, referrals should be sent to Yamhill County Public Works and/or ODOT.
- E. The Public Hearing shall be scheduled and notice shall be mailed to the applicant and adjacent property owners. Notice requirements shall comply with Section 3.202.02.
- F. Staff shall prepare and have available within 7 days of the scheduled hearing a written recommendation concerning the proposed action. This report shall be mailed to the applicant and available at City Hall for all interested parties.
- G. The public hearing before the Planning Commission shall comply with the provisions in Section 3.203.
- H. Approvals of any Type II or Type III action may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:
  - 1. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by a proposed land use described in an application. Conditions shall be related to the following:
    - a. Protection of the public from the potentially deleterious effects of the proposed use; or

- b. Fulfillment of the need for public service demands created by the proposed use.
  2. Changes or alterations of conditions shall be processed as a new administrative action.
  3. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant provides information which demonstrates to the satisfaction of the Planning Commission that it is not practical to fulfill all conditions prior to issuance of such permit, the Planning Commission may require a performance guarantee to ensure compliance with zoning regulations or fulfillment of required conditions as provided in Section 3.208.
- I. The applicant shall be notified, in writing, of the Planning Commission's decision or recommendation. In addition, notice of the Commission's decision shall be mailed to individuals who request such notice at the public hearing, or, by those individuals who submitted a written request for notice prior to the public hearing.
- J. A Type II land use decision may be appealed to the City Council by either the applicant or persons receiving notice of the decision. The appeal shall be filed within twelve (12) days from the date of the decision, pursuant to the provisions of Section 3.205. Type III land use applications are automatically reviewed by the City Council.
- K. The timing requirements established by this Section are intended to allow a final action, including resolution of appeals for all land use actions within one hundred twenty (120) days of receipt of a complete application, except for Type III actions. If for any reason it appears that such final action may not be completed within the 120 day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.
  1. The City staff shall notify the City Council of the timing conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120 day period.

2. Public notice shall be mailed to affected parties as specified in Section 3.202.
3. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Section 3.204 and render a decision approving or denying the request within the 120 day period.

## **3.202 PUBLIC NOTICE REQUIREMENTS**

### **3.202.01 Type I Actions**

Written notice of any Type I decision shall be mailed to the applicant.

### **3.202.02 Type II and Type III Actions**

- A. Notice of any public hearings before the Planning Commission or City Council for a Type II or Type III land use action required by this Ordinance shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to the public hearing. Newspaper notice shall only be required for Type II actions, vacations, and zone changes. Notice for annexations shall be as set forth in Section 3.111.
- B. Written notice of the initial public hearing shall be mailed at least twenty (20) days prior to the hearing date to the owners of property within 150 feet of the boundaries of the subject property. Applicants shall be responsible for providing a certified list of property owners within the notice area prepared by Yamhill County or a title company. The list must be current within the last 30 days.

### **3.202.03 Type IV Actions**

- A. Where a Type IV action is scheduled only a ten (10) day published notice shall be required.
- B. In addition, written notice of the first public hearing shall be mailed at least twenty (20) days but not more than forty (40) days prior to the hearing date to all owners of property within the City whose property would be rezoned by a Type IV actions that amends or adopts new provisions to this development code that limits or prohibits land uses previously allowed in an affected zone.

### **3.202.04 Notice for Appeals**

Notice of hearings on appeal to either the Planning Commission or City Council shall be pursuant to Section 3.202.02, and shall include written notice at least twenty (20) days prior to hearing to the appellant, the applicant and any other individuals who received notice of the original decision.

### 3.202.05 Notice Requirements

#### A. Public notice shall:

1. Explain the nature of the application and the proposed use or uses which could be authorized;
2. Cite the applicable criteria from the ordinance and the plan which apply to the application at issue;
3. Set forth the street address or other easily understood geographical reference to the subject property;
4. State the date, time and location of the hearing;
5. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals;
6. Include the name of the City representative to contact and the telephone number where additional information may be obtained;
7. State that a copy of the application, all documents and evidence relied upon by the applicant and application criteria are available for inspection at no cost and a copy will be available at reasonable cost;
8. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and a copy will be provided at reasonable cost;
9. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearing.
10. For Type IV actions requiring individual written notices to property owners, state that the proposed change, "may reduce the value of your property."

