

Title 16

APPLICATION REVIEW PROCEDURES AND APPROVAL CRITERIA

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- 16.08 Land Divisions and Property Line Adjustments
- 16.12 Conditional Uses
- 16.16 Modifications to Approved Plans (placeholder)
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Chapter 16.04

ADMINISTRATION AND ENFORCEMENT

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Ordinance History: 1645

16.04.010 Purpose.

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

16.04.020 Types of Procedures and Actions.

- A. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections (A) to (D) below.
1. Type I Procedure: Type I decisions are made by the Planning Director, or their designee, without public notice and without a public hearing.
 2. Type II Procedure: Type II decisions are made by the Planning Director, with public notice and an opportunity for appeal.
 3. Type III Procedure: Type III decisions are made after a public hearing, with an opportunity for appeal to the City Council.
 4. Type IV Procedure: The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy. Type IV reviews are considered by the Planning Commission, which makes a recommendation to the City Council.

City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

- B. The Planning Director may determine the appropriate process for any application or decision not specifically addressed herein.

Table 16.04.020 – Summary of Approvals by Type of Review Procedure

Applications	Review Procedures	Pre-App Required	Reviewing Body	Appeal Body
Zoning Compliance	Type I	No	Planning Staff	Circuit Court
Adjustment	Type II	No	Planning Staff	Hearings Officer
Annexation	Type IV	Yes	Planning Commission City Council	LUBA
Zone Code Text Amendment	Type IV	Yes	Planning Commission City Council	LUBA
Certificate of Appropriateness	Type I Type II	No	Planning Staff	Circuit Court or Hearings Officer
Comprehensive Plan Amendment	Type IV	Yes	Planning Commission City Council	LUBA
Conditional Use Permit	Type III	No	Planning Commission	City Council
Flood Plain Development	Type I	No	Planning Staff	Circuit Court
Home Occupation	Type I	No	Planning Staff	Planning Commission
Modification to Approval	Same procedure as original decision	Yes	Same reviewing body as original decision	Same appealing body as original decision
Partition or Re-Plat of 2-3 lots Preliminary Plat Final Plat	Type II Type I	Yes	Planning Staff	Hearings Officer Circuit Court
Property Line Adjustment	Type I	No	Planning Staff	Circuit Court
Plan Review	Type II	No	Planning Staff	Hearings Officer
Planned Unit Development Preliminary Plat Final Plat	Type III Type I	Yes	Planning Commission Planning Staff	City Council Hearings Officer
Sign Permit	Type I	No	Planning Staff	Hearings Officer
Subdivision or Replat of >3 lots Preliminary Plat Final Plat	Type II Type I	Yes	Planning Staff	Hearings Officer Circuit Court
Variance	Type III	Yes	Planning Commission	City Council

Zoning Map Change	Type III or IV	Yes	Planning Commission City Council	LUBA
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16.04.030 Applications.

An application for a permit shall occur as a written application on a form provided by the city. Applications may be filed by the city, the owner of the property, or the contract purchaser with written approval from the owner. There shall be paid to the city at the time of filing an application fee. This fee is set by resolution of the City Council.

16.04.040 Time limit on action on applications.

- A. When Approvals Become Void. Except for zoning or comprehensive plan map amendments, conditional use or master plan approvals, all Type I—IV approvals automatically become void if any of the following events occur:
 - 1. If, within two years of the date of the final decision, an application for a building permit has not been submitted. Unless the approval provides otherwise, all building permits associated with the approval shall be issued within five years of the date of the final decision.
 - 2. If, within two years of the date of the final decision for all land divisions, property line adjustments, abandonments, or replat, the plat or survey approved in the decision has not been submitted to the Coos County Surveyors Office for recording. The plat or survey shall be recorded within five years of date of the final decision.
- B. New Application Required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.
- C. Deferral of the Expiration Period Due to Appeals. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the land use board of appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

16.04.050 Type I Procedure

- A. Type 1 Procedure. The Planning Director, or their designee, without public notice and without a public hearing, makes ministerial decisions through the Type I procedure. Ministerial decisions are those where City standards and criteria do not require the exercise of discretion (i.e., there are clear and objective standards). The Planning Director may process any Type I application as a Type II application if they determine that the application involves interpretation or the exercise of policy or legal judgment. Appeals of Type I decisions are to Circuit Court under writ of review, unless otherwise stated in Table 16.04.020.
- B. Zoning Compliance. The Planning Director reviews proposals requiring a Type I review using a Zoning Compliance application. Zoning Compliance is used to ensure a project

proposal meets the requirements of Title 17 before they are sent to the State of Oregon Building Code Division for a building permit.

C. Application Requirements.

1. Application Forms. Approvals requiring Type I review, including Zoning Compliance, shall be made on forms provided by the City.
2. Application Requirements. When Zoning Compliance is required, it shall:
 - a. Include the information requested on the application form;
 - b. Address the criteria in sufficient detail for review and action; and
 - c. Be filed with the required fee.

D. Requirements. The City shall not act upon an application for land use approval, and a building permit shall not be issued, until the Planning Director has approved Zoning Compliance for the proposed project.

E. Criteria and Decision. The Planning Director's review of Zoning Compliance is intended to determine whether minimum code requirements are met and whether any other land use permit or approval is required prior to issuance of a building permit.

F. Effective Date. A Zoning Compliance decision is final on the date it is signed by the Planning Director. Unless deemed by the Planning Director to be Type II decision, it is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the state Land Use Board of Appeals.

16.04.060 Type II Procedure

The Planning Director, or their designee, performs Administrative Staff Reviews through the Type II procedure. Type II decisions are made by the Planning Director with public notice and an opportunity for appeal to the Hearings Officer, unless otherwise stated in Table 16.04.020.

A. Application Requirements.

1. Application Forms. Applications for projects requiring Administrative Review shall be made on forms provided by the Planning Department.
2. Submittal Information. The Planning Department shall advise the applicant on application submittal requirements. At a minimum, the application shall include all of the following information:
 - a. The information requested on the application form;
 - b. Plans and exhibits required for the specific approval(s) being sought;
 - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail;
 - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and

- e. The required fee.

B. Procedure.

1. The Planning Department shall mail notice of a pending Type II decision to the following individuals and agencies no fewer than 14 days prior to making the Type II decision.
2. The purpose of the Administrative Decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Planning Department issues the decision. Therefore the following individuals and agencies shall be notified:
 - a. All owners of record of real property (as shown in the records of the County Assessor) within a minimum of 100 feet of the subject site;
 - b. Any person who submits a written request to receive a notice of a specific application; and
 - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.
3. The notice of pending Administrative Decision, at a minimum, shall contain all of the following information:
 - a. The deadline for submitting written comments, which must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled meeting date where an application is referred to the Reviewing Body for review;
 - b. A summary of the proposal and the relevant approval criteria in sufficient detail to help the public identify and locate applicable code requirements;
 - c. The address and City contact person for submitting written comments; and the date, time, and location the Reviewing Body, as applicable, is scheduled to make a decision on the application;
 - d. The street address or other easily understandable reference to the location of the proposed use or development;
 - e. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
 - f. Statement that all evidence relied upon by the Reviewing Body, as applicable, to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the City; and
 - g. Statement that after the comment period closes, the City will issue its decision and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

4. At the conclusion of the comment period, the Reviewing Body shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria.
5. Within seven days of a Type II (Administrative) decision, the Planning Department shall proceed to prepare a notice of decision and mail it to the applicant, property owner (if different), the State Building Codes Division, those who provided written comments on the proposal, and those who requested a copy of the decision. The Planning Department shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
6. The Notice of Decision shall contain all of the following information:
 - a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the decision to the City of Bandon Hearings Officer.
- C. Effective Date of Decision. Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective 12 days after the City mails the decision notice, unless the decision is appealed.
- D. Appeal of Type II (Administrative) Decision. A Type II Administrative Decision made by the Planning Director may be appealed to the City of Bandon Hearings Officer;
 1. Who may appeal. The following people have legal standing to appeal a Type II Administrative Decision:
 - a. The applicant or owner of the subject property;
 - b. Any person who was entitled to written notice of the Type II decision; and
 - c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.
 2. Appeal filing procedure.
 - a. Notice of appeal. Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures.
 - b. Time for filing. A Notice of Appeal shall be filed with the Planning Department within the timeframe specified on the Notice of Decision; typically, this will be

within 10 days of the date the Notice of Decision is mailed.

- c. Content of notice of appeal. The Notice of Appeal shall be accompanied by the required filing fee and shall contain:

- 1) An identification of the decision being appealed, including the date of the decision;
 - 2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - 3) A statement explaining the specific issues being raised on appeal; and
 - 4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. Scope of appeal. The appeal of a Type II Administrative Decision shall be a hearing de novo before the Hearings Officer. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Administrative Decision, but may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony, or argument concerning any relevant standard, criterion, condition, or issue.
4. Appeal Hearing Procedure. Hearings on appeals of Type II decisions shall follow the same procedure used for public hearings on Type III reviews. Section 16.04.070 contains requirements for public hearing notices, conduct of hearings, and decision-making procedures for Type III reviews.

16.04.070 Type III Procedure

Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council.

A. Application Requirements.

1. Application Forms. Applications requiring Quasi-Judicial review shall be made on forms provided by the Planning Department.
2. Submittal Information. The Planning Department shall advise the applicant on application submittal requirements. At a minimum, the application shall include all of the following information:
 - a. The information requested on the application form;
 - b. Plans and exhibits required for the specific approval(s) being sought;
 - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail;
 - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and
 - e. The required fee

B. Procedure.

1. Mailed and Posted Notice.
 - a. The City shall mail public notice of a public hearing on a Quasi-Judicial

application at least 20 days before the hearing date to the individuals and organizations listed below. The Planning Department shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed. Notice shall be mailed to:

- 1) All owners of record of real property located within a minimum of 250 feet of the subject site;
 - 2) Any person who submits a written request to receive a notice; and
 - 3) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the Planning Department shall notify the road authority if different than the City of Bandon. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.
- b. At least 14 days before the first hearing, the applicant or applicant's representative shall post notice of the hearing on the project site in clear view from a public right-of-way using a poster format prescribed by the Planning Department. The applicant shall submit an affidavit of notice using a form provided by the City, which shall be made a part of the file. The affidavit shall state the date that the notice was posted.
- c. At least 14 days before the first hearing, the City shall publish notice of the hearing on the City website, and/or have said notice published in a newspaper with local circulation.
2. Content of Notice. Notice of a Quasi-Judicial hearing to be mailed and published per subsection 1 above shall contain all of the following information:
- a. A summary of the proposal and the relevant approval criteria, in sufficient detail to help the public identify and locate applicable code requirements;
 - b. The date, time, and location of the scheduled hearing;
 - c. The street address or other clear reference to the location of the proposed use or development;
 - d. A disclosure statement that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the City Council, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
 - e. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards shall be available for review in the Planning Department, and that copies shall be provided at a reasonable cost;
 - f. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
 - g. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and

- h. A statement that after the public hearing closes, the City will issue its decision, and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

C. Conduct of the Public Hearing.

1. At the commencement of the hearing, the Hearings Officer, Chairperson of the Commission or Mayor, as applicable, or their designee, shall state to those in attendance all of the following information and instructions:
 - a. The applicable approval criteria by Code chapter that apply to the application;
 - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the state Land Use Board of Appeals on that issue;
 - d. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
3. Presenting and receiving evidence.
 - a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;
 - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
 - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.
5. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral

testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.

6. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:

- a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
- b. An extension of the hearing or record granted pursuant to this section is subject to the limitations of ORS 227.178 (120-day rule), unless the applicant waives their right to a final decision being made within 120 days of filing a complete application; and
- c. If requested by the applicant, the hearing body shall grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.

