

CHAPTER 3

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3.101 SUMMARY OF APPLICATION TYPES AND REVIEW PROCEDURES

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

3.101.01 Type I Actions

Type I actions are administrative reviews processed by the City staff. The review standards are generally clear and objective and allow little or no discretion. This process is further divided into two parts:

A. Type I-A: A ministerial action reviewed by staff based on clear and objective standards. No conditions may be placed on the decision and notice of the decision is sent only to the applicant. Section 3.202 lists the notice requirements. Appeal is to the Planning Commission. The following actions are processed under the Type I-A procedure:

1. Lot Line Adjustment
2. Minor Variance*
3. Signs
4. Fence Permit
5. Home Occupation

* Requires a written notice a minimum of fourteen (14) days prior to decision, according to 3.202.01 B.

B. Type I-B: A ministerial action reviewed by the Planning Commission based on generally clear and objective standards with some discretion afforded to Planning Commission. Conditions may be placed on the decision and notice is sent to the applicant and property owners within the required notice area. Section 3.202 lists the notice requirements. Appeal is to the City Council. The following actions are processed under the Type I-B procedure:

1. Partitions
2. Site Plan Review
3. Expedited Land Division

3.101.02 Type II Actions

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

- A. Conditional Use Permit
- B. Non-Conforming Uses
- C. Planned Unit Development
- D. Similar Use
- E. Subdivision
- F. Major Variance
- G. Floodplain Permit

3.101.03 Type III Actions

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

- A. Annexation
- B. Comprehensive Plan Map Amendments
- C. Vacation
- D. Zone Change

3.101.04 Type IV Actions

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

3.101.05 Substantial Conformance

City staff or its designee shall determine for Type I-B, Type II, and Type III at the time of final plat or final plan approval that the development is within substantial conformance of all applicable development standards, including but not limited to: lot dimensions, lot size, structure height, yard standards, number of lots/dwellings, on-site parking requirements, landscaping, and signage.

Review for substantial conformance does not allow approval of any reduction in the minimum required by a development standard or any increase in the maximum allowable under a development standard.

3.102 ZONE CHANGE

3.102.01 Process

Zone change shall be reviewed in accordance with the Type III review procedures specified in Section 3.201.

3.102.02 Application and Fee

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

3.102.03 Criteria for Approval

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

- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
- B. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
- C. Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance.
- D. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.
- E. For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met.
- F. The following additional criteria shall be used to review all non-residential changes:
 - 1. The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next five (5) years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed use.
 - 2. The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the

projected rate of development of uses allowed in the zone during the next five (5) years.

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

3.103 CONDITIONAL USE PERMITS

3.103.01 Process

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

3.103.02 Application and Fee

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

3.103.03 Criteria for Approval

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

- A. The use is listed as a conditional use in the underlying district.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.
- C. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services, existing or planned for the area affected by the use.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.
- E. The proposal satisfies any applicable goals and policies of the Comprehensive Plan which apply to the proposed use.
- F. The authorization of such conditional use will not be materially detrimental to the public health, safety and welfare or injurious to property in the vicinity or district in which the property is located, or otherwise conflict with the objectives of any City plan or policy.

3.104 VARIANCES - MINOR AND MAJOR

3.104.01 Purpose

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

A minor variance may be approved for those requests resulting in no more than a ten percent (10%) change in a quantifiable standard. Otherwise, any change to a quantifiable standard will require a major variance.

3.104.02 Applicability

Under the following provisions, a property owner or his designate may propose a modification or variance from a standard or requirement of this Ordinance, except when one or more of the following applies:

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

3.104.03 Criteria and Procedure - Minor Variance

The City recorder, after consultation with city engineer and planner or designee may allow a minor variance from a requirement or standard of this Ordinance in accordance with the Type I-A review procedures provided that the applicant provides evidence that the following circumstances substantially exist:

- A. The intent and purpose behind the specific provision sought to be varied is either clearly inapplicable under the circumstances of the particularly proposed development; or,
- B. The particular development as proposed otherwise clearly satisfies the intent and purpose for the provision sought to be varied; and

- C. The proposed development will not unreasonably impact adjacent existing or planned uses and development; and
- D. The minor variance does not expand or reduce a quantifiable standard by more than ten percent (10%) and is the minimum necessary to achieve the purpose of the minor variance; and
- E. There has not been a previous land use action approved on the basis that a minor variance would not be allowed.

3.104.04 Criteria and Procedure - Major Variance

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

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

3.104.05 Application and Fee

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

3.105 SITE PLAN REVIEW

3.105.01 Purpose

The Site Plan Review Process is intended to:

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

3.105.02 Application and Fee

An application for Site Plan Review shall be filed with the City recorder and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.105.03 Applicability of Provisions

- A. Site Plan Review shall be applicable to all new developments and major remodeling of existing developments except:
 - 1. Single-family detached dwellings;
 - 2. A duplex; or
 - 3. Any commercial or industrial site alteration or building remodel that does not exceed twenty-five percent (25%) of the total square footage of the site or structure.
- B. All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Code.

3.105.04 Review and Approval Process

Site Plan Review applications shall be reviewed in accordance with the Type I-B review procedures specified in Section 3.201.

