

TITLE 19 – ADMINISTRATION OF LAND USE AND DEVELOPMENT

- 19.1 TYPES OF REVIEW PROCEDURES
- 19.2 LAND USE REVIEW AND SITE DESIGN REVIEW
- 19.3 LAND DIVISIONS AND PROPERTY LINE
ADJUSTMENTS
- 19.4 CONDITIONAL USE PERMITS
- 19.5 MASTER PLANNED DEVELOPMENTS
- 19.6 MODIFICATIONS TO APPROVED PLANS &
CONDITIONS OF APPROVAL
- 19.7 LAND USE DISTRICT MAP & TEXT
AMENDMENTS
- 19.8 CODE INTERPRETATIONS
- 19.9 MISCELLANEOUS PERMITS – TEMPORARY
USES, HOME OCCUPATIONS

CHAPTER 19.1 TYPES OF REVIEW PROCEDURES

SECTIONS:

- 19.1.100 PURPOSE & APPLICABILITY OF REVIEW PROCEDURES**
- 19.1.200 TYPE I PROCEDURE**
- 19.1.300 TYPE II PROCEDURE**
- 19.1.400 TYPE III PROCEDURE**
- 19.1.500 TYPE IV PROCEDURE**

- 19.1.600 COMPLETENESS REVIEW AND 120 DAY RULE**
- 19.1.610 PRE-APPLICATION CONFERENCES**

- 19.1.630 PLANNING DIRECTOR'S DUTIES**
- 19.1.640 AMMENDED APPLICATIONS**
- 19.1.650 RE-SUBMITTAL**

- 19.1.670 CONSOLIDATED PROCEDURE**
- 19.1.680 NON-LAND DECISION**
- 19.1.700 DESIGN REVIEW BOARD NOTICE PROCEDURE**
- 19.1.710 QUASI-JUDICIAL HEARING PROCESS**
- 19.1.730 REQUESTS FOR CONTINUANCES AND TO KEEP THE RECORD OPEN**
- 19.1.740 CONDITIONS OF APPROVAL AND NOTICE OF DECISION**
- 19.1.750 OBJECTIONS TO PROCEDURE**
- 19.1.760 EXTENSION OF APPROVAL**
- 19.1.770 RE-APPLICATION LIMITED**
- 19.1.780 EXPIRATION OF AN APPROVAL**
- 19.1.800 AUTHORIZATION OF SIMILAR USES**
- 19.1.810 REVOCATION OF A PREVIOUSLY APPROVED PERMIT**
- 19.1.820 RECONSIDERATION OF A FINAL DECISION**
- 19.1.830 TRANSFER OF APPROVAL RIGHTS**
- 19.1.840 PERFORMANCE GUARANTEES**
- 19.1.850 COVENENT WITH THE CITY**
- 19.1.860 FEE'S**
- 19.1.900 SPECIAL PROCEDURES**
- 19.1.910 TRAFFIC IMPACT STUDIES**

- 19.1.100 PURPOSE AND APPLICABILITY OF REVIEW PROCEDURES**

A. Purpose. The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 18.1.100 provides a key for determining the review procedure and the decision-making body for particular approvals.

B. Applicability of Review Procedures. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures: Type I, II, III, and IV. These procedures are described in subsections 1-4 below. Table 18.1.100 lists all of the City’s land use and development approvals and their required review procedure(s).

1. Type I Procedure (Administrative). Type I decisions are made by the City Planning Director without public notice and without a public hearing. Type I decisions require the application of clear and objective standards and do not require the exercise of policy or legal judgment in evaluating the application.
2. Type II Procedure (Administrative). Type II decisions are made by the City Planning Director with public notice, and an opportunity for a public hearing if appealed. The appeal of a Type II decision is heard by the Planning Commission;
3. Type III Procedure (Quasi-Judicial). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.
4. Type IV Procedure (Legislative). Type IV procedures apply to legislative decisions. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts, not just one property). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

C. Review by the Planning Commission and City Council

1. Review of a decision by the Planning Director or designee or a Hearings Body's decision may be initiated by not less than 4 members of the Planning Commission or the City Council.
2. The review shall be initiated in writing and delivered to the Planning Director within 12 days of the date of the mailing of the final written decision of the Planning Director or lower Hearings Body.
3. Review shall be conducted in the same manner provided for an appeals, except that an appeal fee and transcript shall not be required.

Table 19.1.100 Summary of Approvals by Type of Review Procedure		
Approvals*	Review Procedures	Applicable Regulations
Access Permit (public street)	Type I	Chapters 18.1, 19.2, 19.3; Engineering Standards
Building Permit	N/A	Building Code
Code Interpretation	Type II	Chapter 19.8
Code Amendment	Type IV	Chapter 19.7
Comprehensive Plan Amendment	Type IV	Comprehensive Plan
Conditional Use Permit	Type III	Chapter 19.4
Flood Plain Development Permit	Type I	Building Code
Home Occupation	Type I	Chapter 19.9.200
Master Planned Development	Type III	Chapter 19.5
Modification to Approval	Type II/III (minor or major)	Chapter 19.6
Land Use District Map Change Quasi-Judicial (no plan amendment required) Legislative (plan amendment)	Type III Type IV	Chapter 19.7
Property Line Adjustments & Lot Consolidations	Type II	Chapter 19.3
Lot of Record Determination	Type II	Chapter 20.4
Non-Conforming Use or Development Confirmation	Type II	Chapter 20.3
Partition	Type II	Chapter 19.3
Sign Permit	Type I	Chapter 18.8
Land Use Review	Type I	Chapter 19.2, Building Code
Site Design Review	Type II / III	Chapter 19.2
Subdivision Preliminary Plan Final Plat	Type III Type I/	Chapter 19.3
Temporary Use Permit	Type II	Chapter 19.9.100
Tree Removal	Type I	Chapter 18.7, Chapter 18.2
Variance	Type I Type II Type III	Chapter 20.1

* The applicant may be required to obtain approvals from other agencies, such as a road authority. The City notifies agencies of applications that may affect their facilities or services.

19.1.200 TYPE I PROCEDURE (ADMINISTRATIVE)

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the City.
2. Submittal Requirements. Type I applications shall:
 - a. Include the information requested on the application form;
 - 1) A permit may be initiated only by the record property owner, contract purchaser (or a representative of the owner or purchaser), the City Manager or designee.
 - 2) Where there is more than one record owner, the City will not accept an application without signed authorization from all record owners.
 - b. Address the criteria in sufficient detail for review and action; and
 - c. Include the required fee.
 - d. The applicant has the burden of demonstrating, with evidence that all applicable approval criteria are or can be met.

B. Notice of Application for Type I Administrative Decision. Notice is only required to be provided to the applicant and must be posted in a public place at City Hall and on the property as stated in “C” below. No additional notice is required.