7. The Notice of Quasi-Judicial Decision shall contain all of the following information:

- a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
- c. A statement of where the City's decision can be obtained;
- d. The date the decision shall become final, unless appealed; and
- e. A statement describing the right of appeal..

D. Effective Date of Decision. Unless the conditions of approval specify otherwise, a Quasi-Judicial Decision becomes effective 21 days after the City mails the decision notice, unless the decision is appealed.

E. Appeal of Reviewing Body's Decision. The Reviewing Body's decision may be appealed to the City Council, or the Council may, on its own motion, initiate proceedings to review a decision within 20 days following the date of decision, as follows:

1. Who May appeal. The following people have legal standing to appeal:

- a. The applicant or owner of the subject property; and

- b. Any other person who testified orally or in writing during the subject public hearing before the close of the public record.

2. Appeal filing procedure.

- a. Notice of appeal. Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.
 - b. Time for filing. A Notice of Appeal shall be filed with the Planning Department within the timeframe specified on the Notice of Decision; typically, this will be within 10 days of the date the Notice of Decision is mailed.
 - c. Content of notice of appeal. The Notice of Appeal shall be accompanied by the required filing fee and shall contain:
 - 1) An identification of the decision being appealed, including the date of the decision;
 - 2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - 3) A statement explaining the specific issues being raised on appeal; and
 - 4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. Scope of appeal. The reviewing body shall determine, as a non-public hearing item, that the scope of review and appeal will be one of the following:
- a. Restricted to the record of the decision being appealed
 - b. Limited to the admission of additional evidence on such issues of additional evidence as the reviewing body determines necessary for a proper resolution of the matter;
 - c. A de novo hearing on the merits of the appeal.

F. Record of the Public Hearing.

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

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

- G. Effective Date and Appeals to State Land Use Board of Appeals. A Quasi-Judicial Decision or Appeal Decision, as applicable, is effective the date the City mails the decision notice. Appeals of City Council decisions under this chapter shall be filed with the state Land Use Board of Appeals pursuant to ORS 197.805 - 197.860.

16.04.080 Type IV Procedure

- A. Timing of Requests. The City Council may establish a schedule for when it will accept legislative code amendment or plan amendment requests, or the City Council may initiate its own legislative proposals at any time. Legislative requests are not subject to the 120-day review period under ORS 227.178. Appeals of legislative decisions are heard by the state Land Use Board of Appeals.
- B. Application Requirements.
 1. Application forms. Legislative applications shall be made on forms provided by the Planning Department.
 2. Submittal Information. The application shall contain all of the following information:
 - a. The information requested on the application form;
 - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. The required fee, except when the City of Bandon initiates request; and
 - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.
- C. Procedure. Hearings on Legislative Land Use requests are conducted similar to City Council hearings on other legislative proposals, except the notification procedure for Legislative Land Use requests must conform to state land use laws (ORS 227.175), as follows:
 1. The Planning Department shall notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments (zone change, rezoning with annexation, or comprehensive plan amendment) at least 35 days before the first public hearing at which public testimony or new evidence will be received. The notice shall include a DLCD Certificate of Mailing.
 2. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - a. Each owner whose property would be directly affected by the proposal (see ORS 227.186);

- b. Any affected governmental agency;
 - c. Any person who requests notice in writing; and
 - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
- 3. At least 10 days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the city.
- 4. For each mailing and publication of notice, the Planning Department shall keep an affidavit of mailing/publication in the record.
- D. Final Decision and Effective Date. A Legislative Land Use decision, if approved, shall take effect and shall become final as specified in the enacting ordinance or, if not approved, upon mailing of the notice of decision to the applicant. Notice of a Legislative Land Use decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development within 20 business days after the City Council decision is filed with the Planning Department. The City shall also provide notice to all persons as required by other applicable laws.

16.04.090 Time Limits and Consolidated Review

- A. Time Limit - 120-day Rule. The City shall take final action on Administrative and Quasi-Judicial land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the Planning Department deems the application complete for purposes of processing, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178.
- B. Time Periods. In computing time periods prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is not on a weekend or legal holiday.
- C. Consolidated Review of Applications. When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings shall be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.

16.04.100 Fees.

- A. The Bandon City Council shall set planning, zoning and permit fees by resolution.
- B. No permit shall be issued until all planning and other fees are paid.

16.04.110 Interpretation.

- A. The provisions of this title shall be held to be the minimum requirements necessary to fulfill the objectives of this title. Where conditions are imposed under or by provisions of this title or any other ordinance, resolution, or regulation, the provisions which are more restrictive shall apply.
- B. The Planning Director shall have the authority to interpret the Comprehensive Plan, Title 16 and Title 17, and their applicability to specific properties.
- C. Anyone may initiate an application for an interpretation, except that an application for an interpretation of the applicability of the Comprehensive Plan, Title 16 or Title 17 to a specific property may only be initiated by the following:
 - 1. The owner of the subject property;
 - 2. The contract purchaser of the subject property, if the application is accompanied by proof of the purchaser's status as such;
 - 3. The agent of the owner or contract purchaser of the subject property, if the application is duly authorized in writing by the owner or the contract.
- D. Requests for interpretation shall be submitted on a form provided by the City and accompanied by the required fee.
- E. For requests made by the general public, the City shall issue a written interpretation within 14 days of the request. The decision shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy. The decision shall become effective 14 days later unless an appeal is filed in accordance with subsections (E) or (F) of this section.

Appeals of Planning Director interpretations or requests by Staff for interpretation shall be heard by the Planning Commission through the Type II process described in 16.04.060.

A Type II decision by the Planning Commission may be appealed to the Council based on the process listed in 16.04.060 (D).

16.04.120 Enforcement.

The city manager or designate shall have the power and duty to enforce the provisions of this title. No public employee or official of the city shall issue any permit or license for any use, activity or structure which violates provisions of this title. Any permit or license issued in conflict with the provisions of this title shall be void.

16.04.130 Violations.

Any land use, building or structure occurring, set up, erected, constructed, altered, enlarged, converted, moved or maintained in a manner contrary to the provisions of this title shall be declared to be unlawful and the city manager or designate shall commence with actions or proceedings for the abatement, removal or discontinuance of the use. The city manager or designate may take steps and apply to courts that may have jurisdiction to grant relief from violations.

16.04.140 Penalty.

Violation of this title is punishable in accordance with Chapter 1.16.

Chapter 16.08

LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

Sections:

16.08.010	Purpose
16.08.020	General Requirements
16.08.030	Approval Process
16.08.040	Pre-Planning for Large Sites
16.08.050	Flexible Lot Size and Flag Lots
16.08.060	Preliminary Plat Submission Requirements
16.08.070	Preliminary Plat Approval Criteria
16.08.080	Land-Division-Related Variances
16.08.090	Final Plat Submission Requirements and Approval Criteria
16.08.100	Filing and Recording
16.08.110	Re-platting and Vacation of Plats
16.08.120	Property Line Adjustments

16.08.010 Purpose.

The purpose of this chapter is to implement the objectives in subsections A-E, below:

- A. Provide rules, regulations, and standards governing the approval of subdivisions, partitions, and property line adjustments as follows:
 - 1. Subdivisions are the creation of four or more lots from one parent lot, parcel, or tract, within one (1) calendar year, or any division of land that creates a street.
 - 2. Partitions are the creation of three or fewer lots from one parent lot, parcel, or tract within one calendar year.
 - 3. Property line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots).
- B. Carry out the City's development pattern, as envisioned by the City's comprehensive plan.
- C. Encourage efficient use of land resources and public services, and to provide transportation options.
- D. Promote the public health, safety, and general welfare through orderly and efficient urbanization.
- E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards.

16.08.020 General Requirements

- A. Subdivision and Partition Approval Through Two-Step Process. Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:
1. The preliminary plat must be approved before the final plat can be submitted for approval consideration; and
 2. The final plat must demonstrate compliance with all conditions of approval of the preliminary plat.

Note: Property line adjustments and lot consolidation requests (i.e., no new lot is created) are subject to Section 16.08.120; they are not subject to 16.08.020 through 16.08.110.

- B. Compliance with Oregon Revised Statutes (ORS) Chapter 92. All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92 Subdivisions and Partitions.
- C. Conversion Plans. At the time an application is made to divide a parcel into any number of lots, a conversion plan must also be submitted, if the parcel will have additional division potential after the current proposal is completed. The conversion plan must show how the parcel can be ultimately divided into the maximum practical number of lots allowed by the zoning. The conversion plan must provide all of the graphic information required for a land subdivision or partition, as applicable, based on the ultimate number of lots allowable under the zoning. The conversion plan must show how the presently proposed division will be compatible with the allowable ultimate land division. The conversion plan must be simultaneously recorded with the approved partition plat and shall be binding unless amended with the Reviewing Body's approval. (See also, Section 16.08.040 Pre-Planning for Large Sites.)
- D. Adequate Utilities. All lots created through land division shall have adequate public utilities and facilities such as streets, water, sewer, gas, and electrical systems, pursuant to Titles 12 & 13. These systems shall be located and constructed underground where feasible.
- E. Adequate Drainage. All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required, pursuant to Chapter Title 13.
- F. Adequate Access. All lots created or reconfigured shall have adequate vehicle access and parking, as may be required, pursuant to Titles 16 and 17.

16.08.030 Preliminary Plat Approval Process

- A. Review of Preliminary Plat. Preliminary plats shall be processed using the Type II procedure under Section 16.08.040. All preliminary plats, including partitions and subdivisions, are subject to the approval criteria in Section 16.08.070.

- B. The Reviewing Body may approve phased subdivisions, pursuant to subsection 16.08.030.D, with an overall time frame of more than two years between preliminary and final plat approvals.
- C. Modifications and Extensions. The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 16.04. The Reviewing Body may, upon written request by the applicant and payment of the required fee, grant written extensions of the approval period not to exceed one year per extension, provided that all of the following criteria are met:
1. Any changes to the preliminary plat follow the procedures in Chapter 16.16;
 2. The applicant has submitted written intent to file a final plat within the one-year extension period;
 3. An extension of time will not prevent the lawful development of abutting properties;
 4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and
 5. The extension request is made before expiration of the original approved plan.
- D. Phased Subdivision. The Reviewing Body may approve plans for phasing a subdivision, and changes to approved phasing plans, provided the applicant's proposal meets all the following criteria:
1. In no case shall the construction time (i.e., for required public improvements, utilities, streets) for the first subdivision phase be more than one year;
 2. Public facilities shall be constructed in conjunction with or prior to each phase;
 3. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that are required as part of the approved development proposal;
 4. The proposed phasing schedule shall be reviewed with the preliminary subdivision plat application; and
 5. Reviewing Body approval is required for modifications to phasing plans.

16.08.040 Pre-planning for Large Sites

- A. Purpose. Section 16.08.040 requires the pre-planning of large sites in conjunction with requests for annexation, and applications for phased subdivisions and master plan developments; the purpose of which is to avoid piecemeal development with inadequate public facilities.
- B. Applicability. This section applies to land use applications and annexations affecting more than 40 acres of land under the same contiguous ownership, even where only a portion of the site is proposed for subdividing. For the purposes of this section, the same contiguous ownership means the same individual, or group of individuals, corporations, or other entities, controls a majority share of ownership.
- C. Area Plan Required. Prior to submittal of an annexation petition or land division application for an area subject to Section 16.08.040, a conceptual master plan shall be

submitted to the Planning Director with the required pre-application materials for the project or proposal. The conceptual master plan shall illustrate the type and location of planned streets, utility corridors, parks, open spaces, and land uses for the ultimate buildout of the subject property and all lands under contiguous ownership. The plan shall demonstrate how future development, including any proposed phasing, can meet all the guidelines under subsection D, below.