3.105.05 Submittal Requirements

A. The following information shall be submitted as part of a complete application for Site Plan Review:

1. Site Analysis

- a. Existing site topography;
- b. Identification of areas exceeding ten percent (10%) slopes;
- c. Site drainage, areas of potential flooding;
- d. Areas with significant natural vegetation;
- e. Classification of soil types; and
- f. Existing structures, roadway access and utilities.
- g. Existing and proposed streets, bikeways, and pedestrian facilities within 200 feet.

2. Site Plan

- a. Proposed grading and topographical changes;
- b. All proposed structures including finished floor elevations and setbacks;
- c. Vehicular, bicycle, and pedestrian circulation patterns, parking, loading and service areas;
- d. Proposed access to public roads and highways, bikeways, pedestrian facilities, railroads or other commercial or industrial transportation systems;
- e. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services. Inverse elevations may be required for all underground transmission lines;
- f. Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with surrounding properties and uses;

- g. Proposed on-premise signs, fencing or other fabricated barriers, together with their heights and setbacks;
- h. Proof of ownership and signed authorization for the proposed development, if applicant is not the owner of the site; and
- i. A schedule of expected development.

3.105.06 Evaluation of Site Development Plan

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

- A. Conformance with the General Development Standards contained in this Ordinance including:
 - 1. Streets
 - 2. Off-street parking
 - 3. Public facilities, including storm drainage, and, utility lines and facilities
 - 4. Signs
 - 5. Site and landscaping design
- B. Characteristics of adjoining and surrounding uses;
- C. Drainage and erosion control needs;
- D. Public health factors;
- E. Traffic safety, internal circulation and parking;
- F. Provision for adequate noise and/or visual buffering from non-compatible uses;
- G. Retention of existing natural features on site; and
- H. Problems that may arise due to development within potential hazard areas.
- I. Connectivity of internal circulation to existing and proposed streets, bikeways and pedestrian facilities.

3.105.07 Access

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

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

3.105.08 Expiration of Approval

- A. Site Plan Review approval shall be effective for a period of one year from the date of approval. Substantial construction of the approved plan shall begin within the one (1) year period.
- B. Site Plan Review approval shall be voided immediately if construction on the site is a departure from the approved plan. Substantial conformance, as defined in Section 1.200, is determined according to Section 1.101.05.
- C. The City recorder, after consultation with city engineer and planner shall upon written request by the applicant and payment of the required fee, grant an extension of the approval for a period not to exceed six (6) months provided that:
 - 1. No changes are made to the approved Site Plan Review;
 - 2. The applicant can show intent to initiate construction on the site within the six (6) month extension period; and
 - 3. There have been no changes in the facts or applicable policies or ordinance provisions on which the original approval was based.

3.105.09 Financial Assurances

If required site improvements cannot be completed prior to the issuance of an occupancy permit, a performance bond or other guarantee acceptable to the City Attorney may be required, as provided for in Subsection 3.201.02(F)(3).

3.106 PARTITIONS

3.106.01 Area of Application

A partition is required for any land division which creates two (2) or three (3) parcels in a calendar year. The parcels shall meet the Development Standards for Land Divisions of Section 2.208, other applicable development standards and the following additional requirements:

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

3.106.02 General Provisions

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

3.106.03 Submittal Requirements for Preliminary Review

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

3. Name and addresses of land owner, applicant, engineer, surveyor, planner, architect or other individuals responsible for the plan.
4. Map number and tax lot or tax account number of subject property.
5. The boundary lines and approximate area of the subject property.
6. Dimensions and size in square feet or acres of all proposed parcels.
7. The approximate location and identification of existing streets, bikeways, pedestrian facilities, easements or right-of-ways adjacent to, or within, the subject property, and, existing improvements on the property and important features such as section, political boundary lines.

3.106.04 Process for Preliminary Review

Preliminary plats for partitions shall be reviewed in accordance with the Type I-B review procedures specified in Section 3.201.

3.106.05 Process for Final Plat Approval

- A. Survey Submitted: Within one (1) year of the final decision approving a preliminary plat, a final survey of the approved plat shall be recorded. If the final survey is not submitted within one (1) year, the preliminary approval shall lapse.
- B. Final Approval: If the partition plat is consistent with the approved preliminary plat, and if the conditions of approval have been satisfied, the City recorder, after consultation with city engineer and planner, shall mark a copy of the survey plat "APPROVED" and shall retain one (1) copy for the City's files. See Section 3.101.05.
- C. Recording of Approved Plat Required: No building permit shall be issued, or parcel sold, transferred or assigned until the final approved Plat has been recorded with the County Recorder. The applicant shall be responsible for all recording fees.
- D. Improvements/Bonding: Prior to occupancy, all improvements required by the conditions of approval shall be constructed or the construction shall be guaranteed through a performance bond or other instrument acceptable to the City Attorney, as provided for in Subsection 3.201.02(F)(3).

3.106.06 Expedited Land Division

- A. Definition. An expedited land division:

1. Is an action of the City that:
 - a. Includes land that is zoned for residential uses and is within an urban growth boundary.
 - b. Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.
 - c. Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect open spaces, scenic historic areas, natural resources, and estuarine resources.
 - d. Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.
 - e. Creates enough lots or parcels to allow building residential units at eighty percent (80%) or more of the maximum net density permitted by the zoning designation of the site.
2. Is a land division that:
 - a. Will create three (3) or fewer parcels; and
 - b. Meets the criteria set forth for an action under subsection 3.106.06(A)(1)(a)-(e).