C. Posting of Property. The applicant is responsible for posting the property in the following manner:

1. City Guidance and the Applicant’s Responsibility
 - a. The City shall supply all notices that an applicant is required to post on the subject property, and shall specify the dates the notices are to be posted as well as the earliest date on which they may be removed;
 - b. The City shall also provide a statement, to be signed and returned by the applicant, certifying that the notice(s) were posted at the correct time. If there is any delay in the City’s land use process caused by the applicant’s failure to correctly post the subject property for the required period of time and in the correct location, the applicant shall extend the 120-day period by that amount of time expired since the notice was sent or the problem was found and notification sent to the applicant..
2. Number and Location of Postings

- a. The applicant must place the notices on each frontage of the subject property where a public right-of-way abuts the subject property;
- b. If a property's frontage exceeds 600 feet, the applicant shall post one copy of the notice for each 600 feet or fraction thereof;
- c. In the case a property's size and dimension does not meet the requirements above, the Planning Director may require additional notices to be posted;
- d. The applicant shall remove the signs within 10 days following the event announced in the notice.

D. Administrative Decision Requirements. The Planning Director's shall issue a written decision that addresses all of the approval criteria, including any applicable requirements of a road authority. Based on the criteria and the information in the record, the Planning Director shall approve or deny the application. A copy of the decision shall be provided to the applicant and kept on file at City Hall.

E. Final Decision and Effective Date. A Type I administrative decision is final for purpose of appeal when it is mailed by the City. A Type I administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

F. Appeal. A Type I administrative decision may be appealed to the Planning Commission as follows:

1. **Who May Appeal.** The following people may appeal a Type I administrative decision:
 - a. The applicant or owner of the subject property;
 - b. A person who submitted written comments on the application.
 - c.
2. **Appeal filing procedure.** A person may appeal a Type I decision by filing a Notice of Appeal according to the following procedures:
 - a. **Time for Filing.** A Notice of Appeal shall be filed with the Planning Director within 14 days of the date the Notice of Decision was mailed;
 - b. **Content of Notice of Appeal.** The Notice of Appeal shall contain:
 - 1) The City Planning file number and date the decision to be appealed was rendered;

19.1 – Types of Applications and Review Procedures – Type I (Administrative)

- 2) The name, mailing address and daytime telephone number of each appellant;
 - 3) A statement of how the appellant has standing to appeal;
 - 4) A statement of the basis for the appeal; and
 - 5) The applicable appeal fee.
3. Scope of appeal. Appeal of a Type I administrative decision shall be heard by the Planning Commission de novo and the Planning Commission shall allow any person to submit evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. Final Decision by the City. The decision of the Planning Commission regarding an appeal of a Type II administrative decision is the final decision of the City. The decision of the Planning Commission on an appeal is final and effective on the date it is mailed by the City. The Planning Commission’s decision may be appealed to the State Land Use Board of Appeals (LUBA).

19.1.300 TYPE II PROCEDURE (ADMINISTRATIVE)

A. Pre-application Conference. A pre-application conference is required for Type II reviews. The requirements and procedures for a pre-application conference are described in Section 19.1.610.

B. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the City.
2. Submittal Requirements. Type II applications shall:
 - a. Include the information requested on the application form;
 - 1) An application may be initiated only by the record property owner, contract purchaser (or a representative of the owner or purchaser), the City Manager or designee.
 - 2) Where there is more than one record owner, the City will not accept an application without signed authorization from all record owners.
 - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Section 19.2 (Land Use Review), 19.3 (Land Divisions), 19.6 (Modifications), 19.8 (Code Interpretations), and 19.9 (Miscellaneous Permits);
 - c. Address how the application complies or can be made to comply with the applicable criteria in sufficient detail for review and action;
 - d. Include the required fee;
 - e. Include one set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application as required in this section. The records of the Clackamas County Assessor's office are the official records for determining ownership. The applicant shall produce the notice list. At the applicant's request, and upon payment of a fee noted on the City's fee list, the City shall prepare the public notice mailing list. The City or the applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of the application.

3. The applicant has the burden of demonstrating, with evidence that all applicable approval criteria are or can be met.

C. Notice of Application for Type II Administrative Decision.

1. The Planning Director shall provide public notice of the application not less than 14 days prior to making a Type II administrative decision, and shall accept written comments. Notice of the application shall be mailed, by first class mail, to:
 - a. All owners of record of real property within a minimum of 500 feet of the subject site;
 - b. Any City recognized neighborhood association whose territory includes the subject property;
 - c. Any person who submits a written request to receive a notice; and
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail owner, when there is a proposed development abutting or affecting their transportation facility.
2. The purpose of the notice is to give nearby property owners and other interested parties an opportunity to submit written comments before the Type II decision is made.
3. Notice of a pending Type II administrative decision shall:
 - a. Explain the nature of the application and the proposed use or uses which would be authorized;
 - b. List the applicable criteria from the MDC and the plans that apply to the application;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
 - e. Include the name and telephone number of a contact person regarding the administrative decision;
 - f. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

- g. State that failure of an issue to be raised or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue;
- h. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost;
- i. State that after the comment period closes, the Planning Director shall issue a Type II administrative decision, and that the decision shall be mailed to the applicant and those who submitted written comments or who are otherwise legally entitled to notice.

D. Posting of Property. The applicant is responsible for posting the property in the following manner:

1. City Guidance and the Applicant’s Responsibility
 - a. The City shall supply all notices that an applicant is required to post on the subject property, and shall specify the dates the notices are to be posted as well as the earliest date on which they may be removed;
 - b. The City shall also provide a statement, to be signed and returned by the applicant, certifying that the notice(s) were posted at the correct time. If there is any delay in the City’s land use process caused by the applicant’s failure to correctly post the subject property for the required period of time and in the correct location, the applicant shall extend the 120-day by that amount of time expired since the notice was sent or the problem was found and notification was sent to the applicant.
2. Number and Location of Postings
 - a. The applicant must place the notices on each frontage of the subject property along a public right-of-way;
 - b. If a property’s frontage exceeds 600 feet, the applicant shall post one copy of the notice for each 600 feet or fraction thereof;
 - c. In the case a property’s size and dimension does not meet the requirements above, the Planning Director may require additional notices to be posted;
 - d. The applicant shall remove the signs within 10 days following the event announced in the notice.

E. Administrative Decision Requirements.

1. The Planning Director shall make a Type II written decision addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the application.
2. The Type II Notice of Decision shall contain:
 - a. A description of the applicant’s proposal and the City’s decision on the proposal (i.e., may be a summary);
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
 - c. A statement of where the City’s decision can be obtained;
 - d. The date the decision shall become final, unless appealed; and
 - e. A statement that all persons entitled to notice may appeal the decision.

F. Notice of Decision.

Within 5 days after the Planning Director signs the decision, Notice of a Type II Decision shall be sent by First Class mail to:

1. The applicant;
2. Any person who submits a written request to receive notice, or provides comments during the application-review period;
3. Any City-recognized neighborhood group or association whose boundaries include the site; and
4. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.

F. Final Decision and Effective Date. A Type II administrative decision is final when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

G. Appeal. A Type II administrative decision may be appealed to the Planning Commission as follows:

1. Who may appeal. The following people may appeal a Type II administrative decision:
 - a. The applicant;
 - b. Any person who was entitled to written notice of the Type II administrative decision;
 - c. Any other person who participated in the proceeding by submitting written comments.
2. Appeal filing procedure. A person may appeal a Type II administrative decision by filing a Notice of Appeal according to the following:
 - a. Time for Filing. A notice of appeal shall be filed with the Planning Director within 14 days of the date the notice of decision was mailed;
 - b. Content of Notice of Appeal. The notice of appeal shall contain:
 - 1) The City planning file number and date the decision to be appealed was rendered;
 - 2) The name, mailing address and daytime telephone number for each appellant;
 - 3) A statement of how each appellant has an interest in the matter and standing to appeal;
 - 4) A statement of the specific grounds for appeal; and
 - 5) The applicable appeal fee.
3. Scope of appeal. The appeal of a Type II administrative decision shall be de novo. The Planning Commission shall allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. Final Decision by the City. The decision of the Planning Commission regarding an appeal of a Type II administrative decision is the final decision of the City. The decision of the Planning Commission on an appeal is final and effective on the date it is mailed by the City. The Planning Commission's decision may be appealed to the Land Use Board of Appeals (LUBA).

