

**CITY OF BANDON  
PLANNING COMMISSION**

**THURSDAY, November 16<sup>th</sup>, 2023  
Regular Meeting – 7:00 PM**

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*MEETING WILL BE HELD IN PERSON AT THE COUNCIL CHAMBERS AT CITY HALL*

*AND OVER ZOOM:*

*Link to meeting:*

<https://us02web.zoom.us/j/2157059460>

*Meeting ID: 215 705 9460*

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- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. CONSENT AGENDA**
  - 3.1 Regular Meeting Minutes – September 28<sup>th</sup>, 2023
- 4. PUBLIC COMMENT**

Comments from the Public on any item NOT on the agenda – limited to 3 minutes each.
- 5. DISCUSSION**
  - 5.1 Code Clean-up 2024
  - 5.2 Master Planned Development
- 6. STAFF UPDATE**
  - 6.1 Planning Department Report
- 7. OPEN DISCUSSION**

Commissioner Comments
- 8. ADJOURN**

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e-mail: [citymanager@ci.bandon.or.us](mailto:citymanager@ci.bandon.or.us)

City Web site: [www.ci.bandon.or.us](http://www.ci.bandon.or.us)

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# City of Bandon

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*Bandon by the Sea*

<b>PLANNING COMMISSION CONSENT AGENDA</b>	<b>DATE: 11/16/2023</b>
<b>SUBJECT: MEETING MINUTES - SEPTEMBER</b>	<b>ITEM NO: 3.1</b>

## **BACKGROUND:**

These are minutes from the Planning Commission regular meeting on September 28<sup>th</sup>, 2023 at 7:00 pm.

## **FISCAL IMPACT:**

None.

## **RECOMMENDATION:**

Approve the minutes as presented.

## **SUBMITTED BY:**

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**Dana Nichols, Planning Director**

**Regular Meeting of the Planning Commission  
at Bandon City Hall, on Facebook, and via Zoom Meetings  
September 28, 2023**

**COMMISSION:**

- Bill Frey, Commissioner
- Sally Jurkowski, Vice Chair
- Gordon Norman, Commissioner
- Tom Orsi, Commissioner
- Catherine Scobby, Commissioner
- Gerald “Bear” Slothower, Chair
- Donald Starbuck Commissioner

**STAFF:**

- Shala Kudlac, City Attorney
- June Hinojosa, City Recorder
- Dana Nichols, Planning Manager
- Officer Damon Price, Bandon Police

**1.0 CALL TO ORDER**

Slothower called the meeting to order at 7:00 p.m.

**2.0 ROLL CALL**

Roll Call was taken as indicated above. Starbuck joined the meeting using Zoom. The other Commissioners and City Staff members were present in the Council Chambers.

**3.0 CONSENT AGENDA**

**3.1 Regular Meeting Minutes – August 24, 2023**

Hearing no objections or corrections, Slothower approved the August 24, 2023, minutes as written.

**4.0 PUBLIC COMMENT**

**Susan Miller, a resident of Bandon**

Miller requested some “maintenance assistance” from the City to remove the dry, dead gorse that was in the City right-of-way along Carter Avenue between Lincoln Avenue and Harrison Avenue, next to the Donut Hole. She said it was “a fire burst waiting to happen” and she had recently come to the Planning and Public Works Departments at City Hall with that same request.

**5.0 ACTIONS**

**5.1 Reschedule the October meeting date: October 19 at 7:00 p.m.**

Nichols explained that an Oregon Planners Conference was being held on the regularly scheduled Planning Commission meeting date in October, so she had requested to have the meeting moved to October 19, 2023. She also requested a change to the November meeting date, since the meeting would fall on Thanksgiving Day if the Commission adhered to its regular schedule.

Orsi moved to reschedule the Commission’s October 2023 meeting to October 19. Jurkowski seconded the motion and it passed by unanimous voice vote (7:0:0):

- AYES: Frey, Jurkowski, Norman, Orsi, Slothower, Scobby, Starbuck
- NAYS: None
- ABSENT: None

## **5.2 Reschedule the November meeting date: November 16 at 7:00 p.m.**

Starbuck moved to reschedule the Commission's November 2023 meeting to November 16. Frey seconded the motion, which passed by unanimous voice vote (7:0:0):

AYES: Frey, Jurkowski, Norman, Orsi, Slothower, Scobby, Starbuck

NAYS: None

ABSENT: None

## **6.0 HEARINGS**

### **6.1 23-045, Request for approval of a Conditional Use Permit to construct a new resort: 110 room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites; request for approval of a variance to certain height restrictions and plan review for commercial design standards, parking, and signage.**

Slothower opened the Public Hearing at 7:05 p.m. He read aloud the rules and procedures for conducting a Public Hearing.

Jurkowski stated that she had walked in the area of the proposed development before any plans for the project existed. Starbuck said he had walked through the property in question many times and knew several people who lived near the property. Neither Starbuck nor Jurkowski believed their site visits would influence their decisions on the application.

Scobby noted that quite a few of her neighbors had submitted testimony and she was aware that the project would have a large impact on the character of her neighborhood. She added, "I have carefully weighed any perceived or actual conflict of interest with this project, in respect to the proximity of my home to the site, and I am confident that there is no actual conflict of interest, as defined in the code, and I am also confident in my ability to objectively weigh the application against the Comprehensive Plan and the City's code." Scobby said she would be happy to recuse herself "for the good of the order" if there was a challenge to her objective role on the Commission. She also acknowledged having ex parte contact in the form of conversations with neighbors where the topic of the project had come up and where she had encouraged them to come to the meeting and voice their concerns.

Orsi reported having ridden his bicycle through the property to get a sense of the topography.

Norman offered that he had driven by there a number of times but had not conducted a site visit. He had received a couple of emails requesting information, and he referred the writers to material on the project that could be found on the City's website and suggested they could attend the meeting in person or on Zoom. Norman also told them that a written record of the meeting would probably be available on the City's website within a week.

Nichols did not think the Minutes Clerk could meet that time frame, but a video of the meeting would be posted by early the following week.

Frey figured he had driven by the site literally thousands of times and had walked through and around the site before it was sold to the applicant. He had also seen the applicant's presentation to the City Council on the project and had read and heard comments on social media and in conversations. Frey did not think any of this would sway his opinion, one way or the other, or create a conflict of interest.

Jurkowski testified that she had watched the Council meeting on Zoom.

Nichols stressed that what mattered was whether the Commissioners had gained anything from any "inadvertent discoveries" they mentioned.

Slothower emphasized that what mattered was whether anything the Commissioners had observed would influence their vote on the application.

Beginning the Staff Report, Nichols announced that a Type III Public Hearing was taking place on the request for a Conditional Use Permit (CUP) to construct a new resort and for variances to certain height restrictions, as well as a plan review for commercial design standards, parking, and signage. She said the applicant had requested consolidating the application—allowed by state law—which meant some items that normally would be Staff decisions would be heard as part of the Public Hearing.

The site of the proposed Gravel Point development contained an old subdivision that looked like a window pane on the map and was made up of many small lots and a street configuration that Nichols observed, “probably doesn’t match what we’d actually want to see” on that site. As part of the applicant’s proposal, there was a request to dedicate an additional right-of-way to connect Carter Avenue and extend another public street northeast for future growth. This would require the City Council to approve the applicant’s request to vacate the existing rights-of-way.

The Gravel Point project would be developed on several parcels that totaled almost 25 acres, east of Beach Loop Drive, north of Carter Avenue and south of Face Rock Drive. On the east, the property abutted land in the Donut Hole. As part of her presentation, Nichols displayed a map outlining the project site.

Nichols explained that the Planning Staff’s procedure was to review an application for conformance with the applicable criteria in the Bandon Municipal Code (BMC). For this application, Staff examined Conditional Use criteria, the criteria for a variance, the Controlled Development I (CD-1) zone criteria, and standards for signage, commercial design, and off-street parking and loading.

The CD-1 zone was intended to allow a mixture of uses, including residential, tourist commercial, and recreational. The applicant was requesting a hotel and commercial retail sales and services, considered Conditional Uses in the CD-1 zone. Responding to the stated purpose of the CD-1 zone, “to recognize the scenic and unique qualities of Bandon’s ocean front and nearby areas,” the applicant had proposed structures that were “built into” the landscape. Nichols noted that Staff had requested that the applicant provide additional information about setbacks, because the plans that were submitted did not show setbacks for all structures. However, the site plans did show that all setbacks exceeded the City’s requirements for the CD-1 zone.

Nichols covered the height regulations for structures in the CD-1 zone. West of Beach Loop Drive, there was a 24-foot height limit. The limit east of Beach Loop Drive was 28 feet, which could be exceeded up to a maximum of 35 feet, only if:

- The additional height did not negatively affect the views from surrounding properties.
- The additional height did not cut off sunlight from surrounding properties.
- The additional height did not negatively affect the aesthetic character of the neighborhood.
- All portions of any roofs above 28 feet were sloped at a minimum of 3:12, down and away from the highest point of the structure. Nichols theorized that this restriction was probably intended to prevent a building from being a big, imposing 35-foot-high block that would cut off sunlight. She thought the 3:12 pitch would minimize the bulk of a large structure’s roof line.
- The front, side, and rear setbacks were increased by one foot for each foot or portion of a foot that the highest point of the structure exceeded 28 feet.

The applicant had requested a variance to the 3:12 roof pitch. Staff recommended that the Commission should request additional evidence, to determine whether the first three criteria were met.

Since the applicant was requesting a Conditional Use Permit, Nichols discussed the purpose of conditional uses, in terms of two questions: “Are the conditions right for the use to exist?” or “Are there conditions we can place on the application to make it right for it to exist?”

Approval criteria for CUPs included:

- The project must meet the general sense of the Comprehensive Plan (Comp Plan), which Nichols described as the guiding document for development in the City, with the Municipal Code being the enforcing agent for the Comp Plan. She noted that the Comp Plan did not have specific requirements that applied to the Gravel Point application, although it did indicate that “tourist commercial” uses were appropriate to Beach Loop Drive.
- Regarding dimensional standards and purpose, adequate size requirements, and site characteristics, Nichols observed that the project planned to utilize the topography of the 24.8-acre site, with only 8.5 percent devoted to development, leaving 78 percent open space, including improved and enhanced wetlands.
- Staff needed to address the project’s utilization of public facilities and determine if there was sufficient infrastructure to meet the project’s needs. Nichols stated that although Bandon had a need to expand its raw water storage capacity for dry periods, that was different from the water system’s overall capacity, which was said to be adequate for more than a decade into the future, according to the City’s Water Master Plan, especially inside the city limits.
- The applicant provided a transportation impact analysis that focused on three main points of concern—the future intersection of Carter Avenue and Beach Loop Drive, the intersection of Beach Loop Drive and Seabird Drive, and the intersection of Seabird Drive and Highway 101. Nichols pointed out that the latter was acknowledged as a problem, whether or not the Gravel Point resort was approved. She said ODOT (Oregon Department of Transportation) had already determined that a signal was warranted at Seabird and 101, with an “F” rating.
- To minimize the project’s impact on the neighborhood as required, the applicant pledged to provide buffering from adjoining residences, and structures would be located far from the property lines.

Nichols covered the three items the Commission would evaluate in conducting a Plan Review for the project:

- Signs: Three signs were requested—one at the main entrance at Carter Avenue and Beach Loop Drive and two side entrance signs. Nichols noted that the applicant needed to supply the linear street frontage to be able to calculate the signage allowance, although it appeared the applicant had met the requirement.
- Commercial Design Standards: Due to its size, the Gravel Point project’s landscaping plan, screening, lighting, pedestrian amenities, building façades, and roof pitch would need to be reviewed. Staff asked for additional evidence to ensure these plans met the City’s code requirements.
- Parking: The developers planned to provide 164 vehicle parking spaces and 16 bicycle parking spaces. Only two RV (recreational vehicle) spaces were planned.

Nichols offered some details on the requested variance to the code requirement for a 3:12 roof pitch on portions of a building above 28 feet in height in the CD-1 zone. The developers proposed a “shed roof” style that would also function as a “green roof.” She believed they would need to provide more information before a decision could be made.

Some of the public comments received prior to the hearing concerned wetlands on the project site, which were also discussed in the project narrative that accompanied the Gravel Point application. The City's Wetlands Inventory map identified two wetlands on the property, labeled TUP-5 as part of the Tupper Creek watershed and JOH-6 as part of the Johnson Creek watershed. These were not considered "significant wetlands" and therefore were not regulated by BMC 17.102. Nichols said the City did notify the Department of State Lands (DSL) with a Wetland Land Use Notification as required, because the applicant would be subject to DSL rules.

Staff's recommendation to the Commission was to continue the hearing to its next regular meeting, October 19, 2023, to allow submission of the additional evidence requested in the Staff Report. Nichols reported that there had been a request in the public comments to leave the hearing record open for an additional seven days.

Norman asked why the wetlands on the property were not classified as significant.

Nichols responded that the Staff Report provided details of the City's code requirements, and she explained that the wetlands on the property did not meet any of the criteria used to identify locally significant wetlands.

Norman observed that not everyone thought the main entrance to Gravel Point should be at Carter Avenue and Beach Loop Drive, and he wondered if there was any way to have a more direct connection from the resort to Highway 101. He speculated that ODOT's position on traffic signals might make that difficult.

Nichols conveyed her understanding of ODOT's stance on signaling the intersection of Seabird Drive and Highway 101. She said it would be difficult and expensive to put a traffic light there because of motorists approaching the intersection on 101 from the south at a high speed, coming off a long, deep dip. Nichols could not say what ODOT's position might be on putting a signal at other intersections north of Seabird that would have a lower speed limit and less challenging topography. She pointed out that Face Rock Drive might be the only street that could connect to the highway, but a new road would have to pass through a parcel that had some wetlands, and there was no existing right-of-way platted through the private property in that area.

Hinojosa informed the Commission and Staff that there were 100 people attending the meeting on Zoom, the maximum the City's account would accommodate. She added there had been quite a few people who were unable to log in to Zoom as a result. Hinojosa relayed a message from City Manager Dan Chandler that said, "It's important, I think, to continue the hearing and allow people who weren't allowed to testify a chance to testify, rather than just keeping the record open."

Frey asked Nichols if the applicant would receive a copy of the Staff Report and be aware of the additional evidence that was requested. She responded that the report went to the applicant at the same time as the Commissioners received it, so they might provide additional evidence during their presentation in the hearing.

Slothower invited the applicant to make a statement.

**Sheri McGrath of Coos Curry Consulting**, a longtime resident of the Bandon area, represented the Gravel Point project and was joined by its developer, **Brett Perkins (PERK Development)**, a native of Coos Bay who was "eager to contribute his knowledge and resources to developing here in Bandon." She was also accompanied by the project's architect, **Christopher Bell (DLR Group)**, who was going to narrate the applicant's presentation.

McGrath said the presentation had been updated to reflect public comments and the Staff Report, and to gain clarification on what the developer was requesting. She stated that the application was not a request for a resort but was a request for what was listed in the Bandon Municipal Code—hotel/motel use, restaurant, spa, walking trails, and whatever was allowed in the CD-1 zone.

McGrath said the applicant had provided written comments in response to the public testimony that had been received, trying to address everyone's concerns. "We are here to be good neighbors," she emphasized. "Like I said, we are local."

McGrath addressed City infrastructure, which seemed to be the main concern expressed in public comments. She noted that the Gravel Point project was estimated to pay \$1,191,561 in System Development Charges (SDCs)—equivalent to 87 new residential homes—making "a significant contribution to infrastructure in our community." Those fees would go toward rebuilding and maintaining all public facilities, including water and sewer. Additionally, the Transient Occupancy Tax (TOT) collected by Gravel Point in its first year was estimated to reach \$1.6 million. "The City of Bandon relies greatly on TOT. That pays for the police force," McGrath pointed out.

McGrath declared that the applicant was agreeable to Staff's proposal to extend the hearing. Since the application had been deemed complete on August 21, 2023, the 120-day review period would end on December 19, 2023. McGrath asked for the hearing to be extended and to hold open public comment until October 12, 2023, suggesting that the Commission's October 19, 2023, meeting would be acceptable, but going past that date might make it impossible to meet the 120-day review period.

Bell displayed a map highlighting the project's location and the primary access to the site, from Seabird Drive to Beach Loop Drive. He downplayed the significance of the Carter Avenue entrance to the site, saying it was created at the City's request to "keep the neighborhood connected."

An illustration was shown of the planned entrance to the development, with the Dune Lodge and its restaurant terrace facing back into the site. The hotel, dubbed Meadow Lodge, could be seen farther back in an existing grove of trees.

Examples were shown of the type of 16-foot "cutoff" light fixtures planned for street rights-of-way in the development, as required by the City. Bell displayed proposed primary and secondary signage, which he maintained would be well below the maximum sizes allowed.

The next slide was an aerial view of the subject property with topographical lines superimposed on it, illustrating how the developer was "trying to leave the canopy alone...trying to leave the wetlands alone...trying to leave the topography alone, to the extent that we can," Bell said, "because we like it. It makes it interesting. We don't want to go flatten the site and make it into some other site, so we're going to some lengths to try and maintain and enhance that landscape that we're seeing there today."

Another map of the property showed planting zones envisioned by the project's landscape architect. Bell noted that there had been comments about some items on the plant list being non-native, and he gave an assurance that those plants would be edited out over time. He stressed that "100 percent intent of the list" was to restore the native landscape.

The map that followed showed the general configuration of structures on the site. Bell pointed out the Carter Avenue connection and he mentioned another roadway, just south of the hotel building, which curved to the northeast and allowed for a future eastward connection to Highway 101. He drew attention to how the two "commercially scaled buildings" were situated in the center of the site, significantly pulled in from the edges, while the rest of the structures that spread out over the remainder of the site were designed in "domestic scale architecture...to reflect the scale and character of the neighbors."

Bell responded to comments about "screening," particularly in the southeast corner of the site. He said the earlier drawings only showed screening where it was mandated by the code, because the philosophy of the project was to leave it unfenced, open, and natural. Bell indicated that the developer was happy to provide screening where the neighbors desired it, and the western, northeastern, and southeastern property lines were highlighted on the map to represent landscape buffers for the surrounding neighborhoods.