D. Criteria. The conceptual plan required under subsection C, above, is not required to be engineered but shall have a sufficient level of detail so that the City officials can determine that it meets the following design guidelines:

1. Streets are interconnected to the extent practicable; blocks are walkable in scale (generally 200-600 feet in length), except where topography, existing development, or other physical features require longer blocks, in which case pedestrian access ways connect through long blocks;
2. Water, sewer, and storm drainage facilities logically extend to serve the site at buildout, consistent with adopted public facility plans. Where a public facility plan identifies a need for new capacity-related improvements (e.g., water storage, sewage treatment, pump stations, etc.) in the future, the plan shall describe conceptually how such improvements can be accommodated;
3. Overall, the plan achieves a housing density that is consistent with the Comprehensive Plan and Development Code; and
4. The plan reserves land needed for public use (e.g., schools, parks, fire stations, and other facilities), in accordance with the Comprehensive Plan and to the extent allowed under applicable law.
5. Implementation. The City will review the conceptual master plan required by this section and provide input to the applicant during the pre-application meeting for the land use application or annexation petition, as applicable. The City may also refer the plan to outside agencies with jurisdiction for their input. The master plan is not binding, but the applicant is encouraged to refine the plan based on City input before submitting a land use application or annexation petition for the subject property.

16.08.050 Flag Lots

A. Flag Lot Standards.

1. A deep lot may be split into a front and rear lot, creating a maximum of one flag lot, if the original lot cannot be otherwise divided separately or in conjunction with adjoining lots.
2. Flag lots which would take access on an identified future or existing collector street shall not be allowed.
3. Flag lots which would take access on a local street shall only be allowed through the granting of a variance by the planning commission in conformance with Chapter 16.36. If granted, the divider shall recognize that the subject lots have no further division potential. In addition to variance approval and the requirements of this chapter, any flag lot shall meet the following standards:

- a. The length, width and yard dimensions of each resulting lot must be at least the minimum required in the zoning district, with the front lot retaining a minimum lot

- depth of ninety (90) feet.
- b. The rear lot must have an access to the street that is at least twenty-five (25) feet wide with twenty-five (25) feet of street frontage. The “flagpole” access must be conveyed with ownership of the rear lot and be an integral part of the rear lot;
- c. The driveway access shall be improved to a permanent surface of asphaltic concrete, Portland cement, or gravel acceptable to the public works department with a minimum width of twelve (12) feet. Shared access agreements benefitting two adjacent parcels may be allowed where two accesses are less than fifty (50) feet apart or the resulting configuration of the lots permits shared access.

16.08.060 Preliminary Plat Submission Requirements

Applications for Preliminary Plat approval shall contain all of the following information:

A. General Submission Requirements.

- 1. Information required for a Type III review (see Section 16.04.070); and
- 2. Public Facilities and Services Impact Study. The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall determine the scope of the study, which shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system (for subdivisions and planned unit developments of 20 or more dwelling units); water system; and sewer system. For each system and type of impact, the study shall propose improvements necessary to meet City standards under adopted ordinances and facility master plans. The City may require a Traffic Impact Analysis.

B. Preliminary Plat Information. In addition to the general information described in subsection A, above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide all of the following information, in quantities determined by Reviewing Body:

1. General information:

- a. Name of subdivision (partitions are named by year and file number), which shall not duplicate the name of another land division in Coos County (check with County Surveyor);
- b. Date, north arrow, and scale of drawing;
- c. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;
- d. Zoning of parcel to be divided, including any overlay zones;
- e. A title block including the names, addresses, and telephone numbers of the owners of the subject property and, as applicable, the name of the engineer and surveyor, and the date of the survey; and
- f. Identification of the drawing as a “preliminary plat.”

2. Existing Conditions. Except where the Reviewing Body deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the

following information on existing conditions of the site:

- a. Streets: Location, name, and present width of all streets, alleys, and rights-of-way on and abutting the site;
- b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
- c. Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
- d. Ground elevations shown by contour lines at two-foot vertical intervals. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor; the Reviewing Body may waive this standard for partitions when grades, on average, are less than 6 percent;
- e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
- f. The Base Flood Elevation, per FEMA Flood Insurance Rate Maps, as applicable;
- g. North arrow and scale; and
- h. Other information, as deemed necessary by the Reviewing Body for review of the application. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.

3. Proposed Development. Except where the Reviewing Body deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on the proposed development:

- a. Proposed lots, streets, tracts, open space, and park land (if any); location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
- b. Easements: location, width and purpose of all proposed easements;
- c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;
- d. Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose of surface water management, recreation, or other uses;
- e. Proposed public street improvements, pursuant to Chapter 16.40;
- f. On slopes exceeding an average grade of 10 percent, as determined by the City Engineer, the preliminary location of development on lots (e.g., building envelopes), demonstrating that future development can meet minimum required setbacks and applicable engineering design standards;
- g. Preliminary design for extending City water and sewer service to each lot, per Chapter 16.40;
- h. Proposed method of storm water drainage and treatment, if required, pursuant to

Chapter 16.40;

- i. The approximate location and identity of other utilities, including the locations of street lighting fixtures, as applicable;
- j. Evidence of compliance with applicable overlay zones, including but not limited to City of Bandon Flood Plain Overlay and Hazards Overlay; and
- k. Evidence of contact with the applicable road authority for proposed new street connections.

16.08.070 Preliminary Plat Approval Criteria

A. Approval Criteria. The Reviewing Body may approve, approve with conditions, or deny a preliminary plat. The Reviewing Body decision shall be based on findings of compliance with all of the following approval criteria:

- 1. The land division application shall conform to the requirements of Chapter 16.08;
- 2. All proposed lots, blocks, and proposed land uses shall conform to the applicable provisions of Title 17 (Zoning);
- 3. Access to individual lots, and public improvements necessary to serve the development, including but not limited to water, sewer, and streets, shall conform to Title 17;
- 4. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
- 5. The proposed streets, utilities, and surface water drainage facilities conform to City of Bandon adopted master plans and applicable engineering standards, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications;
- 6. All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas is assured through appropriate legal instrument;
- 7. Evidence that any required state and federal permits, as applicable, have been obtained or can reasonably be obtained prior to development; and
- 8. Evidence that improvements or conditions required by the City, road authority, Coos County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met.

B. Conditions of Approval. The Reviewing Body may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations.

16.08.080 Land Division-Related Variances

Variances shall be processed in accordance with Chapter 16.36. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted; when practical, the applications shall be reviewed concurrently.

16.08.090 Final Plat Submission Requirements and Approval Criteria

Final plats require review and approval by the Planning Director prior to recording with Coos County. The final plat submission requirements, approval criteria, and procedure are as follows:

- A. Submission Requirements. The applicant shall submit the final plat within two years of the approval of the preliminary plat as provided by Section 16.08.070. The format of the plat shall conform to ORS 92.
- B. Approval Process and Criteria. By means of a Type I Review, the Reviewing Body shall review and approve or deny the final plat application based on findings of compliance or noncompliance with all of the following criteria:
 - 1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, rights-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
 - 2. All public improvements required by the preliminary plat have been installed and approved by the City or applicable service provider if different than the City of Bandon Public Works Department, or otherwise bonded in conformance with Section 16.40;
 - 3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
 - 4. All required streets, access ways, roads, easements, and other dedications or reservations are shown on the plat;
 - 5. The plat and deed contain a dedication to the public of all public improvements, including, but not limited to, streets, public pathways and trails, access reserve strips, parks, and water and sewer facilities, as applicable;
 - 6. As applicable, the applicant has furnished acceptable copies of Covenants, Conditions, and Restrictions (CC&R's); easements; maintenance agreements (e.g., for access, common areas, parking, etc.); and other documents pertaining to common improvements recorded and referenced on the plat;
 - 7. Verification by the City that water and sanitary sewer service is available to every lot depicted on the plat; and
 - 8. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of each monument and its reference to some corner approved by the Coos County Surveyor for purposes of identifying its location.

16.08.100 Filing and Recording

A new lot is not a legal lot for purposes of ownership (title), sale, lease, or development/land use until a final plat is recorded for the subdivision or partition containing the lot is recorded. Requests to validate an existing lot created through means other than a final plat ("lot of record") shall follow the procedures set forth in ORS 92.010 to 92.190. The final plat

filing and recording requirements are as follows:

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

16.08.110 Re-platting and Vacation of Plats

Any plat or portion thereof may be re-platted or vacated upon receiving an application signed by all of the owners as appearing on the deed. Except as required for street vacations, the same procedure and standards that apply to the creation of a plat (preliminary plat followed by final plat) shall be used to re-plat or vacate a plat. Street vacations are subject to ORS Chapter 271. A re-plat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable City standards.

16.08.120 Property Line Adjustments

A Property Line Adjustment is the modification of a lot boundary when no lot is created. The Reviewing Body reviews applications for Property Line Adjustments pursuant to the Type I procedure under Section 16.04.050. The application submission and approval process for Property Line Adjustments is as follows:

- A. Submission Requirements. All applications for Property Line Adjustments shall be made on forms provided by the City and shall include information required for a Type I review, pursuant to Section 16.04.050. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions, footprints and dimensions of existing structures (including accessory structures), location and dimensions of driveways and public and private streets within or abutting the subject lots, location of lands subject to the City of Bandon Flood Plain, existing fences and walls, and any other information deemed necessary by the Reviewing Body for ensuring compliance with City codes. The application shall be signed by all of the owners as appearing on the deeds of the subject lots.

B. Approval Criteria. The Reviewing Body shall approve or deny a request for a property line adjustment in writing, based on all of the following criteria:

1. Parcel Creation. No additional parcel or lot is created by the lot line adjustment;
2. Lot standards. All lots and parcels conform to the applicable lot standards of the zoning district (Title 17) including lot area, dimensions, setbacks, and coverage. As applicable, all lots and parcels shall conform the City of Bandon Flood Plain; and
3. Access and Road authority Standards. All lots and parcels conform to the standards or requirements of Chapter 16.40, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made less conforming by the property line adjustment.

C. Recording Property Line Adjustments.

1. Recording. Upon the City's approval of the proposed property line adjustment, the applicant shall record the property line adjustment documents with Coos County within 60 days of approval (or the decision expires), and submit a copy of the recorded survey map to the City, to be filed with the approved application.
2. Time limit. The applicant shall submit a copy of the recorded property line adjustment survey map to the City within 15 days of recording and prior to any application being filed for a building permit on the re-configured lots.

CHAPTER 16.12

CONDITIONAL USES

Sections:

- 16.12.010 Authorization to grant or deny conditional uses.
- 16.12.020 Authorization to impose conditions.
- 16.12.030 Existing uses.
- 16.12.040 Approval standards for conditional uses.
- 16.12.050 Conditional use cannot grant variances.
- 16.12.060 Application for a conditional use.
- 16.12.070 Major modifications to approved plans.
- 16.12.080 Minor modification(s) of a conditional use permit.
- 16.12.090 Standards governing conditional uses.
- 16.12.100 Time limits on meeting physical improvement requirements and conditions.

16.12.010 Authorization to grant or deny conditional uses.

Conditional uses are those which may be appropriate, desirable, convenient or necessary in the zoning district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Applications for uses designated in this title as conditional uses may be granted, granted with modifications or denied by the Planning Commission in accordance with the standards and procedures set forth in this chapter.)

16.12.020 Authorization to impose conditions.

In approving an application for a conditional use or the modification an existing and functioning conditional use, the city may impose, in addition to those standards and requirements expressly specified by this title, any additional conditions which the city considers necessary to assure that the use is compatible with other uses in the vicinity and to protect the city as a whole. These conditions may include but are not limited to:

- A. Changing the required lot size or yard dimensions;
- B. Limiting the height of the building(s);
- C. Controlling the location and number of vehicle access points;
- D. Requiring additional right-of-way areas or changing the street width;
- E. Requiring public improvements, including, but not limited to streets, sidewalks, sewer and water line extensions, and bike paths;
- F. Changing the number of off-street parking and loading spaces required;
- G. Limiting the number, size and location of signs;
- H. Requiring diking, fencing, screening or landscaping to protect adjacent or nearby property;
- I. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;
- J. Limiting the hours, days, place and manner of operations;
- K. Limiting or setting standards for the location and intensity of outdoor lighting;
- L. Setting requirements on the number, size, location, height and lighting of signs;
- M. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas.