19.1.400 TYPE III PROCEDURE (QUASI-JUDICIAL)

A. Pre-application Conference. A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section 19.1.610.

B. Application Requirements.

1. Application forms. Type III applications shall be made on forms provided by the City. If a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, a new application is not required.
2. Submittal Information. Type III application shall:
 - a. Include the information requested on the application form;
 - 1) An application may be submitted only by the record property owner, contract purchaser (or a representative of the owner or purchaser), or the City Manager;
 - 2) Where there is more than one record owner, the City will not accept an application without signed authorization from all record owners.
 - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 19.2 (Land Use Review), 19.3 (Land Divisions), 19.6 (Modifications), 19.8 (Code Interpretations), and 19.9 (Miscellaneous Permits);
 - c. Address the criteria in sufficient detail for review and action;
 - d. Include one set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application as required in this section. The records of the Clackamas County Assessor's Office are the official records for determining ownership. The applicant shall produce the notice list. At the applicant's request, and upon payment of a fee noted on the City's fee list, the City shall prepare the public notice mailing list. The City or the applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of application; and
 - e. Include the appropriate application fee.

3. The applicant has the burden of demonstrating, with evidence that all applicable approval criteria are or can be met.

C. Notice of Hearing.

1. Mailed notice. The City shall mail the notice of the Type III application. The records of the Clackamas County Assessor's Office are the official records for determining ownership. Notice shall be mailed according to the following:
 - a. At least 20 days before the hearing date, the Planning Director shall mail notice of the application, by first class mail, to:
 - 1) All owners of record of real property within a minimum of 500 feet of the subject site;
 - 2) The applicant and all owners or contract purchasers of record of the property that is subject of the application;
 - 3) Any City recognized neighborhood association whose territory includes the subject property;
 - 4) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility.
 - 5) Any person who submits a written request to receive notice; and
 - 6) For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
 - b. At least 14 business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City.
2. Content of Notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:
 - a. Explain the nature of the application and the proposed land use or uses which would be authorized;
 - b. List the applicable criteria from the MDC and the plans that apply to the application;

- c. The street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing;
 - e. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
 - f. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
 - g. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost;
 - h. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing. Copies shall be provided at a reasonable cost upon request.
 - i. Include a general explanation of requirements for submission of testimony and the procedure for conduct of hearings.
- D. Posting of Property.** The applicant is responsible for posting the property in the following manner:
- 1. City Guidance and the Applicant’s Responsibility
 - a. The City shall supply all notices that an applicant is required to post on the subject property, and shall specify the dates the notices are to be posted as well as the earliest date on which they may be removed;
 - b. The City shall also provide a statement, to be signed and returned by the applicant, certifying that the notice(s) were posted at the correct time. If there is any delay in the City’s land use process caused by the applicant’s failure to correctly post the subject property for the required period of time and in the correct location, the applicant shall extend the 120-day period by that amount of time expired since the notice was sent or the problem was found and notification sent to the applicant.
 - 2. Number and Location of Postings
 - a. The applicant must place the notices on each frontage of the subject property;

- b. If a property's frontage exceeds 600 feet, the applicant shall post one copy of the notice for each 600 feet or fraction thereof;
- c. In the case a property's size and dimension does not meet the requirements above, the Planning Director may require additional notices to be posted;
- d. The applicant shall remove the signs within 10 days following the event announced in the notice.

E. Public Hearing On A Type III Application.

1. A public hearing before the Planning Commission is required for all Type III applications.
2. At the commencement of the hearing, the Planning commission shall state to those in attendance:
 - a. The applicable approval criteria and standards;
 - b. A statement that testimony and evidence shall address the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
 - c. A statement that failure to raise an issue with sufficient detail to give the Planning Commission and those in attendance an opportunity to respond to the issue, means that an appeal may not be made to the Land Use Board of Appeals (LUBA) on that issue;
 - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The commission shall grant the request by continuing the hearing to a date certain, or by leaving the record open for additional written evidence for not less than seven days.
3. If the Planning Commission grants a continuance, the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;

4. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least 7 days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission may reopen the record. If the Planning Commission reopens the record, a person may raise new issues that relate to that new evidence or testimony.
 - a. If requested by the applicant, the City shall allow the applicant at least 7 days after the record is closed to all other persons to submit final written arguments in support of the application. The applicant's final submittal shall be part of the record but may not include any new evidence.

5. Participants in the appeal of a Type II administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts as reasonably possible therefore:
 - a. At the beginning of the public hearing,;

 - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;

 - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;

 - d. If a member of the hearings body abstains or is disqualified, and there is not adequate members to form a quorum then the City shall provide a substitute in a timely manner subject to the impartiality rules in subsections 4 and 5. In this case, a member of the City Council appointed by the Mayor may substitute for a member of the Planning Commission.

 - e. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;

- f. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.
5. Ex Parte Communications, Bias and Conflict of Interest.
- a. At the beginning of the public hearing, members of the Planning Commission shall disclose any ex parte communications the member may have received concerning the application and the substance of the communication. Communication with City staff is not considered an ex parte communication.
 - b. A member of the Planning Commission may not participate in the deliberations and may not take any formal action on an application if the member has an actual bias or conflict of interest in the matter.
 - c. Prior to taking public testimony, the Planning Commission shall allow persons participating in the hearing to challenge the bias or conflict of interest of any member of the commission.
6. Presenting and receiving evidence.
- a. The Planning Commission may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
 - b. Oral testimony will not be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing as allowed by the Planning Commission;
 - c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support a decision on the application. However, the site visit must be disclosed at the beginning of the hearing and an opportunity provided to dispute any evidence the member may have received during the visit.

F. Public Hearing on Appeal of a Type II Decision

The public hearing on appeal of Type II decision that is filed with the Planning Commission under MMC 19.1.300 shall be conducted as provided in Section 19.1.400. E. above and the decision made and issued as provided in Section 19.1.400 G. below.

G. The Decision Process.

1. Basis for decision. Approval or denial of an appeal of a Type II administrative decision or of a Type III application shall be based on standards and criteria in the development code and, when appropriate, to the comprehensive plan for the area in which the development would occur.
2. Findings and conclusions. The written decision shall be based on the evidence, testimony and arguments in the record. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts in the record.
3. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection 2, which either approves, denies, or approves with specific conditions. The Hearings Body may also issue appropriate intermediate rulings when more than one permit or decision is required.
4. Decision-making time limits. A final order for any Type II administrative appeal or Type III action shall be filed with the Planning Director within 10 business days after the decision is reduced to writing and signed on behalf of the Planning Commission.
5. Notice of Decision. Written notice of a Type II administrative appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within 10 business days of the decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
6. Final Decision and Effective Date. A decision of the Planning Commission on a Type II appeal or Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to LUBA must be filed within 21 days of the City Council's written decision.