Using a map of parking areas, Bell explained that there were some scattered parking spaces around the villas, except in the area of the dunes. To minimize impact on the landscape and the neighbors there, the only vehicles allowed would be golf carts, and there was a walking path to the dunes rather than a road. Vehicle parking was mainly under the two lodge buildings to protect the landscape, with overflow surface parking along some of the roadsides.

Bell offered a detailed map of the setbacks of buildings from property lines and roadways. The hotel building was to be over 300 feet from the west boundary, around 190 feet from the east boundary, and about 155 feet from the north boundary. Along the western property line, the closest structure would be 43 feet away, and the commercial building (the Dune Lodge) would be 87 feet away.

Sketches of the central hotel building were shown, viewing it from different angles. The flat roof requested by the developer was visible. Bell said it would be a “green roof” used to create habitat that would be attractive to birds.

“We have more grey water capture potential on this site than we know what to do with,” Bell proclaimed. He said there would be enough collection and storage capacity to water the green roof.

An artist’s rendering of the Dune Lodge illustrated how it was built into the dune and designed to have its activity facing away from the neighbors to the west.

A set of summer solar and wind study diagrams revealed little impact of shadows from the structures on the property at various times during the day. The winter study sketches showed longer shadows throughout the day that mainly stayed within the property lines.

Bell shared an illustration of how the nearest Meadow Suite villa on the west side of the property would match up with a neighboring home. The occupied spaces were not facing the neighbors, and the height of the villa’s roof was below that of the neighboring home.

The Ridgeline Suite villas in the dunes also faced mainly away from neighboring properties and had a lower profile. A rendering of the Ridgeline Suites showed the golf cart/walking path and lighting that had been reduced to three-foot-high shielded bollard lights due to concerns that had been voiced. Views of the Ridgeline villas displayed their “weathered wood effect” exterior walls over “board-formed concrete.”

The Meadow Suites, situated closer to surrounding properties, echoed the neighborhood aesthetic with their pitched roofs but maintained the color palette used on the other villas.

A schematic of the project’s road and pedestrian path system featured the dark sky compliant bollard lighting locations.

In cross-section diagrams, Bell pointed out the open bioswales along the roadways, which used a “sustainable urban drainage system” to filter and clean the water as it flowed across the site, recharging the aquifer and wetlands in an effort to use stormwater onsite.

Jurkowski had read that some villas might be made available for temporary workforce housing. She wondered how that would be possible for people who could not afford the cost of renting such units.

Bell replied that the developer was looking at a site on the adjacent 60 acres, toward the north by City Park, for workforce housing. He added that there was also an effort to form a partnership with the Bandon Community Swimming Pool organization to find a home for an aquatic and fitness center there, and the developer was studying the possibility of constructing a 250,000 gallon water retention facility on that 60-acre property.

Jurkowski and Slothower were unable to find any reference to housing in the application materials.

McGrath clarified that when the plans were first developed for Gravel Point, ownership of the adjoining property had not yet been obtained. Once that land had been purchased, an additional proposal had been submitted for up to 60 dwelling units of workforce housing for Gravel Point staff on the north side of the 60 acres, along City Park. McGrath said there was so much interest in the potential housing that permission was given to show a little of the future plans. She said the developer was going through wetlands delineations and traffic studies, talking with the Bandon Swimming Pool people about how to incorporate their plans, and considering how annexation would take place.

“Those items are quite a bit down the road at this point,” McGrath observed. “We’re doing our best to propose what is an isolated proposal on this 24.8 acres that’s not required to go through annexation and a master plan process, but also be mindful of the things that the City says that they need, including workforce housing.”

For context of the workforce housing shortage in Bandon, McGrath used the example of traveling nurses, who received a per diem payment for housing. She said that over the following six months there would be, on average, four units available, with 20 or more in rotation. Some of them were vacation rentals and some were hotel rooms or people’s basements. They were rented for 30 days or more, skirting the vacation rental regulations. McGrath acknowledged that traveling medical professionals and other professionals working remotely needed a space to live, but they were using housing inventory Bandon needed for true workforce housing and they could afford to pay higher rents.

McGrath noted that the City’s Water Master Plan called for a 250,000-gallon reservoir that the developer was prepared to provide on the property adjacent to the Gravel Point development, at a location the City Engineer had stated would be ideal.

Concerning the need for a more direct roadway into Gravel Point, McGrath suggested Bandon’s Transportation System Plan (TSP) would be realized as the City continued to grow and the connection to Highway 101 would eventually happen through annexation and after wetland delineation. She emphasized that although the wetlands on the Gravel Point property were not labeled as significant, she and the developer and design team took the wetlands seriously. McGrath praised the architectural team for protecting and enhancing the wetlands even though the City’s ordinance did not apply.

Frey asked what minimum staff size was expected at the Gravel Point development.

McGrath replied that there would be 40 to 60 employees, including groundskeepers.

Norman assumed a needs study had been done prior to proposing the Gravel Point project. He questioned if a 110-room hotel plus 32 additional units was “really necessary for Bandon,” and he wondered if the developer would be able to fill those rooms over the next few years.

“Absolutely,” McGrath responded. “There’s one really odd thing about the opinion of small business in Bandon,” she asserted, “and it’s that all small businesses are struggling to keep employment and keep their doors open, and that’s not accurate.”

McGrath added, “We have continually seen a shortage in rental availability in Bandon alone. There were four hotels on Beach Loop. Now there’s two. So, there hasn’t been an increase in hotel use or development. We’re just literally trading out rooms that are no longer available. This is also creating a problem for vacation rentals, both legal and illegal. Because there’s a demand, people are renting out their inventory that really needs to go back into long-term rental inventory.”

Scobby inquired about the obstacles to making a connection with Highway 101, since she thought McGrath seemed to have a more positive outlook about that than Nichols had expressed earlier.

McGrath replied that Bandon's TSP clearly showed east-west and north-south connections through the Donut Hole. The east-west link to Highway 101 would be made via Face Rock Drive or Edna Lane. She said a road could be put through the wetlands, but it would take time. Properties in the area were under Coos County jurisdiction and neither the City nor the landowners in the Donut Hole had chosen to initiate annexation. McGrath believed that there would eventually be a connection. The designated north-south connection in the TSP was Franklin Avenue, which was planned to extend all the way to Seabird Drive and alleviate pressure on the Ocean Trails subdivision.

Bell reiterated that the Gravel Point project included the beginning of a roadway aimed toward the northeast, preparing for an eventual connection to 101.

Frey brought up the traffic studies produced for the project by Parametrix. He perceived that the Parametrix report only addressed PM peak hour trips, which he understood to be the industry standard. He did not see any discussion of possible AM traffic flow—people coming to or leaving the resort, staff coming and going, service and delivery vehicles coming and going, and people coming to the restaurant and/or spa. Because of that activity, Frey felt the AM traffic would increase considerably, and he doubted the two proposed access points were sufficient for a development the size of Gravel Point. He contended a third access point, directly linked to Highway 101, would be a “best case scenario” to handle the volume of traffic during the construction phase as well as after the development opened.

For that to happen, McGrath insisted, the City needed to be in favor of annexation. She stressed that the application under consideration only involved property within the City of Bandon, and the Planning Commission's role was to review the Conditional Use Permit application for a listed use in the CD-1 zone.

Frey retorted that his reading of the municipal code was that the Commission had authority to require additional access points, but he said he understood McGrath's point. Regarding the 111 new PM peak hour trips on local roads estimated by Parametrix due to the Gravel Point development, Frey commented, “Statistics are great. I'm an accountant, so I love them. But statistics can be driven in different directions for different interpretations.” Although not suggesting the statistics from Parametrix were derived to support a particular position, he maintained that the overall increase in traffic would cause people to avoid Seabird Drive, “which would be great for the residents on Lincoln and Spinnaker and Carter.” Given the main entrance being on Beach Loop Drive, Frey asked, “Do we really want hundreds of cars traveling past our school and our park on 11<sup>th</sup>, or driving through Old Town?”

McGrath restated that this was a question of the City being favorable to annexation and paying its part into developing those roads. She commented that putting in a street was not inexpensive and there was a risk of losing a project altogether if something was required beyond the purview of the project. “We're not talking about annexation of the Donut Hole right now,” McGrath remarked. “The City claims that the infrastructure's not there for that. I don't know about that part.”

Responding to Frey's analysis of the traffic study, McGrath contended that even at double the peak hours, the predicted traffic would still fall within the range stated in the TSP. She pointed out that Parametrix was the same company that was currently updating City of Bandon's TSP, indicating the company's accuracy and reliability.

Scobby thought the applicant was suggesting the main entrance was on a “substandard road” and yet was not proposing to add sidewalks to Beach Loop Drive in front of the development.

“All roads in Bandon are substandard,” McGrath responded, recounting how the City had paved its roads in 2000 by putting asphalt over the existing base layer, without bringing any streets up to full standard.

Concerning recommendations that the applicant should provide sidewalks along its frontage on Beach Loop Drive, she asked, “What do you do when those dead-end?...If a developer contributes part, is the City willing to pick up the rest of it? Does it make sense to do construction two or three different times over the next five-year period, to bring in a sidewalk, or do you disrupt Beach Loop one time, and you do it all?” McGrath did not think the City had the money to do the whole project, but there was the option of forming an LID (Local Improvement District), requiring property owners to pay for their portion of the sidewalk.

McGrath noted that the contiguous ownership of Gravel Point and neighboring parcels would enable the development of a trail system and a road system connecting the Beach Loop area to City Park, moving bicyclists, people walking their dogs, the disabled, etc. off Beach Loop Drive and into the interior of Bandon. She said the project team was especially proud of that.

“As a local,” McGrath told the Commissioners, “I always have mixed feelings about development, right?...So, when I think about where’s my town going, it gets exciting to think about a trail system, a City Park, a protected wetland, an area that does move traffic interior and helps to break that up while the Donut Hole is being annexed, and while future growth and streets are being put in.”

Norman asked how long the construction period would be if the project was approved.

McGrath answered that she had commented on Staff’s recommendation for a one-year permit timeline, saying it was not reasonable. She said the Bandon Municipal Code allowed for a two-year buildout for a CUP, which she found insufficient for a project the size of Gravel Point. Therefore, the applicant was requesting no further restriction on the buildout time allowed by the code.

McGrath said the developer had been told the Public Works permit process would occur before Zoning Compliance, to address the infrastructure and deal with the City Engineer. She anticipated that process to take a year, and by that time plans would have been approved and ground could be broken on the hotel project.

Norman wondered how long construction equipment would be working on the site.

McGrath replied that the remainder of the current year would be spent in hearings. Permitting and building out the infrastructure would take up most of 2024, with at least another year after that devoted to the hotel project.

Jurkowski commented that it took three and a half years before she could live in her new single-family dwelling, because the City required a road to her home that was built to standards. She agreed that a year was not going to be enough.

McGrath noted that there was a difference between residential and commercial contractors, and although there might be a shortage of residential contractors in the area, she was certain there was no shortage of commercial ones.

Perkins, a builder by trade, observed that there were many variables that would affect the length of a construction project. Current circumstances that could cause delays included long-lead procurement items such as transformers, electrical switch gear, roof insulation, and labor. This project was underwritten to have at least a year in planning and a 24-month construction schedule, Perkins said.

Nichols asked to clarify that the project’s CUP was valid for one year, and the applicant would have to obtain Zoning Compliance approval during that time. Zoning Compliance approval was good for five years, as long as the applicant got a building permit within two years. This allowed an extended timeline for building a large development.

Norman felt that bringing such a large development to a small coastal community might mean the developer would have to shoulder much of the responsibility of necessary infrastructure improvements.

McGrath countered that developer and owner had volunteered extra resources, such as the 250,000 gallon water reserve the City wanted in south Bandon. Responding to Scobby's question about the reservoir's location, McGrath specified that it would be within the adjacent 30 acres that were inside the Bandon city limits. She suggested the City should consider if it was more important to have that emergency water reserve or to annex the Donut Hole and push through a new road to Highway 101. "Certainly you can't ask a developer to do both," she stated.

Norman asserted that the City would have already annexed the Donut Hole if the residents had wanted to and if it was not cost-prohibitive to provide the infrastructure. He did not believe the City would get a return on its investment with annexation.

McGrath responded that the City would benefit from the right development that would pay back through TOTs, SDCs, and property taxes. She noted that single-family residences did not have a high enough tax rate to accomplish that.

Bell interjected that the project was also designed to affect the demand side of the equation, reducing the demand for water and power by about 30 percent of what would normally be expected of a development of its type. He expected the project to hit the LEED (Leadership in Energy and Environmental Design) gold certification level.

Slothower asked Bell to explain how the "green roof" worked.

Bell described it as a shallow-soil habitat of small plants carefully selected for bird life.

Slothower guessed that would involve native grasses and small shrubs, while Jurkowski figured the plants would be chosen for drought resistance.

Replying to Frey, Bell indicated that the Meadow and Dune Lodges would both have green roofs. Frey followed up by asking for clarification on the maximum roof height of the Dune Lodge.

Nichols explained that the height was established by averaging the height of the structure on all four sides, measured from the native grade (the ground level prior to disturbance) at the center point of each wall to the highest point of the roof. She said part of the roof would look taller due to the slope.

Bell said the eastern part of the lodge had a height of 31 feet and faced inward, into the site, while the western part was much lower.

Frey inquired about the cubic feet of the elevator overruns and how many there were.

Bell estimated each would be ten feet by ten feet, rising about five feet above the roof. Frey thought that amounted to "a variance on a variance," considering the roof height was already requested to be a variance from the maximum, but Bell viewed the overruns as equivalent to chimney extensions, which the code allowed to exceed the height of the roof. He added that they were a great distance from the property line, compared to the typical residential chimney.

Jurkowski wondered how Gravel Point planned to enforce a policy limiting noise.

Perkins answered that there would be a strict policy in place and violators would be fined and repeat offenders would be barred from the resort. The hotel operator would manage the application of the noise policy.

Thinking about the impact of noise on the neighbors, Jurkowski asked how quickly management would respond. Perkins replied, "Right away," and McGrath added that it would be treated like a vacation rental. The hotel would be managed full time on site, and the response would be immediate. She emphasized that disruptive behavior was not anticipated, because the project was "more of a wellness opportunity. It's not a go golf and drink and play and party atmosphere."

Slothower transitioned the hearing to the public comment portion. Members of the public were limited to three minutes.

**Carol Stange, a Bandon property owner**

Stange and her husband were in the process of building a house on Jackson Avenue SW, near City Park. Slothower clarified that property outside of the Gravel Point project that bordered the Stanges property was not open for discussion.

**Catherine Mills, a Bandon resident**

Mills believed that connecting the project to Highway 101 by way of Edna Lane, which was already platted, would be a better choice for traffic. She noted that applicant relied on traffic studies from 2009 and during the pandemic in 2021, so she did not think they were accurate.

**Nancy Post, a Bandon resident**

Post wanted to make sure the Gravel Point development fulfilled its stated intentions—to restore the Oregon coast, to “concentrate and touch lightly,” and to be good neighbors. She planned to talk about graphics she had submitted, but they were not available to be displayed at the meeting.

Post commented that the dune behind Strawberry Drive was “distinctly different from the rest of the site. What might be suitable elsewhere is not appropriate on the dunes,” she maintained. Post felt the path, lighting, and the buildings planned for the dunes would be “disastrous” for Strawberry Drive, the existing wetland, and the wildlife.

“My fear from the beginning,” Post stated, “has been that this is too big for the Planning Commission to decide on their own.” She contended the City Council should be included, and she perceived that the Commissioners had shown indifference by not visiting the site and familiarizing themselves with the surrounding neighborhoods.

**Kevin Hunting, a Bandon resident**

A resident of the Ocean Trails neighborhood, Hunting spoke in opposition to the project, because “it attaches to our neighborhood” through Carter Avenue. He said most of those who lived in the neighborhood were retirees and full-time residents, and he expected an unwanted increase in traffic, because “the shortest route is going to be Carter. All GPSs are going to lead you there,” he pointed out. Hunting contended there was already more traffic on Seabird Drive than the traffic studies showed.

Hunting told the Commissioners that his family had specifically moved to Bandon from a large city because it was quiet. “Having a big commercial entity a couple of blocks away is too much for us,” he said. Hunting noted that there would be construction vehicles in the area for years, and north winds in the summer would mean “we’re all going to be ingesting dirt for years.” He urged the Commission to have further discussion with the neighbors and to pause and consider if such a big project was good for Bandon’s small community.

Norman asked Hunting what a “pause” would look like, and who else needed to provide input who was not in attendance at the meeting or on Zoom.

Hunting replied that his neighbors only became aware of the project in the last week or two. He said his wife had posted signs on mailboxes earlier that day to let people know about the meeting. Hunting believed there needed to be more engagement with the public.

**Mary Woolley, a Bandon resident**

“We’d like to have this resort,” Woolley began, “if it was done properly.” She suggested, however, that there were some aspects of the project that needed to be corrected for it to become a community asset. In terms of the landscaping, Woolley thought the developer should have consulted with a local person who had years of knowledge of native plants and their environment.

In her view, there was a “chasm between what they say they want to do in their objectives and what they are actually planning to do.”

Woolley’s second objection was to the “poorly planned traffic approach to the resort.” She felt it would cost more later to fix the problem by putting in a direct approach from Highway 101, given the cost to repair local streets that would be damaged by local construction and resort traffic. She added that a direct entrance off 101 would give more visibility to Gravel Point and “avoid wreaking havoc with formerly quiet family neighborhoods.” Woolley commented that it demeaned the project to cause the major traffic flow to go through residential neighborhoods.

**John Mitchell, a Bandon resident**

Mitchell questioned the relevance of the traffic studies conducted in 2021, with minimal traffic flow at the height of the pandemic, and 2009, with projected traffic increases that he believed underestimated current traffic levels, in light of the recent five years of development.

**Michael Scalici, a Bandon resident**

Scalici supported the conceptual plan for the Gravel Point project. As far back as 2001, prior to the current project, he had been retained as a natural resources consultant by six different clients, to complete wetland delineations on the parcels that formed the adjoining 60 acres north and east of Gravel Point. Most of those clients were interested in constructing residential lots, except for the group that hoped to construct the Bandon Community Pool on one 10-acre parcel. Scalici said these property owners had ideas but lacked financing. After they sold the lots, the property was allowed to go fallow, letting gorse reinvade and pose a fire threat.