### **3.203 PUBLIC HEARING BEFORE THE PLANNING COMMISSION**

#### **3.203.01 General Provisions**

- A. Land use actions which require a public hearing by the Planning Commission shall be initially heard by the Planning Commission within sixty (60) days of the receipt of an application or appeal.
- B. The Planning Commission may continue a public hearing for additional information, testimony or for decision, to its next regular meeting or to a special meeting. In no instance, however, shall the decision be continued more than sixty (60) days beyond the initial hearing date.
- C. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing.
- D. The decisions of the Planning Commission on applications for Type II actions shall be final unless appealed to the City Council pursuant to Section 3.205.
- E. The recommendations of the Planning Commission on applications for Type III actions shall be referred to the City Council for final determination, pursuant to Section 3.204.
- F. An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) may be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the city. Such issues shall be raised with sufficient specificity so as to afford the City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- G. Appeal of a Type I action shall be heard by the Planning Commission in accordance with provisions of Section 3.205. Findings of the Planning Commission on such appeal shall be final unless further appealed to the City Council.

#### **3.203.02 Public Hearing Procedures**

A. The Public Hearing shall be conducted under the following procedures:

1. Open the public hearing , announce the purpose, and explain process.
2. Ask for objections to jurisdiction.
3. Call for abstentions.
4. Staff report with initial recommendation.
5. Letters.
6. Public Agencies
7. Proponents testimony.
  - a. Principal.
  - b. Others.
8. Opponents testimony.
9. General questions and comments from the public.
10. Questions of proponents and opponents from the floor and Commission/Council directed through Chair/Mayor.
11. Proponent rebuttal.
12. Staff final recommendation.
13. Close of hearing.
14. Deliberation of Commission/Council of findings of fact.
15. Decision

**3.203.03 Evidence**



- A. All evidence offered and not objected to may be received unless excluded by the Planning Commission on its own motion. Evidence may be received subject to a later ruling as to its admissibility.
- B. The Planning Commission may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence; but erroneous admission of evidence by the Commission shall not preclude action or cause reversal on appeal unless shown to have substantially prejudiced the rights of a party. When a hearing will be expedited, any part of the evidence may be received in written form.
- C. All evidence shall be offered and made a part of the public record in the case.
- D. The Planning Commission may take notice of judicially recognizable facts, and members may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Planning Commission members may utilize their experience, technical competence and specialized knowledge in evaluation of the evidence presented.
- E. Every party is entitled to an opportunity to be heard and to present and rebut evidence.
- F. All interested persons shall be allowed to testify.

**3.203.04 Record of Hearing**

A verbatim record of the proceeding shall be made by written, mechanical or electronic means, which record need not be transcribed except upon review of the record.

**3.203.05 Limits on Oral Testimony**

The Planning Commission Chairman may set consistent, reasonable time limits for oral presentations to the end that parties are encouraged to submit as much evidence as possible in writing prior to the hearing.

**3.203.06 Exhibits**

All exhibits received shall be marked so as to provide identification upon review. Such exhibits shall be retained by the City.

### **3.204 REVIEW AND PUBLIC HEARINGS BY CITY COUNCIL**

#### **3.204.01 General Provisions**

- A. Type III Reviews: The City Council shall hear all Type III actions. The City Council action on such requests shall be the final action of the City on the request.
- B. Appeals: The City Council shall hear appeals of all Planning Commission actions conducted pursuant to Section 3.205. The appeal hearing shall be conducted in a manner consistent with Section 3.203. The action of the Planning Commission shall be final and the appeal shall not be heard by the Council if the appeal period has lapsed.
- C. All hearings or reviews required by the City Council shall be heard within thirty (30) days of the Planning Commission's written decision or appeal request. In no instance, however, shall this period extend the date of the hearing and final action beyond 120 days from the date of the initial submission of a complete application, unless voluntarily agreed to by the applicant.
- D. The decision shall be made by the City Council, and written findings prepared, listing findings for approval or denial, and any conditions of approval, within two weeks of the hearing by the City Council. In no case, however, shall this decision and the preparation of written findings extend beyond 120 days from the date of initial submittal of a complete application, unless voluntarily agreed to by the applicant.