H. Appeal of a Type III Decision

1. A Type III decision may be appealed to the City Council and a public hearing conducted as as provided in this subsection.
2. A Type III decision may be appealed by:

- a. The applicant;
 - b. Any other person who participated in the proceeding before the Planning Commission.
3. A person appealing a Type III decision shall file a notice of appeal with the Planning Director within 14 days of the date notice of the decision was mailed.
- a. The notice of appeal shall contain:
 - 1) The City planning file number and date the decision was issued;
 - 2) The name, mailing address and daytime telephone number of the appellant;
 - 3) A statement of how the appellant participated in the proceedings before the Planning Commission;
 - 4) A statement of the basis for appeal; and
 - 5) The applicable appeal fee.
4. a. The public hearing on an appeal of a Type III decision shall be de novo and the City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
- c. The public hearing before the City Council shall be conducted in the same manner as the initial evidentiary hearing before the Planning Commission except that specific notice of the hearing is required to be provided only to the applicant and persons who participated in the proceedings before the Planning Commission. The notice shall be sent by first class mail not less than 10 days prior to the public hearing.
- d. Any staff report prepared for the public hearing shall be available to the public not less than seven (7) days prior to the hearing.
5. A decision by the City Council shall be based on the record and include written findings and conclusions that relates the evidence in the record to the applicable criteria in the development code and shows how each criteria is met or not met.
6. The City Council's decision on a Type III application is the City's final decision of the City. The City Council's decision is final and effective on the date it is reduced to writing and signed on behalf of the city. A copy of the decision shall be mailed to the applicant and persons who participated in the proceedings before the City Council within three (3) days of the date of the decision. The City Council's decision may be appealed to the Land Use Board of Appeals (LUBA)

as provided by law.

19.1.500 TYPE IV PROCEDURE (LEGISLATIVE)

A. Pre-Application Conference. A pre-application conference is required for all Type IV applications initiated by a party other than the City of Molalla. The requirements and procedures for a pre-application conference are described in Section 19.1.610.

B. Application Requirements.

1. Application forms. A Type IV application shall be made on forms provided by the City.
2. Submittal Information. A Type IV application shall:
 - a. Include the information requested on the application form;
 - b. Be filed with a map and one copy of a narrative statement that explains how the application satisfies all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 19.2 (Land Use Review), 19.3 (Land Divisions), 19.6 (Modifications), 19.8 (Code Interpretations), and 19.9 (Miscellaneous Permits);
 - c. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards;
 - e. d. Include one set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive notice of the application. The records of the Clackamas County Assessor's Office are the official records for determining ownership. The applicant shall produce the notice list. At the applicant's request, and upon payment of a fee noted on the City's fee list, the City shall prepare the public notice mailing list. The City or the applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of application;
 - f. The required fee.
2. The applicant has the burden of demonstrating that all applicable approval criteria are or can be met.

C. Notice of Hearing.

1. Required hearings. A minimum of 2 hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications.
2. Notification requirements. Notice of public hearings shall be provided in the following manner:
 - a. The notice shall contain the information described in subsection C. 3. below and be mailed to:
 - 1) The owner of any property subject to the application;
 - 2) Any affected governmental agency;
 - 3) Any person who requests notice in writing;
 - 4) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park;
 - 5) The owners of an airport that is the subject of a zone-change application.
 - b. Public notice shall be published in a newspaper of general circulation in the City at least 10 days before the first scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date.
 - c. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.
3. Content of notices. The notice shall include the following information:
 - a. A description of the nature of the application and the proposed land use or uses that would be authorized;
 - b. The applicable criteria from the MDC and the plans that apply to the application;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. The date, time and location of the hearing;

- e. The name of a local government representative to contact and the telephone number where additional information may be obtained;
 - f. State that a copy of the application and all documents and other evidence submitted by or on behalf of the applicant, and applicable criteria are available for public inspection at no cost and will be provided at a reasonable cost;
4. Failure to receive notice. The failure of a person to receive notice shall not invalidate any action subsequently taken by the Planning Commission or City Council provided:
- a. Notice is provided by first class mail and was deposited with the United States Postal Service; and
 - b. Published notice was provided and deemed given on the date it is published.

D. Hearing Process and Procedure.

1. Unless otherwise provided in the rules of procedure adopted by the City Council:
- a. The presiding officer of the Planning Commission and of the City Council have the authority to:
 - 1) Regulate the course, sequence, and decorum of the hearing;
 - 2) Direct procedural requirements or similar matters; and
 - 3) Impose reasonable time limits for oral presentations.
 - b. A person may not address the Commission or the Council without:
 - 1) Receiving recognition from the presiding officer; and
 - 2) Stating the person's full name and address.
 - c. Disruptive conduct such as applause, cheering, or display of signs may be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council shall conduct the hearing as follows:

- a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council;
- b. The Planning Director's report and other applicable staff reports shall be presented;
- c. The public shall be invited to testify;
- d. The public hearing may be continued to allow additional testimony or it may be closed; and
- e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

E. Continuation of the Public Hearing. The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

F. Decision-Making Criteria. The Planning Commission shall make a recommendation on the application to the City Council. The City Council shall make the final decision on the application. The Planning Commission's recommendation and the City Council's decision shall be based on the following factors:

1. Compliance with the applicable Statewide Planning Goals;
2. Compliance with applicable City of Molalla Comprehensive Plan provisions; and
3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are reasonably likely to be provided concurrently with the development of the property or within the applicable planning period.

G. Approval Process and Authority.

1. The Planning Commission shall:
 - a. After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the application; and

- b. Within 14 business days of determining a recommendation, the presiding officer shall sign the written recommendation, which shall be filed with the Planning Director and forwarded to the City Council.
2. The City Council shall:
 - a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to the application. The City Council also may remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application;
 - b. Consider the recommendation of the Planning Commission; however, the City Council is not bound by the Commission's recommendation; and
 - c. Act by ordinance, which shall be signed by the Mayor after the Council's adoption of the ordinance.

H. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the City Council decision is filed with the City Planning Director. The City shall also provide notice to all persons as required by other applicable laws.

I. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance. If not approved, the decision becomes final upon mailing of the notice of decision to the applicant.

J. Record of the Public Hearing.

1. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;
2. The official record shall include:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the Planning Director to the hearings body regarding the application;
 - c. The final ordinance;
 - d. All correspondence; and
 - e. A copy of the notices that were given as required by this Chapter.