Scalici called Gravel Point a great opportunity to develop much-needed workforce housing, additional lodging, a long-sought community pool, walking trails to connect otherwise disconnected communities, and other recreational opportunities. He noted that there were considerable wetland areas throughout the properties, most of which had either been “ditched” in an attempt to drain them or filled in an attempt to bury them. As a result, they ranked low in function and value. With well-thought mitigation plans, Scalici believed those wetlands could provide greater ecological functions and provide effective storm water management, minimizing hydrological additions to the City’s stormwater system.

**Tim Terry, a Bandon resident**

Terry and his wife Claudia lived on Beach Loop Drive, not far from the project site. He thought the statistics about the potential traffic flow resulting from the project were “misleading and inaccurate.” Terry observed speeding in front of his house daily and he complained that there was “no police deterrent out there, despite my many calls for help.” He believed “a project of this magnitude is going to compound the difficulties...exponentially” on Beach Loop Drive. Terry said it was already unsafe to walk a dog or ride a bike there, and that was where he would prefer to walk or ride his bike, not on a trail that was not on Beach Loop. He was happy to talk with anyone to explore other options.

**Darcy Grahek, a Bandon area resident**

The owner of Stillwater Natives Nursery, Grahek was curious about what Scalici meant by “enhancing” the wetlands. She also disagreed with combining stormwater into wetlands and viewed those as completely different functions. Grahek noted that fairy shrimp and northern red-legged frogs bred in vernal pools, so diverting stormwater to those wetlands would destroy their function, turning it into stormwater management. She hoped for a clarification of where the stormwater would flow.

Grahek said she liked the message described in the project’s plan, but she saw a lack of expertise in some of the descriptions, such as 12 inches of topsoil, which would never be found in old sand dunes. She concluded with an admonition not to forget the wind, because whatever was planted on the hotel roof would feel the impact of 60- to 100-mile-per-hour gusts from time to time, “and your green roof could easily blow off.”

**Don Suva, a Bandon resident**

Suva began by thanking the Commissioners. He thought the 32 “villas” in the development should be considered Vacation Rental Dwellings (VRDs), which would cause them to be regulated differently under the municipal code.

**Misty Johnson, a Bandon area resident**

Johnson voiced concern for the wetlands. Johnson Creek ran behind her property and there was a natural spring on her property because of that, as well as “tons of wildlife.” She was not comforted by the developer’s plan to make the wetlands better. Johnson was also worried about increased traffic on Highway 101, which she had to cross daily to get her mail.

**Fred Gernandt, a Bandon resident**

Gernandt pointed out that Seabird Drive was 100 feet wide, so there was room to make it work with passing lanes. He added that the speed limit could be reduced on 101 if traffic was too fast, making it unnecessary to put in a million-dollar traffic light.

Nichols and Kudlac discussed whether it was appropriate for the applicant to have time for a rebuttal at this time or to wait until the hearing was continued. They deferred to Slothower, who opted for the applicant to have a ten-minute rebuttal to what had been said at the current meeting, with an opportunity to rebut whatever was discussed at the next meeting.

McGrath thanked everyone for the time and feedback. She had a short list of responses to the public comments. She explained that there could not be two conflicting CUPs, and since the application was for a commercial use, there could not also be an application for VRDs, which were residential uses.

Regarding the comment about lack of expertise, McGrath stated that she had been impressed with the crew that the developer brought in. The geotechnical investigation was performed by The Galli Group, and they decided what the topsoil depth was and the site configuration. Scalici was a local wetland expert, she noted. McGrath clarified that DSL was determining what wetland mitigation and enhancement needed to be done, but she stressed that Johnson Creek would remain protected.

Responding to concerns about speed limit violations, she did not know why police were not monitoring Seabird Drive and Beach Loop Drive. McGrath noted that TOT money helped pay for Bandon Police, so she felt the amount of TOT contributed by Gravel Point might enable the City to hire more than one new enforcement officer.

Addressing the criticism of the traffic assessment, Bell stated that the consultant had applied “adjustment factors” to the 2021 study due to COVID. Concerning landscaping for the development, he said, “We’re very early in this project. We have not done the work that we need to do to come up with the detailed answers about those things.” Bell indicated that kind of work would take place in the year ahead. He invited anyone interested in meeting with him on the project site the following day to see him after the meeting.

Perkins thanked the Commissioners for hearing the presentation and proposal. He told them he was a native of the area, and although he resided in southern California, all of his family was from Coos Bay, North Bend, Bandon, and Coquille, so he visited the area frequently. “There’s nothing more that I would like than to make this project be about the community,” Perkins emphasized, adding, “We’re not just coming in here to take over and destroy. That is not who I am.” He said the project team’s intent was to include the community and meet with them in various ways.

Slothower, Nichols, and Kudlac huddled for a minute and determined that the hearing should be continued to a Special Meeting of the Commission in one week, on October 5, 2023. Enough of the Commissioners expected to be available on that date to form a quorum.



Jurkowski made a motion to continue the hearing to October 5 at 7:00 p.m. and Norman seconded the motion. The motion passed by voice vote (5:2:0):

AYES: Frey, Jurkowski, Orsi, Slothower, Scobby

NAYS: Norman, Starbuck

ABSENT: None

Nichols explained that she and Kudlac had discussed the state laws concerning the timeline for public hearings. If someone asked for the record to be left open for seven days, there could not be another hearing before that date. After that hearing, another request to keep the record open could be made. Because of that and the overall 120-day time frame for processing the application, continuation of the hearing had to take place as soon as possible.

Frey asked if the Commissioners would be able to ask further questions at the next meeting, and she answered, “Yes.”

Kudlac added that there may have been individuals who did not get to testify because they were not able to log into Zoom, and that was the main reason for continuing the hearing. She pointed out that anyone who did not have the opportunity to speak or did not feel comfortable speaking in public could submit written comments to City Hall prior to the next meeting.

Orsi wondered how to communicate with those who could not get through on Zoom.

Nichols answered that notice would be posted on the City’s website, on its Facebook page, and at City Hall, and email notifications would be sent out.

Slothower thanked Nichols for all the work she had done without an assistant for the last month.

## **7.0 STAFF UPDATE**

### **7.1 Planning Department Report**

Nichols reported that there had been a “total slowdown” in new single-family dwelling applications. The total of ten was much lower than nearly 60 at the same time in 2022. She said there were some applications recently for multi-family housing and ADUs (Accessory Dwelling Units). Nichols observed that there was a need for housing all over the country, in part “because there hasn’t been the right kind of housing production happening for years” and because there still was insufficient housing being made.

Recently, Nichols met with members of the Coos County Building Department to discuss the feasibility of implementing a proposed ADU Amnesty Program. The idea was that the City would offer owners of noncompliant or illegal ADUs that may have predated the ADU ordinance to engage in a process to come into compliance without penalty. She said the county would insist on some health and life safety standards being met, but county staff expressed supported for the amnesty concept.

Nichols provided an update on the City’s request for additional planning assistance to help with the implementation of new code provisions stemming from the Housing Needs Analysis and Buildable Lands Inventory work completed during the past year. The original grant application was unsuccessful because DLCD lacked funding for all the requests it received. However, new funding had become available, and DLCD informed the City that there was a strong likelihood its application would be approved.

Planner Kristan Liechti left her position at the end of August 2023 and the City hired Jason Kral, the Vegetation Management Coordinator spearheading the City’s Gorse Abatement Program, to provide support for the Planning Department.

## **7.2 Land Use Legislation Report**

Nichols shared DLCD's 2023 Land Use Legislation Report with the Commissioners. It listed and summarized all bills related to land use that were passed by the Oregon Legislature during its 2023 session. She anticipated the City would be incorporating some of the measures in those bills into its code cleanup efforts during the coming year.

## **8.0 OPEN DISCUSSION**

### **Commissioner Comments**

Frey thanked everyone who came to the meeting. He encouraged them to let their friends and neighbors know that the hearing was being continued. He thanked Bell for his presentation and complimented Nichols for her work on the project.

Norman observed that the Commission sometimes seemed in a hurry and not sensitive to the fact that it was an effort for citizens to attend Commission meetings and for some people it was "nerve-racking" to stand and testify. "I think it's important that we hear what Bandon citizens have to say," he commented, and he thought it was important to ask questions of them to clarify what they meant. "I think we need to put more energy into that," Norman concluded, "because they are why we're here."

Scobby asked if it would be possible for the whole Commission to have a site visit, since the hearing was being continued.

Nichols advised that site visits could amount to ex parte contact, since the Commissioners would be gaining something outside of the Public Hearing. If every Commissioner attended, it would have to be conducted as a public meeting.

Kudlac pointed out that public notice would have to be given, the public would have to be able to attend, and the meeting would need to be recorded. Responding to a question from Frey, she assured him that individual site visits would be fine if Commissioners declared them at the next meeting.

Jurkowski thanked everyone involved with preparing the information for the Commission about the project.

Orsi voiced appreciation for Nichols' summary of the project.

Slothower noted that he had been apprehensive about how the meeting would turn out with so many people attending, but he was pleased with the overall positive attitude.

## **9.0 ADJOURN**

Slothower adjourned the meeting at 9:11 p.m.

Planning Commission Regular Meeting Minutes  
Submitted by Richard Taylor, Minutes Clerk



# City of Bandon

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*Bandon by the Sea*

## AGENDA REPORT

**TO:** Planning Commission

**FROM:** Dana Nichols, Planning Director

**DATE:** November 16, 2023

**SUBJECT:** **Item Number: 5.1 CODE CLEAN-UP 2024**

### **BACKGROUND:**

The Planning Commission's work program (Resolution 23-21) included an item titled: *Continuing Code Clean-Up and Audit*. This is an annual task that aims to make minor changes to the code to aid in clarifying any unclear and misused code provisions, provide for better organizational structure, or modify code language to meet new state laws that do not otherwise warrant a code amendment on their own.

For the 2024 code clean-up, Staff recommends the following:

- Reviewing parking minimums and standards
- Respond to required code changes from HB 3395 (Housing Omnibus Bill)
- Reorganize the code (use tables instead of individual zone chapters)
- Modify Hazard Overlay to be more clear & objective

### **ANALYSIS OF THE ISSUES:**

After recent land use requests, there has been interest in reviewing the City's parking minimums for certain uses. The City eliminated parking minimums for any outright permitted uses in the C-1, Old Town Commercial Zone earlier this year. State law also required that we remove parking minimums for accessory dwelling units.

There is an argument to be made that requiring large parking areas can be costly in terms of infrastructure, both to developers and the environment, and that there is little taxable value produced by them ("the high cost of free parking"). On the other hand, places like Bandon are hardly accessible without a personal vehicle and with our weather conditions people like to have nearby parking to avoid the rain and wind. The Planning Commission should review the existing parking chapter (17.96) and determine whether there are parking minimums that might be either reduced, eliminated, modified, or added to better meet the need to our community.

## Code Clean-Up Discussion

November 16, 2023

2

Additionally, House Bill 3395 has been attached for your review and consideration. These changes may be made as part of the code clean-up or the Commission may wish to include them with a larger housing code amendment in a separate action.

Finally, the Hazard Overlay Zone has been attached. While legislation has been passed to limit the clear & objective requirements for housing on resource lands located on rural lands, there still remains some concern around the implementation of code related to natural resources for residential uses inside City limits. Hazards, such as landslide and liquefaction susceptibility, are inherently not clear and objective – their boundaries are changing frequently, and the mitigation required may be different for each site and development proposal. This fact is unavoidable. The Commission may want to consider some changes to the code that limit the appearance of staff discretion and rely more heavily on the recommendations made by the geoprofessional.

### **FISCAL IMPACT:**

Any code amendment process requires significant staff time. An annual code-clean-up is an opportunity for staff to consolidate small code changes into one amendment process, thus minimizing time required for noticing, scheduling, and prospering public hearings for proposed amendments.

### **RECOMMENDATION:**

The following is recommended to the City Council:

1. Review and discuss the information provided;
2. Provide input and direction to city staff.

Attachments:            Attachment 1: Off-Street Parking & Loading (Chapter 17.96)  
                                 Attachment 2: HB 3395 – Legislative Land Use Summary  
                                 Attachment 3: Hazard Overlay Zone (Chapter 17.78)

Chapter 17.96

OFF-STREET PARKING AND LOADING

Sections:

- 17.96.010 Applicability.
- 17.96.020 Off-street parking.
- 17.96.030 Off-street loading.
- 17.96.040 General provisions for off-street parking and loading.
- 17.96.050 Design requirements for parking lots.
- 17.96.060 Completion time for parking lots.
- 17.96.070 Vehicle access points.

17.96.010 Applicability.

In all zones, off-street parking and loading space shall be provided as set forth in this chapter.

17.96.020 Off-street parking.

At the time a new structure is erected or enlarged or the use of an existing structure is changed, off-street parking spaces shall be provided as set forth in this section unless greater requirements are otherwise established. If parking space has been provided in connection with an existing use or is added to an existing use, the parking space shall not be eliminated if it would result in less space than is required by this title. When square feet are specified, the area measured shall be the gross floor area of the building but shall exclude any space within a building devoted to off-street parking or loading. When the number of employees is specified, persons counted shall be those working on the premises, including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space. Parking requirements for specific uses are shown in the following table:

Table 17.96.020

**PARKING REQUIREMENTS FOR SPECIFIC USES**

<b>Use</b>	<b>Requirement</b>
<b>A. Residential Uses</b>	
1. Single-family dwelling	Two spaces.
2. Two- or multifamily dwelling units	Spaces equal to 1.5 times the number of dwelling units.
3. Apartment house, rooming house or boarding house	Spaces for eighty (80) percent of the guest accommodations plus one additional space.
<b>B. Commercial/Residential uses:</b>	
1. Hotel	One space per two guest rooms plus one space per two employees.
2. Motel	One space per guest room or suite plus one additional space for the owner or manager.
3. Club or lodge	Space to meet the combined requirements of the uses being conducted, such as hotel, restaurant, auditorium, etc.

<b>C. Institutions:</b>	
1. Convalescent hospital nursing home, sanitarium rest home, or home for the aged.	One space per two beds for patients or residents.
2. Hospital	Spaces equal to 1.5 times the number of beds.
<b>D. Places of Public Assembly:</b>	
1. Church	One space per four seats or eight feet of bench length in main auditorium.
2. Library or reading room	One space per four hundred (400) square feet of floor area per two employees.
3. Preschool nursery or kindergarten (primary school)	Two spaces per teacher.
4. Elementary or junior high school	One space per classroom plus one space per administrative employee or one space per four seats or eight feet of bench length in the auditorium or assembly room, whichever is greater.
5. High school	One space per classroom plus one space per administrative employee plus one space for each six students or one space per four seats or eight feet of bench length in the main auditorium, whichever is greater.
6. Other auditorium or meeting room	One space per four seats or eight feet of bench length.
<b>E. Commercial amusements</b>	
1. Stadium, arena, or indoor theater	One space per four seats or eight feet of bench length.
2. Bowling establishment without restaurant	Eight spaces per alley plus one space per two employees.
3. Bowling establishment with restaurant	Ten (10) spaces per alley plus one space per two employees.
4. Dance hall or skating rink	One space per one hundred (100) square feet of floor area plus one space per two employees.
<b>F. Commercial:</b>	
1. Retail store, except as provided in subsection (F)(2) of this table	One space per four hundred (400) square feet of floor area.
2. Service or repair shop, retail store handling exclusively bulky merchandise such as automobiles or furniture	One space per six hundred (600) square feet of floor area.
3. Bank or office (except medical and dental)	One space per six hundred (600) square feet of floor area plus one space per two employees.
4. Medical and dental office or clinic	One space per three hundred (300) square feet of floor area plus one space per two employees.
5. Eating or drinking establishment	One space per two hundred (200) square feet of floor area.

6. Mortuaries	One space per four seats or eight feet of bench length in the chapel.
<b>G. Industrial:</b>	
1. Storage warehouse, manufacturing establishment, freight terminal	One space per employee.
2. Wholesale establishment	One space per employee plus one space per seven hundred (700) square feet of patron serving area.

17.96.030 Off-street loading.

- A. Passengers. A driveway designed for a continuous forward flow of passenger vehicles for the purpose of loading and unloading children shall be located on the site of any school having a capacity greater than twenty-five (25) pupils.
- B. Merchandise, Material or Supplies. Buildings or structures to be built or substantially altered which receive and distribute materials and merchandise by trucks shall provide and maintain off-street loading berths in sufficient number and size to handle adequately the needs of the particular use. Loading space that has been provided for an existing use shall not be eliminated if its elimination would result in less space than is required to handle adequately the needs of the use. Off-street parking areas used to fulfill the requirements of this title shall not be used for loading and unloading operations except during periods of the day when not required to care for parking needs.

17.96.040 General provisions for off-street parking and loading.

- A. The provision and maintenance of off-street parking and loading spaces is a continuing obligation of the property owner. No building or other permit shall be issued until plans are presented which show property that is and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this title. Should the owner or occupant of any lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be a violation of this title to begin or maintain such altered use until such time as the increased off-street parking or loading requirements are complied with.
- B. Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission based upon the requirements for comparable uses listed.
- C. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of several uses computed separately.
- D. Owners of two or more uses, structures or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the city in the form of deeds, leases or contracts to establish the joint use.
- E. Off-street parking spaces for dwellings shall be located on the same parcel with the dwelling. Other required parking spaces shall be located not farther than five hundred (500) feet from the building or use they are required to serve, measured in a straight line from the building.

- F. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons and employees only, and shall not be used for storage of vehicles or materials or for the parking of trucks used in conducting the business or use.
- G. Parking within required setback areas for residential uses:
  - 1. A maximum of three (3) motor vehicle parking spaces shall be allowed within the required front or street-side setback area, two (2) of which may be counted towards meeting the minimum number of required off-street parking spaces. Any such parking spaces must be located within a driveway surfaced with concrete, asphalt, gravel, or other material approved by the City.
  - 2. Motor vehicle parking within the required front or street-side setback area shall be located no closer than five (5) feet from any interior property line.
- H. A plan, drawn to scale, indicating how the off-street parking and loading requirements are to be met shall accompany any application for a building permit. The plan shall show all elements necessary to indicate that the requirement is being met, including the following:
  - 1. Delineation of individual parking and loading spaces;
  - 2. Circulation area necessary to serve space;
  - 3. Access to streets and property to be served;
  - 4. Curb cuts;
  - 5. Dimensions, continuity and substance of screening;
  - 6. Grading, drainage, surfacing and subgrading details;
  - 7. Delineation of obstacles to parking and circulation in finished parking areas;
  - 8. Specifications as to signs and bumper guards;
  - 9. Other pertinent details. (Amended during 2000 codification.)