B. Exclusion.

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

- C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.
- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 100 feet of the site proposed for the land division as required by Section 3.202. The notice shall include the following:
1. The deadline for submission of written comments.
 2. The time and place where all copies of evidence submitted by the applicant will be available for review.
 3. The name, address, and telephone number of the City's staff person available to comment on the application.
 4. Summary of the local decision making process for such a decision.
 5. Applicable decision criteria.
 6. Notification that participants must raise all issues during the written comment period.
- E. Initial Decision. The Planning Commission shall allow at least fourteen (14) days for written comments and shall render a decision within 63 days of a complete application. No public hearing may be held during the initial decision making phase.
- F. Notice of Final Decision. A notice of decision must be given to the applicant and other participants of the decision. The notice of decision shall state the appeal process.
- G. Time Extension.
1. Applicant: If a decision is not made within 63 days, the applicant may seek review by writ of mandamus.
 2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in application makes the 63 day period impracticable. Following a seven (7) day notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That determination is specifically declared not to be a land use decision or limited land use decision.

- H. Decision Criteria. Criteria for approving the partition shall be as follows:
1. The criteria established in Section 3.106.01.
 2. Density. The application must be able to establish at least eighty percent (80%) of the allowable density of the applicable residential zone.
 3. Street Standards. The application must comply with the most recent City of Willamina Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards contained within this Ordinance.
- I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within fourteen (14) days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.
- J. Appeal Fee. Filing an appeal requires a deposit of \$300.00 to cover costs. An appellant faces the possibility of an assessment of \$500.00 for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded.
- K. Basis of an Appeal of the Initial Decision. The local appeal shall be based on the following:
1. The failure to meet local substantive and procedural requirements,
 2. Unconstitutionality,
 3. The decision was not within the expedited land division category, or
 4. A party's substantive rights have been substantially prejudiced by an error in procedure of the local government.
- L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.
- M. Hearings Officer Notification. Within seven (7) days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings

officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.

- N. Appeal Hearing. The hearings officer conducts a hearing that:
 - 1. Follows the Commission proceeding requirements,
 - 2. Allows the local government's explanation of its decision, and
 - 3. May consider evidence not previously considered.

- O. Hearings Officer Decision. In all cases , not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.

- P. Appeal of Hearings Officer Decision. Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.

- Q. Basis of an Appeal of the Hearings Officer Decision. The grounds for review of a hearings officer's decision are limited to:
 - 1. Whether the decision followed the process for an expedited land division and appellant raised that issue,
 - 2. Unconstitutionality, and
 - 3. Certain bias or interest on the part of the hearings officer or local government.

- R. Process for Final Plat Approval. Final plats for expedite land divisions shall be reviewed consistent with the requirements in Section 3.106.05.

3.107 SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS

3.107.01 General Provisions

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

3.107.02 Submittal Requirements

- A. The following submittal requirements shall apply to all major partition applications and to Preliminary Plan applications for subdivisions and PUDs.
 - 1. All applications shall be submitted on forms provided by the City to the City recorder along with the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.
 - 2. In addition to the information listed in Subsection 3.106.03 of this ordinance, applicants for subdivisions, and planned unit developments shall submit the following:
 - a. The name, address and phone number of the applicant engineer, land surveyor, or person preparing the application;
 - b. Name of the PUD or subdivision.
 - c. Date the drawing was made.
 - d. Vicinity sketch showing location of the proposed land division.
 - e. Identification of each lot or parcel and block by number.
 - f. Gross acreage of property being subdivided or partitioned.
 - g. Direction of drainage and approximate grade of abutting streets.
 - h. Streets proposed and their names, approximate grade, and radius of curves.

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

3.107.03 Review Procedures

- A. All Preliminary Plans for subdivisions and PUDs shall be heard by the Planning Commission pursuant to the procedures set forth in Section 3.203.
- B. Approvals of any preliminary plans for a subdivision or PUD shall be valid for one year after the date of the written decision. A Final Plat for a Final Plan for a subdivision shall be recorded within this time period or

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

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

3.107.04 Form of Final Subdivision Plat

- A. The final plat shall be prepared in a form and with information consistent with ORS 92.010-92.160, and approved by the County Surveyor.
- B. Where applicable, all Homeowners Agreements, Articles and By-Laws shall be submitted with the final plat for review by the City Attorney.
 - 1. The final plat shall not be approved by the Planning Commission until the Homeowners Association Agreement, Articles and By-Laws are approved.
 - 2. The Homeowner's Association Agreement shall be consistent with Chapter 94, Oregon Revised Statutes.
 - 3. A Certificate of Formation of a non-profit corporation, with a State seal, for the Homeowners Association, shall be submitted with the final plat for review by the Planning Commission.
 - 4. Signed, original documents of the Homeowners Association Agreement, Articles and By-Laws and the Certificate of Formation described in (3) above, shall be recorded with the final plat.
- C. All plat names shall conform to ORS 92.090.

3.107.05 Final Plat Review of Subdivisions

- A. The final subdivision plat shall be submitted to the Planning Commission for review. The Planning Commission shall review the plat to assure compliance with the approved preliminary plat and with the conditions of approval. See Section 3.101.05. The Planning Commission Chairman

shall signify Planning Commission approval of the final plat by signing the recorder's plat sheet and exact duplicate.