16.12.030 Existing uses.

In the case of a use existing prior to the effective date of the ordinance codified in this title and which is classified in this title as a conditional use, any alteration of the structure shall conform with the requirements dealing with conditional uses.

16.12.040 Approval standards for conditional uses.

The approval of all conditional uses shall be consistent with:

- A. The comprehensive plan;
- B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;
- C. That the site size and dimensions provide adequate area for the needs of the proposed use;
- D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;
- E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;
- F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;
- G. 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 permitted uses listed in the underlying zoning district;
- H. All other requirements of this title that apply.

16.12.050 Conditional use cannot grant variances.

A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title. A variance application may be filed in conjunction with the conditional use permit by filing an application with the city using forms prescribed for that purpose.

16.12.060 Application for a conditional use.

The applicant for a conditional use proposal shall be the recorded owner of the property or an agent authorized in writing by the owner. They may initiate a request for a conditional use permit or the modification of an existing, functioning conditional use permit by filing an application with the city using forms prescribed for that purpose.

In addition, the following shall be supplied by the applicant:

- A. One (1) copy of the site development plan(s) drawn to scale and necessary data or narrative which explains how the development conforms to the standards;
- B. The required fee;
- C. The conditional use plan, data and narrative shall include the following:
 - 1. Existing site conditions,
 - 2. A site plan for all proposed improvements,
 - 3. A grading plan,
 - 4. A landscape plan,
 - 5. Architectural elevations of all structures,
 - 6. A sign plan,
 - 7. A copy of all existing and proposed restrictions or covenants;
- D. In the case where any or all of the above are unnecessary, as in the case of a change of use in an existing structure, the planning director shall determine which items in

subsection (C)(1) through (7) of this section will not be required for application. The Planning Commission may request additional items if they determine that these additional items are necessary to understand and make a decision on the application.

16.12.070 Major modifications to approved plans.

- A. An applicant may request approval of a modification to an approved plan by:
 - 1. Providing the planning director (director) with five copies of the proposed modified conditional use plan;
 - 2. For all exhibits larger than eleven (11) inches by seventeen (17) inches, twelve (12) copies are required;
 - 3. Providing a narrative addressing the proposed changes as listed in subsection B of this section;
- B. The director shall determine that a major modification has resulted if one or more of the changes listed below have been proposed:
 - 1. A change in land use;
 - 2. An increase in dwelling unit density;
 - 3. A ten (10) percent change in the ratio of the different types of dwelling units to the number of units;
 - 4. A change in the type of commercial or industrial structures;
 - 5. A change in the type and location of access ways and parking areas where off- site traffic would be affected;
 - 6. An increase in the floor area proposed for nonresidential use by more than ten (10) percent where previously specified;
 - 7. A reduction of more than ten (10) percent of the area reserved for common space and/or usable open space;
 - 8. A reduction of specified setback requirements by more than twenty (20) percent;
 - 9. An elimination of project amenities by more than ten (10) percent where the plan specified they were to be provided, such as:
 - a. Recreational facilities,
 - b. Screening, or
 - c. Landscaping provisions;
 - 10. A ten (10) percent increase in the approved density; or
 - 11. Any modification to conditions imposed at the time of the approval of the conditional use permit.
- C. Upon the director's determination that the proposed modification to the conditional use plan is a major modification, the applicant shall submit a new application for a conditional use permit.
- D. The director's decision may be appealed as per Chapter 16.04.

16.12.080 Minor modification(s) of a conditional use permit.

- A. Any modification that is not within the description of a major modification as provided in Section 16.12.070(B) shall be considered a minor modification.
- B. A minor modification shall be approved, approved with conditions or denied following the director's review based on the findings that:
 - 1. No provisions of this title will be violated; and
 - 2. The modification is not a major modification.
- C. Procedures for the notice of the director's decision and the appeal process are contained in the zoning ordinance. The decision may be appealed as per Chapter 16.04. (Amended during 2000 codification.)

16.12.090 Standards governing conditional uses.

A conditional use shall comply with the standards and purpose of the zone in which it is located except as these standards may have been modified in authorizing the conditional use or as otherwise provided as follows:

- A. Yards. In any zone, additional yard requirements may be imposed.
- B. Height Exception for Churches and Governmental Buildings. In any zone where offered as a conditional use, a church or governmental building may be built to exceed the height limitation of the zone in which it is located to a maximum height of fifty (50) feet if the total floor area of the building does not exceed one-and-a-half times the area of the site and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.
- C. Limitation on Access to Property. The Planning Commission may limit vehicle access from a conditional use to a street.
- D. Signs. See Chapter 17.90 Signs
- E. Church. A church may be authorized as a conditional use after consideration of the following factors:
 - a. Sufficient area provided for the building;
 - b. Required yards and off-street parking (related structures and uses such as a manse, parochial school or parish house are considered separate principal uses with additional lot area required);
 - c. Location of the site relative to the service area of the church;
 - d. Probable growth and growth needs;
 - e. Site location relative to land uses in the vicinity and adequacy of access from principal streets, together with the probable effect on traffic volumes of abutting and nearby streets.
- F. Public Utility or Communication Facility. A public utility or communication facility such as a substation, pumping station, radio or television studio or transmitter, or a utility transmission line shall require an easement or right-of-way twenty (20) feet or more wide. In considering an application for a public utility facility, the Planning Commission shall determine that the site, easement or right-of-way is located so as to best serve the immediate area, and in the case of a right-of-way or easement, will not result in uneconomic parceling of land. As far as possible, transmission towers, poles, overhead wires, pumping station and similar gear shall be so located, designed and installed as to minimize their effect on scenic values.
- G. Trailer, Recreational Vehicle, Mobile home or Manufactured Home Park (herein referred to as "park"). A park may be permitted as a conditional use provided it meets the requirements of the State of Oregon. In addition, the following minimum standards shall apply:
 - a. Parking Space Requirement. A parking space shall be provided for each site in the park. In addition, guest parking spaces shall also be provided in every park within two hundred (200) feet of the sites served and at a ratio of one parking space for each two sites. Parking spaces shall have durable and dustless surfaces adequately maintained for all weather use and properly drained.
 - b. Fencing and Landscaping. A sight-obscuring fence or hedge not less than six feet high shall enclose the park except at points of ingress and egress and at vision clearance areas. A build-up fence, as distinguished from an evergreen hedge, shall be so located as to conform to front and side yard requirements of the zone and suitable landscaping shall be provided in the required yards.
 - c. Area. The minimum area for a park shall be forty thousand (40,000) square feet. The average area of sites within a park shall be not less than two thousand (2,000) square feet, exclusive of washrooms, recreation areas, roadways and other accessory facilities. No site shall be less than one thousand six hundred (1,600) feet in area.

- H. Multifamily Housing. When considering a conditional use for multifamily housing, conditions shall not be placed which would exclude needed housing, unnecessarily decrease density, or allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delays.
- I. Drive-Up Uses. Drive-up uses are a conditional use in the general commercial zone. All drive-up uses shall comply with the following provisions:
 - a. All drive-up uses shall provide at least two designated parking spaces immediately beyond the service window to allow customers requiring excessive waiting time to receive service while parked.
 - b. All drive-up uses shall provide a means of egress for vehicular customers who wish to leave the waiting line.
 - c. The grade of the stacking area shall be flat or downhill to eliminate excessive fuel consumption.
 - d. The drive-up shall be designed to provide natural ventilation for dispersal of exhaust fumes.
- J. Bed and Breakfasts and Bed and Breakfast Inns. Bed and breakfasts and bed and breakfast inns are conditional uses in the CD-1, CD-2, and CD-3 zones and they shall comply with all of the provisions pertaining to vacation rentals as listed in subsection K of this section.
- K. Vacation Rental Dwellings. Vacation rental dwellings (VRDs) are a conditional use in the CD-1, CD-2, CD-3, and C-3 zones, and are subject to the requirements of this chapter. Conditional use permits are a discretionary decision by the City subject to review by the Planning Commission.

Definitions: "Owner" for the purposes of this chapter, means the natural person or legal entity that owns and holds legal and/or equitable title to the property. If the owner is a natural person, or where the natural person has transferred their property to a trust where the natural person is the trustor, that person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit. If the owner is a business entity such as a partnership, corporation, a limited liability company, a limited partnership, a limited liability partnership or similar entity, any person who owns an interest in that business entity shall be considered an owner and such person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit.

1. All vacation rental dwelling shall comply with the following approval:
 - a. VRDs are only allowed in single-family detached dwellings. Any dwelling proposed as a VRD shall be at least three years old, calculated from the date of issuance of a certificate of occupancy from the City of Bandon;
 - b. Including the subject property, the saturation rate within a 25-foot radius of the subject property must be less than 30%. The saturation rate is calculated using the following ratio:

Numerator: Subject property + permitted VRD units (each unit within a multi-family VRD is counted individually).

Denominator: Subject property + eligible properties (single-family detached dwellings).

- c. In the CD-1 zone, dwelling units proposed for VRD status may be located only in the VRD-overlay zone as indicated on the attached map. VRD's are allowed as a conditional use in all areas of the CD-2 and CD- 3 zones;
- d. The VRD Conditional Use Permit is valid for a specific owner of a specific dwelling and is not transferable. The permit shall become null and void when the owner sells or transfers the real property. No owner shall be issued a new VRD permit who holds another VRD permit;
- e. VRD's with shared beach access shall provide written permission from all persons with an interest in a private beach access to be used by the VRD or positive action to notify renters of the location and required use of public beach access points shall be taken;
- f. VRD's using a joint access driveway shall provide evidence that all other owners of property utilizing the private access agree to the proposed vacation rental dwelling using the private access;
- g. The applicant shall provide evidence that the VRD will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;
- h. The applicant shall provide evidence that the property can accommodate one off-street parking space for each bedroom in the VRD, with a minimum of two off-street parking spaces. A bedroom is defined as an enclosed sleeping area with a built-in closet. Approved off-street parking areas shall be available to accommodate full occupancy of the VRD without the use of on-street parking. The Planning Commission may limit the allowable parking area and the number of parked cars on-site;
- i. Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people. The occupancy determined by the Planning Commission may be less than the maximum allowed;
- j. Property owners shall be required to comply with the requirements of all other permitting agencies.

2. General Regulations:

- a. There shall be an owner or designated local management person immediately available to handle complaints and problems on a 24-hour basis. Contact information of the designated local management person shall be updated annually and kept on file in the Planning Department. The owner or management person shall be available by phone and physically able to respond to the VRD within a reasonable time period;
- b. Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done in accordance with the City of Bandon requirements;

- c. If the VRD activity ceases for a period of one year, or fails to be rented for more than 10 nights within a calendar year, as determined by the transient occupancy tax receipts and rental documentation, the VRD becomes null and void;
- d. Carbon monoxide and smoke detectors shall be provided in all potential and actual sleeping areas, whether or not such detectors are required by the building code;
- e. No more objectionable traffic, on-street parking, noise, smoke, light, dust, litter or odor may be emitted from the VRD than a normal neighborhood dwelling;
- f. Weekly solid waste collection service shall be provided during all months that the dwelling is available as a rental pursuant to this chapter. The property must provide a 96-gallon receptacle for solid waste. Receptacles must be removed from the City right-of-way within 24-hours after pick-up;
- g. Tsunami preparedness – all VRD's shall post the Bandon Tsunami Evacuation Route map in a conspicuous location within the dwelling;
- h. At the direction of the City Manager, other informational materials may be required to be posted in a conspicuous location within the dwelling. The City shall provide such materials at no cost to the property owner;
- i. A rental permit shall be posted within the dwelling adjacent to the front door. The permit shall state the name, address, and telephone number of the contact person required by this chapter. The permit shall also identify the address of the VRD, the maximum number of occupants permitted to stay overnight, the day(s) established for solid waste collection, and non-emergency Bandon Police number.