17.96.050 Design requirements for parking lots.

- A. Areas used for parking vehicles and for maneuvering shall have durable and dustless surfaces maintained adequately for all weather use and so drained as to avoid flow of water across sidewalks.
- B. Except for parking in connection with dwellings, parking and loading areas adjacent to or within residential zones or adjacent to dwellings shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence or not less than five nor more than six feet in height, except where vision clearance is required.
- C. Parking spaces along the outer boundaries of a parking lot shall be contained by a bumper rail or by a curb which is at least four inches high and which is set back a minimum of four and one-half feet from the property line.
- D. Artificial lighting which may be provided shall be so deflected as not to shine or create glare in any residential zone or on any adjacent dwelling.
- E. A standard parking space shall be eight and one-half feet by nineteen (19) feet.
- F. Except for single-family and duplex dwellings, groups of more than two parking spaces shall be so located and served by a driveway that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley.
- G. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of traffic and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate and service anticipated traffic. In no case shall access point of service drives to a street be less than one hundred (100) feet apart, measured from center to center. Service drives shall be



clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers on street frontage not occupied by service drives.

- H. Driveways shall have a minimum vision clearance area formed by the intersection of the driveway center line, the street right-of-way line and straight line joining said lines through points thirty (30) feet from their intersection.
- I. All parking lots will meet requirements of the Americans with Disabilities Act.
- J. For standards not specifically cited in this title, additional dimensional standards for parking lot features shall be consistent with the most recent edition of Architectural Graphic Standards.
- K. For uses other than residential uses, one third of the required spaces may be compact spaces. Compact spaces shall be eight feet by sixteen (16) feet.
- L. For parking lots for motels, restaurants or retail businesses of more than twenty (20) spaces, five percent of the total number of spaces will be R.V. spaces at least ten (10) feet wide by thirty (30) feet long.

17.96.060 Completion time for parking lots.

Required parking spaces shall be improved as required and made available for use before the final inspection is completed by the building inspector. If the parking space is not required for immediate use, an extension of time may be granted by the building inspector, providing a performance bond or its equivalent is posted equaling the cost to complete the improvements as estimated by the building inspector. If the improvements are not completed within one year's time, the bond or its equivalent shall be forfeited and the improvements constructed under the direction of the city.

17.96.070 Vehicle access points.

To promote public safety, the number of vehicle access points to arterial roads and highways shall be kept to a minimum. In reviewing applications for land divisions and discretionary permits, the Planning Commission shall limit the number of vehicular access points by requiring shared access, reserve strips, eliminating circle drives (with two access points) and taking other actions consistent with the directives of this chapter.

### *Housing Production Strategies*

- Establishes a clear state goal for housing production strategies of providing to further “housing choice for all”, ‘affirmatively furthering fair housing’. and fair and equitable housing outcomes
- Clarifies the types of actions that increase housing production, affordability, and choice, including ‘efficiency measures’ which were historically part of the buildable lands statute.
- Establishes a Housing Coordination Strategy required for Metro and optional for other regional/county entities, recognizing the coordinating role that regional governments play in housing planning and outlining the actions and tools that could be included in such strategies.

### *Population Forecasts*

- Amends the population forecast statutes to require the Population Research Center and Metro to include race, ethnicity and disability in their projections. Further requires the Population Research Center to include tribal lands in its projections.

*Requires complex rulemaking and a rules advisory committee.*

**Status:** Governor signed

**Effective Date:** March 29, 2023

## **[HB 3395](#) – Housing Omnibus Bill**

**Chief Sponsors:** Speaker Rayfield, Rep. Dexter, Rep. Gomberg, and Sen. Jama

**Summary:** HB 3395 sets forth numerous policy changes related to residential development:

- Requires non-Metro cities between 2,500 – 10,000 residents to adopt ordinances allowing duplexes on any lot zoned for residential use that allows single family detached housing by June 30, 2025. DLCD will receive \$1.25m to provide grant assistance for those cities to update their local development codes.
- In areas within UGB boundaries and zoned for commercial use, directs local governments to allow housing units available to those households making 60% of area median income, or allow mixed use structures with ground floor commercial for those households with moderate incomes as defined in ORS 456.270 (80-120% AMI). This provision takes effect as of January 1, 2024.
- Provides local governments flexibility on their required timelines for final action on an application for a permit, limited land use decision or zone change. Specifically, when a local government tentatively approves an application for the development of a residential structure within an urban growth boundary, they may extend the deadline (150 days for

counties, 120 days for cities) by up to seven days to ensure sufficiency of the final order. Additionally, it provides local and state government agencies the ability to withdraw final decisions for reconsideration on appeal for an application relating to the development of a residential structure. Collectively, these provisions are intended to reduce appeals that can substantially delay the development of housing by providing local governments more time and ability to address issues before they are appealed. These provisions take effect as of January 1, 2024.

- Makes permanent the requirement that local governments approve emergency shelters subject to certain conditions and operated by a local government, non-profit, religious corporation, or housing authority located on any property within the UGB or on rural residential lands. This provision does not apply when the point-in-time count indicates that homelessness comprises less than 0.18% of the total state population.
- Awards attorney fees to any local government or intervening applicant that prevails on the appeal of the local approval of an emergency shelter, and to any applicant that prevails on the appeal of a local denial.
- Exempts development established on or after January 1, 2024, in which each residential unit is subject to an affordability restriction, owned by a public benefit corporation or owned by a religious corporation from the definition of “planned community” provided in ORS 94.550. This provision takes effect as of January 1, 2024.
- Precludes local governments from reviewing and approving condominium plats, and prohibits any zoning, subdivision, building code or other regulation that imposes a tax or fee, approval process or permitting requirements upon any development or property proposed as condominium not also imposed on a different form of ownership. This provision takes effect as of January 1, 2024.
- Directs that cities and counties to accept as assurance for the provision of water and sewer services one or more award letters from public funding sources made to a person subdividing a property for affordable housing if the value of the award letters exceeds the total project cost. This provision takes effect as of January 1, 2024.
- Requires local governments to approve Single Room Occupancy development with up to 6 units on each lot zoned for single family detached housing and, if the lot allows the development of 5 or more units, then the SRO development must be approved up to the number of units allowed by the underlying density standard. This provision takes effect as January 1, 2024.
- Amends the definition of “needed housing” in ORS 197.296 and 197.303 to include “single room occupancy” development, meaning that local governments must consider this development type when evaluating the amount of buildable land necessary for

residential development over a 20-year timeframe and when preparing Housing Production Strategies to meet housing production goals. This provision takes effect as of January 1, 2024.

- Establishes a process for homeowner associations to remove discriminatory language from any declaration or bylaws adopted for a planned community or condominium established before September 1, 2021, to review these documents and amend such language on or before December 31, 2024.
- Allows the Public Utilities Commission to permit utilities to convey a real property interest at below market prices or as a gift provided the property is used for affordable housing. This provision takes effect as of January 1, 2024.
- Directs the Oregon Department of Administrative Services, in consultation with DLCD and OHCS, to provide grants to councils of government and economic development districts to support housing and community development capacity in local governments and the federally recognized tribes. HB 3395 appropriates \$5M for this purpose.

*Requires conforming rulemaking.*

**Status:** Governor signed

**Effective Date:** June 30, 2023

## **HB 2127 – Pendleton UGB Expansion for Affordable Housing Pilot Extension**

**Chief Sponsor:** Rep. Mannix

**Summary:** In 2016, the Oregon Legislative Assembly passed House Bill 4079, which established a pilot program for the construction of affordable housing. The program allowed two cities to approve affordable housing on land outside but adjacent to their urban growth boundary (UGB) under certain conditions, including the a demonstration selected projects that were likely to provide affordable housing that otherwise would not have been built. Ultimately, the cities of Bend and Redmond were selected. Later, in 2021, the Legislative Assembly enacted House Bill 2160, which allowed LCDC to consider an application from the City of Pendleton under the pilot project with a deadline for the application on June 30, 2023.

HB 2127 removed the deadline for the City of Pendleton to apply to a pilot project program for affordable housing and sunsets the program on January 2, 2028.

**Status:** Governor signed

**Effective Date:** June 30, 2023

## Chapter 17.78

### HAZARD OVERLAY ZONE (HO)

#### Sections

- 17.78.010 Purpose
- 17.78.020 Applicability
- 17.78.030 Geologic Assessment Review
- 17.78.040 Geologic Report Standards
- 17.78.050 Decisions of Geologic Assessment Reviews
- 17.78.060 Development Standards for Uses Subject to Review

Ordinance History: No. 1636

#### 17.78.010 Purpose

The purpose of the Hazard Overlay Zone is to protect people, lands and development in areas that have been identified as being subject to geologic hazards and to apply review standards to all proposed development activity within the areas subject to geologic hazards by:

- A. Identifying areas subject to natural hazards (Landslide, Coastal Erosion, and Liquefaction);
- B. Assessing the risks to life and property posed by new development in areas of known natural hazard susceptibility; and
- C. Applying standards to the siting and design of new development on lands subject to natural hazards that will reduce the risk to life and property from these hazards.

#### 17.78.020 Applicability

The following areas are considered potentially geologically hazardous and are therefore subject to the requirements of this section:

- A. All lands partially or completely within “high” or “very high” landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, “Landslide susceptibility overview map of Oregon”.
- B. All lands partially or completely within “high” or “very high” liquefaction susceptibility as mapped in DOGAMI OPEN-FILE REPORT O-13-06, “Ground motion, ground deformation, tsunami inundation, co-seismic subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes.”
- C. All lands along the oceanfront.

#### 17.78.030 Geologic Assessment Review

- A. Except for activities identified in Subsection 2 of this section as exempt, any new development or substantial improvement, as defined in Title 15, in an area subject to the provisions of this section shall require a Geologic Assessment Review.
- B. The following development activities are exempt from the requirement for a Geologic Assessment Review:
  - 1. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation and do not constitute substantial improvement as defined in Title 15.
  - 2. Exploratory excavations under the direction of a certified engineering geologist or

- registered geotechnical engineer;
3. Construction of structures for which a building permit is not required;
  4. Yard area vegetation maintenance and other vegetation removal on slopes less than 25%;
  5. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside of the previously disturbed area;
  6. Maintenance and repair of utility lines, and the installation of individual utility service connections;
  7. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard;
  8. Construction/erection of beachfront protective structures subject to regulation by the Oregon Parks and Recreation Department under OAR 736, Division 20; and
  9. Any development or activity to be conducted on a site for which a certified engineering geologist has determined that there are no high or very high geologic hazards present. The City of Bandon is not liable for any type of certification that a geologic hazard is not present on site.
- C. Application, review and appeals for a Geologic Assessment Review shall be in accordance with the requirements for plan review as set forth in BMC 16.04. Applications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity. Geologic Assessment Review shall be completed prior to any ground disturbance.
- D. All applications for Geologic Assessment Review shall be accompanied by a Geologic Report prepared by a qualified geoprofessional (as defined in Title 17) that meets the content requirements of section 17.78.040, at the applicant's expense.

17.78.040 Geologic Report (Engineering Geologic Report and Geotechnical Engineering Report) Standards

- A. The Geologic Report shall include the required elements of this section and one of the following:
1. A statement that the use and/or activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property resulting from the proposed use and/or activity;
  2. A statement that there is an elevated risk posed to the subject property by geologic hazards that requires mitigation measures in order for the use and/or activity to be undertaken safely sited on the property; or
  3. A certification that there are no high or very high geological hazards present on site. If such is certified by a licensed professional, then a Geologic Hazard Review application is not required. The City of Bandon is not liable for any type of certification that a geologic hazard is not present on site.

- B. Geologic Reports required pursuant to this section shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles, and shall at a minimum contain the applicable provisions of "Guideline for Preparing Engineering Geologic Reports," 2nd Edition, 5/30/2014, published by the Oregon Board of Geologist Examiners.
- C. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section.
- D. Geologic Reports required by this section shall include a statement from the preparer of the report that all of the applicable content requirements of this subsection have been addressed or are not applicable to the review. The report shall also include a description of the qualification of the licensed professional or professionals that prepared the report.
- E. For the purposes of Section 17.78.040, a Geologic Report refers to both engineering geologic reports and geotechnical engineering reports.
- F. Geologic Reports required by this section shall be valid for a period of five years from the date of preparation of such report. No extensions to this timeline shall be granted. The city assumes no responsibility for the quality or accuracy of such reports.

17.78.050 Decisions of Geological Assessment Reviews

A decision on a Geologic Assessment Review shall be based on the following standards:

- A. The Geologic Report shall meet the content standards set forth in Section 17.78.040.
- B. In approving a Geologic Assessment Review, the decision maker may impose any conditions which are necessary to ensure compliance with the provisions of this section or with any other applicable provisions of the City of Bandon Land Use and Development Code.
- C. In the event the decision maker determines that additional review of the Geologic Report by an appropriately licensed and/or certified professional is necessary to determine compliance with this section, the City of Bandon may retain the services of such a professional for this purpose. The applicant shall be responsible for all costs associated with the additional review. The results of that evaluation shall be considered in making a decision on the Geologic Assessment Review.

17.78.060. Development Standards for Uses Subject to Review

In addition to the conditions, requirements and limitations imposed by a required Geologic Report, all uses subject to a Geologic Assessment Review shall conform to the following requirements:

- A. Historical, Cultural, and Archaeological Resources: All activities and uses subject to Geologic Assessment Reviews proposed for areas of historical, cultural, or archaeologically sensitive areas, as identified in the City of Bandon Comprehensive Plan, shall require consultation with the appropriate Tribe prior to the commencement of any and all ground disturbing activity. Proof of this consultation shall be provided as a part of application submission.

- B. Hazard Disclosure Statement: All applications for new development or substantial improvements subject to Geologic Assessment Review shall provide a Hazard Disclosure Statement signed by the property owner that acknowledges:
1. The property is subject to potential natural hazards and that development thereon is subject to risk of damage from such hazards;
  2. The property owner has commissioned an engineering geologic report for the subject property, a copy of which is on file with City of Bandon Planning Department, and that the property owner has reviewed the Geologic Report and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development on the subject property;
  3. The property owner accepts and assumes all risks of damage from natural hazards associated with the development of the subject property.
- C. Mitigation measures: If on-site structural mitigation measures are required as a condition of approval, the applicant shall, prior to the issuance of zoning compliance, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of the property owners to refrain from interfering with such measures or improvements and to maintain them.
- D. Safest site requirement: All new construction shall be limited to the recommendations, if any, contained in the Geologic Report; and
1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and
  2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.
- E. Minimum Oceanfront Setbacks: In areas subject to the provisions of this section, the building footprint of all new development or substantial improvement subject to a Geologic Assessment Review shall be set back from the ocean shore a minimum twenty-five (25) feet from the top of the bank or greater if recommended by the Geologic Report.
- F. Erosion Control Measures: A certified engineering geologist, geotechnical engineer, or qualified civil engineer shall address the following standards:
1. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;
  2. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;
  3. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
  4. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;



5. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
  6. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;
  7. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure;
  8. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;
  9. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:
    - a. Energy absorbing devices to reduce runoff water velocity;
    - b. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
    - c. Dispersal of water runoff from developed areas over large undisturbed areas;
  10. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and
  11. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.
- G. Certification of compliance: Permitted development shall comply with the recommendations in the required Geologic Report.

No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the planning director receives a written statement by an appropriately licensed and/or certified professional indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the City of Bandon must also receive an additional written statement of compliance by the design engineer.

- H. Restoration and replacement of existing structures:
1. A building or structure that is nonconforming under Section 17.108 that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in Section 17.108. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.
  2. A building or structure that conforms to the Municipal Code that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a qualified geoprofessional. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Standards outlined in this section. All recommendations contained in the report shall be followed.



# City of Bandon

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*Bandon by the Sea*

## AGENDA REPORT

**TO:** Planning Commission

**FROM:** Dana Nichols, Planning Director

**DATE:** November 16, 2023

**SUBJECT:** **Item Number: 5.2 MASTER PLANNED DEVELOPMENT**

### **BACKGROUND:**

The Planning Commission's work program (Resolution 23-21) included an item titled: *Master Planned Developments*. This task aims to develop a new code chapter that gives the City the ability to adopt innovative zoning for large sites that meets certain goals and objectives. The model code for small cities provided by the Department of Land Conservation and Development is attached for your reference. The code states that the applicant is permitted to propose an overlay zone unique to their site that may modify the underlying zone as long as there is a public benefit and engineering standards can be met. These might include reducing the minimum lot sizes and setbacks to avoid natural hazards such as wetlands or riparian areas, allowing certain commercial and residential uses on the same site and increasing height allowances, modifying transportation standards to achieve a more connected grid, etc. Some cities use this approach to encourage more and different housing types. Attached are examples from other cities.

### **ANALYSIS OF THE ISSUES:**

Master Planned Developments will allow for a greater flexibility in the design of large swaths of land, while also letting the City retain control of the proposed land uses. The Planning Commission may want to ask the City Council to determine what their goals are, as described above.

### **FISCAL IMPACT:**

Any code amendment process requires significant staff time. This item was included in the Planning Department work program and was planned for in the FY 23-24 Planning Department budget.

### **RECOMMENDATION:**

The following is recommended to the City Council:

1. Review and discuss the information provided;
2. Provide input and direction to city staff.

Master Planned Development Discussion

November 16, 2023

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Attachments:            Attachment 1 – Model Code from DLCD  
                                 Attachment 2 – City of Bend, OR  
                                 Attachment 3 – City of Black Diamond, WA

## Chapter 4.8 - Master Planned Developments

### Sections:

- 4.8.010 Purpose
- 4.8.020 Applicability
- 4.8.030 Review and Approvals Process
- 4.8.040 Modifications to Development Standards
- 4.8.050 Concept Plan Submission
- 4.8.060 Concept Plan Approval Criteria
- 4.8.070 Expiration
- 4.8.080 Detailed Development Plan Submission
- 4.8.090 Detailed Development Plan Criteria
- 4.8.100 Subsequent Development Reviews

### **4.8.010 Purpose**

The purposes of Chapter 4.8 are to:

- A.** Implement the Comprehensive Plan by providing a means for master planning large development sites as an alternative to piecemeal subdivision development;
- B.** Encourage innovative planning that results in projects that benefit the community, for example, through greater efficiency in land use, improved protection of open spaces, transportation efficiency, and housing choices;
- C.** Encourage housing options for a range of household sizes, incomes, and lifestyles;
- D.** *[Encourage mixed-use development and diversified employment opportunities;]*
- E.** Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F.** Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;
- G.** Encourage energy efficiency and improved air and water quality;
- H.** Implement public facility master plans; and
- D.** Provide flexibility in development standards, consistent with the above purposes.