19.1.600 COMPLETENESS REVIEW AND 120 DAY RULE

- A. **Completeness Review.** Upon submission of application subject to this Chapter 19, the Planning Director shall date stamp the application form and verify that the appropriate application fee has been submitted.
1. The Planning Director will review the application and accompanying information to determine whether the application is complete.
 2. Within 30 days of receipt of the application, the Planning Director shall complete the initial review and send the applicant a written statement indicating whether the application is complete. If the application is incomplete, the Planning Director will indicate the information that must be submitted to make the application complete.
- B. **Application Deemed Incomplete.** Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days within which to submit the missing information or the application shall be rejected and all materials and the unused portion of the application fee shall be returned to the applicant.
1. If the applicant submits the requested information within the 180-day period, the Planning Director shall again verify whether the application, as submitted and supplemented, is complete.
 2. Each such review and verification shall follow the procedure in subsection (A.2.) of this section.
- C. **Application Deemed Complete.** Once the Planning Director determines the application is complete, or the applicant refuses to submit any more information, the City shall declare the application complete and take final action on the application within 120 days of that date or such other period as provided by law.
- D. **120-Day Rule Does Not Apply.** The 120-day rule does not apply to the following:
1. Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver of the 120-day period.
 2. Any delay due to an incomplete set of mailing labels for the record property owners entitled to notice.
 3. An application for a permit that is not wholly within the City's authority and control.
 4. An application for an amendment to the City's Comprehensive Plan or land use regulations or an application for a permit, the approval of which depends upon a plan amendment.

- E. Complete Application Standards. Except as otherwise provided by law, the approval standards that control the City’s review and decision on a complete application are the standards that were in effect on the date the application was first submitted.
- F. Extension in Writing. An applicant may request an extension in writing of the 120-day rule.
- G. Time Computation. In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or a legal holiday, in which event, the period runs until the end of the next day which is not a weekend or legal holiday.

19.1.610 PRE-APPLICATION CONFERENCE

- A. Purpose. The pre-application conference is to provide City staff with a summary of the applicant’s development proposal as well as an opportunity for staff to provide the applicant with information on likely impacts, requirements, approval standards, fees and other information that may affect the proposal.

- B. Prior to Submitting an Application.
 - 1. The applicant shall schedule and attend a pre-application conference with City staff to discuss the proposal.
 - 2. The Planning Director may waive the pre-application requirements if, in the Planning Director’s opinion, the development does not warrant a pre-application conference.

- C. Pre-Application Conference.
 - 1. To schedule a pre-application conference, the applicant shall contact the Planning Director, submit the required materials, and pay the appropriate fee.
 - 2. At a minimum, an applicant shall submit a short narrative and site plan (drawn to a scale acceptable to the Planning Director) describing the proposal and identifying proposed land uses, traffic circulation, and public rights-of-way. A completed design review worksheet shall also accompany the application.
 - 3. The Planning Director shall provide the applicant a written summary of the pre-application conference.
 - 4. City staff is not authorized to waive any requirement of this code. Any omission or failure by staff to recite to an applicant all relevant applicable land use requirements does not constitute a waiver by the City of any standard or requirement.

- D. Pre-Application Valid Time. A pre-application conference shall be valid for a period not to exceed 6 months from the date the first pre-application hearing is held. If an application is not filed within 6 months of the pre-application conference, the applicant must schedule and attend another pre-application meeting before the City will accept a permit application.

- E. Pre-Application Meeting. The Planning Director may require that materials are to be submitted up to 21 days prior to a pre-application meeting taking place. The applicant shall pay the appropriate fee. If the fee is unknown, staff may estimate and require additional payment or make a refund when that fee becomes known.

- F. Information provided. At the pre-application conference, the Planning Director shall:
 - 1. Cite the comprehensive plan policies and map designations applicable to the proposal;

19.1 – Types of Applications and Review Procedures – Type IV (Legislative)

2. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 3. Identify other governmental policies and regulations that relate to the application; and
 4. Reasonably identify other opportunities or constraints concerning the application.
- G. Changes in the Law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

19.1.630 PLANNING DIRECTOR’S DUTIES

A. The Planning Director shall:

1. Prepare application forms based on the criteria and standards in the development code and applicable state law, and enforce the City’s Comprehensive Plan and implementing ordinance provisions;
2. Prepare staff reports for appropriate applications that summarize the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report may also provide a recommended decision of: approval; denial; or approval with specific conditions that ensure conformance with the approval criteria;
3. Prepare a notice of the proposal decision:
 - a. In the case of an application subject to a Type I or II review process, the Planning Director shall make the staff report and all case-file materials available at the time that the notice of the decision is issued;
 - b. In the case of an application subject to a hearing (Type III or IV process), the Planning Director shall make the staff report available to the public at least 7 days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed.;
4. Administer the hearings process;
5. File notice of the final decision in the City’s records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law;
6. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and
7. Administer the appeals and review process.

19.1.640 AMENDED DECISIONS

- A. The purpose of the amended decision is to allow the Planning Director to correct typographical errors, correct inadvertent inclusions or omissions, and/or make other minor changes that do not materially alter the decision.
- B. The Planning Director may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new 10-day appeal period shall begin on the day the amended decision is issued.
- C. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
- D. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures in Chapter 19.6. All other changes to decisions that are not modifications under Chapter 19.6 follow the appeal process.

19.1.650 RE-SUBMITTAL

- A. An application that was denied may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 12 months from the date the final City action denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome as determined by the Planning Director.
- B. An application that is withdrawn by the applicant prior to a final decision on the application may not be re-submitted as the same or a substantially similar proposal for the same land for a period of at least 3 months from the date the application was withdrawn.

19.1.670 CONSOLIDATED PROCEDURE

- A. An application that involves two or more procedures may be processed concurrently under the highest numbered procedure required for any part of the application.
- B. The applicant may determine whether the applications shall be processed concurrently.
- C. If the applicant elects to have the applications processed separately, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure unless otherwise determined by the Planning Director.
- D. If the applications are processed concurrently with 2 or more of the same highest numbered procedures but assigned to different hearing bodies, only the highest hearing body shall hear the application.
- E. The City Council is the highest hearing body, followed by the Planning Commission, then the Planning Director.

19.1.680 MINISTERIAL DECISIONS

Decisions that are made under standards that do not require interpretation or the exercise of policy or legal judgment are ministerial in nature and are not land use decisions subject to Title 16 through 20 and Title 22 of this code. Examples of ministerial decisions include building permits and review of final subdivision or partition plats.

19.1.700 DESIGN REVIEW BOARD NOTICE PROCEDURE

A. Notice of public hearing on an application before the Design Review Board.

1. Notice for all public hearings concerning the Design Review Board shall conform to the requirements of this subsection.
2. At least 21 days prior to the initial evidentiary hearing, the City shall prepare and send, by first class mail, notice of the hearing to all record owners of property within 500 feet of the subject property and to any City-recognized neighborhood association whose territory includes the subject property.
3. At least 20 days prior to the hearing, notice shall be sent to affected governmental entities, special districts, urban service providers, and Oregon Department of Transportation.
4. The City shall also public the notice in a newspaper of general circulation within the City at least twenty days prior to the hearing.
5. The applicant is responsible for providing five accurate and complete sets of mailing labels for these property owners and neighborhood associations.
6. Posting the subject property with the City prepared notice.
7. Notice of the application hearing shall include the following information:
 - a. Explain the nature of the application and the proposed use or uses, which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing before the Design Review Board;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue;
 - f. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

19.1 – Types of Applications and Review Procedures – Type IV (Legislative)

- g. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria area available for inspection at no cost and will be provided at reasonable cost;
- h. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;
- i. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

19.1.740 CONDITIONS OF APPROVAL AND NOTICE OF DECISION

- A. The Hearings Officer, Design Review Board, Planning Commission and City Council may impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.
- B. Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to Section 16.6.200 and 16.6.300 of this code and ORS 30.315.