3. Compliance

- a. Vacation Rental Dwellings that are out of compliance with the requirements of 16.12.090(K)(2) as of the effective date of the ordinance codified in this section shall, within 120 days after said date, be brought into compliance.
- b. Violation of the requirements specified herein shall constitute grounds for revocation of the permit. Additionally, the city may institute appropriate actions or proceedings to prevent, restrain, correct, abate, or remove any unlawful location or a vacation rental dwelling in violation of this chapter. The owner(s) of a building where a violation has been committed shall be guilty of a violation of this title and shall be subject upon conviction of a fine of \$750, per BMC 1.04. Each day under which the violation continues shall be considered a separate offense.

16.12.100 Time limitation

- A. A conditional use permit shall become void one (1) year after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permit activity is being regularly conducted on the premises.

- B. The Planning Commission may extend a use permit for an additional period of one (1) year, subject to the requirements of this title.
- C. A conditional use permit shall become void if the use is discontinued for a period of one year.

16.12.110 Violation of conditions

The Planning Commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 16.04. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.

Chapter 16.16

MODIFICATIONS TO APPROVED PLANS (placeholder)

Sections:

CHAPTER 16.32

ZONE CHANGES AND AMENDMENTS

Sections:

- 17.116.010 Authorization to initiate amendments.
- 17.116.020 Application and fee.
- 17.116.030 Conditional zone amendment.
- 17.116.040 Records of amendments.

17.116.010 Authorization to initiate amendments.

An amendment to the text or the zoning map of this title or the comprehensive plan may be initiated by the city council, by the Planning Commission, or by a property owner or his or her authorized agent. The Planning Commission shall hold a hearing and recommend to the city council to approve, approve with conditions, or deny the proposed amendment. The city council may hold a public hearing (public hearings shall occur in accordance with Chapter 16.04). Amendments shall be adopted by ordinance.

17.116.020 Application and fee.

The application shall be processed using the Type III or Type IV procedures. The Planning Department shall review proposed zone changes or amendments to the text of the zoning ordinance to determine consistency with the comprehensive plan and that the amendment will not adversely affect the city's or the developer's ability to satisfy land use, transportation and utility, service needs or capacities. The proposed amendment shall also be reviewed to determine the suitability of the uses proposed in terms of slope, geologic stability, flood hazard, wetlands and other relevant hazard or resource considerations.

17.116.030 Conditional zone amendment.

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

- A. The city council shall have the authority to attach conditions to the granting of amendments to a zone boundary. These conditions may relate to any of the following matters:
 - 1. The uses permitted;
 - 2. Public facility improvements such as street improvements, dedication of street right-of-way, sewer, storm drainage, and water;
 - 3. That all or part of the development or use be deferred until certain events, such as the provision of certain public facilities to the property, occur;
 - 4. The time frame in which the proposed use associated with the zone boundary change is to be initiated.
- B. Conditions attached to a zone boundary change shall be completed within the time limitations set forth. If no time limitations are set forth, the conditions shall be completed within two years from the effective date of the ordinance enacting the one boundary change.
- C. The city council may require a bond from the property owner or contract purchasers in a form acceptable to the city in such amount as to assure compliance with the conditions imposed on the zone boundary change. Such a bond shall be posted prior to the issuance of the appropriate development permit.
- D. Conditions shall not be imposed which would have the effect of limiting use of the

property to one particular owner, tenant or business. Conditions may limit the subject property as to use, but shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.

- E. Conditions that are imposed under the provisions of this section shall be construed and enforced as provisions of this zoning code relating to the use and development of the subject property. The conditions shall be enforceable against the applicant as well as their successors and assigns.
- F. Requests for modification of conditions shall be considered by the zone amendment application and review procedure of this chapter.
- G. Failure to fulfill any condition attached to a zone boundary change within the specified time limitations shall constitute a violation of this section and may be grounds for the city to initiate a change in the zone boundary pursuant to the procedures of this chapter.

17.116.040 Records of amendments.

The city recorder shall maintain records of amendments to the text and map of the plan and this title in a form convenient for use of the public.

CHAPTER 16.36

ADJUSTMENTS AND VARIANCES

Sections:

- 16.36.010 Purpose.
- 16.36.020 General Provisions.
- 16.36.030 Adjustments.
- 16.36.040 Variances.
- 16.36.050 Expiration.

16.36.010 Purpose.

Chapter 16.36 provides standards and procedures for adjustments and variances, which are modifications to development standards that are not otherwise permitted elsewhere in this Code.

16.36.020 General Provisions.

Adjustments are variances that are intended to provide relief from code standards in specific situations. Both procedures are intended to ensure that the resulting development is compatible with adjacent properties and is consistent with the intent of the Code.

- A. Adjustments. Adjustments provide relief from specific code provisions when a code provision has the unintended effect of preventing reasonable development in conformance with all other code requirements. Adjustments are allowed in limited situations pursuant to Section 16.36.030.
- B. Variances. Variances provide greater flexibility to code standards than adjustments, where the physical characteristics of a site or its surroundings prevent reasonable development in compliance with a code standard.

16.36.030 Adjustments.

Adjustments are minor modifications to Code standards that are intended to provide reasonable flexibility for planned land uses and development. Adjustments are subject to the following standards and procedures. Permitted uses shall not be adjusted.

- A. Applicability. The Reviewing Body, through a Type II procedure, may adjust the following standards:
 - 1. Setbacks: Up to a 10 percent reduction to a minimum setback.
 - 2. Lot Coverage: Up to a 10 percent increase to the maximum lot coverage.
 - 3. Lot Dimensions: Up to a 10 percent decrease to a minimum lot dimension.
 - 4. Lot Area: Up to a 10 percent decrease in minimum lot area.
 - 5. Other Dimensional Standards: Up to a 10 percent increase or decrease in a

quantitative (numerical) standard not listed above. This option does not include building code requirements, engineering design standards, building height, public safety standards, or standards implementing state or federal requirements, as determined by the Planning Director.

- B. Approval criteria. The City may grant an Adjustment only upon finding that all of the following criteria are met. The burden is on the applicant to demonstrate compliance with the criteria.
1. The Adjustment allows for a building plan that is more compatible with adjacent land uses, or it does not create a conflict with adjacent uses;
 2. The Adjustment is necessary to allow for normal interior building functions, such as mechanical equipment/utility closets, heating and ventilation systems, restrooms, stockrooms, shelving, and similar interior building functions;
 3. Approval of the Adjustment does not create (a) violation(s) of any other adopted ordinance or code standard, and does not create the need for a Variance;
 4. An application for an Adjustment is limited to one lot per application;
 5. Requests for more than one Adjustment on the same lot shall be consolidated on one application and reviewed concurrently by the City;
 6. Not more than three Adjustments may be approved for one lot or parcel in a continuous 12-month period; and
 7. All applicable building code requirements and engineering design standards shall be met.

16.36.040 Variances.

- A. Applicability. A Variance is a variance that does not otherwise meet the criteria under Section 16.36.030.
- B. Approval Criteria. The Reviewing Body through a Type III procedure may approve a Variance upon finding that it meets all of the following criteria:
1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance;
 2. The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;
 3. The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant);
 4. The Variance does not conflict with other applicable City policies or other applicable regulations;
 5. The Variance will result in no foreseeable harm to adjacent property owners or the public; and
 6. All applicable building code requirements and engineering design standards shall be met.

Chapter 16.40

IMPROVEMENTS

Sections:

16.40.010	Agreement for improvements.
16.40.020	Bond.
16.40.025	Guarantee.
16.40.030	Fees.
16.40.040	Principles of acceptability.
16.40.050	Streets.
16.40.060	Blocks.
16.40.070	Building sites.
16.40.080	Grading of building sites.
16.40.110	Land for public purposes.
16.40.120	Improvement procedures.
16.40.130	Specifications for improvement.
16.40.140	Improvements in developments.
16.40.160	Improvements on substantial developments.

16.40.010 Agreement for improvements.

Before approval of a subdivision final plat or partition map, the developer shall either install required improvements and repair existing streets and other public facilities damaged in the development of the property or execute and file with the city manager an agreement between himself or herself and the city, specifying the period within which required improvements and repairs shall be completed; and providing that, if the work is not completed within the period specified, the city may complete the work and recover the full cost and expense, together with court costs and attorney fees necessary to collect said amounts from the developer. The agreement shall also provide for reimbursement of the city for the cost of inspection by the city. In addition, no agreement for improvements shall be accepted until such time as seventy-five (75) percent of the required improvements are complete, as determined by the city. (

16.40.020 Bond.

- A. To assure his or her full and faithful performance of the agreement for improvements, the developer shall file one of the following:
 1. 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;
 2. Cash;
 3. Other financial security acceptable to the city.
- B. Such assurance of full and faithful performance shall be for a sum approved by the city manager as sufficient to cover the cost of the improvements and repairs, including related engineering and incidental expenses, and to cover the cost of city inspection.
- C. If the developer fails to carry out provisions of the agreement and the city has unreimbursed costs or expenses resulting from such failure, the city shall call on the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit exceeds cost and expense incurred by the city, it shall release the remainder. If the amount of the bond or cash deposit is less than the cost and expense incurred by the city, the developer shall be liable to the city for the difference.

16.40.025 Guarantee.

The developer shall guarantee all materials and equipment furnished and work performed against any defect in materials or workmanship which become evident within two years after the acceptance of the work by the city. A warranty bond or cash deposit shall be submitted to the city upon acceptance of the project and shall be in the amount equaling fifteen (15) percent of the value of the improvements. Said surety shall remain in full force and effect during the guaranty period and correction of any faulty work or materials shall be promptly executed by the developer, or, if corrected by the city, shall be the responsibility of the surety.

16.40.030 Fees.

All fees and costs associated with the design, installation, and inspection of the improvements shall be borne by the developer.

16.40.040 Principles of acceptability.

A development shall conform to all approved development plans, shall take into consideration all preliminary plans made in anticipation thereof and shall conform to the design standards established by this title as determined by the city.

16.40.050 Streets.

- A. General. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets.

The street system shall assure an adequate traffic circulation with intersection angles, grades, tangents and curves appropriate for the traffic to be carried, considering the terrain. Where location is not shown in a development plan, the arrangement of streets shall either:

1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
2. Conform to a plan for the neighborhood approved or adopted by the planning commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

- B. Minimum Right-of-Way and Roadway Width. Unless otherwise indicated on the development plan, the street right-of-way and roadway widths shall not be less than the minimum width adopted by council resolution.

Where conditions, particularly topography or the size and shape of the tract, make it impractical to otherwise provide buildable sites, narrower right-of-way may be accepted, ordinarily not less than fifty (50) feet. If necessary, slope easements may be required.

- C. Reserve Strips. Reserve strips or street plugs controlling access to streets will not be approved unless necessary for the protection of the public welfare or of substantial property rights, and in these cases they may be required. The control and disposal of the land comprising such strips shall be placed within the jurisdiction of the city under conditions approved by the planning commission.

- D. Alignment. As far as is practical, streets other than minor streets shall be in alignment with

existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of two hundred (200) feet between the center lines of streets having approximately the same direction, and in no case shall be less than one hundred twenty-five (125) feet.