### **4.8.020 Applicability**

The master planned development designation may be applied over any of the City's *[residential]* zoning districts. It is an option available to developers of land.

### 4.8.030 Review and Approvals Process

**A. Review Steps.** There are three required steps to master planned development approval, which may be completed individually or combined for concurrent review:

1. Application for master planned development concept plan approval;
2. Application for detailed development plan approval, which may include a preliminary subdivision plan; and
3. Application(s) for final development plan (e.g., final plat and/or site design review) approval.

#### **B. Approval Process.**

1. The master planned development concept plan shall be reviewed pursuant to the Type III procedure in Section 4.1.040, the submission requirements in Section 4.8.050, and the approval criteria in Section 4.8.060.
2. The detailed development plan and preliminary subdivision plan shall be reviewed using the Type II procedure in Section 4.1.030 to ensure substantial compliance with the approved concept plan.
3. Site design review applications for approved planned developments shall be reviewed using a Type II procedure in Section 4.1.030 to ensure substantial compliance with the approved concept plan.
4. Steps 1-3, above, may be combined in any manner, so long as the decision-making sequence follows the above order. Notification and hearings may be combined.

### 4.8.040 Modifications to Development Standards

The standards of Article 2 and Article 3 may be modified through the master plan development process without the need for variance under Chapter 4.7. In evaluating this criterion, the *[City decision-making body]* shall consider whether the proposal, on balance, exceeds the City's minimum requirements and provides greater community benefits than would otherwise occur under the base Development Code requirements. In evaluating community benefits, the *[City decision-making body]* shall apply the following criteria; the City may deny an application for Master Planned Development concept plan approval that does not meet all of the following criteria:

**A. Comprehensive Plan.** The modification does not conflict with the Comprehensive Plan. A Master Planned Development may exceed the maximum residential density (minimum lot size) permitted by the underlying zone, provided that the overall density of the project (average of total dwelling units per acre) is not greater than *[110]* percent of the density permitted by the underlying zone.

**B. Purpose and Intent of Development Code.** The modification equally or better meets the purpose and intent of the Development Code section(s) to be modified, as compared to a project that strictly conforms to code standards.

- C. Public Benefit.** The modification provides a net benefit to the public by one or more of the following:
1. Greater variety of housing types or lot sizes than would be achieved under the base Development Code standards;
  2. More open space or more usable open space than would be required under the base Development Code standards;
  4. Greater protection of natural features than would be required under the base Development Code standards;
  5. Avoidance of natural hazards (e.g., geological hazards, river resources, or flood hazards); and
  6. Improved transportation connectivity, such as the provision of pathways and/or other transportation facilities, that would not otherwise be provided pursuant to base Development Code requirements.
- D. Engineering Design Standards.** Modifications to the City's Engineering Design Standards require separate variance to such standards approved by the City Engineer. The City may grant such variances concurrently with the master planned development.

### 4.8.050 Concept Plan Submission

- A. General Submission Requirements.** An application for a Concept Development Plan shall follow the submission requirements for a Type III review under Section 4.1.040, and shall include all of the following:
1. Statement of planning objectives to be achieved by the master planned development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
  2. Development schedule indicating the approximate dates when construction of the project and its various phases, if any, including public facilities, are expected to be initiated and completed;
  3. Statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the planned development;
  4. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section 4.8.060;
  5. Maintenance plan for any common areas or lands not dedicated to a public agency or owned in fee simple; and
  6. Additional reports or studies prepared by qualified professionals, as required by the City Manager, to determine potential project impacts and mitigation, if any, related to: transportation; public facilities;

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## 4.8 – Master Planned Developments

geologic or other hazards; architecture; noise, light, solar access, air quality, or similar concerns; and natural features.

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

1. Existing conditions map, as defined in Section 4.2.040 Site Design Review Application Submission Requirements;
2. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
3. Grading concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);
5. Architectural concept (e.g., plans illustrate architectural styles, building heights, and general materials);
6. Sign concept plan (e.g., locations, general size, style, and materials of signs), as applicable; and
7. Copy of all existing covenants and restrictions, and a general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

### 4.8.060 Concept Plan Approval Criteria

The City, in approving or approving with conditions a Concept Plan, shall make findings that all of the following criteria are met. The City must deny an application where not all of the criteria are met.

- A. Comprehensive Plan.** The proposal conforms to the Comprehensive Plan;
- B. Land Division Chapter.** Except as may be modified under Section 4.8.040, all of the requirements for land divisions, under Chapter 4.3, are met;
- C. Article 2 and Article 3 Standards.** Except as may be modified under Section 4.8.040, all of the requirements of Article 2 and Article 3 are met;
- D. Open Space.** Master plans shall contain a minimum of [20] percent open space, which may be public, private, or a combination of public and private open space. Such open space shall be integral to the master plan and connect to a majority of the proposed residential lots. Plans shall provide space for both active and passive recreational uses, and may include, but are not limited to, neighborhood parks, pathways/trails, natural areas, plazas, and play fields. Open space areas shall be shown on the final plan and recorded with the final plat or separate instrument; the open space shall be conveyed in accordance with one of the following methods:
  1. By dedication to the City as publicly owned and maintained open space. Open space proposed for dedication to the City must be acceptable to the Planning Commission with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide an



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## 4.8 – Master Planned Developments

environmental assessment), and approved by City Council based on budgetary, maintenance, and liability considerations; or

2. By leasing or conveying title (including beneficial ownership) to a corporation, homeowners' association, or other legal entity. The terms of such lease or other instrument of conveyance must include provisions for maintenance and property tax payment acceptable to the City. The City, through conditions of approval, may also require public access be provided, where the open space is deemed necessary, based on impacts of the development and to meet public recreational needs pursuant to the Comprehensive Plan.

### **E. Affordable Housing.** *[Placeholder]*

**User's Guide:** Some cities might want to include affordable housing as a criterion for granting density bonuses or allowing other code adjustments under this chapter. For example, a developer who agrees to provide a percentage of affordable housing units could receive density bonus, which would include the affordable units and possibly some additional market-rate housing as an incentive. Generally, housing is considered affordable where a household spends not more than 30% of their gross monthly income on it. Housing programs aim to serve those earning a certain percentage below the median household income for the area. The Cities of Ashland and Newberg are two Oregon communities that provide regulatory incentives for affordable housing.

- ### **F. Modifications to Standards.** Modifications to Code standards must conform to the criteria in Section 4.8.040.

### **4.8.070 Concept Plan and Expiration**

- A. Filing.** Upon approval of a concept plan, the approved plan, including any conditions of approval, shall be binding on future uses and development of the property, except where an approval expires.
- B. Expiration.** Except as provided by subsection C, below, a concept plan shall become void three years after the date of approval if the applicant, or successor, has not filed with the City an application for detailed development plan and final plat approval in conformance with Sections 4.8.080 and 4.8.090.
- C. Extension.** The City may grant extensions of the concept plan approval period, not to exceed one year per extension, provided that the extension request is made before expiration of the master planned development approval, the applicant can show intent of applying for detailed development plan review within the one-year extension period, and there have been no substantive changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based.

**4.8.080 Detailed Development Plan Submission**

Detailed development plan submittal requirements are determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan submittal shall meet the minimum requirements for final plat submission under Chapter 4.3 and shall contain information demonstrating compliance with the concept plan. The detailed development plan and preliminary subdivision plan shall be reviewed using the Type II procedure in Section 4.1.030 to ensure substantial conformance to the approved concept plan. Where the proposal is for a multifamily development, Site Design Review is required, pursuant to Chapter 4.2; Site Design Reviews on detailed development plans shall be processed through the Type II procedure.

**4.8.090 Detailed Development Plan Criteria**

Approval of the detailed development plan shall be based upon a finding that the final plan substantially conforms to the concept plan, including any concept plan conditions of approval. Minor changes to the approved concept plan may be approved with the detailed plan where the City Manager finds that the modification is necessary to correct an error or to address changes in circumstances beyond the applicant's control that have occurred since the date of project approval. Other changes must be reviewed as major modifications under Chapter 4.5.

**4.8.100 Subsequent Development Reviews**

Notwithstanding the provisions of Section 4.2.030, where the City has previously approved a development project in concept as part of a master planned development approval, as determined by the City Manager, subsequent land use applications for the same project may be processed through a Type I review.

## Chapter 4.5 MASTER PLANS

Revised



Sections:

- 4.5.100**     **Master Plan General Provisions.** Revised
- 4.5.200**     **Community Master Plan.** Revised
- 4.5.300**     **Institutional Master Plan.** Revised
- 4.5.400**     **Employment Master Plans.**
- 4.5.500**     ***Repealed.***

**Prior legislation:** Ords. NS-2016, NS-2229, NS-2263, NS-2271.

### 4.5.100 Master Plan General Provisions.



 **This section was recently amended by Ordinance NS-2445, codified in July 2022.**

- A. *Purpose.* The purpose of the community master plan, institutional master plan and employment master plan is to promote and facilitate coordinated development. Master plans provide a process to consider future development on larger sites and to analyze future demand on public facilities. Master plans provide an opportunity for innovative and creative development while providing long-term predictability for the applicants, surrounding neighborhoods, and the entire community.
- B. *Applicable Standards and Criteria.* There are three categories of master plans (community master plan, institutional master plan, and employment master plan) each with a distinct set of standards and criteria. The determination of master plan category will be made by the City based on the most prominent use(s) proposed by the master plan or development proposal. Each master plan or development proposal must only fall into one master plan category and only the standards and criteria applicable to the category of master plan determined by the City are applicable to a proposed master plan or development proposal.
- C. *Uses.* The uses are the same as those permitted within the zoning district except as follows:
1. Density transfers may be permitted as part of a major community master plan 20 acres or larger, or as part of a major employment or major institutional master plan in an opportunity area that is 20 acres or larger; however, the density must comply with the density standards in BDC [4.5.200\(E\)\(3\)](#);
  2. Uses in the zoning district may be modified and may prohibit uses or include uses not permitted when consistent with the Bend Comprehensive Plan designation's characteristics; and
  3. Private recreational facilities and private open space areas in compliance with BDC [4.5.200\(E\)\(4\)](#) are permitted as part of a community master plan.

D. *Consistency with ORS 227.178.* A major master plan is an amendment to an acknowledged Comprehensive Plan and/or land use regulation and is therefore not subject to the 120-day review period under ORS [227.178](#). The City will use all reasonable resources to render a final decision on all major master plans within 180 days of receiving a complete application. Approval or denial of the major master plan application will be based on the standards and criteria at the time the major master plan was first submitted to the City.

E. *Submittal Requirements.* The following information must be submitted as deemed applicable by the Community and Economic Development Director based on the size, scale, and complexity of the master plan:

1. *Existing Conditions Submittal Requirements.*

a. Narrative statement that describes the following:

- i. Current uses.
- ii. Site description, including the following items. May also reference submitted maps, diagrams or photographs.

- (A) Physical characteristics;
- (B) Building inventory including size and height;
- (C) Vehicle/bicycle parking, and loading areas;
- (D) Landscaping/usable open space; and
- (E) Lot coverage.

iii. Infrastructure facilities and capacity, including the following items:

- (A) Water;
- (B) Sanitary sewer;
- (C) Stormwater management; and
- (D) Easements.

b. *Existing Site Conditions Map.*

i. The existing site conditions map must include the following information on site and within 150 feet of the proposed master plan (as applicable):

- (A) The applicant's entire property and the surrounding property. The property boundaries, dimensions and gross area must be identified. Existing aerial photos may be used;
- (B) Ownership of master plan area and ownership of all property within 150 feet of the proposed master plan;
- (C) Topographic contour lines shown at one-foot intervals for slopes of 10 percent or less. For slopes greater than 10 percent, contour lines must be shown at two-foot intervals. Slopes greater than 25 percent must be identified;
- (D) The location, names, and widths of existing public and private streets, alleys, drives, sidewalks, bike lanes, multi-use paths, transit routes and facilities, rights-of-way, and easements. Existing aerial photos may be used;
- (E) The location of existing irrigation canals and ditches, pipelines, drainage ways, waterways, railroads, and any natural features such as rock outcroppings, wooded areas, and natural hazards. Existing aerial photos may be used;

(F) The location of existing sanitary and storm sewer lines, water mains, septic facilities, culverts, and other underground and overhead utilities;

(G) Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;

(H) Resource areas, including wetlands on the City's Local Wetlands Inventory, streams, surface mines, and wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection; and

(I) Locally or federally designated historic and cultural resources on the site and the adjacent parcels.

ii. The existing site conditions map must include the following information on site:

(A) The location of existing structures, parking, loading and service areas, and pavement. Existing aerial photos may be used; and

(B) The location, size and species of trees and other vegetation having a caliper (diameter) of six inches or greater at four feet above grade.

iii. Date, north arrow, scale, names, and addresses of all persons listed as owners on the most recently recorded deed.

iv. Name, address, email address, and telephone number of project designer, engineer, surveyor, and/or planner, if applicable.

## 2. *Proposed Master Plan Submittal Requirements.*

a. Narrative that describes the following:

i. Development boundary subject to proposed master plan. May also reference submitted maps or diagrams;

ii. Project description;

iii. Description, approximate location, and approximate timing of each proposed phase of development. The phasing plan may be tied to necessary infrastructure improvements. May also reference submitted maps or diagrams;

iv. How the proposed water, sewer, and street system will serve the size and type of development and uses planned for this area;

v. How the location and sizing of water and sewer facilities on site will be consistent with existing and planned facilities;

vi. How water flow volumes will be provided to meet fire flow and domestic demands;

vii. The function and location of any private utility system;

viii. Compliance with the applicable approval criteria set forth at BDC [4.5.200](#), Community Master Plan, BDC [4.5.300](#), Institutional Master Plan, and BDC [4.5.400](#), Employment Master Plans;

ix. Types of residential uses and planned densities; and

x. Bend Comprehensive Plan Map compliance analysis which explains how plan designation acreages in the Bend Comprehensive Plan Map designations for the subject site or sites, including minimum and maximum residential density ranges, are implemented by the master plan, including rearranging

the plan designations and/or zoning that retains the same total area of all plan designations on the subject site or within one percent of the same total acres. All other changes must be processed concurrently as a Comprehensive Plan amendment and zone change.

- b. Scaled maps or diagrams that include the following information (as applicable):
  - i. Development boundary;
  - ii. Phasing plan;
  - iii. Conceptual site plan including the following:
    - (A) General land uses;
    - (B) Approximate building envelopes and square footage;
    - (C) Vehicle, biking, and walking circulation system, including cross-sections, and where these facilities will connect with the existing and planned system;
    - (D) General location and size of areas to be conveyed for public use (e.g., schools, recreational areas, parks, fire stations, and other public uses) in accordance with the City of Bend, the Bend Parks and Recreation District Parks, Recreation, and Green Spaces Comprehensive Plan, and the School Facility Plan, latest editions, and other open space areas as required by this chapter;
    - (E) Transit routes and facilities;
    - (F) Parking, loading, and service areas including loading and service areas for waste disposal;
    - (G) North arrow and scale; and
    - (H) Other information necessary to show how the conceptual site plan meets applicable criteria;
  - iv. Water and sewer facilities to serve the master plan area, including line sizes, general location of routes, and how the lines will tie into adjacent areas and facilities;
  - v. General location of streets and water and sewer lines illustrated on abutting vacant land and developable land and all contiguous property under common ownership. This illustration is not binding on the abutting properties;
  - vi. Grading concept plan (for hillside or sloping properties, or where extensive grading is anticipated);
  - vii. Landscape concept plan and tree preservation plan in accordance with BDC Chapter [3.2](#), Landscaping, Street Trees, Fences and Walls;
  - viii. Architectural concept plan (e.g., information sufficient to describe architectural styles, building heights, and general materials); and
  - ix. Sign concept plan (e.g., locations, general size, style, and materials of signs).
- c. Draft Development Code text, figures, and tables, in a format prescribed by the City, which propose changes to the development standards and zoning district requirements intended to implement the major master plan. The draft text, figures, and tables must also include any proposed districts, street layouts, and cross-sections that vary from standards.

- d. A letter or other written documentation from the Bend Metro Park and Recreation District which indicates that the applicant has met with the District to discuss the proposed master plan, and provided the District an opportunity to review the design for options to enhance existing parks and trails, and develop new parks and trails.
- e. A letter or other written documentation from the Bend-La Pine School District which indicates that the applicant has met with the District to discuss the proposed master plan, and provided the District an opportunity to review the master plan area for compliance with the School Facility Plan, latest edition.
- f. Transportation analysis in compliance with BDC Chapter [4.7](#), Transportation Analysis.
- g. Institutional and employment master plans must submit a transportation and parking demand management (TPDM) plan in compliance with BDC Chapter [4.8](#), Transportation and Parking Demand Management (TPDM) Plan.
- h. Water and sewer capacity analysis.
- i. Information required by BDC [2.7.600](#), Water Overlay Zone (WOZ), BDC [2.7.700](#), Upland Areas of Special Interest Overlay Zone, BDC [3.5.200](#), Outdoor Lighting Standards, and/or BC Chapter [5.50](#), Noise, as applicable.
- j. Copies of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).
- k. A title report prepared within the previous 90 days.