#### **3.204.02 Hearings by City Council**

Actions on quasi-judicial requests shall be conducted at public hearings pursuant to the City Council's adopted rules of procedure. The City Council shall allow opportunity for all parties to be heard and may accept new evidence.

### 3.204.03 Review by City Council

- A. Review on Record: Except as set forth in Subsection 3.204.03 (B), the City Council review of an appeal on an action by the Planning Commission shall be confined to the record of the initial proceeding. Parties may offer testimony regarding alleged errors in the Planning Commission action. The meeting shall be conducted as set forth in the City Council's adopted rules of procedures. The record of the initial proceeding shall include:
1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Planning Commission as evidence;
  2. All materials submitted by the City Staff with respect to the application;
  3. The transcript of the hearing; and
  4. The findings and action of the Planning Commission and the notice of decision.
- B. Submission of New Testimony and De Novo Hearings: The City Council may admit additional testimony and other evidence by holding a de novo hearing. Upon the decision to admit additional testimony or other evidence and to hear the entire matter de novo, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters at the initial hearing.
- C. City Council Action: The City Council may affirm, rescind or amend the action of the Planning Commission and may grant approval subject to conditions necessary to carry out the Comprehensive Plan. The City Council may also remand the matter back to the Planning Commission for additional review, subject to the agreement of the applicant to extend the 120 day review period.

**3.205 APPEAL PROVISIONS.**

**3.205.01 Appeal Period**

- A. The decision of the City Administrator shall be final for a Type I land use decision unless a notice of appeal from an appropriate aggrieved party is received by the City within twelve (12) days of the date of the final written notice, or unless the City Council, on its own motion, orders review within twelve (12) days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal.
- B. The decision of the Planning Commission for a Type II land use decision, or the appeal of a Type I decision, shall be final unless a notice of appeal from an aggrieved party is received by the City within twelve (12) days of the date of the final written notice, or unless the City Council, on its own motion, orders review within twelve (12) days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal.

**3.205.02 Form of Appeal**

Appeal requests shall be made on forms provided by the City and shall state the alleged errors in the Planning Commission action.

**3.205.03 Notice Requirements**

- A. Notice of hearings by the Planning Commission on appeal requests shall be as specified in Section 3.202.
- B. Notice of hearings by the City Council on appeal requests shall be as specified in Section 3.202.

**3.205.04 Transcript Fees**

In addition to other fees for appeal requests, any person requesting a verbatim transcript shall pay a fee equal to the actual cost of the preparation of the transcript. The cost of the transcript fee shall be determined by the cost per page for the preparation of such transcripts, at an appropriate rate.

The City shall estimate the cost of the transcript at the time of the filing of the appeal request and shall receive a deposit in that amount. Any person requesting a verbatim transcript shall be billed for actual costs in excess of the deposit or receive a refund for surplus deposit funds in excess of transcript fees authorized by this Section.

**3.206 FEES**

**3.206.01 Purpose**

Fees are for the purpose of defraying administrative costs.

**3.206.02 General Provisions**

- A. Fees shall be payable at the time of application and shall be as set forth by Resolution of the City Council. There shall be no fee required for an application initiated by the Planning Commission or the City Council.
- B. The failure to submit the required fee with an application or notice of appeal, including return of checks unpaid or other failure of consideration, shall be a jurisdictional defect.
- C. Fees are not refundable unless the application is withdrawn prior to any public notification of the hearing or the incurrence of expenses by the City.
- D. The City Council may reduce or waive the fees upon showing of just cause to do so.