- E. Future Extensions of Streets. Where necessary to give access to or permit a satisfactory future division of adjoining land, or as identified in the Transportation System Plan, streets shall be extended to the boundary of the subdivision or partition and the resulting dead-end streets may be approved without a turnaround. Reserve strips and street plugs may be required to preserve the objectives of street extension.
- F. Intersection Angles. Streets shall be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case shall the acute angle be less than eighty (80) degrees unless there is a special intersection design. An arterial or collector street intersecting with another street shall have at least one hundred (100) feet of tangent adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least fifty (50) feet of tangent adjacent to the intersection unless topography requires a lesser distance. Intersections which contain an acute angle of less than eighty (80) degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of twenty-five (25) feet and maintain a uniform width between the roadway and the right-of-way line. Ordinarily, the intersection of more than two streets at any one point will not be approved.
- G. Existing Streets. Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way and improvements shall be provided at the time of the land division.
- H. Half Street. Half streets, while generally not acceptable, may be approved where essential to the reasonable development of the subdivision or partition when in conformity with the other requirements of these regulations and when the planning commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be provided within such tract. Reserve strips and street plugs may be required to preserve the objectives of half streets.
- I. Cul-de-sac. A cul-de-sac shall be as short as possible and should have a maximum length of four hundred (400) feet and serve building sites for not more than eighteen (18) dwelling units. A cul-de-sac shall terminate with a circular or modified circular turnaround.
- J. Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city and shall be subject to the approval of the planning commission.
- K. Grades and Curves. Grades shall not exceed six percent on arterials, ten (10) percent on collector streets or twelve (12) percent on other streets. Center line radii or curves shall not be less than three hundred (300) feet on major arterials, two hundred (200) feet on secondary arterials or one hundred (100) feet on other streets, and shall be to an even

ten (10) feet. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the planning commission may accept steeper grades and sharper curves. In flat areas, allowance shall be made for finished street grades having a minimum slope, preferably, of at least 0.5 percent.

- L. Marginal Access Streets. Where a land division abuts or contains an existing or proposed arterial street, the planning commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear or side property line or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- M. Alleys. Alleys shall be provided in commercial and industrial districts, unless other permanent provisions for access to off-street parking and loading facilities are approved by the planning commission. The corners of alley intersections shall have a radius of not less than twelve (12) feet.

16.40.060 Blocks.

- A. General. The length, width and shape of blocks shall take into account the need for adequate building site size and street width and shall recognize the limitations of the topography.
- B. Size. No block shall be more than one thousand (1,000) feet in length between street corner lines unless it is adjacent to an arterial street or unless the topography or the location of adjoining streets justifies an exception. The recommended minimum length of blocks along an arterial street is one thousand eight hundred (1,800) feet. A block shall have sufficient width to provide for two tiers of building sites unless topography or the location of adjoining streets justifies an exception.
- C. Easements.
 - 1. Utility Lines. Easements for sewers, water mains, electric lines or other public utilities shall be dedicated whenever necessary. The easements shall be at least twelve (12) feet wide and centered on lot or parcel lines, except for utility pole tieback easements which may be reduced to six feet in width.
 - 2. Watercourses. If tract is traversed by a watercourse, such as a drainage way, channel or stream, a storm water easement or drainage right-of-way conforming substantially with the line of the watercourse shall be provided. Additional width, and streets or parkways parallel to the major watercourses may also be required.
 - 3. Pedestrian and Bicycle Ways. For public convenience, a pedestrian or bicycle way may be required to serve a cul-de-sac, to pass through an unusually long or oddly shaped block, or to facilitate public circulation. Planned pedestrian or bicycle ways as identified in the transportation system plan shall be required to be constructed as part of the subdivision or partition. (Ord. 1471 (part), 2001)

16.40.070 Building sites.

- A. Size and Shape. The size, width, shape and orientation of building sites shall be appropriate for the location of the land division and for the type of development and use contemplated and shall be consistent with the residential lot size provisions of the zoning ordinance, with the following exceptions:

1. In areas that will not be served by a public sewer, minimum lot and parcel sized shall permit compliance with the requirements of the Department of Environmental Quality and shall take into consideration problems of sewage disposal, particularly problems of soil structure and water table as related to sewage disposal by septic tank.
 2. Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the planning commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- B. Access. Except as set forth in Section 16.16.020, each lot and parcel shall abut a street other than an alley for a width of at least forty (40) feet.
- C. Through Lots and Parcels. Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. A planting screen easement at least ten (10) feet wide and across which there shall be no right of access may be required along the line of building sites abutting such a traffic artery or other incompatible use.
- D. Lot and Parcel Side Lines. The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.

16.40.080 Grading of building sites.

Grading of building sites shall be minimized and shall conform to the following standards unless physical conditions demonstrate the propriety of other standards:

- A. Cut slopes shall not exceed one and one-half feet horizontally to one foot vertically.
- B. Fill slopes shall not be steeper than two feet horizontally to one foot vertically.
- C. The character of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended and shall be determined by the city engineer.
- D. The developer shall obtain any permits required from the Department of Environmental Quality as relates to on-site erosion.

16.40.090 Land for public purposes.

- A. When the city has an interest in acquiring a portion of a proposed subdivision for a public purpose, or when the city has been advised of such interest by a school district or other public agency and there is reasonable assurance that steps will be taken to acquire the land, then the planning commission may require that those portions of the subdivision be reserved for public acquisition for a period not to exceed one year. The developer shall be required to grant a recordable option to the public agency involved providing for purchase within one year of the recording of the plat at a stated price not to exceed the value of the land prior to development.

- B. Within or adjacent to a development, a parcel of land of not less than six percent of the gross area of the development shall be set aside and dedicated to the public by the developer. The parcel shall be approved by the planning commission as being suitable and adaptable for park and recreation uses. In the event no such area is suitable for park and recreation purposes, the developer shall, in lieu of setting aside land, pay into a public land fund a sum of money equal to the current real market value of the property x .06. The sums so contributed shall be used to aid in securing land or providing facilities for park and recreation purposes within the city. If the nature of the subdivision is such that over thirty-four (34) percent of the tract to be subdivided is being dedicated to the public for streets, the requirements of this section shall be reduced so that the total obligation of the subdivider does not exceed over forty (40) percent.

16.40.100 Improvement procedures.

In addition to other requirements, improvements installed by a land divider, either as a requirement of these regulations or at his or her own option, shall conform to the requirements of this title and improvements standards and specifications followed by the city, and shall be installed in accordance with the following procedure:

- A. Improvement work shall not commence until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans may be required before approval of the tentative plan of a subdivision or partition.
- B. Improvement work shall not commence until after the city is notified, and if work is discontinued for any reason, it shall not be resumed until after the city is notified.
- C. Improvements shall be constructed under the supervision of the developer's licensed engineer. The developer's engineer shall certify, in writing, all improvements upon completion. The city engineer shall conduct inspections of improvements as required during the final stages of construction. The city may require changes in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change. Such changes shall be reviewed and approved by the city engineer prior to construction.
- D. Underground utilities, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed on each parcel, obviating the necessity for disturbing the street improvements when service connections are made.
- E. A map showing public improvements as build shall be filed with the city upon completion of the improvements.

16.40.110 Specifications for improvements.

The city engineer shall prepare and submit to the city council specifications to supplement the standards of the title based on engineering standards appropriate for the improvements concerned. Specifications shall be prepared for the design and construction of required public improvements, such other public facilities as a developer may elect to install, and private streets.

16.40.120 Improvements in developments.

The following improvements shall be installed at the expense of the developer and at the

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time of development.

A. Streets. Public streets, including alleys within the development and public streets adjacent but only partially within the sub-division, shall be improved. Catch basins shall be installed and connected to drainage tile leading to storm sewers or drainage ways. Upon completion of the street improvement, monuments shall be reestablished and protected in monument boxes at every public street intersection and all points of curvature and points of tangency of their center lines.

B. Surface Drainage and Storm Sewer Systems. Drainage facilities shall be provided within the development to connect development drainage to drainage ways or storm sewers outside the development. Design of drainage within the development shall comply with the adopted storm water drainage plan and shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the development and to allow extension of the system to serve such areas.

C. Sanitary Sewers. Sanitary sewers shall be installed to serve the development and to connect the development to existing mains in accordance with the city's sanitary sewer master plan. In the event it is impractical to connect the development to the city trunk system, the planning commission may authorize the use of septic tanks if lot areas are adequate considering connection to a sewage disposal system are installed and sealed. Design by the developer's engineer shall take into account the capacity and grade to allow for desirable extension beyond the development.

D. Water System. Water lines and fire hydrants serving each building site in the development and connecting the development to city mains shall be installed in accordance with the approved engineering design. The developer's engineered design shall take into account provisions for extension beyond the development and, if possible, to adequately grid or loop the city system.

E. Sidewalks. Sidewalks shall be installed in accordance with the transportation system plan and the construction typicals adopted by council resolution.

F. Bicycle Routes. The planning commission may require the installation of bicycle lanes within streets or separate bike paths if the development would be an extension of existing or planned bike routes.

G. Street Name Signs. Street name signs shall be installed at all street intersections.

H. Street Lights. Street lights shall be installed as required and served from an underground electric source.

I. Other. The developer shall make necessary arrangements with utility companies or other persons or corporations for the installation of underground lines and facilities. Electrical lines and other wires, including but not limited to communication, street lighting and cable television, shall be placed underground.

16.40.130 Improvements on substantial developments.

A. Purpose. This section established and confirms standards for the development of

commercial developments which substantially impact city services. These regulations are needed to assure consistent and equal treatment of developers of certain commercial developments and

to provide for coordination of proposed developments with city comprehensive plans, implementing ordinances and city standards, criteria and guidelines. The overall purpose is to require that those developments which substantially impact the services shall pay their fair share.

B. Street Standards. Any development which contains buildings or structures or a combination of both which totals more than ten thousand (10,000) square feet on one or more contiguous parcels of land shall be required to improve or construct the abutting streets to city standards.

C. Water System Standards. Any buildings or structures in a commercial development which require a fire sprinkler system shall be required to construct or reconstruct the development's water system to assure adequate water flow as determined by the fire chief.

D. Extensions. Any commercial development which requires the extension of water, street, sewer or storm drain facilities shall pay the cost of construction for the facilities required to service the development.

E. Variances. Variance procedures and standards for this section shall be those as set out in Title 17, now and as amended.

Chapter 16.50

PLANNED UNIT DEVELOPMENT

Sections:

- 16.50.010 Purpose.
- 16.50.015 PUD uses and density.
- 16.50.020 PUD approval process; consolidated applications authorized.
- 16.50.025 Pre-application conference and public information meeting.
- 16.50.030 Application.
- 16.50.040 Limitation on application.
- 16.50.050 Hearing procedure.
- 16.50.060 Criteria for approval.
- 16.50.070 Planning Commission action.
- 16.50.080 Modifications to standards to be authorized.
- 16.50.090 Common elements and required open space.
- 16.50.100 Postponed architectural approval and final PUD plan approval.
- 16.50.110 Engineering construction plans and improvements.
- 16.50.120 Approval of final PUD plan; approval criteria.
- 16.50.130 Limitation on new application.
- 16.50.140 Surety agreement and bond.

Ordinance History: #1634

16.50.010 Purpose.

- A. The purpose of planned unit development approach is to a greater degree of flexibility, consistency and quality in the design of urban development than would otherwise be possible under the strict requirements of this Code. These provisions are intended to promote.
 - 1. creative and imaginative design for urban development in ways that encourage community identity, consistently high quality construction, and pedestrian orientation;
 - 2. the preservation, restoration and integration of important natural features such as forested areas, riparian corridors and wetlands;
 - 3. economic and efficient use of urbanizable land through density transfer and clustering, while transitioning to the surrounding neighborhoods;
 - 4. a mixture of land use and housing types that are thoughtfully planned and well-designed;
 - 5. the preservation of views from existing developed areas, through the PUD, of scenic views and sites identified in the Comprehensive Plan.