F. *Modifications to Approved Area Plans, Master Plans, PUDs and Special Planned Districts.*

1. The following modifications to a master plan, area plan, PUD or special planned district may be approved with a land division or with an application in compliance with BDC Chapter [4.2](#), Minimum Development Standards Review, Site Plan Review, and Design Review, unless the Community and Economic Development Director elevates the application to the Planning Commission for hearing as a Type III application.
  - a. Increase or decrease of residential densities relative to that approved in the master plan by no more than 15 percent, when such change conforms to the Bend Comprehensive Plan and its density ranges. In no case shall the density fall below the minimum density established in BDC [4.5.200\(E\)\(3\)\(b\)](#). Master plans 20 acres or larger must comply with the density standards of BDC [4.5.200\(E\)\(3\)](#);
  - b. A reduction to the amount of open space or landscaping relative to that approved in the master plan by no more than 10 percent, when such change complies with the master plan's minimum open space requirements;
  - c. An increase in lot coverage by buildings relative to that approved in the master plan by no more than 15 percent of the approved lot coverage (e.g., approved lot coverage of 40 percent may increase to 46 percent);
  - d. Any changes in the amount of parking relative to that approved in the master plan by no more than 15 percent. A proposed modification that is part of an approved TPDM plan must comply with BDC Chapter [4.8](#), Transportation and Parking Demand Management (TPDM) Plan;
  - e. A change in the location or alignment for proposed streets, parking lot configuration, utility easements, landscaping or other site improvements as long as the change is in substantial conformance with the approved master plan; and
  - f. Increase or decrease in the size and/or height of a building relative to that approved in the master plan by no more than 10 percent.

2. In no case will a modification under subsections [\(F\)\(1\)\(a\)](#) through [\(f\)](#) of this section be approved that causes a minor master plan that was approved without any deviations to this code to fail to meet a minimum or maximum standard as set in this code.

3. All other changes require a modification in conformance with BDC [4.1.1325](#), Modification of Approval. [Ord. NS-2445, 2022; Ord. NS-2434, 2022; Ord. NS-2405, 2021; Ord. NS-2303, 2018; Ord. NS-2289, 2017]

#### 4.5.200

#### Community Master Plan.



 This section was recently amended by Ordinance NS-2445, codified in July 2022.

A. *Purpose.* The community master plan is intended to provide complete neighborhoods with varied housing options, services, and amenities needed for daily living, including public schools, parks and open spaces, shops, and services, all within a convenient walking or biking distance. The community master plan is also intended to provide convenient access to public transportation and employment areas.

B. *Applicability.*

1. Community master plans in conformance with this section may be submitted for any property or combination of properties three acres or larger in size.

2. Community master plans are required for any property or combination of adjacent properties under common ownership totaling 20 acres or larger unless exempted below.

a. *Exemptions.*

i. When a property is 40 acres or larger and is part of a proposed land division or property line adjustment application where all the proposed lots/parcels will be 20 acres or larger, a community master plan will not be required until further development is proposed for the newly created lots/parcels; however, lots or parcels smaller than 20 acres may be created and developed prior to an approved community master plan application if they are intended for schools and/or parks.

ii. When a property is 20 acres or larger and a majority of it includes an existing development (e.g., golf course), a community master plan will not be required unless there are two land division applications submitted of the parent property within a five-year period. A community master plan will be required to be processed prior to submitting the second land division application during the five-year period.

iii. The City determines that the master plan category is an institutional master plan or employment master plan.

iv. The property is part of a special planned district in BDC Chapter [2.7](#), Special Planned Districts, Refinement Plans, Area Plans and Master Plans. Properties that are part of an approved area plan must comply with the approval criteria of this chapter in addition to the land division or site plan review criteria at the time of development.

v. The property is part of a master plan or planned unit development approved prior to April 14, 2017, and remains in effect or has initiated the use according to BDC [4.1.1315](#).

C. *Review Process.*



1. *Needed Housing.* If the community master plan includes needed housing as defined by State statutes, the written narrative submitted with the community master plan application must clearly state whether the applicant is electing to use a process with clear and objective standards (minor master plan) or is electing to use a deviation process with changes proposed to one or more of the Bend Development Code standards and/or zoning district requirements and/or with changes proposed to the Bend Comprehensive Plan Map designations and/or zoning (major master plan).

2. *Minor Community Master Plans.* Minor community master plans are processed as follows:

a. *Step 1.* The approval of a minor community master plan (Type II process).

b. *Step 2.* Upon approval of the minor community master plan, and prior to the commencement of Step 3, the applicant must submit a final minor community master plan to the City in an electronic format specified by the City. The final minor community master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision.

c. *Step 3.* The approval of a land division(s) and/or Site Plan Review application(s) (Type II process).

3. *Major Community Master Plans.* Major community master plans are processed as follows:

a. *Step 1.* The Planning Commission makes a recommendation to the City Council on an application for a major community master plan. The text of a major community master plan must be included in BDC Chapter [2.7](#), Special Planned Districts, Refinement Plans, Area Plans and Master Plans, in compliance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments. The City Council is the final review authority on such applications (Type III process).

b. *Step 2.* Upon approval of the major community master plan, and prior to the commencement of Step 3, the applicant must submit a final major community master plan to the City in an electronic format specified by the City. The final major community master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision. The major community master plan denotation for the subject site will be shown on the Zoning Map. The denotation on the Zoning Map may be added or removed administratively by staff upon approval or withdrawal of the major community master plan.

c. *Step 3.* The approval of a land division(s) and/or site plan review application(s) (Type II process).

D. *Community Master Plan Approval Criteria.*

1. *Minor or Major Community Master Plan.* The City may approve, approve with conditions, or deny a proposed minor or major community master plan application based on meeting all of the following criteria:

a. The community master plan complies with subsection [\(E\)](#) of this section, Standards and Regulations.

b. Existing water and sewer facilities have adequate capacity to serve the proposed development in compliance with the Collection Systems Master Plan and the Water System Master Plan, latest editions, or adequate facilities will be installed prior to occupancy or use.

c. The community master plan complies with BDC Chapter [4.7](#), Transportation Analysis.

2. *Minor Community Master Plan.* In addition to the approval criteria in subsection [\(D\)\(1\)](#) of this section the City may approve, approve with conditions, or deny a proposed minor community master plan application based on meeting all of the following criteria:

- a. The community master plan land uses and densities are consistent with the Bend Comprehensive Plan Map designations.
- b. The applicant has demonstrated how the standards and regulations contained in BDC Title [2](#), Land Use Districts, and BDC Title [3](#), Design Standards, can be met through future site plan review or land division applications.

3. *Major Community Master Plan.* In addition to the approval criteria in subsection [\(D\)\(1\)](#) of this section the City may approve, approve with conditions, or deny a proposed major community master plan application based on meeting all of the following criteria:

a. The community master plan land uses and densities must be consistent with the Bend Comprehensive Plan Map designations. If rearranging the plan designation locations and/or zoning is proposed as part of the master plan application, the master plan must retain the same total area of all plan designations on the subject site or within one percent of the same total acreage and maintain the density/housing numbers consistent with the allocations prescribed by the existing plan designations except as provided in subsection [\(E\)\(3\)](#) of this section. Any other changes to the plan designations and density/housing numbers, or other changes to the Comprehensive Plan Map designations, require a Comprehensive Plan and Zoning Map amendment to be processed concurrently in accordance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments.

b. The applicant has demonstrated that the standards and zoning district requirements contained in BDC Title [2](#), Land Use Districts, and BDC Title [3](#), Design Standards, are capable of being met during site plan or land division review, except as proposed to be modified by the applicant as part of a major community master plan. Where the applicant has proposed deviations to the above standards and/or zoning district requirements, the applicant has demonstrated:

- i. That granting a deviation to the BDC standards and/or zoning district requirements will equally or better meet the purpose of the regulation proposed to be modified; or
- ii. That granting a deviation to the BDC standards and/or zoning district requirements is necessary due to topographical constraints or other unique characteristics of the property or specific development type proposed by the master plan; and
- iii. That any impacts resulting from the deviation are mitigated to the extent reasonably practical.

c. In lieu of the approval criteria in BDC [4.6.300](#), Quasi-Judicial Amendments, major community master plan applications that do not propose a Bend Comprehensive Plan amendment must demonstrate compliance with the following:

- i. Approval of the request is consistent with the relevant Statewide planning goals that are designated by the Planning Director or designee; and
- ii. Approval of the request is consistent with only the relevant policies of the Bend Comprehensive Plan Chapter 11, Growth Management, that are designated by the Planning Director or designee.

d. If the major community master plan proposal contains a zone change request to bring the zoning into compliance with the Bend Comprehensive Plan designation, the zone change is subject to the approval criteria of BDC [4.6.300\(C\)](#).

- e. If the major community master plan proposal contains a proposed amendment to the Bend Comprehensive Plan Map or text, the amendment is subject to the approval criteria of BDC [4.6.300\(B\)](#).

E. *Standards and Regulations.* Minor and major community master plans must comply with the following standards:

1. *Access to Commercial Goods and Services.* Access to commercial goods and services must be provided in compliance with the following standards:

- a. The community master plan must have access to commercial goods and services by walking or biking a distance not greater than a one-half mile radius measured from all points along the perimeter of the master plan boundary to any land planned, zoned or developed for one or more such services. Such commercial uses may be provided within nearby neighborhoods or nonresidential districts as long as the minimum distance standard is met. In satisfying such distance standard, commercial goods and services that are not accessible by walking or biking because of physical or geographic barriers (e.g., rivers, Bend Parkway, canals, and railways) may not be used. Except for minor community master plans that are proposing needed housing as defined by state statutes, the Review Authority may find that this provision is met when the commercial uses are located further away than one-half mile but the purpose and intent of providing reasonable access to the commercial uses has been met.

2. *Multimodal Connections.* Multimodal connections must be provided on site in compliance with the City of Bend Transportation System Plan (TSP) and the Bend Parks and Recreation District Parks, Recreation, and Green Spaces Comprehensive Plan, latest editions, and the existing and planned trail systems adjacent to the community master plan must be continued through the entire community master plan.

3. *Housing Density and Mix.* Community master plans 20 acres or larger must provide a mix of housing types and achieve minimum housing densities in conformance with the standards of subsections [\(E\)\(3\)\(a\)](#) and [\(b\)](#) of this section. To the extent that the Bend Comprehensive Plan Chapter 11, Growth Management, proposes a different mix of housing and/or density standards in the specific expansion area policies, then those policies apply.

- a. *Density Calculations and Exceptions.* Minimum and maximum densities must be calculated in conformance with BDC [2.1.600\(C\)](#), except as follows:

- i. *Public and Institutional Uses and Miscellaneous Uses in Opportunity Areas.* In opportunity areas as shown in the Bend Comprehensive Plan Figure 11-1, a maximum of 20 acres of residential designated land proposed for public and institutional uses and miscellaneous uses (BDC Table 2.1.200) may be excluded from the density calculation and housing mix. The density for the 20 acres must be taken from the residential designation with the lowest maximum density standard in the opportunity area. The master plan must provide the density and housing mix for the residential designated property in excess of 20 acres. No more than 20 acres may be exempted from the density and housing mix in an opportunity area;

- ii. *Open Space.* Open space in compliance with subsection [\(E\)\(4\)](#) of this section may be excluded from the applicable density calculation; and

- iii. *Comprehensive Plan Designations.* Land designated as Commercial, Mixed-Use, Industrial and Public Facilities may be excluded from the applicable density calculation.

- b. Minimum standards are as follows:

- i. *RL Comprehensive Plan Designation.* At least 50 percent of the maximum gross density of the RL Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes and/or multi-unit residential housing units comprising at least 10 percent of total housing units.
- ii. *RS Comprehensive Plan Designation.* At least 70 percent of the maximum gross density of the RS Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes, and/or multi-unit residential housing units comprising at least 10 percent of total housing units.
- iii. *RM Comprehensive Plan Designation.* At least 60 percent of the maximum gross density of the RM Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes, and/or multi-unit residential housing units comprising at least 67 percent of total housing units.
- iv. *RH Comprehensive Plan Designation.* The minimum density of the RH Comprehensive Plan designation applies. Single-unit detached dwellings are not permitted in the RH Zone.
- v. *Density and Housing Mix Transfers.*
  - (A) Density and housing mix transfers are permitted within the major community master plan boundary when the major master plan is 20 acres or larger; however, the density and housing mix standards of this section shall not be reduced through the major community master plan process.
  - (B) Density and housing mix transfers are permitted for major master plans that are 20 acres or larger in an opportunity area as follows:
    - (1) The density and housing mix required for RS, RM and RH plan designated areas may be transferred within the opportunity area; and
    - (2) The density and housing mix required for RS plan designated areas may be transferred within a walking or biking distance not greater than one mile from the boundary of the opportunity area on existing travel routes (multimodal street or designated multi-use pathway) or any planned travel route shown within the Transportation System Plan. If the density and housing mix for the RS plan designation is transferred to a property not contemplated for residential development under the Comprehensive Plan (i.e., publicly owned properties with a residential plan designation that were not considered available for residential development under the Buildable Lands Inventory), then the receiving property need only provide the number of housing units transferred or the minimum RS density standards, whichever is greater.
      - (a) As a condition to approval of any density and housing mix transfer to one or more receiving properties pursuant to this section, the owner(s) of the receiving property(ies) must enter into a written agreement in a form acceptable to the City that will be binding upon the parties to the agreement and all successors in interest and that will run with the land. The agreement must specify the number of dwelling units and housing mix for the RS plan designated areas to be transferred (the stated density may not exceed the maximum permitted density of the Comprehensive Plan designation of the receiving property(ies)). After endorsement of the agreement by the City, the fully executed agreement must be recorded in the Deschutes County

Official Records. The agreement's execution and recordation must take place prior to final master plan approval for the transferring property.

4. The community master plan must contain a minimum of 10 percent of the gross area as public or private open space such as parks, pavilions, squares and plazas, multi-use paths within a minimum 20-foot wide corridor, areas of special interest, tree preservation areas, or public and private recreational facilities and must comply with the following:

- a. The open space area must be shown on the conceptual site plan and recorded with the final plat or separate instrument.
- b. The open space must be conveyed in accordance with one of the following methods:
  - i. By dedication to the Park District or City as publicly owned and maintained open space. Open space proposed for dedication to the Park District or City must be acceptable with regard to the size, shape, location, improvement, environmental condition, and budgetary and maintenance abilities; or
  - ii. By leasing or conveying title (including beneficial ownership) to a corporation, owners association or other legal entity. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) acceptable to the City. Private open space must be located in a tract and include an open space easement.
- c. Adequate guarantee must be provided to ensure permanent retention of common open space and recreation areas which may be required as conditions of approval.

F. *Duration of Approval.*

1. An approved community master plan will remain valid indefinitely unless withdrawn by all owner(s) of property within the community master plan. The City may deny withdrawal when a switch to otherwise applicable standards would not be in the public interest because of sufficient development under the community master plan. Standards and regulations identified in the approved community master plan will control all subsequent site development as long as the approved community master plan is valid. If alternative standards and regulations are not specifically identified in the approved community master plan, the applicable City standard at the time any development application is submitted will apply.

2. The duration of approval for a community master plan must coincide with the timeline outlined in the approved phasing plan and in accordance with the time frames studied in the transportation analysis and water and sewer capacity analysis for the community master plan. Site plan review or land division applications submitted consistent with or earlier than as provided in an approved phasing plan will not require an updated transportation analysis and water and sewer capacity analysis as part of the development application. Infrastructure capacity may be reserved for the community master plan site for up to 15 years or as specified in an approved phasing plan.

3. The time period set forth in this subsection (F) will be tolled upon filing of an appeal to LUBA and must not begin to run until the date that the appellate body has issued a final order. [Ord. NS-2445, 2022; Ord. NS-2423, 2021; Ord. NS-2405, 2021; Ord. NS-2353, 2019; Ord. NS-2289, 2017]

## Institutional Master Plan.

 This section was recently amended by Ordinance NS-2445, codified in July 2022.

A. *Purpose.* The institutional master plan is intended to facilitate an efficient and flexible review process for development of institutions which control large areas of land within the City, contain a greater intensity of development than surrounding areas, are a source of substantial employment, and are usually located adjacent to residential neighborhoods. An institutional master plan is intended to permit flexibility, while providing a level of understanding by the community and neighboring properties about the future growth of the institution.

B. *Applicability.*

1. Institutional master plans in conformance with this section may be submitted for any property or combination of properties three acres or larger in size.

2. Unless exempted below, institutional master plans in conformance with this section are required for any property or combination of adjacent properties under common ownership at the date of adoption of this code for the following:

a. Institutions of higher education: 10 acres or larger.

b. All other institutions: 20 acres or larger.

3. *Exemptions.* Unless the applicant elects to apply for an institutional master plan, the following are exempt:

a. The property is part of a special planned district in BDC Chapter [2.7](#), Special Planned Districts, Refinement Plans, Area Plans and Master Plans. Properties that are part of an approved area plan must comply with the approval criteria of this chapter in addition to the land division or site plan review criteria at the time of development.

b. Cemeteries and public maintenance facilities in existence prior to 2016.

c. The City determines that the master plan category is a community master plan or employment master plan.

C. *Review Process.*

1. *Minor Institutional Master Plans.* Minor institutional master plans are processed as follows:

a. *Step 1.* The approval of a minor institutional master plan (Type II process).

b. *Step 2.* Upon approval of the minor institutional master plan, and prior to the commencement of Step 3, the applicant must submit a final minor institutional master plan to the City in an electronic format specified by the City. The final minor institutional master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision.

c. *Step 3.* The approval of a land division(s) and/or site plan review application(s) (Type II process).

2. *Major Institutional Master Plans.* Major institutional master plans are processed as follows:

a. *Step 1.* The Planning Commission makes a recommendation to the City Council on an application for a major institutional master plan. The text of a major institutional master plan must be included in BDC Chapter [2.7](#), Special Planned

Districts, Refinement Plans, Area Plans and Master Plans, in compliance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments. The City Council is the final review authority on such applications (Type III process).

b. *Step 2.* Upon approval of the major institutional master plan, and prior to the commencement of Step 3, the applicant must submit a final major institutional master plan to the City in an electronic format specified by the City. The final major institutional master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision. The major institutional master plan denotation for the subject site will be shown on the Zoning Map. The denotation on the Zoning Map may be added or removed administratively by staff upon approval or withdrawal of the major institutional master plan.

c. *Step 3.* The approval of a land division(s) and/or site plan review application(s) (Type II process).