- B. The final subdivision plat shall be filed with the appropriate County Department of Assessment and Taxation.

3.108 SIMILAR USES

3.108.01 Purpose and Scope

The purpose of this Section is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein.

3.108.02 Application and Fee

Any application for a similar use shall be filed with the City recorder, after consultation with city engineer and planner and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section.

3.108.03 Process

Similar use requests shall be reviewed in accordance with the Type II review procedures.

3.108.04 Review Criteria

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

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

3.108.05 Determination

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

3.109 NONCONFORMING USES

3.109.01 Purpose and Scope

Within the zoning districts established by this Ordinance and amendments thereto, uses and structures exist which were lawful before the date of adoption or amendment of this Ordinance but which would be prohibited or restricted under the terms of this Ordinance. The general purpose of this Section is to encourage the conversion of such nonconforming uses to conforming uses. However, this Section allows nonconforming uses and structures to be continued, altered, restored or replaced subject to satisfaction of the review criteria specified in Subsection 3.109.03. Nothing contained in this Ordinance shall require any change in the plans, construction, or designated use of any structure for which a building permit was issued and actual construction commenced prior to the date of adoption of this Ordinance or any amendment thereto. However, no alteration of a nonconforming use shall be permitted except in compliance with the provisions of this Section.

3.109.02 Application and Fee

An application for an alteration or expansion of a nonconforming use shall be filed with the City recorder and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Nonconforming use requests shall be heard by the Planning Commission pursuant to the provisions of Sections 3.202 and 3.203.

3.109.03 Discontinuation of Use

If a non-conforming use is discontinued for a period of more than twelve (12) consecutive months, the use shall not be resumed unless the resumed use conforms with the requirements of the Ordinance and other regulations applicable at the time of the proposed resumption. In the event that a structure is destroyed by fire or other natural or man-made causes, City staff shall notify the property owner in writing that they have a maximum of one year to resume the former use.

3.109.04 Alterations Required by Law

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

3.109.05 Maintenance

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

3.109.06 Alteration, Restoration, or Replacement

- A. The City recorder, after consultation with city engineer and planner shall authorize restoration or replacement of a nonconforming use or structure when restoration or replacement is made necessary by fire, casualty, or natural disaster, provided that a building permit for the physical restoration or replacement is obtained within one (1) year of the damage or destruction.
- B. The Planning Commission may extend the restoration or replacement period for an additional six (6) months. In no case shall the total restoration or replacement period exceed eighteen (18) months. Requests for extension of restoration or replacement period shall be submitted in writing thirty (30) days prior to the expiration date of the restoration or replacement period.
- C. The alteration of a nonconforming use or structure may be authorized by the Planning Commission, subject to the Type II review procedure, provided that the applicant demonstrates that the proposal satisfies the following criteria:
 - 1. That the alteration of structures would result in a reduction in nonconformity of the use, or would have no greater adverse impact on the neighborhood
 - 2. If a change in use is requested, the non-conforming use would not be replaced by another non-conforming use (Replacement of a non-conforming use by a use in the same land use category shall not be considered a change of use).

3.109.07 Conditions of Approval

In approving the alteration, restoration, or replacement of a nonconforming use, the Planning Commission may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out. Such conditions shall be reasonably related to the criteria set forth in Subsection 3.109.06.

3.110 LOT LINE ADJUSTMENTS

3.110.01 Area of Application

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

3.110.02 Standards

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

3.110.03 Submittal Requirements

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

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

5. The proposed boundary lines and approximate area of the subject property created before and after the adjustment.
6. Dimensions and size in square feet or acres of all proposed parcels.
7. The approximate location and identification of existing streets, easements or right-of-ways adjacent to, or within, the subject property, and, existing improvements on the property and important features such as section, political boundary lines.

3.110.04 Review Process

A lot line adjustment is subject to Type I-**A** review.

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

- A. A metes and bounds legal description of the adjusted lots is recorded with the appropriate County Clerk.
- B. If required by ORS Chapter 92, a final plat and boundary survey are prepared and all new boundaries are monumented as required by ORS Chapters 92 and 209. The final plat is submitted to the City for signatures. After signatures are received the applicant files the final plat in the County Clerk's office and returns three (3) copies to the City.

3.111 ANNEXATIONS

3.111.01 Authority of City to Annex

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

3.111.02 General Annexation Procedure

- A. Following submission of annexation proposal or initiation, the City recorder, after consultation with city engineer and planner shall set a date for hearing with the City. Notice shall be pursuant to the proposed method of annexation.
- B. The Planning Commission shall hear testimony and shall recommend approval or denial of the proposed annexation and submit such recommendation to the Council within ten (10) days for the hearing. The Planning Commission's decision shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan. For all annexations the decision shall state how the proposal will:
 - 1. Affect the community's air resources;
 - 2. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands;
 - 3. Relate to areas with natural hazards;
 - 4. Affect the fish and wildlife in the proposed annexation;
 - 5. Utilize energy resources and conserve energy use;
 - 6. Protect open spaces and scenic views and areas;
 - 7. Provide for transportation needs in a safe, orderly and economic manner;
 - 8. Provide for an orderly and efficient arrangement of public services;
 - 9. Provide for the recreation needs of the citizens;
 - 10. Affect identified historical sites and structures and provide for the preservation of such sites and structures;