19.1.750 OBJECTIONS TO PROCEDURE

- A. A person who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, must make the objection prior to the City rendering a final decision.
- B. A procedural objection may be raised at any time prior to a final decision, after which it is deemed waived.
- C. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person’s substantive rights.

19.1.760 EXTENSION OF AN APPROVAL

- A. Planning Director’s extension:
 - 1. Prior to the expiration of an approved permit, the Planning Director may extend the permit for a period of one year, up to an aggregate period of two years.
 - 2. A request for an extension shall be reviewed by the Planning Director as a Type II decision. The person requesting the extension shall demonstrate compliance with the standards in subsection B. of this section.
- B. In order to an application for an extension under this section, the Planning Director must find that:
 - 1. The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit or that such approvals or permits are not yet required by the condition of the development.
 - 2. Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder.
 - 3. The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code, the permit, or any condition thereunder.

4. There have been no changes in circumstances or the law likely to necessitate significant modifications to the development approval or conditions of approval.

19.1.780 EXPIRATION OF AN APPROVAL

A. Unless otherwise stated in an approval decision, all quasi-judicial permit approvals, except for zoning map or Comprehensive Plan map amendments, automatically became void if any of the following events occur:

1. Within one year of the date of the final decision, a building permit has not been issued.
2. Within one year of the date of the final decision, the activity approved in the permit has not commenced or, in situations involving only the creation of lots or parcels, the land division has not been completed.
3. The applicant or the applicant’s successor in interest fails to comply with one or more conditions of approval.

B. Expiration of a permit requires a new application for any use on the subject property that is not otherwise allowed outright.

C. Deferral of the expiration period due to appeals.

1. If a permit decision is appealed beyond the jurisdiction of the City, the expiration period does not begin to run until review by the Land Use Board of Appeals (LUBA) and the Appellate Courts has been completed, including any remand proceedings before the City.
2. The expiration period provided for in this section will begin to run on the date of final disposition of the case (i.e. the date when an appeal may no longer be filed).

19.1.800 AUTHORIZATION OF SIMILAR USES

A. A use not specifically listed in the allowed uses of a district, may nonetheless be allowed if it is deemed similar in nature and impact to the uses allowed in the applicable zone.

Applications for similar use determinations shall be processed using the Type II procedure.

1. A similar use that is authorized must be similar to, or of the same type as, the uses allowed in the underlying district.
2. This section does not allow the authorization of a use that is allowed in a different zone.

19.1.810 PERMIT REVOCATION OR MODIFICATION

- A. In the event an applicant, or the applicant’s successor in interest, fails to fully comply with all conditions of permit approval or otherwise does not comply fully with the City’s approval, the City may revoke or modify the permit as provided under this section.
- B. All quasi-judicial permits may be revoked or modified if the Planning Commission determines that any of the following situations exist:
 - 1. One or more conditions of the approval have not been implemented or have been violated;
 - 2. The activities of the use, or the use itself, are substantially different from what was approved;
 - 3. The use is a nonconforming use that has substantially changed its activities or substantially increased the scope or intensity of its operations since the use became nonconforming.
- C. Revocation or modification shall be processed as a Type III decision. The City has the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant’s successor has violated the permit, applicable approval standards or conditions of approval.
- D. Possible Actions at the Revocation Hearing
 - 1. If the Planning Commission finds that the use fails to comply with a condition of approval or the actual use is substantially different from the approved use:
 - a. The Planning Commission may modify the permit. In order to modify the permit, the Commission must find that the although use or development does not fully comply with the conditions of approval, the violations are not substantial enough to warrant revocation and the use can comply with the original approval criteria if certain conditions are met. The Commission may modify the existing conditions, add new conditions, or refer the case to the code enforcement officer for enforcement of the existing conditions.
 - b. The Planning Commission may revoke the permit if it finds there has been a failure to comply with conditions of approval, substantial violations of conditions of approval, a failure to implement conditions of prior land use decisions or the actual use of the site is substantially different from the approved use.
- E. If a permit is revoked, the use or development becomes illegal.
 - 1. The use or development shall be terminated within thirty days of the date of the decision maker, unless the decision provides otherwise.

2. In the event the decision maker’s decision on a revocation request is appealed, the revocation action shall be stayed pending the final outcome of the appeal.

19.1.830 TRANSFER OF APPROVAL RIGHTS

- A. Unless otherwise stated in the City’s permit decision, any approval granted under Titles 16 through 20 and Title 22 run with the land and are transferred with ownership of the land
- B. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners of the property for which the permit was granted.

19.1.840 PERFORMANCE GUARANTEES

When required by the provisions of the Molalla Municipal Code or a land use decision, the applicant shall file a performance guarantee and a maintenance to ensure the full and faithful performance of the applicant’s obligations under the code and land use decision, including the construction of any public improvements. The applicant shall ensure completion of all work for which permits are required according to the following:

- A. The applicant shall provide a surety bond executed by a surety company authorized to transact business in the State of Oregon, irrevocable letter of credit or other surety in a form approved by the City Attorney.
- B. If the applicant fails to complete any improvements required under the code or land use decision, the City shall estimate the cost of completing any required improvement, call on the bond or other surety as necessary to complete the improvement. If the amount obtained from the bond or deposit is insufficient to complete the improvement, the City may hold either the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvement as determined reasonable by the City.
- C. Notwithstanding Paragraphs A and B of this section, the City, in its sole discretion, may allow the applicant to submit a financial payment in lieu of actual construction of the improvement.
- D. Form of guarantee
 1. A performance or maintenance guarantee shall be in a form approved by the City Attorney, and may include an irrevocable stand-by letter of credit issued by a recognized lending institution to the benefit of the City, a certified check, dedicated bank account or allocation of a construction loan held in reserve by the lending institution for the benefit of the City.
 2. The guarantee shall be filed with the City Recorder after review and approval by the City Attorney. The City Attorney may consult with the Planning Director, Public Works Director, and any other City staff the City Attorney deems necessary and appropriate.

E. Amount of Guarantee

1. The amount of the performance guarantee shall be equal to at least 125% of the estimated cost of constructing the improvement in question.
2. The amount of the performance guarantee may be larger than 125% if deemed necessary by the Public Works Director.
3. The amount of a maintenance guarantee shall be determined by the Public Works Director, but in any case not less than 20% of the value of the improvement.
4. The cost estimate substantiating the value of the improvement must be provided by the applicant and supported by engineering or an architect's estimate or written estimates by three contractors with their names and addresses. The City expressly reserves the right to reject any estimates it determines are not credible or otherwise do not provide an adequate basis for determining the amount of the performance or maintenance guarantee.
5. The estimates shall separately itemize all materials, labor, and other costs.

F. Duration of the guarantee

1. A performance guarantee shall remain in effect until the improvement is substantially actually constructed and accepted by the City.
2. Once the improvement is accepted by the City, the performance surety shall be resleased.
3. A maintenance bond shall remain in effect for a period of not less than one year after the improvements are accepted by the City. The maintenance surety shall be release by the City after it determines, in its sole discretion, that the improvement is operating in a manner sufficient to accomplish the intended purpose and that no warranty or punch list items remain outstanding.