D. *Submittal Requirements.* In addition to the submittal requirements of BDC [4.5.100\(E\)](#), the following information must be submitted as deemed applicable by the Community and Economic Development Director based on the size, scale, and complexity of the development:

1. Narrative that defines and summarizes the organizational mission and objectives. The statement must describe the projective population that will be served by the institution including size and distinctive cohorts (e.g., faculty, staff, clients, patients, and students) and any anticipated changes in the size or composition of that population associated with different phases of development. It must also specify any services or facilities available to the general public.
2. Summary of the facilities related to the proposed institutional master plan.
3. Description of the following:
  - a. General location of all existing and proposed uses and on-site circulation plans;
  - b. Approximate floor area of proposed structures;
  - c. Approximate height of proposed structures;
  - d. Approximate number and general location of parking spaces on site and those off site in compliance with BDC Chapter [3.3](#), Vehicle Parking, Loading and Bicycle Parking, and BDC Chapter [4.8](#), Transportation and Parking Demand Management (TPDM) Plan;
  - e. A description of on-site housing and any dedicated off-site housing facilities to be developed as part of the institutional master plan, including the total number of users that may be accommodated in such facilities; and
  - f. Public safety.
4. Design guidelines for new and renovated buildings and structures including materials, height, bulk, massing, and colors.
5. Open space must be shown on the conceptual site plan and may include parks, pavilions, multi-use paths within a minimum 20-foot wide corridor, squares and plazas, areas of special interest, tree preservation areas, and recreational facilities.

E. *Approval Criteria.* The City may approve, approve with conditions, or deny the proposed institutional master plan application based on meeting all of the following criteria:

1. The proposed land uses within the institutional master plan must be consistent with the Bend Comprehensive Plan Map designations. If rearranging the plan designation locations and/or zoning are proposed as part of the major institutional master plan application, the major institutional master plan must retain the same total

area of all plan designations on the subject site or within one percent of the same total acreage consistent with the allocations prescribed by the existing plan designations. Any other changes to the Comprehensive Plan Map designations require a Comprehensive Plan and zoning map amendment to be processed concurrently in accordance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments.

2. The applicant has demonstrated that the standards and zoning district requirements contained in BDC Title [2](#), Land Use Districts, and BDC Title [3](#), Design Standards, are capable of being met during site plan or land division review, except as proposed to be modified by the applicant as part of a major institutional master plan. Where the applicant has proposed deviations to the above standards and/or zoning district requirements as part of a major institutional master plan, the applicant has demonstrated:

- a. That granting a deviation to the BDC standards and/or zoning district requirements will equally or better meet the purpose of the regulation proposed to be modified; or
- b. That granting a deviation to the BDC standards and/or zoning district requirements is necessary due to topographical constraints or other unique characteristics of the property or specific development type proposed by the master plan; and
- c. That any impacts resulting from the deviation are mitigated to the extent reasonably practical.

3. The institutional master plan complies with BDC Chapter [4.7](#), Transportation Analysis, and meets all the approval criteria in BDC Chapter [4.8](#), Transportation and Parking Demand Management (TPDM) Plan.

4. Existing water and sewer facilities have adequate capacity to serve the proposed development in compliance with the Collection Systems Master Plan and the Water System Master Plan, latest editions, or adequate facilities will be installed prior to occupancy or use.

5. The institutional master plan provides multimodal connections on site in compliance with the City of Bend Transportation System Plan (TSP) and the Bend Parks and Recreation District Parks, Recreation, and Green Spaces Comprehensive Plan, latest editions, and existing and planned trail systems adjacent to the institutional master plan are continued through the entire institutional master plan.

6. The institutional master plan must provide and maintain a minimum of 10 percent of the gross area as open space in compliance with subsection [\(D\)\(5\)](#) of this section.

7. The institutional master plan, when located in an opportunity area and includes residential designated land, complies with the density and housing mix in BDC [4.5.200\(E\)\(3\)](#).

8. In lieu of the approval criteria in BDC [4.6.300](#), Quasi-Judicial Amendments, major institutional master plan applications that do not propose a Bend Comprehensive Plan amendment must demonstrate compliance with the following:

- a. Approval of the request is consistent with the relevant Statewide planning goals that are designated by the Planning Director or designee; and
- b. Approval of the request is consistent with only the relevant policies of the Bend Comprehensive Plan Chapter 11, Growth Management, that are designated by the Planning Director or designee.

9. If the major institutional master plan proposal contains a zone change request to bring the zoning into compliance with the Bend Comprehensive Plan designation, the zone change is subject to the approval criteria of BDC [4.6.300\(C\)](#).



10. If the major institutional master plan proposal contains a proposed amendment to the Bend Comprehensive Plan Map or text, the amendment is subject to the approval criteria of BDC [4.6.300\(B\)](#).

F. *Periodic Institutional Master Plan Status Report.* Every five years or sooner from the date of the institutional master plan approval, the institution must submit an update to the Planning Division. This update must provide a description of all projects that: (1) have been completed since the most recent update; (2) are ongoing, including a description of the status and estimated timetables for completion of such projects; (3) are scheduled to begin in the upcoming 24 months, including estimated timetables for the commencement, progress, and completion of such projects; and (4) are no longer being considered by the institution. In addition, the institution must submit an updated site plan. The update will be presented to the Planning Commission, but will not require a public hearing. The status report will no longer be required if the institutional master plan is built out and additional development is not contemplated.

G. *Duration of Approval.*

1. An approved institutional master plan will remain valid indefinitely unless withdrawn by all owner(s) of property within the institutional master plan. The City may deny withdrawal when a switch to otherwise applicable standards would not be in the public interest because of sufficient development under the institutional master plan. Standards and regulations identified in the approved institutional master plan will control all subsequent site development as long as the approved institutional master plan is valid. If alternative standards and regulations are not specifically identified in the approved institutional master plan, the applicable City standard at the time any development application is submitted will apply.

2. The duration of approval for an institutional master plan must coincide with the timeline outlined in the approved phasing plan and in accordance with the time frames studied in the transportation analysis and water and sewer capacity analysis for the institutional master plan. Site plan review or land division applications submitted consistent with or earlier than as provided in an approved phasing plan will not require an updated transportation analysis and water and sewer capacity analysis as part of the development application. Infrastructure capacity may be reserved for the institutional master plan site for up to 15 years or as specified in an approved phasing plan.

3. The time period set forth in this subsection (G) will be tolled upon filing of an appeal to LUBA and must not begin to run until the date that the appellate body has issued a final order. [Ord. NS-2445, 2022; Ord. NS-2423, 2021; Ord. NS-2405, 2021; Ord. NS-2353, 2019; Ord. NS-2289, 2017]

#### **4.5.400**

#### **Employment Master Plans.**



A. *Purpose.* The employment master plan is intended to provide a method by which the City may permit a variety of commercial and/or industrial development types, designs or arrangements that may not be permissible under traditional zoning regulations yet still provide for the ability to plan for full build-out of large employment centers. The employment master plan will provide a mechanism to achieve development which will contribute to the diversification of the City's economic base.

B. *Applicability.*

1. Employment master plans in conformance with this section may be submitted for any property or combination of properties three acres or larger in size.

2. Employment master plans in conformance with this section are required for any property or combination of adjacent properties under common ownership totaling 20 acres or larger at the date of adoption of this code, unless exempted below.

3. *Exemptions.* Unless the applicant elects to apply for an employment master plan, the following are exempt:

a. The property is part of a special planned district in BDC Chapter [2.7](#), Special Planned Districts, Refinement Plans, Area Plans and Master Plans. Properties that are part of an approved area plan must comply with the approval criteria of this chapter in addition to the land division or site plan review criteria at the time of development.

b. The City determines that the master plan category is a community master plan or institutional master plan.

C. *Review Process.*

1. *Minor Employment Master Plans.* Minor employment master plans are processed as follows:

a. *Step 1.* The approval of a minor employment master plan (Type II process).

b. *Step 2.* Upon approval of the minor employment master plan, and prior to the commencement of Step 3, the applicant must submit a final minor employment master plan to the City in an electronic format specified by the City. The final minor employment master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision.

c. *Step 3.* The approval of a land division(s) and/or site plan review application(s) (Type II process).

2. *Major Employment Master Plans.* Major employment master plans are processed as follows:

a. *Step 1.* The Planning Commission makes a recommendation to the City Council on an application for major employment master plan. The text of a major employment master plan must be included in BDC Chapter [2.7](#), Special Planned Districts, Refinement Plans, Area Plans and Master Plans, in compliance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments. The City Council is the final review authority on such applications (Type III process).

b. *Step 2.* Upon approval of the major employment master plan, and prior to the commencement of Step 3, the applicant must submit a final major employment master plan to the City in an electronic format specified by the City. The final major employment master plan must depict the proposal as approved and must incorporate all conditions of approval contained in the decision. The major employment master plan denotation for the subject site will be shown on the Zoning Map. The denotation on the Zoning Map may be added or removed administratively by staff upon approval or withdrawal of the major employment master plan.

c. *Step 3.* The approval of a land division(s) and/or site plan review application(s) (Type II process).

D. *Approval Criteria.* The City may approve, approve with conditions, or deny the proposed employment master plan application based on meeting all of the following criteria:

1. The proposed land uses within the employment master plan must be consistent with the Bend Comprehensive Plan Map designations. If rearranging the plan designation locations and/or zoning are proposed as part of a major employment master plan application, the major employment master plan must retain the same total area of all plan designations on the subject site or within one percent of the same

total acreage consistent with the allocations prescribed by the existing plan designations. Any other changes to the Comprehensive Plan Map designations require a Comprehensive Plan and zoning map amendment to be processed concurrently in accordance with BDC Chapter [4.6](#), Land Use District Map and Text Amendments.

2. The applicant has demonstrated that the standards and zoning district requirements contained in BDC Title [2](#), Land Use Districts, and BDC Title [3](#), Design Standards, are capable of being met during site plan or land division review, except as proposed to be modified by the applicant as part of a major employment master plan. Where the applicant has proposed deviations to the above standards and/or zoning district requirements as part of a major employment master plan, the applicant has demonstrated:

- a. That granting a deviation to the BDC standards and/or zoning district requirements will equally or better meet the purpose of the regulation proposed to be modified; or
- b. That granting a deviation to the BDC standards and/or zoning district requirements is necessary due to topographical constraints or other unique characteristics of the property or specific development type proposed by the master plan; and
- c. That any impacts resulting from the deviation are mitigated to the extent reasonably practical.

3. Existing water and sewer facilities have adequate capacity to serve the proposed development in compliance with the Collection Systems Master Plan and the Water System Master Plan, latest editions, or adequate facilities will be installed prior to occupancy or use.

4. The proposal complies with BDC Chapter [4.7](#), Transportation Analysis, and meets all the approval criteria in BDC Chapter [4.8](#), Transportation and Parking Demand Management (TPDM) Plan.

5. The employment master plan provides multimodal connections on site in compliance with the City of Bend Transportation System Plan (TSP) and the Bend Parks and Recreation District Parks, Recreation, and Green Spaces Comprehensive Plan, latest editions, and existing and planned trail systems adjacent to the employment master plan are continued through the entire employment master plan.

6. The employment master plan, when located in an opportunity area and includes residential designated land, complies with the density and housing mix in BDC [4.5.200\(E\)\(3\)](#).

7. In lieu of the approval criteria in BDC [4.6.300](#), Quasi-Judicial Amendments, major employment master plan applications that do not propose a Bend Comprehensive Plan amendment must demonstrate compliance with the following:

- a. Approval of the request is consistent with the relevant Statewide planning goals that are designated by the Planning Director or designee; and
- b. Approval of the request is consistent with only the relevant policies of the Bend Comprehensive Plan Chapter 11, Growth Management, that are designated by the Planning Director or designee.

8. If the major employment master plan proposal contains a zone change request to bring the zoning into compliance with the Bend Comprehensive Plan designation, the zone change is subject to the approval criteria of BDC [4.6.300\(C\)](#).

9. If the major employment master plan proposal contains a proposed amendment to the Bend Comprehensive Plan Map or text, the amendment is subject to the approval criteria of BDC [4.6.300\(B\)](#).

E. *Duration of Approval.*

1. An approved employment master plan will remain valid indefinitely unless withdrawn by all owner(s) of property within the employment master plan. The City may deny withdrawal when a switch to otherwise applicable standards would not be in the public interest because of sufficient development under the employment master plan. Standards and regulations identified in the approved employment master plan will control all subsequent site development as long as the approved employment master plan is valid. If alternative standards and regulations are not specifically identified in the approved employment master plan, the applicable City standard at the time any development application is submitted will apply.

2. The duration of approval for an employment master plan must coincide with the timeline outlined in the approved phasing plan and in accordance with the time frames studied in the transportation analysis and water and sewer capacity analysis for the employment master plan. Site plan review or land division applications submitted consistent with or earlier than as provided in an approved phasing plan will not require an updated transportation analysis and water and sewer capacity analysis as part of the development application. Infrastructure capacity may be reserved for the employment master plan site for up to 15 years or as specified in an approved phasing plan.

3. The time period set forth in this subsection (E) will be tolled upon filing of an appeal to LUBA and must not begin to run until the date that the appellate body has issued a final order. [Ord. NS-2423, 2021; Ord. NS-2405, 2021; Ord. NS-2353, 2019; Ord. NS-2289, 2017]

#### 4.5.500 Cottage Housing Development.



*Repealed by [Ord. NS-2389](#).*

**The Bend Development Code is current through Ordinance NS-2456, passed October 19, 2022.**

Disclaimer: The city recorder's office has the official version of the Bend Development Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.bendoregon.gov](http://www.bendoregon.gov)

[Code Publishing Company](#)

Code of Ordinances 18.98.190 - MPD standards—Water and sewer standards.

18.98.195 - Vesting.

18.98.200 - Revocation of MPD permit.

➤ Chapter 18.100 - DEFINITIONS

➤ Title 19 - ENVIRONMENT

➤ Title 20 - MISCELLANEOUS PROVISIONS

STATUTORY REFERENCES FOR WASHINGTON CITIES AND TOWNS

ORDINANCE LIST AND DISPOSITION TABLE

CODE COMPARATIVE TABLE AND DISPOSITION LIST

< 18.90.060 - Additional requirements.

Chapter 18.100 - DEFINITIONS >

## Chapter 18.98 - MASTER PLANNED DEVELOPMENT<sup>[3]</sup>



Sections:

**Footnotes:**

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**Editor's note**— Ord. No. 897, § 1(Exh. A), adopted April 16, 2009, amended Ch. 18.98 in its entirety to read as herein set out. Former Ch. 18.98, §§ 18.98.005—18.98.200, pertained to similar subject matter, and derived from Ord. 796, §§ 1, 2, 4, adopted 2005; Ord. 779, § 2 Exh. 1 (part), adopted 2005.

### 18.98.005 - MPD zoning district created.



The master plan development (MPD) zoning district is created. No development activity may occur, or any application accepted for processing, on property subject to an MPD zoning designation, or for which the submittal of an MPD is required by a development agreement, unless it is done in accordance with the terms and conditions of a valid MPD permit or consistent with this chapter. Development activity shall include, but not be limited to, grading, clearing, filling, tree harvesting, platting, short platting, building or any other activity for which a city permit or other approval is required.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

### 18.98.010 - Master planned development (MPD) permit—Purpose.



The purposes of the master planned development (MPD) permit process and standards set out in this chapter are to:

- A. Establish a public review process for MPD applications;
- B. Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size;
- C. Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;
- D. Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;
- E. Allow flexibility in development standards and permitted uses;
- F. Identify significant environmental impacts, and ensure appropriate mitigation;
- G. Provide greater certainty about the character and timing of residential and commercial development and population growth within the city;
- H. Provide environmentally sustainable development;
  - I. Provide needed services and facilities in an orderly, fiscally responsible manner;
  - J. Promote economic development and job creation in the city;
- K. Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;
- L. Promote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the city's design standards;
- M. Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

### **18.98.020 - MPD permit—Public benefit objectives.**

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A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:

- A. Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;
- B. Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;
- C. Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse;
- D. Preservation and enhancement of open space and views of Mt. Rainier;

- E. Provision of employment uses to help meet the city's economic development objectives;
- F. Improvement of the city's fiscal performance;
- G. Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and
- H. Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.030 - MPD permit—Criteria for MPD eligibility.**

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- A. *Where required.* An MPD permit shall be required for any development where:
  - 1. Any of the property within the development is subject to an MPD designation on the Comprehensive Plan Future Land Use Map or an MPD zoning designation;
  - 2. The parcel or combined parcels to be included in a development total at least eighty gross acres; or
  - 3. Any of the property within the development is subject to a development agreement that requires an MPD permit to be obtained.
  - 4. Provided, however, the above provisions notwithstanding, any commercial area that is intended to be used to meet the economic objectives of an MPD and is geographically separated from the residential component of a proposed MPD may be approved through the site plan approval process of [Chapter 18.16](#), subject to the following conditions:
    - a. The commercial area is included in an MPD application that has been determined to be complete and is identified in the application as being intended to meet the economic objectives of the MPD application;
    - b. The MPD design and development standards shall be applied, unless modified in accordance with the provisions of [section 18.98.130\(A\)](#);
    - c. The approved conditions shall include the requirements of [section 18.98.080\(A\)](#);
    - d. If the environmental review on the MPD permit application has not been completed, then, if determined appropriate, an environmental determination may be issued for the commercial area, provided the determination contains provisions that the commercial area shall still be considered for cumulative impact purposes, and appropriate additional mitigation requirements in the environmental review for the MPD application;
    - e. The provisions of the subsequent MPD approval shall apply to the site plan approval, including vesting, but only to the extent that they do not adversely impact complete building applications that have been submitted, or on-site infrastructure improvements that have already been permitted.

B.

*Eligibility.* Where not required under subsection (A) of this section the city may accept an MPD permit application, and process a development proposal as an MPD, only for contiguous properties that are in a single ownership, or if in multiple ownerships, specific agreements satisfactory to the city shall be signed by each property owner that place the properties under unified control, and bind all owners to the MPD conditions of approval.

1. All properties within its proposed MPD are within the city limits or within the PAA provided that, if a proposed MPD includes lands within the PAA, approval of the entire MPD will not be granted until such time annexation of unincorporated lands is completed.

C. *Contiguity.* All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

### **18.98.040 - MPD permit—Application requirements.**

A. Application requirements. All applications for approval of an MPD permit shall, at a minimum, include all of the information and documents set forth in this section.