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

3.111.03 Annexation by Election

- A. The Council, upon approval of the annexation proposal, has the authority to submit, except when not required under ORS. 222.850 to 222.915, to dispense with submitting the proposal for annexation to the registered voters of the City.
- B. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose. The proposal for annexation may be voted upon by the voters of the City and of the territory simultaneously or at different times not more than twelve (12) months apart.
- C. Two (2) or more proposals for annexation may be voted upon simultaneously; however in the City each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.
- D. The Council shall give notice of each annexation election by publication prior to such election once each week for four (4) successive weeks in a newspaper of general circulation in the City. Whenever simultaneous elections are held, the same notice and publication shall fulfill the requirements of publication for the City election and the election held in the territory. Notice shall also be given by posting notices of the election in four (4) public places within the City if votes are to be cast therein and four (4) public places in each territory proposed to be annexed for a like period as provided in this section for publication of notice. The notice shall distinctly state the proposition to be submitted, shall contain a legal description of, and a map indicating the boundaries of each territory proposed to be annexed, and the registered voters shall be invited thereby to vote upon such annexation. The Council shall also designate and the notice shall state the hours during which the polls will be open within the

City and each territory proposed to be annexed. If the election is to be held at the usual precinct polling places designated for a general election held at that time, or if the election is not held at the same time as a general election, but is held at the same polling places used for the last preceding general election, the notice shall so state; if any polling place is to be different than the regular polling places, the notice shall describe the location of the polling places to be used in the area or precincts in which the polling places are different.

3.111.04 Annexation Procedure Without City Election

- A. By ordinance, the Council may elect to dispense with submitting the annexation proposal to the registered voters of the City, set a date for public hearing, at which time the registered voters of the City can be heard on the annexation proposal.
- B. Notice of the public hearing shall be published once a week for two (2) successive weeks prior to the day of the hearing, in a newspaper of general circulation in the City, and posted in four (4) public places in the City for a like period.
- C. Written notice shall be given to all property owners within the boundaries of the proposed annexation and within 500 feet of the external boundaries of the proposed annexation.
- D. After the public hearing the Council, by ordinance subject to referendum, and containing a legal description of the proposed annexation:
 - 1. Declare that the territory is annexed to the City upon the condition that the majority of the votes cast in the territory is in favor of annexation;
 - 2. Declare that the territory is annexed to the City where persons with land ownership in the proposed territory consent in writing to such annexation as provided in Section 3.200.

3.111.05 Annexation Procedure with Election in Proposed Territory

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

2. The Council takes the necessary action to call the annexation election in the City under Subsection 3.111.03 (D), if the Council submits the question to the registered voters of the City.

3.111.06 Island Annexation

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

3.111.07 Submission of Annexation Reports

- A. The City shall report all changes in the boundaries or limits of the City to the County Clerk and County Assessor. The report shall contain a legal description of the new boundaries and shall be filed within ten (10) days from the effective date of the change of any boundary lines.
- B. With the exception of "Island Annexation" the City recorder, after consultation with city engineer and planner shall submit to the Secretary of State:
 1. A copy of the annexation ordinance;
 2. An abstract of the vote within the City if votes were cast therein, which shall show the whole number of registered voters voting therein on the annexation, the number of votes cast against annexation;
 3. A copy of the statement of consent of landowners in the territory annexed;
 4. A copy of the ordinance of the City declaring that no election is required in the City; and
 5. An abstract of the vote upon the referendum if a referendum petition was filed with respect to the deferred ordinance.

3.111.08 Effective Date of Annexation

The annexation shall be complete from the date of filing with the Secretary of State as provided in ORS 222.150, 222.160, 222.170, 111.900, and Subsection 3.111.07 (B). Thereafter, the annexed territory shall be and remain part of the

City. The date of such filing shall be the effective date of annexation, provided such filing is not made later than ninety (90) days prior to any general or primary election; otherwise, the effective date of such annexation shall be the day after the primary or general election next following the date of filing.

3.111.09 Zone Designation of Annexed Property

The City Council shall establish the appropriate Plan designation and zoning upon annexation of property to the City.

3.200 ADMINISTRATIVE PROCEDURES

Section 3.201	GENERAL PROCEDURES
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3.201.03	Procedure for Type II and Type III Actions
Section 3.202	PUBLIC NOTICE REQUIREMENTS
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3.201 GENERAL PROCEDURES

3.201.01 Procedure for Type I-A Review

Applications subject to administrative review shall be reviewed and decided by the City recorder, after consultation with city engineer and planner.