19.1.850 COVENANT WITH THE CITY

- A. As a condition of final approval of a quasi-judicial permit, the City may impose a requirement that the applicant execute a covenant with the City agreeing to comply with all conditions of approval.
- B. Any such covenant shall include the following elements:
 1. An agreement.
 - a. The applicant shall agree to comply with all applicable code requirements, conditions of approval and any representations made to the City by the applicant or the applicant's agents during the application review process in writing.

- b. This commitment shall be binding on the applicant and all of the applicant's successors, heirs and assigns.

2. Revocation

- a. If the owner fails to perform under the covenant, the City may immediately institute revocation of the approval or any other enforcement action available under state law or the Molalla Development Code.
- b. The covenant shall provide for payment of attorney fees and other costs incurred by the City in any such enforcement action.

3. Judicial Enforcement – Where the development rights of a site are dependent on the performance of conditions by the owner of another property (such as joint access), the covenants are judicially enforceable by the owner of one site against the owner of another.

4. Adopting the covenant:

- a. The City Attorney shall approve the form of all covenants. The covenant shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval;
- b. Proof of recording shall be made prior to the issuance of any permits and filed with the Planning Department;
- c. Recording shall be at the applicant's expense;
- d. Failure to sign and record the covenant within the prescribed period shall require a new application for any use of the subject property

19.1.860 FEES

- A. The City may adopt by resolution, and revise from time to time, a schedule of fees for for land use applications, appeals and related matters.
- B. Unless otherwise provided by state law, a fee is intended to reflect the City's actual or average cost of processing the application or conducting the appeal process and shall be credited to the general fund of the City.

C. Payment

- 1. All fees are due and payable at the time the application, appeal or other matter is submitted.
- 2. An application or appeal will not be accepted unless the proper fee is paid.

D. Refunds. Fees will only be refunded as provided in this subsection.

1. When a fee is paid for an application, which is later found to not be required, the City may refund the fee.
2. When an error is made in calculating a fee, overpayments will be refunded and underpayment will be collected from the applicant.
3. In the event an applicant withdraws an application, the Planning Department shall refund the unused portion of the fee. The Planning Department will deduct from the fee the City's actual costs incurred in processing the application prior to withdrawal.

E. Fee Waivers

1. The Planning Director may waive all or any portion of an application or appeal fee if, in the Director's sole discretion, the Director determines that an application must be resubmitted because of an error made by the City.
2. A fee or transcript payment is not required for applications or appeals filed by the City.

19.1.900 SPECIAL PROCEDURES

- A. **Expedited Land Divisions**. An Expedited Land Division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.
1. **Selection**. An applicant who wishes to use the ELD review process for a partition or subdivision application instead of the procedure that would otherwise apply to it, must request the City follow the ELD process in writing at the time the application is filed.
 2. **Review procedure**. An applications for a Expedited Land Division shall comply with ORS 197.360 through 197.380, and the applicable provisions of the Molalla Comprehensive Plan and Development Code.
 2. **Appeal procedure**. An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer for such appeals and the City Attorney is not a city employee, the City Attorney shall serve as the hearings officer for an appeal of an ELDdecision.

19.1.910 TRAFFIC IMPACT STUDIES

The purpose of this section is to assist in determining the road authorities that should participate in a land use decision, and to implement OAR 660-012-0045 (2) (e) of the State Transportation Planning Rule. This section establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a Traffic Impact Study; and who is qualified to prepare the Study.

A. When a Traffic Impact Study is Required. The City or road authority having jurisdiction over a transportation facility may require a Traffic Impact Study (TIS) as part of a land use application or a change in access. A TIS is required when a land use application involves one or more of the following:

1. A change in zoning;
2. A proposed development or land use activity that the road authority determines may create operational or safety concerns along an affected transportation facility(ies);
3. An increase in site traffic volume generation by 300 Average Daily Trips (ADT) or more;
4. An increase in peak hour volume of a particular movement to and from a State highway by 20 percent or more;
5. An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day;
6. The location or relocation of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard; or
7. A change in internal traffic patterns that may cause safety problems, such as back up onto a street or greater potential for traffic accidents.

B. Traffic Impact Study Preparation. A Traffic Impact Study shall be prepared by a professional engineer in accordance with the requirements of the road authority. For development proposing access to, or affecting a state highway, ODOT must provide traffic study scope and methodology for evaluation of highway operations.

CHAPTER 19.2 LAND USE REVIEW AND SITE DESIGN REVIEW

Sections:

- 19.2.100 PURPOSE**
- 19.2.200 APPLICABILITY**
- 19.2.300 LAND USE REVIEW PROCEDURE AND APPROVAL CRITERIA**
- 19.2.400 SITE DESIGN REVIEW – APPLICATION REVIEW PROCEDURE**
- 19.2.500 SITE DESIGN REVIEW – APPLICATION SUBMISSION REQUIREMENTS**
- 19.2.600 SITE DESIGN REVIEW - APPROVAL CRITERIA**
- 19.2.700 BONDING AND ASSURANCES**
- 19.2.800 DEVELOPMENT IN ACCORDANCE WITH PERMIT APPROVAL; MODIFICATIONS; PERMIT EXPIRATION**

19.2.100 PURPOSE

The purpose of this Chapter is to:

- A. Provide rules, regulations and standards for efficient and effective administration of land use and site development review;
- B. Carry out the development pattern and plan of the City and its comprehensive plan policies;
- C. Promote the public health, safety and general welfare;
- D. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards;
- E. Encourage the conservation of energy resources; and
- F. Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

19.2.200 APPLICABILITY

Land Use Review or Site Design Review is required for all new developments and modifications of existing developments as further described below. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance are exempt from review unless a change in material or design will occur.

A. Land Use Review. Land Use Review is a review conducted by the Planning Director or designee without a public hearing (Type I or II). (See Chapter 19.1 for review procedure.) It is intended for changes in land use and developments that do not require a conditional use permit or Site Design Review. Land Use Review ensures compliance with the basic land use and development standards of the land use district, such as lot area, building setbacks and orientation, lot coverage, maximum building height, and other provisions of Title 17. Land Use Review is required for all of the types of land uses and development listed below. Land uses and developments exceeding the thresholds below require Site Design Review.

1. Change in use from one type of land use to a different land use;
 - a. When the existing use pre-dates the proposed use by more than 12 months, it constitutes a change of occupancy.
 - b. Changes of use require a pre-application meeting with the Planning Director. Where a change of use is proposed from one outright permitted use to another, and no property improvements are required, or the intensity of the use is not substantially increased, land use review is not required.
2. Single-family detached dwelling (including manufactured home on its own lot);
3. A single duplex, or up to two single family attached (town home) units not requiring a land division, and accessory parking on the same lot;
4. Non-residential building additions up to 500 square feet, or up to 20 percent of the existing structure, whichever is greater;
5. Minor Modifications to development approvals as defined by Chapter 19.6;
6. Any proposed development that has a valid conditional use permit. Major modifications to a development with a conditional use permit require review and approval in accordance with Chapter 19.4 - Conditional Use Permits;
7. A home occupation that requires a permit under Chapter 19.9.200;
8. A temporary use that requires a permit under Chapter 19.9.100;
9. Accessory structures and accessory parking;
10. Development and land uses that are part of a previously approved Site Design Review or Conditional Use Permit application;
11. Public improvements required by a condition of approval (e.g., transportation facilities and improvements, parks, trails, and similar improvements, as determined by the City);

12. Review of equestrian development facilities.
13. Any mobile vendor structure(s) and/or trailer(s) that will be doing business in the City for more than thirty days in a calendar year; and
14. Review of color palettes.