B. Applicability.

Planned unit developments are an optional use on sites meeting the following criteria:

- 1. *PUDs shall be comprised of a parcel or parcels of 2 acres or greater in size.*
 - a. *Planning Commission may allow a PUD on a smaller parcel if it finds that the site has unique qualities or circumstances that merit a PUD*
- 2. *PUDs are not permitted west of Beach Loop Drive.*

16.50.015 PUD uses and density.

Notwithstanding the requirements of this Title, the following uses and densities shall be permitted in accordance with this chapter:

A. Residential uses.

In all Residential (R) and Controlled Development (CD) zones, allowed uses include single-family dwellings, single-family attached dwellings, duplexes, and multi-family dwellings.

1. Multi-family dwellings shall not comprise more than 50% of the total number of housing units within the PUD.
2. The total number of dwelling units allowed shall be limited by the minimum lot sizes for proposed dwelling type(s) as follows:
 - a. Single-family dwellings: 4,320 square feet
 - b. Single-family attached dwellings: 2,600 square feet
 - c. Duplexes: 7,200 square feet
 - d. Multifamily dwellings: 8,400 square feet plus 800 square feet for each unit over three.
 - e. Lot sizes may be averaged within the PUD provided that the total square footage for all lots meet the minimum required for all lots in total.

B. Commercial and public uses.

Commercial and public uses may be permitted in a PUD if such uses are integrated into the proposed development.

1. Commercial uses may be provided in the following forms:
 - a. Small-scale retail uses.
 - b. Eating and drinking establishments.
 - c. Services oriented towards residents in the PUD.
 - d. Ground-floor commercial development with upper-story residential development if it meets or exceeds the purpose of this chapter and the base zone.
2. Commercial uses shall feature neighborhood-scale design per Chapter 16.42.
3. Public uses may be provided in the following forms:
 - a. Schools, including nursery and/or day care centers
 - b. Public utility or service buildings
 - c. Public parking
 - d. Government structures, offices or uses
4. Cumulatively, not more than 10% of the gross acreage may be devoted to commercial and/or public uses that serve the PUD.

16.50.020 PUD approval process; consolidated applications authorized.

Approval of a PUD by the Planning Commission shall be a two-step process involving approval of a Preliminary PUD plan as the first step, and approval of a Final PUD plan as the second step. A Preliminary PUD plan shall be reviewed through the Planning Commission in a public hearing per Chapter 16.04. A Final PUD plan shall be reviewed through an Administrative review and approval process per Chapter 16.04.

A. Consolidation.

Applications for development permits and other planning actions, including tentative subdivision plan, may be consolidated with an application for a Preliminary PUD plan, except applications for comprehensive plan amendments and annexations. Applications for final subdivision plat may be consolidated with Final PUD plan.

B. Limitation.

Where use is made of the planned use development process as provided in this chapter, no building or other permit shall be issued for such development or part thereof until the Planning Commission has approved the Preliminary PUD plan.

16.50.025 Pre-application conference and public information meeting.

Prior to submission of a PUD application, the applicant shall participate in an application conference and present the draft PUD proposal for public review and comment.

A. Pre-application conference.

The purpose of a pre-application conference is to provide advice to prospective applicants regarding compliance with the purpose and requirements of this chapter, and to determine which application materials must be submitted to constitute a complete application. This conference shall be required prior to the submission of an application.

B. Public information meeting.

The purpose of the information meeting is to present the draft proposal for general information and comment, to document the nature of neighborhood concerns, and to incorporate comments where possible into the design of the PUD before it is submitted to the city. Property owners within 250 feet of the PUD shall be provided written notice of the time and place of the meeting, and a site plan showing the draft proposal, at least one week before the meeting. The meeting shall also be advertised in a local newspaper. The applicant shall be responsible for providing a list of public comments and concerns expressed at the meeting, and generally state how the issues and concerns are being addressed.

16.50.030 Application

The owner or his agent may make application for PUD approval by filing an application with the Planning Department. The application shall be accompanied by the following:

- A. A filing fee in an amount established by general resolution of the city council. No part of the fee shall be refundable.
- B. A current assessor's map with the boundaries of the proposed PUD identified.
- C. Preliminary PUD plan. All applications shall be accompanied by a general development plan prepared in accordance with Chapter 16.12. Additionally, such plans shall include preliminary plans for the provision of public access, water and sanitary sewer service and a proposal for the PUDs operative Covenants, Conditions and Restrictions (CCRs). The applicant shall also submit one copy of the Preliminary PUD Plan which has been reduced to a size suitable for photocopy reproduction.
- D. Written documents required include:
 1. A legal description of the total site proposed for development, including proof that the applicant owns all property to be included in the PUD.
 2. A statement of planning objectives to be achieved by the PUD through the particular approach proposed, including a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.
 3. A development schedule indicating the approximate date when construction of the PUD, or stages of the PUD, can be expected to begin and be completed.
 4. Quantitative data for the following:
 - a. Total number and type of dwelling units.
 - b. Parcel sizes.
 - c. Lot coverage of buildings and structures.
 - d. Gross and net residential densities.
 - e. Total amount of nonresidential construction.
 - f. Geotechnical engineer or geologist report, as necessary.
 - g. Other studies as recommended by the Planning Director or the Planning Commission.
4. Documents indicating the short and long-term rights and responsibilities of the

residents and developer for construction and maintenance of open space, common areas and facilities, and building maintenance.

E. Site plan and supporting maps.

A site plan and any maps necessary to show the major details of the proposed PUD must contain the following minimum information:

1. The existing site conditions including:
 - a. Contours at two-foot intervals; if slope is greater than 30%, five-foot intervals.
 - b. Watercourses.
 - c. Floodplains.
 - d. Unique natural features.
 - e. Existing vegetation types.
 - f. Identifying which features and vegetation will remain and which will be removed.
2. Proposed lot lines and plot designs.
3. The location and floor area size of all existing and proposed buildings, structures and other improvements, including:
 - a. Maximum heights.
 - b. Types of dwelling units.
 - c. Density per type of dwelling unit.
 - d. Nonresidential or commercial facilities.
 - e. Sketches of typical structures and improvements, including exterior finishes and materials.
 - f. Grading plan with contours at two-foot intervals.
4. The location and size in acres or square feet of all areas to be conveyed, dedicated, or reserved as common open spaces, public parks, recreational areas, or similar public and semipublic areas.
5. The existing and proposed circulation system, including notation of proposed ownership (public or private) of arterial, collector, and local streets including:
 - a. Off-street parking areas.
 - b. Service areas.
 - c. Loading areas.
 - d. Major points of access to public rights-of-way.
6. The existing and proposed pedestrian circulation system, including its interrelationship with the vehicular circulation system, indicating proposed treatments of points of conflict.
7. The existing and proposed utility systems including but not limited to:
 - a. Sanitary sewers.
 - b. Storm sewers and drainage.
 - c. Location of looped water system sized for fire protection.
 - d. Location of underground electric, television and telephone lines.
8. A general landscape plan indicating the treatment and materials used for private and common open spaces.
9. Information on land areas adjacent to the proposed PUD sufficient to indicate the relationships between the proposed development and existing adjacent areas, including land uses, zoning classifications, densities, circulation systems, public facilities, and unique natural features of the landscape.
10. The proposed treatment of the perimeter of the PUD, including screens, fences and walls.
11. Any additional information as required by the Planning Director that may be

deemed necessary to evaluate the character and impact of the proposed development (Editorially amended during 2000 codification.)

- F. Architectural elevations and footprints for all proposed buildings shall be submitted for approval by the Planning Commission as part of the Preliminary PUD Plan. An applicant for a Preliminary PUD Plan may request to postpone the submission and approval of architectural plans for proposed buildings and have such plans approved by the Planning Commission at a later time after the Preliminary PUD Plan has been submitted, subject to the approval of the Planning Commission.
- G. When the approval of architectural plans for buildings has been postponed, the Preliminary PUD Plan shall show the building envelopes of planned buildings in conceptual form and indicate their range of height(s). Such building envelopes shall reasonably anticipate and separately define the maximum extent of the footprint and height for each building in the PUD. Conceptual architectural drawings shall also be submitted.
- H. A narrative description of the PUD which shall cover the following:
 - 1. The nature, planned use, future ownership and method of perpetual maintenance of all buildings and structures, access ways, land to be left in natural condition, or developed parks or open space.
 - 2. A list of all deviations from the strict provisions of this Code by citing each provision of the Code to be deviated from, followed by a brief explanation which covers the nature and extent of the deviation.
 - 3. A proposed development schedule which indicates the approximate date when construction of the PUD is expected to begin and end. If the PUD will be developed in phases, the development schedule for each phase shall be keyed to a plan that indicates PUD phasing boundaries.
 - 4. Such other pertinent information shall be included as may be considered necessary by the Planning Commission to make a determination that the contemplated arrangement or use makes it necessary and desirable to adopt regulations and requirements differing from those ordinarily applicable under this chapter.
- I. Written findings of fact and conclusions of law which address the approval criteria listed in 16.50.060 and 16.50.080.
- J. Documentation of the result of the public information meeting, including any changes to the proposed plans made as a result of the public information meeting.

16.50.040 Limitation on application.

No application shall be accepted for a use which will require a change of zoning district or zoning text unless said application is accompanied by an application for a zoning amendment as set forth in Chapter 17.116.

16.50.050 Review Required

A Planned Unit Development is a land use decision and shall be reviewed through a quasi-judicial review including public hearing conducted in accordance with BMC 16.04 and ORS 197.763.

16.50.060 Criteria for Approval

In granting approval for a PUD, the Planning Commission shall make its decision based on the following:

- A. The applicant has, through investigation, planning and programming, demonstrated the soundness and economic viability of the proposal, the fact that it will result in a safe,

functional and attractive development, and the ability to carry out the project as proposed.

- B. The proposal complies with transportation and public utilities requirements that are relevant to the property or properties upon which that development proposal is located and to the off-site facilities and services which are affected by the proposal, and all implementing ordinances of the city in terms of location and general development standards, except those for which a specific deviation has been approved under Section 16.50.080.
- C. The proposal will meet or exceed the purpose of this chapter and the base zone. Any modifications to standards of the base zone shall be justified in accordance with the purpose of the base zone.
- D. The project will satisfactorily take care of the traffic it generates by means of adequate off-street parking, access points and additional street rights-of-way improvements.
- E. Proposed development will occur on building sites with less than 20% slope as certified by a surveyor.
 - 1. Development on building sites exceeding a 20% slope may be permitted if the applicant meets or exceeds the geologic hazard criteria outlined within the base zone, ensuring that the proposal can be safely developed.
- F. The property is, or can be supplied at the time of development, with the following types of public facilities that are determined to be sufficient in their condition and capacity to support development of the property as anticipated by the PUD:
 - 1. Public sanitary sewerage collection facilities.
 - 2. Public domestic water distribution facilities.
 - 3. Storm drainage facilities.
 - 4. Public streets.
 - 5. Parks, recreation, or open space facilities as required in 16.50.090.

In instances where the Planning Commission determines that there is insufficient public facility capacity to support the development of the whole PUD project, nothing in this criterion shall prevent the approval of an early phase of a PUD which can be supplied with adequate public facilities.

- G. In addition to the requirement in 16.50.015(B), proposed commercial development shall also:
 - 1. Support but not overwhelm the predominantly residential development.
 - 2. Not cause undue traffic congestion, not require additional off-street parking, and shall comply with the relevant requirements of the Transportation System Plan.
 - 3. Be attractively designed and functionally located so as to fit harmoniously into and have minimal adverse effects upon the adjacent or surrounding development.
- H. The PUD design preserves views to the greatest extent possible from abutting residential development, through the PUD site, to scenic sites and vistas identified in the Comprehensive Plan.
- I. Along a PUD perimeter where more than 50 percent of abutting lots are developed with existing single-family residential uses, development shall be single-family dwellings or shall provide a 20-foot setback from the PUD perimeter.
- J. All standards listed in Section 16.50.080 (Modifications) and 16.50.090 (Common elements and open space) are met.
- K. PUDs within the floodplain shall comply with all applicable city flood regulations and the requirements of the National Flood Insurance Program (NFIP).