1. A set of master plan drawings, drawn at a scale as determined by the director, showing:
  - a. Proposed open space, parks, recreation areas, trail networks, wildlife corridors, and perimeter buffers, and the intended ownership and acreage for each area;
  - b. Existing environmentally sensitive areas and their buffers, together with the reports, surveys or delineations used to identify their locations and areas for which development within a wetland, bog, stream or its related buffer is proposed and for which mitigation or buffer averaging will be required;
  - c. Proposed locations and preliminary street sections of all streets having a function higher than neighborhood access, and all pedestrian connections including trails; if the local access street section is intended to vary from the adopted city standard;
  - d. Proposed sites for schools and other public facilities required to serve the development;
  - e. Conceptual public utility plans (sewer, water, stormwater);
  - f. Types, generalized locations, acreages, and densities of proposed residential and nonresidential development;
  - g. Proposed sites for public transit facilities;
  - h. Any existing easements located upon the property;
  - i. Identify areas that will be protected from development by the requirements of [Chapter 19.10](#) (sensitive areas ordinance).
2. A map, drawn at a scale as determined by the director showing property boundaries and existing topography (five-foot contour intervals), areas of vegetation by type, other natural features, and existing structures.
3. A legal description of the MPD property, together with a title report no more than thirty days old,



disclosing all lien holders and owners of record.

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4. A projected phasing plan and development time schedule, regardless of intended ownership, for all development, including but not limited to housing, stormwater systems, sanitary sewer facilities, public water facilities, roads, trails, commercial (including required neighborhood commercial) areas, recreational facilities, and open space, including any off-site improvements.
5. A completed SEPA checklist, with various environmental studies and SEPA documents. If the city and the applicant have agreed that an environmental impact statement will be prepared for the proposal, a checklist shall not be required.
6. A comprehensive fiscal analysis disclosing the short and long-term financial impacts of the proposed MPD upon the city both during development and following project completion, including an analysis of required balance of residential and commercial land uses needed to ensure a fiscal benefit to the city after project completion, and including an analysis of personnel demands and fiscal short-falls anticipated during the development phase of the MPD together with recommended mitigations to ensure that the MPD does not negatively impact the fiscal health of the city, nor the ability of the city to adequately serve existing residents, provided that if an EIS will be prepared, the fiscal analysis may be prepared concurrently.
7. A narrative description and illustrations of the MPD planning/design concept, demonstrating how the proposed MPD is consistent with the adopted MPD design standards, the comprehensive plan, all elements of Sections [18.98.010](#) and [18.98.020](#), and other applicable policies and standards. If deviations from these standards are proposed, the narrative shall describe how the proposed deviations provide an equal or greater level of public benefit.
8. Typical cross-sections of all proposed street and trail types, including landscaping, pedestrian facilities, and any other proposed improvements within the right-of-way or trail corridors.
9. A listing of all property owners of record within five hundred feet of the exterior boundaries of all parcels proposed to be included within the MPD (When one or more of the MPD property owners own property adjacent to but not included within the MPD, the five hundred feet shall be measured from the exterior boundary of this adjacent property.). The applicant shall update the list prior to each proposed public meeting or required public mailing, as requested by the city, in order to assure a current list of all required notices.
10. A narrative description and illustrations of how street alignments and land uses in the proposed MPD will coordinate and integrate with existing adjacent development, and adjacent undeveloped properties.
11. A narrative description of proposed ownership and proposed maintenance program for all lands and facilities required to be shown on the master plan drawings by subsection (A)(1)(a) of this section.
12. A proposed water conservation plan for the MPD pursuant to [Section 18.98.190](#).
- 13.

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If applicable, a description of any mineral (or other resource) extraction operations proposed within the MPD, the timing and phasing of the proposed operation and reclamation of the land for subsequent proposed uses.

- 14. Proof of proper notice for the public information meeting.
  - 15. A narrative description, with reference to the drawings required by subsection (A)(1)(a) above, of how the proposal will comply with the sensitive areas ordinance (Chapter [19.10](#));
  - 16. Proposed floor area ratios (FAR) for both residential and non-residential areas;
  - 17. A narrative description, with associated tables, showing the intended residential density, the number of development rights that are needed to meet the intended density, the number of development rights that are already associated with the property included within the proposed MPD boundaries, and the number of development rights that must be acquired to meet the intended density;
  - 18. If transfer of development rights are needed to attain proposed densities, a phase plan for the acquisition of development rights certificates shall be submitted, demonstrating that for each residential phase, no more than sixty percent of the proposed density is based upon the land area included in that phase. Prior to approval of implementing project actions (subdivision approval, site plan approval, etc.), the originals or documentation of the right to use development rights held in trust by the city pursuant to the terms of the transfer of development rights program (Chapter [19.24](#)), shall be provided.
- B. The director shall have the authority to administratively establish additional detailed submittal requirements.
- C. The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.050 - MPD permit—Required approvals. :**

- A. *MPD permit required.* An approved MPD permit and development agreement shall be required for every MPD.
- B. *Consolidated review.* An MPD permit will be allowed as part of a consolidated permit action as authorized by RCW 36.70B. Consolidation shall not be allowed for comprehensive plan amendments. At the city's discretion, an MPD permit may be processed concurrently with amendments to the development regulations or interlocal agreements, provided that the applicant acknowledges in writing that they assume the risk of the MPD permit application being denied or otherwise conditioned as a result of final action on any requested amendment.

*Implementing development applications.* An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing development approval. An application for an MPD permit may be processed with amendments to the comprehensive plan, zoning code, inter-local agreements and land development permits associated with the MPD permit, such as forest practice permits, clearing and grading permits, shorelines permits, and permits required by other public agencies. The city shall not grant approvals to related permits before the granting of an MPD permit and recording of a development agreement except as provided in [Section] 18.98.030.A.4.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.060 - MPD permit—Review process.**



- A. *MPD permit—Pre-application conference, public information meeting and planning commission informational meeting required.*
  - 1. A pre-application conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.
    - a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.
    - b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.
    - c. A nonrefundable pre-application conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the pre-application conference will be scheduled.
    - d. If, at the pre-application conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.
  - 2. After the pre-application conference has been completed, a public information meeting shall be conducted by the applicant prior to acceptance of an MPD permit application.
    - a.

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The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

- b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection A.4.e.(c) of this section.
3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission information meeting is required before the city will accept an application for MPD permit approval.
  - a. The planning commission information meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.
  - b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.
4. *MPD permit public review process.*
  - a. *Completeness check and SEPA.* Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.
  - b. *Optional EIS scoping meeting.* If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.
  - c. *Staff review.* At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.
  - d. *Staff report.* The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.
  - e.

*Hearing examiner public hearing.* The city's hearing examiner shall hold a public hearing on the MPD permit application. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

- (a) Publication in the city's newspaper of record;
  - (b) Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;
  - (c) Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per [Section 18.98.040\(A\)\(9\)](#); and
  - (d) Any person(s) formally requesting notice.
5. *MPD permit approval criteria.* The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in [Section 18.98.080](#).
6. *City council.* At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:
- a. Accept the examiner's recommendation;
  - b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
  - c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.
7. *Appeals.* The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals.

(Ord. No. 897, § 1(Exh. A), 4-16-2009; Ord. No. 935, § 2, 2-18-2010)

### **18.98.070 - MPD permit—Environmental review (SEPA).**

- A. Pursuant to the requirements of the State Environmental Policy Act (SEPA) and local SEPA regulations, the city shall determine whether an environmental impact statement is required for the MPD proposal. An application for an MPD permit shall include, at a minimum, a completed environmental checklist. Prior to or concurrent with application submittal, the city and the applicant may agree to prepare an environmental impact statement for the proposal.
- B. If desired by the applicant and deemed appropriate by the city, an MPD proposal may be designated by the city as a planned action pursuant to RCW 43.21C.031(2) and WAC 197-11-164 et seq.

C. Implementing city permits and approvals, such as preliminary plats, building permits, and design reviews, shall be subject to applicable SEPA requirements.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

### **18.98.080 - MPD permit—Conditions of approval.**

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- A. An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met:
1. The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of [Section 18.98.130](#) have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or regulations, then the specific requirement of this chapter shall be deemed the most stringent.
  2. Significant adverse environmental impacts are appropriately mitigated.
  3. The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule:
    - a. If any phase has not been completed within five years, a new fiscal analysis must be completed with regards to that phase before an extension can be granted; and
    - b. Prior to commencing a new phase.
  4. A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:
    - a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build-out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and to the MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and
    - b. At full build-out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and

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connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.

5. The project, at all phases and at build-out, will not result in the lowering of established staffing levels of service including those related to public safety.
  6. Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the city.
  7. If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.
  8. If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.
  9. The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.
  10. The proposed MPD meets or exceeds all of the public benefit objectives of [Section] [18.98.020](#) and the MPD purposes of [Section] [18.98.010](#)(B) through (M).
  11. If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.
  12. As part of the phasing plan, show open space acreages that, upon build-out, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.
  13. Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.
  14. School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's adopted standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.
- B. So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.

**18.98.090 - MPD permit—Development agreement.**



The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals (preliminary plat, design review, building permit, etc.).

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.100 - MPD permit—Amendments to an approved MPD permit.**



An applicant may request an amendment to any element or provision of an approved MPD. All applications for amendments shall be deemed either "minor" or "major." An amendment application shall be considered minor if it meets all of the following criteria:

- A. Would not increase the total number of dwelling units in an MPD above the maximum number set forth in the approved MPD permit or reduce the number by more than ten percent;
- B. Would not increase the total floor area of nonresidential uses by more than ten percent;
- C. Would not decrease the minimum, or increase the maximum density for residential areas of the MPD beyond density ranges approved in the MPD permit;
- D. Would not decrease the approved amount of open space or recreation space;
- E. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;
- F. Would not adversely impact the project's fiscal projections to the detriment of the city;
- G. Would not significantly impact the overall design of the approved MPD; and
- H. Would not significantly alter the size or location of any designated open space resulting in a lowered level of service and does not reduce the total amount of required open space.
- I. Minor amendments may be approved administratively in accordance with the procedure set forth in the MPD development agreement, where applicable. Any amendment application that is not "minor" shall be deemed to be major. The final determination regarding whether an amendment is "minor" or "major" shall rest with the director, subject to appeal to the hearing examiner. Applications for major modifications shall be reviewed by the same procedures applicable to new MPD permit requests. The city, through the development agreement for the approved MPD, may specify additional criteria for determining whether a proposed modification is "major" or "minor", but the criteria listed in this section cannot be modified or reduced in a development agreement.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.110 - MPD standards—Design review required.**





A. *Design standards.* The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.

B. *Design review process.*

1. *MPD permit.* The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.
2. *Implementing permits or approvals—Residential subdivisions.* Each residential subdivision that is part of an approved MPD shall be reviewed at the time of preliminary plat review for compliance with the city's MPD design standards. This review shall include typical elevations, and exterior material samples for the single-family residences and other structures to be built on the subdivided lots. This review shall be merged with the hearing examiner's review of the preliminary plat.
3. *Implementing permits or approvals—Short subdivisions (short plats).* Short subdivisions (short plats) within an approved MPD shall be reviewed by the director for compliance with the city's MPD design standards as required in [subsection] (2) above.
4. *Implementing permits or approvals—Residential building permits.* Staff shall administratively review residential building permit applications in approved and recorded subdivisions and short subdivisions for consistency with the MPD design guidelines.
5. *Implementing permits or approvals—Other building permits.* All other structures shall be reviewed by the director for compliance with the MPD design standards. The director shall make a decision on the proposal's compliance with the MPD design standards and adopt findings, conclusions and, where applicable, conditions of approval. Building permit applications that are found to be not consistent with the approved design standards shall be rejected, subject to appeal to the hearing examiner.
6. *Future project consistency.* The decision-maker shall not approve a preliminary plat or short plat, or issue a building permit or site plan review approval for a parcel located within an MPD, unless the city has found that the proposal is consistent with applicable MPD design standards.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.120 - MPD standards—Permitted uses and densities. :**

- A. MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.
- B. The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and shall also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.
- C. The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential

units within the MPD, will, with reasonable certainty, be met before full build-out of the residential portion of the Code of Ordinances MPD.

- E. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.
- F. The council may authorize a residential density of up to twelve dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of [Section 18.98.140\(G\)](#), or otherwise is providing the open space required by [Section 18.98.140\(F\)](#), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of [Section 18.98.140\(G\)](#) or is otherwise meeting the open space requirement of [Section] [18.98.140\(F\)](#), an effective density of development up to a maximum of eighteen dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of [Sections] [18.98.010](#) and [18.98.020](#). A MPD may include multi-family housing at up to thirty dwelling units per gross acre, subject to the following:
  - 1. Areas proposed for development at more than eighteen dwelling units per gross acre shall be identified on the MPD plan; and
  - 2. Identified sites shall be located within one-quarter mile of shopping/commercial services or transit routes; and
  - 3. The maximum building height shall not exceed forty-five feet; and
  - 4. Design guidelines controlling architecture and site planning for projects exceeding eighteen dwelling units per gross acre shall be included in the required development agreement for the MPD; and
  - 5. Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but areas subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.
- G. Unless the proposed MPD applicant has elected to meet the open space requirements of [Section 18.98.140\(G\)](#), or is otherwise meeting the open space requirements of [Section 18.98.140\(F\)](#), the following conditions will apply, cannot be varied in a development agreement, and shall preempt any other provision of the code that allows for a different standard:
  - 1. Clustering of residential units shall not be allowed;
  - 2. Residential density shall not exceed four dwelling units per acre in any location;
  - 3. The lot dimension requirements of [Section] [18.44.040](#) shall be met.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

## **18.98.130 - MPD standards—Development standards.**

A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related development agreement may allow development standards different from [those] set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:

- 1. Is needed in order to provide flexibility to achieve a public benefit; and
- 2. Furthers the purposes of this chapter and achieves the public benefits set forth in [Section 18.98.010](#); and
- 3. Provides the functional equivalent and adequately achieves the purpose of the development standard from which it is intended to deviate.

B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.140 - MPD standards—Open space requirements.**



- A. Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreation areas, such as golf courses, trail corridors, playfields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may propose other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by [Chapter 19.10](#).
- B. Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.
- C. The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.
- D. The approved MPD permit and development agreement shall establish specific uses for open space within the approved MPD.
- E. The approved MPD permit and development agreement shall establish which open space shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms.

F. An approved MPD shall contain the amount of open space required by any prior agreement.

G. If an applicant elects to provide fifty percent open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in [Section 18.98.120](#)(F).

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.150 - MPD standards—On-site recreation and trail requirements.** ⋮

- A. An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.
- B. The MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.155 - MPD standards—Sensitive areas requirements.** ⋮

- A. The requirements of the sensitive areas ordinance (Chapter [19.10](#)) shall be the minimum standards imposed for all sensitive areas.
- B. All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.160 - MPD standards—Transfer of development rights.** ⋮

- A. All proposed transfers of development rights shall be consistent with the TDR program (Chapter [19.24](#)). An MPD permit and development agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site.
- B. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.170 - MPD standards—Street standards.** ⋮

- A. Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.
- B. The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.
- C. The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.180 - MPD standards—Stormwater management standards.**

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- A. The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in Sections [18.98.010](#)(C), (H), and (L), [18.98.020](#)(B) and (C), and [18.98.180](#)(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: (1) the transmission of the stormwater by gravity flow to a regional system is not possible and (2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.
- B. The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in [Section 18.98.195](#)(B).
- C. Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD.
- D. The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.190 - MPD standards—Water and sewer standards.**

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- A. An MPD shall be served with public water and sanitary sewer systems that:
  - 1.

Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.

- 2. Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.

B. Each MPD shall develop and implement a water conservation plan to be approved as part of the development agreement that sets forth strategies for achieving water conservation at all phases of development and at full build-out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is two hundred gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is one hundred eighty gallons per day or less per equivalent residential unit.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.195 - Vesting.**



- A. Except to the extent earlier terminated, modified by the provisions of this chapter, or as otherwise specified in the conditions of approval, the MPD permit approval vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.
- B. Vesting as to stormwater regulations shall be on a phase by phase basis.
- C. Vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by [Section 18.98.060\(B\)\(6\)\(c\)](#) shall only be for such period of time as is justified by the required updated analysis.
- D. Building permit applications shall be subject to the building codes in effect at the time a building permit application is deemed complete.
- E. The council may grant an extension of the fifteen year vesting period for up to five years for any phase so long as the applicant demonstrates with clear and convincing evidence that all of the following are met:
  - 1. The phase approval has not been revoked in accordance with the provisions of [Section 18.98.200](#);
  - 2. The failure to obtain the implementing entitlement approval for the applicable phase is a result of factors beyond the applicant's control;
  - 3. The granting of an extension will not adversely impact any of the purposes or public benefit provisions of this chapter; and
  - 4. The city has not adopted ordinances of general application that impose a more stringent development standard than those in effect for the phase for which a time extension is requested or, in the alternative, the applicant agrees to comply with the more stringent standard.

Any request for an extension shall be considered as a major amendment to the MPD. The council may impose such additional conditions to the phases as it deems appropriate to further the purposes and public benefit objectives of the MPD code in light of the number of years that have passed since the original MPD permit approval

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and taking into consideration the effectiveness of the existing permit conditions in meeting those purposes and public benefit objectives.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

### 18.98.200 - Revocation of MPD permit.



The city council may amend or revoke any or all conditions of MPD approval, after public hearing and notice under the following circumstances:

- A. If the MPD permit allowed for phasing and the implementing action (i.e., final plat approval, site plan approval, etc.) for the development of the next phase has not been approved within five years of the approval of the previous phase or, in the case of the first phase, from the original MPD approval and an extension of said phase has not been previously granted. An extension may be granted for up to an additional two years on such additional conditions as the council determines are necessary in order to assure that the extension does not adversely impact the intent and purpose of the initial MPD approval.
- B. A condition of the MPD approval has been violated and the violation has not been corrected after sixty days notice of the violation unless said violation can be corrected through the use of a duly posted performance or maintenance bond provided at the time of MPD approval.
- C. A violation of an MPD condition of approval that cannot be corrected, such as the destruction of wetlands or removal of trees and vegetation that was specifically prohibited and cannot be restored to their original state within sixty days.
- D. The MPD permit has been approved for more than five years and the city council finds that further development will present a threat to the public health, safety and welfare unless the amendment or revocation is implemented; provided, however, the city shall first determine that the condition cannot be amended in order to eliminate the threat to the public health, safety or welfare before it revokes the permit approval.

The above provisions notwithstanding, the vacation and/or amendment of the MPD approval shall not affect previously approved building permits.

- E. If the MPD permit is revoked for undeveloped phases, the parcels for which the permit is revoked cannot be developed without a new MPD permit being obtained, even if the revoked parcels are less than the minimum acreage required by [Section 18.98.030](#).

(Ord. No. 897, § 1(Exh. A), 4-16-2009)