**3.207 TYPE IV ACTIONS**

**3.207.01 Initiation**

Type IV may be initiated by:

- A. Majority vote of the City Council.
- B. Majority vote of the Planning Commission.

**3.207.02 Procedure for Type IV Actions**

- A. Public Hearings by Planning Commission
  - 1. A public hearing shall be held by the Planning Commission on all proposed amendments to this Ordinance and on all legislative amendments and revisions of the Comprehensive Plan.
  - 2. The Planning Commission may continue any hearing in order to make a reasonable decision.
- B. Public Hearing by City Council: Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments. Notice shall be as specified in Section 3.202.

### **3.208 PERFORMANCE GUARANTEES**

#### **3.208.01 Performance Guarantee**

When required, the applicant shall file a performance guarantee, to insure the full and faithful performance of all terms of an improvement agreement, if any, or to insure completion of all work for which permits are required. A performance guarantee may be one of the following:

- A. A surety bond executed by a surety company authorized to transact business in the State of Oregon, in a form approved by the city attorney in an amount equal to 120 percent of the construction cost of required improvements, as verified by the city.
- B. A deposit with the city, or at the option of the city, a verified deposit with a responsible escrow agent or trust company, of cash or negotiable bonds in an amount equal to 120 percent of the construction costs of the required improvements, together with an agreement that the deposit may be disbursed only upon city approval of disbursement. The agreement shall include a provision that the city shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the required improvements are completed to the satisfaction of the city engineer following an inspection by the city engineer or the engineer's authorized representative.
- C. An agreement between the city, developer and one or more financial or lending institutions pledging that funds equal to 120 percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements. An irrevocable letter of credit is acceptable.
- D. An agreement between developer and city that no building permits for any structures within the subdivision will be issued until all improvements have been completed by the applicant and accepted by the city. Such agreement shall be in a form approved by the city attorney and recorded in the deed records of the appropriate county.

#### **3.208.02 Failure to Complete Improvements**



If the applicant fails to complete all improvements required by the City, the City shall estimate the cost of completing any required improvement(s). The City shall then call on the bond or deposit for the funds necessary to complete the improvement. If the amount obtained from the bond or deposit is insufficient to complete the improvement, or no bond or deposit was obtained, the City may either hold the collected funds until additional funds are available from the applicant or, the City may perform improvement on a portion of the improvement as determined reasonable.

Following final inspection of the improvement, and if the bond or deposit exceeds the actual cost to the City of completing the improvement, the remainder shall be released. If collected funds were inadequate to compensate the City for all reasonable costs, then the City may pursue all legal and appropriate remedies to collect any funds due to the City. These remedies shall include placing a lien on the real property where the City paid improvement was performed.. Funds payable to the city shall also be a personal debt and obligation of the owner.

### **3.208.03 Construction Deferral**

If public improvements are required as a condition of approval of an action under this ordinance, such improvements shall be the obligation of the applicant but may, be deferred until the property owner applies for a building permit or certificate of occupancy, whichever is earlier. Upon justification by the applicant, the improvements may be further deferred on all or a portion of the public improvements required as a part of the condition of approval under this ordinance, for a period not to exceed 18 months, or until required by council, whichever is earlier. An applicant seeking deferral under this ordinance shall sign an improvement deferral agreement which specifies the terms of deferral. Said agreement shall be in a form approved by the City Attorney and shall run with the property and be filed in the deed records of Yamhill County.

**3.209 REVOCATION OF DECISION**

**3.209.01 Compliance with Conditions**

Compliance with conditions imposed by the City Administrator, Planning Commission or City Council in granting a permit for any land use action shall be required. Any departure from these conditions of approval and approved plans constitutes a violation of this Ordinance.

**3.209.02 General Provisions**

- A. The City Recorder may initiate a revocation of any land use permit or approval issued for failure to comply with any prescribed condition of approval. The hearing shall be conducted as a Type II hearing and in accordance with the procedures for a Type II hearing.
- B. Final decisions regarding Comprehensive Plan text or map amendments, Development Code text amendments or zone changes shall not be subject to revocation.