16.50.070 Planning Commission action.

The Planning Commission shall act upon the application within 120 days after the application is deemed complete, excluding such time as may be required to complete any necessary zoning amendment.

A. Planning Commission options.

In taking action, the Planning Commission may approve unconditionally, approve with conditions, or deny an application as submitted. Any PUD shall be subject to all conditions imposed, and shall be excepted from the other provisions of this title only to the extent specified in said approval.

B. Appeal.

The decision of the Planning Commission shall be final unless it is appealed to the City Council according to the procedures set forth in Chapter 16.04.

C. Preliminary PUD Modification.

An applicant may apply for modifications to an approved preliminary PUD at any time. Modifications to approved preliminary PUD plans are subject to the process described in 16.50.120(E) and (F), but are not subject to the limitation set forth in 16.50.130.

16.50.080 Modifications to standards to be authorized.

The Planning Commission may authorize modifications to the dimensional standards of the underlying zoning district, to parking lot design standards, or to the design of public streets and alleys, subject to the following limitations:

A. Modifications must be identified.

Each proposed modification shall be separately identified, combined with an explanation of why the modification meets one or more of the purposes of PUDs stated in 16.50.010.

B. Limits to modifications.

The nature and extent of potential Code modifications shall be limited to the restrictions and design standards listed below and pertaining to:

1. The size, dimension, location, position and coverage of lots.
2. The location, size and yards for buildings and other structures.
3. Off-street vehicle parking and loading.
4. Streets with respect to length, width, intersection standards, grades, curve radii, turnarounds, easements, street lighting, sidewalks, curbs, and driveway approaches for streets within the PUD, provided they allow adequate circulation for fire access.
 - a. The Fire Chief shall be part of the pre-application conference and will provide written comments as to why the proposed streets will or will not provide adequate fire access based on accepted standards for fire protection and emergency access. If the Fire Chief determines that the proposed streets do not provide adequate fire access, he will make specific written recommendations to the applicant as to what modifications can be made to provide adequate fire access.

C. Setbacks.

Setbacks around the perimeter of the PUD and from existing open streets shall be no less than the setbacks of the underlying base zone.

D. Street and parking standards.

Modifications of street and parking standards proposed in a PUD shall be of an equivalent or better structural quality with respect to the amount, quality, and installation of construction materials as determined by the City Engineer. In no instance shall modifications be granted to standards that apply to collector or arterial streets.

E. Height Standards

Height structures shall not exceed the height allowed in the underlying zone, excepting that the height of any structure shall not exceed 35 feet in height as measured from finished grade to the average highest gable.

16.50.090 Common elements and required open space.

The following standards apply to common areas and open space.

A. Common areas.

Where a PUD has open spaces, parking areas or other elements to be owned or maintained in common by the owners or future owners of land or improvements within the PUD, the Final PUD Plan shall not be approved and in no event shall any lot or unit be sold or conveyed until the PUD has been found to comply with the following requirements, as applicable:

1. If the PUD is a planned community under ORS Chapter 94, the declaration and plat for the planned community shall be submitted with the Final PUD Plan for approval by the Planning Director before being recorded in the official records of Coos County.
2. If the PUD is a condominium under ORS Chapter 100, the declaration and plat for the condominium shall have been recorded in the official records of Coos County, and a copy of the recorded declaration and plat shall be submitted with the Final PUD Plan. A condominium declaration and plat that has been approved by the Oregon Real Estate Commissioner and recorded in the official records of Coos County is not required to be reviewed and approved by the Planning Commission and the Planning Commission shall have no authority under this subsection to require changes thereto.
3. If the PUD contains elements intended for common ownership but ORS Chapters 94 and 100 do not apply, there shall be appropriate legal documents which assure that the common elements will be improved and perpetually maintained for their intended purposes. The legal documents in such instance shall be submitted to the Planning Director for approval as part of the Final PUD Plan before being recorded in the official records of Coos County.
4. When a PUD is proposed to be developed in phases, the phased provision of improved common elements shall be roughly proportional with the development of housing and other elements intended for private ownership. Nothing in this subsection shall prevent the provision of improved common elements at a rate that is proportionally greater than the development of housing and other elements intended for private ownership.
5. Land shown on the Final PUD Plan as a common element shall be conveyed under one of the following options:
 - a. To a public entity which shall agree in writing to perpetually maintain the common element(s) being conveyed.

- b. To an association of owners created pursuant to ORS Chapters 94 and 100 or as otherwise created under Subsection 17.64.090(3), in which instance the City shall be made a party to the legal document which establishes the association, and such document shall provide that the association cannot be terminated or discontinued without the City's prior consent, and that the City may enforce any and all of its provisions.

B. Parks, open space, and community meeting space.

At a minimum, 25% of the net site acreage, after excluding existing and proposed public rights-of-way, shall be reserved as common open space, parks, trails, and/or natural areas.

1. No more than half of the required open space may be on sensitive lands. Natural areas shall be retained in their natural condition. If natural areas are degraded, they shall be restored and enhanced.
2. At least half of the required open space shall be fully improved by the developer for urban open space use (e.g., active parks, plazas, squares and landscaped boulevards) and shall be accessible by PUD residents.
3. Open space area may not include private streets, private yards or anything contained in private yards, public rights-of-way, or required parking areas.
4. A PUD with 25 or more residential units shall include a building or room for community meetings. A PUD with 24 or fewer residential units may include a building or room for community meetings. Any community building or room included in a PUD shall be a credit towards meeting the 25% requirement for open space in the PUD. The amount of credit shall be determined by the Planning Commission.

When the approval of architectural plans for buildings in the PUD has been postponed under Subsection 16.50.030(F) at the discretion of the Planning Commission, the approval of architectural plans for buildings can occur as a one-step procedure when combined with the submission of a Final PUD Plan which incorporates the building(s) and the landscaping and other site improvements which surround the building(s).

16.50.110 Engineering construction plans and improvements

- A. Engineering construction plans, profiles, details and specifications for all public facility and utility improvements shall be prepared by an engineer registered in Oregon. The required engineering plans shall be submitted to and approved by the city before the start of construction.
- B. Unless specifically authorized by the Planning Commission at the time of Preliminary PUD approval, all public facilities and utilities shall be designed and constructed in accordance with the standards and procedures of the city or other public entity to which ownership of said facilities or utilities will be conveyed.
- C. The procedures for engineering design, plan approval and inspection, and bonding requirements shall be the same as required in 16.40.

16.50.120 Approval of Final PUD Plan; approval criteria

The following provisions shall govern the submission and approval of a Final PUD Plan:

A. Filing requirements, time extensions

Following final approval by the Planning Commission of the Preliminary PUD plan, the applicant shall file a Final PUD plan.

1. The Final PUD Plan shall contain in final form all information and materials required by Section 16.50.030 unless certain items are waived by the Planning Director. However, there shall be no burden to demonstrate compliance with the criteria in Section 16.50.060 and no findings of fact and conclusions of law for these criteria

are required in order for the Planning Director to approve a Final PUD Plan.

2. As appropriate, the Final PUD Plan shall incorporate all conditions imposed by the Planning Commission at the time the Preliminary PUD Plan was approved.

B. Phased PUD, time limit between phases

The Final PUD Plan may be submitted for the entire project or on a phase-by-phase basis consistent with the approved Preliminary PUD Plan.

1. If a Preliminary PUD Plan was not approved as a phased project, nothing in this subsection shall prevent the Planning Director from approving a Final PUD Plan in phases provided that the Final PUD Plan complies with all other requirements of this Chapter.
2. If the Planning Director approves a Final PUD Plan for the first phase of a PUD having approved multiple phases, such approval shall perfect the applicant's rights under this section to complete subsequent future phases. However, it is further provided that after Final PUD Plan approval for the first phase, and for each successive phase thereafter, no more than three years shall elapse between approval of phases.
3. If more than three years pass between the Final PUD Plan approval of any two PUD phases, the Planning Director may, without consent of the owners of the PUD, initiate action to terminate undeveloped portions of the PUD.
4. Nothing in this subsection shall prohibit or limit the ability of the Planning Director to establish time periods within which substantial construction of a PUD or any phase thereof is required to occur after a Final PUD Plan has been approved.

C. Final plat for land division

Application for the approval of a Final PUD Plan may occur before, after or concurrent with the approval of a final plat for a land division by the Planning Director. However, it is further provided that no building permits shall be approved by the City and no buildings intended for human occupancy shall be constructed and no lot shall be sold until the Final PUD Plan has been approved by the Planning Director.

D. Final PUD Plan approval criteria

The Final PUD plan shall be approved by the Planning Director if it concludes that compliance exists with each of the following criteria:

1. Provisions for the establishment and maintenance of elements to be held in common ownership, if any, have or will comply with the standards in Section 16.50.080.
2. The final PUD Plan is substantially consistent with the Preliminary PUD Plan, and the conditions, if any, which were attached by the Planning Commission to the approval of the Preliminary PUD Plan. An applicant may seek written clarification from the Planning Director regarding whether any anticipated differences between the Preliminary and Final PUD Plans meet the test of being substantially consistent.

E. Preliminary PUD modification required

When substantial inconsistencies between the Preliminary and Final PUD are found to

occur, these shall result in the need to approve a modification to the approved Preliminary PUD Plan. Modification to the Preliminary PUD Plan approval shall be required whenever the criteria listed in 16.50.120(D) cannot be satisfied. In no instance shall a Final PUD Plan be approved if inconsistencies with the approved Preliminary PUD Plan exist in any of the ways listed below:

1. The exterior boundaries of the PUD shall not change except for slight deviations which are the result of correcting boundary errors or inconsistencies that are found to exist at the time the PUD property is surveyed.
 2. The number of housing units shall not be increased, and in no instance shall the number of housing units be decreased, by more than five percent.
 3. There are new deviations to provisions of this Code which were not approved by the Planning Commission as part of the Preliminary PUD Plan.
- F. Substantial modifications to an approved Preliminary or Final PUD shall be reviewed under the same process and approval criteria as would be required for a new Preliminary or Final PUD application, as appropriate. However, the approval criteria shall apply only to those elements of the PUD proposed for revision.

16.50.130 Limitation on new application

In the event where an application allowed or provided for by the provisions of this chapter is finally denied after exhaustion of all local appeals, and unless the denial is specifically stated to be without prejudice, it shall not be eligible for re-submission for a period of 12 months from the date of final denial unless, in the opinion of the Planning Director, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.

16.50.140 Surety agreement and bond

- A. The developer shall enter into an agreement and provide surety acceptable to the city attorney which assures conformance with the development plan. The city shall have the ability to draw against the surety in an amount necessary to complete the improvements of the infrastructure and other elements of the plan being necessary for protection of the city and general public interest.
- B. The agreement shall be considered a contract between the city and the developer and include at least the following:
 1. Specification of the requirements of what the developer/owner is expected to do.
 2. The deadline for the performance.
 3. That the agreement is for the benefit of the local government and not ultimate purchasers of individual lots, units or real estate interest.
 4. Terms under which the city can determine the developer is in default.
 5. The right for the city staff to come onto the property and inspect and complete work if necessary.
 6. Specification adequacy of rights and remedies for enforceability by the city.
- C. Any bond that is used as a part of this surety agreement shall be in the form acceptable to the city attorney and should include the normal commercial elements of an adequate bond and should at a minimum specify an appropriate method of declaration of default, be with a bonding company that is, in the opinion of the city's advisors, a company that has an adequate rating, have sufficient assets, and should be a local Oregon company in the event that the city is required to sue to preserve its right to claim.