- A. Upon receipt of an application for a Type I-A land use action, the City staff shall review the application for completeness.
 - 1. Incomplete applications shall not be reviewed until all required information has been submitted by the applicant.
 - 2. If incomplete, the applicant shall be notified and provided additional time of up to thirty (30) days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of scheduling the review and all related timing provisions either:
 - 1. Upon receipt of the additional information; or, if the applicant refuses to submit the information;
 - 2. On the 31st day after the original submittal the application shall be deemed complete for review purposes.
- C. Referrals will be sent to interested agencies such as City departments, school district, utility companies, and applicable state agencies.
- D. If the staff finds that the facts of the particular case require interpretation of existing standards, then a public hearing before the Planning Commission shall be scheduled. The procedures for conducting the public hearing shall comply with the standards in Sections 3.203.
- E. Within thirty (30) days of receipt of a complete application or such longer period mutually agreed to by both staff and the applicant, staff shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Ordinance;
- F. Notice shall be provided consistent with Section 3.202.01.
- G. A Type I-A land use decision may be appealed by the applicant to the Planning Commission. The appeal shall be filed within ten (10) days from the date of the decision, pursuant to the provisions of Section 3.205.
- H. The timing requirements established in this Section are intended to allow a final action, including resolution of any appeals, within one hundred

twenty (120) days of receipt of a complete application. If for any reason it appears that such final action may not be completed within the 120 day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.

1. The City staff shall notify the City Council of the timing conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120 day period.
2. Public notice shall be mailed to affected parties as specified in Section 3.202.
3. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Section 3.204 and render a decision approving or denying the request within the 120 day period. Such action shall be the final action by the City on the application.

3.201.02 Procedure for Type I-B Review

Applications subject to administrative review shall be reviewed and decided by the Planning Commission.

- A. Upon receipt of an application for a Type I land use action, the City staff shall review the application for completeness.
 1. Incomplete applications shall not be reviewed until all required information has been submitted by the applicant.
 2. If incomplete, the applicant shall be notified and provided additional time of up to thirty (30) days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of scheduling the hearing and all related timing provisions either:
 1. Upon receipt of the additional information; or, if the applicant refuses to submit the information;
 2. On the 31st day after the original submittal the application shall be deemed complete for review purposes.
- C. Referrals will be sent to interested agencies such as City departments, police and departments, school district, utility companies, and applicable

state agencies at the City recorder/Clerk's option. If a county road or state highway might be impacted, referrals should be sent to Yamhill or Polk County Public Works and/or ODOT.

- D. If the staff finds that the facts of the particular case require interpretation of existing standards, then a public hearing before the Planning Commission shall be scheduled. The procedures for conducting the public hearing shall comply with the standards in Sections 3.203.
- E. Within thirty (30) days of receipt of a complete application or such longer period mutually agreed to by both staff and the applicant, staff shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Ordinance;
- F. Approvals of a Type I-B action may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:
 - 1. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by a proposed land use described in an application. Conditions shall be related to the following:
 - a. Ensure that the standards of the development code are met; or
 - b. Fulfillment of the need for public service demands created by the proposed use.
 - 2. Changes of alterations of conditions shall be processed as a new administrative action.
 - 3. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant provides information which demonstrates that it is not practical to fulfill all conditions prior to issuance of such permit, the City may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions.
 - a. Types of Guarantees. Performance guarantees may be in the form of performance bond payable to the City of Willamina, cash, certified check, time certificate of deposit, or other form acceptable to the City. The form must be approved by the City Attorney and appropriate documents filed with the City recorder.

- b. Amount of Guarantee. The amount of the guarantee must be equal to at least one-hundred-ten percent (110%) of the estimated cost of the performance. The applicant must provide a written estimate acceptable to the City, which must include an itemized estimate of all materials, labor, equipment and other costs of the required performance.

- G. Notice of the decision shall comply with the provisions in Section 3.202.01.

- H. A Type I-B land use decision may be appealed to the Planning Commission, by either the applicant or persons receiving notice of the decision. The appeal shall be filed within ten (10) days from the date of the decision, pursuant to the provisions of Section 3.205.

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

3.201.03 Procedure for Type II and Type III Actions

- A. Upon receipt of an application for Type II or Type III land use action, the City staff shall review the application for completeness.
 - 1. Incomplete applications shall not be scheduled for Type II or Type III review until all required information has been submitted by the applicant.

2. If incomplete, the applicant shall be notified and provided additional time of up to thirty (30) days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of scheduling the hearing and all related timing provisions either:
1. Upon receipt of the additional information; or, if the applicant refuses to submit the information;
 2. On the 31st day after the original submittal the application shall be deemed complete for scheduling purposes only.
- C. Applications for more than one Type II or Type III land use action for the same property may, at the applicant's discretion, be combined and heard or reviewed concurrently.
- D. Referrals will be sent to interested agencies such as City departments, school district, utility companies, and applicable state agencies at the City recorder/Clerk's option. If a county road or state highway might be impacted, referrals should be sent to Yamhill or Polk County Public Works and/or ODOT.
- E. The Public Hearing shall be scheduled and notice shall be mailed to the applicant and adjacent property owners. Notice requirements shall comply with Section 3.202.02.
- F. Staff shall prepare and have available within seven (7) days of the scheduled hearing a written recommendation concerning the proposed action. This report shall be mailed to the applicant and available at City Hall for all interested parties.
- G. The public hearing before the Planning Commission shall comply with the provisions in Section 3.203.
- H. Approvals of any Type II or Type III action may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:
1. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by a proposed land use described in an application. Conditions shall be related to the following:

- a. Protection of the public from the potentially deleterious effects of the proposed use; or
 - b. Fulfillment of the need for public service demands created by the proposed use.
- 2. Changes or alterations of conditions shall be processed as a new administrative action.
- 3. Whenever practical, all conditions of approval required by the City shall be completed prior to occupancy. When an applicant provides information which demonstrates to the satisfaction of the Planning Commission that it is not practical to fulfill all conditions prior to issuance of such permit, the Planning Commission may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions.
 - a. Types of Guarantees. Performance guarantees may be in the form of performance bond payable to the City of Willamina, cash, certified check, time certificate of deposit, or other form acceptable to the City. The form must be approved by the City Attorney and appropriate documents filed with the City recorder.
 - b. Amount of Guarantee. The amount of the guarantee must be equal to at least one-hundred-ten percent (110%) of the estimated cost of the performance. The applicant must provide a written estimate acceptable to the City, which must include an itemized estimate of all materials, labor, equipment and other costs of the required performance.
 - c. Time Periods. The Planning Commission may grant a waiver of performance for a period not to exceed six (6) months. A request for extension of any waiver granted must be submitted to and approved by the City Council.
- I. The applicant shall be notified, in writing, of the Planning Commission's decision or recommendation. In addition, notice of the Commission's decision shall be mailed to individuals who request such notice at the public hearing, or, by those individuals who submitted a written request for notice prior to the public hearing.
- J. A Type II land use decision may be appealed to the City Council by either the applicant or persons receiving notice of the decision. The appeal shall be filed within ten (10) days from the date of the decision, pursuant to the

provisions of Section 3.205. Type III land use applications are automatically reviewed by the City Council.

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

3.202 PUBLIC NOTICE REQUIREMENTS

3.202.01 Type I Actions

- A. Written notice of any Type I-A decision shall be mailed to the applicant.
- B. Written notice of any Type I-B action shall be mailed to the applicant and all property owners, including county and state agencies responsible for roads and highways, within 100 feet of the subject property a minimum of fourteen (14) days prior to the decision.

3.202.02 Type II and Type III Actions

- A. Notice of any public hearings before the Planning Commission or City Council for a Type II or Type III land use action required by this Ordinance shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to the public hearing. Newspaper notice shall only be required for comprehensive plan amendments, subdivisions, vacations, and zone changes.
- B. Written notice of the initial public hearing shall be mailed at least twenty (20) days prior to the hearing date to the owners of property, including county and state agencies responsible for roads and highways, within 100 feet of the boundaries of the subject property.
- C. Where a multiple hearing application is scheduled (Type IV) only a ten (10) day written and published notice shall be required.

3.202.03 Notice for Appeals

- A. Notice of hearings on appeal to either the Planning Commission or City Council shall be pursuant to Subsection (A) above, and shall include written notice at least ten (10) days prior to hearing to the appellant, the applicant and any other individuals who received notice of the original decision.

3.202.04 Notice Requirements

- A. Public notice shall:
 - 1. Explain the nature of the application and the proposed use or uses which could be authorized;
 - 2. Cite the applicable criteria from the ordinance and the plan which apply to the application at issue;

3. Set forth the street address or other easily understood geographical reference to the subject property;
4. State the date, time and location of the hearing;
5. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Appeals Board of Appeals;
6. Include the name of the City representative to contact and the telephone number where additional information may be obtained;
7. State that a copy of the application, all documents and evidence relied upon by the applicant and application criteria are available for inspection at no cost and a copy will be available at reasonable cost;
8. State that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and a copy will be provided at reasonable cost;
9. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearing.

3.203 PUBLIC HEARING BEFORE THE PLANNING COMMISSION

3.203.01 General Provisions

- A. Land use actions which require a public hearing by the Planning Commission under the provisions of this Ordinance shall be initially heard by the Planning Commission within sixty (60) days of the receipt of a complete application or appeal.
- B. The Planning Commission may continue a public hearing for additional, information, testimony or for decision only, to its next regular meeting or to a special meeting. In no instance, however, shall the decision be continued more than sixty (60) days beyond the initial hearing date.
- C. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing.
- D. The decisions of the Planning Commission on applications for Type II actions shall be final unless appealed to the City Council pursuant to Section 3.205.
- E. The recommendations of the Planning Commission on applications for Type III actions shall be referred to the City Council for final determination, pursuant to Section 3.204.
- F. An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) may be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the city. Such issues shall be raised with sufficient specificity so as to afford the City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- G. Appeal of a Type I action shall be heard by the Planning Commission in accordance with provisions of Section 3.205. Findings of the Planning Commission on such appeal shall be final unless further appealed to the City Council.

3.203.02 Public Hearing Procedures

- A. The Public Hearing shall be conducted under the following procedures:
 - 1. Open the public hearing and announce the purpose.
 - 2. Reading of public hearing declarations.

3. Call for abstentions.
4. Ask for objections to jurisdiction.
5. Staff report.
6. Proponents address Commission/Council.
 - a. Principal.
 - b. Others.
7. Opponents address Commission/Council.
8. Questions of proponents and opponents from the floor and Commission/Council directed through Chair/Mayor.
9. Public Agencies.
10. Letters.
11. Proponent/opponent rebuttal.
12. Staff recommendation.
13. Close of hearing.
14. Deliberation of Commission/Council of findings of fact.
15. Decision

3.203.03 Evidence

- A. All evidence offered and not objected to may be received unless excluded by the Planning Commission on its own motion. Evidence may be received subject to a later ruling as to its admissibility.
- B. The Planning Commission may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence; but erroneous admission of evidence by the Commission shall not preclude action or cause reversal on appeal

unless shown to have substantially prejudiced the rights of a party. When a hearing will be expedited, any part of the evidence may be received in written form.

- C. All evidence shall be offered and made a part of the public record in the case.
- D. The Planning Commission may take notice of judicially recognizable facts, and members may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Planning Commission members may utilize their experience, technical competence and specialized knowledge in evaluation of the evidence presented.
- E. Every party is entitled to an opportunity to be heard and to present and rebut evidence.
- F. All interested persons shall be allowed to testify.

3.203.04 Record of Hearing

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

3.203.05 Limits on Oral Testimony

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

3.203.06 Exhibits

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

3.204 REVIEW AND PUBLIC HEARINGS BY CITY COUNCIL

3.204.01 General Provisions

- A. Action on Type III Reviews: The City Council shall hear all Type III actions pursuant to Subsection 3.201.02. The City Council action on such requests shall be the final action of the City on the request.
- B. Appeals: The City Council shall hear appeals of all Planning Commission actions conducted pursuant to Section 3.205. The appeal hearing shall be conducted in a manner consistent with Section 3.204. The action of the Planning Commission shall be final and the appeal shall not be heard by the Council if the appeal period has lapsed.
- C. All hearings or reviews required by the City Council shall be heard within thirty (30) days of the Planning Commission's written decision or appeal request. In no instance, however, shall this period extend the date of the hearing and final action beyond 120 days from the date of the initial submission of a complete application, unless voluntarily agreed to by the applicant.
- D. The decision shall be made by the City Council and written findings prepared listing findings for approval or denial, and any conditions of approval, within two (2) weeks of the hearing by the City Council. In no case, however, shall this decision and the preparation of written findings extend beyond 120 days from the date of initial submittal of a complete application, unless voluntarily agreed to by the applicant.

3.204.02 Hearings by City Council

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

3.204.03 Review by City Council

- A. Review on Record: Except as set forth in Subsection 3.203.03 (B), the City Council review of an appeal on an action by the Planning Commission shall be confined to the record of the initial proceeding. Parties may offer testimony regarding alleged errors in the Planning Commission action. The meeting shall be conducted as set forth in the City Council's adopted rules of procedures. The record of the initial proceeding shall include:

1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Planning Commission as evidence;
2. All materials submitted by the City Staff with respect to the application;
3. The transcript of the hearing; and
4. The findings and action of the Planning Commission and the notice of decision.

- B. Submission of New Testimony and De Novo Hearings: The City Council may admit additional testimony and other evidence by holding a de novo hearing.

Upon the decision to admit additional testimony or other evidence and to hear the entire matter de novo, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters at the initial hearing.

- C. City Council Action: The City Council may affirm, rescind or amend the action of the Planning Commission and may grant approval subject to conditions necessary to carry out the Comprehensive Plan and as provided for in Subsection 3.201.02. The City Council may also remand the matter back to the Planning Commission for additional information, subject to the agreement of the applicant to extend the 120 day review period specified in Section 3.201.02(I).

3.205 APPEAL PROVISIONS

3.205.01 Appeal Period

- A. The decision of the City recorder, after consultation with city engineer and planner, shall be final for a Type I-A land use decision unless a notice of appeal from an appropriate aggrieved party is received by the City within fourteen (14) calendar days of the date of the final written notice, or unless the City Council, on its own motion, orders review within fourteen (14) calendar days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal.
- B. The decision of the Planning Commission for a Type I-B or II land use decision, or the appeal of a Type I-A decision, shall be final unless a notice of appeal from an aggrieved party is received by the City within fourteen (14) calendar days of the date of the final written notice, or unless the City Council, on its own motion, orders review within fourteen (14) calendar days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal.

3.205.02 Form of Appeal

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

3.205.03 Notice Requirements

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

3.205.04 Transcript Fees

In addition to other fees for appeal requests, any person requesting a verbatim transcript shall pay a transcript fee equal to the actual cost of the preparation of the transcript up to \$500, plus one-half (1/2) the actual costs over \$500. The cost of the transcript fee shall be determined by the cost per page for the preparation of such transcripts, at the rate of \$0.25 per page.

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

3.206 FEES

3.206.01 Purpose

Fees are for the purpose of defraying administrative costs.

3.206.02 General Provisions

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

3.207 TYPE IV ACTIONS

3.207.01 Initiation

Type IV may be initiated by:

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

3.207.02 Procedure for Type IV Actions

A. Public Hearings by Planning Commission

- 1. A public hearing shall be held by a majority of the Planning Commission on all proposed amendments to this Ordinance and on all legislative amendments to the Zoning Maps.

The Planning Commission may continue any hearing in order to make a reasonable decision.

- 2. Amendments shall be considered and acted upon by the Planning Commission and no extension granted by the City Council, the City Council may act upon the amendment.
- 3. Notice of the time, place and purpose of the Planning Commission's hearings shall be given by publication of a notice in a newspaper of general circulation in the City not less than twenty (20) days prior to the date of hearing.

- B. Public Hearing by City Council: Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments. Notice shall be as specified in Section 3.202.

3.208 REVOCATION OF DECISION

3.208.01 Compliance with Conditions

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

3.208.02 General Provisions

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