B. Site Design Review. Site Design Review is a discretionary review conducted by the Design Review Board with a public hearing (Type III Quasi-Judicial Review). (See Chapter 19.1 for review procedure.) It applies to all development in the City, except those specifically listed under “A” above (applications subject to Development Review). Site Design Review ensures compliance with the land use and development standards in Title 17 (e.g., lot area, building setbacks and orientation, lot coverage, maximum building height), and the design standards and public improvement requirements in Title 18.

19.2.300 LAND USE REVIEW PROCEDURE AND APPROVAL CRITERIA

When Land Use Review is required, it shall be conducted prior to the issuance of building permits, occupancy permits, or public improvement permits, as determined by the Planning Director. The City shall conduct Land Use Reviews using either a Type I or Type II procedure, as described in Sections 19.1.200 and 19.1.300. A Type I procedure shall be used when the Planning Director finds that the applicable standards are clear and objective and do not require the exercise of discretion. A Type II procedure shall be used when the decision is discretionary in nature. The Planning Director shall be responsible for determining the required review procedure. An application for Land Use Review shall be approved only upon meeting all of the following criteria:

- A. The proposed land use or development is permitted by the underlying land use district (Title 17);
- B. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district and any applicable overlay district(s) are met (Title 17); and
- C. When development is proposed, the applicable sections of Title 18, Design Standards are met.

Land Use Reviews do not address a project’s compliance with applicable building, fire and life safety regulations.

19.2.400 SITE DESIGN REVIEW – APPLICATION REVIEW PROCEDURE

Where Site Design Review is required, it shall be conducted using a Type III procedure, consistent with Section 19.1.400, and using the application requirements and approval criteria contained in Sections 19.2.500 through 19.2.600, below.

Site designs with a value greater than \$1,000,000 in value shall be reviewed and a decision made by the Design Review Board.

19.2.500 SITE DESIGN REVIEW – APPLICATION SUBMISSION REQUIREMENTS

All of the following information is required for Site Design Review application submittal:

- A. General Submission Requirements.** An application for Site Design Review shall contain all of the information required for a Type III review under Section 19.1.400, and also provide:
1. **Public Facilities and Services Impact Study.** The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Section 19.1.600(C)). The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users;
 2. **Traffic Impact Study,** if required by the road authority. Traffic Impact Studies shall conform to the standards and procedures in Section 19.1.910.
- B. Site Design Review Information.** In addition to the general submission requirements for a Type III review (Section 19.1.400) an applicant for Site Design Review shall provide the following additional information, as deemed applicable by the Planning Director. The Planning Director may deem applicable any information that he or she needs to review the request and prepare a complete staff report and recommendation to the approval body:
1. Provide the number of plans referenced below:
 - a. No Design Review Board - 5 sets of plans and materials
 - b. Requires a hearing before the Design Review Board - 12 sets of plans and materials
 - c. If a project is adjacent to a State Highway, 2 additional sets of plans will be required for review by the State highway authority.

- d. The applicants shall submit a set of all drawings and material on CD in PDF format.
2. Staff may require additional sets as necessary. The applicant shall extend the 120day deadline by the period of time it takes from the official date of the request for additional copies to the time the Planning Department actually receives the additional copies.
3. Unless otherwise approved by the Planning Director, plans shall be drawn to scale.
4. All materials shall be submitted in picture format (PDF) and supplied on a CD ROM. A Fee will be charged, as set by City Council Resolution, if electronic forms are not submitted with the application and staff is requested to make the PDF.
5. Site Analysis Map and Site Plan. At a minimum the site analysis map shall contain the following:
 - a. The entire site proposed for development and surrounding properties covering an area of no less than 500 feet from the boundary of the proposed development site.
 - b. Topographic contour lines at 2-foot intervals for slopes of less than 10 percent, and 5-foot intervals for steeper slopes;
 - c. Identification of slopes greater than 25 percent;
 - d. The location and width of all existing public and private streets, drives, sidewalks, pathways, rights-of-way, pedestrian/bicycle/equestrian access ways, and easements on the site and adjoining the site;
 - e. The location and width of all proposed public and private streets, drives, sidewalks, pathways, rights-of-way, pedestrian/bicycle/equestrian access ways, and easements on the site;
 - f. The location of natural hazard areas on and within 100 feet of the boundaries of the site including:
 - 1) Areas indicated on the floodplain maps as being within the 100 year floodplain.
 - 2) Areas subject to soil instability, slumping, earth flow, landslide, and erosion. Such areas may require field investigation by a geotechnical engineer geologist licensed by the State of Oregon to confirm the absence or existence of or potential for severe hazard.
 - g. Resource areas, including marsh and wetland areas, streams, and wildlife habitat areas having unique views, drainage ways, location of significant trees, canals and ditches;

- h. Site features:
 - 1) Location of pavement areas;
 - 2) Location of large rock outcroppings;
 - 3) Areas having unique views;
 - 4) Location, dimensions, and setback distances of all existing and proposed structures on the site along with the current and proposed uses of the structures;
 - 5) Location of existing and proposed utility lines;
 - 6) Site dimensions and total area of the site;
 - 7) Arrows indicating the direction of natural drainage;
 - 8) The outline of existing and proposed structures.
- i. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
- j. Service areas for uses such as mail delivery and trash disposal;
- k. The location, size and species of trees and other vegetation having a caliper (diameter) of 6 inches or greater at 4 feet above grade;
- l. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed;
- m. Name and address of project designer, architect, engineer, surveyor, and/or planner, if applicable;
- n. Outdoor common areas proposed as open space;
- o. The proposed location, height and materials of walls, fences, hedges and screen plantings to ensure harmony with adjacent development or to conceal storage areas, and utility installations;
- p. A list of existing and proposed transit facilities and stops within one-half mile in all directions;
- q. The location and type of existing neighborhood activity centers within one-quarter mile;

- r. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops);
 - s. Loading and service areas for waste disposal, loading and delivery;
 - t. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
 - u. Location, type, and height of outdoor lighting;
 - v. Location, sizes, and types of signs;
 - w. Other site elements that may assist in the evaluation of the application.
6. Architectural drawings and Building Plans.
- a. Architectural drawings or building plans showing one or all of the following are required for new buildings and major remodels:
 - 1) Building elevations (as determined by the Planning Director) with building height and width dimensions;
 - 2) Building materials, colors and type;
 - 3) Long blank walls shall be avoided. One way to achieve this is through modulation, defined as a measured setback or offset in a building face.
 - 4) Commercial activities within commercial buildings shall be visible from the street and pedestrian ways. This encourages visual connections between indoor and outdoor areas. Such visual connections create interest and make shopping more attractive and safe.
 - 5) Building design in the C-1, C-2, C-3, and CPA zones shall incorporate traditional building materials such as natural timbers, stone, and brick.
 - 6) Building colors shall accent, blend with, or complement surroundings and meet the color palette requirements that may exist.
 - 7) Structures shall be located and constructed in order to promote passive energy conservation.
 - b. The siting, construction and design of buildings and other improvements shall protect natural and cultural resources identified by the Comprehensive Plan:

- c. Stock building plans may not be acceptable. The merit of the particular design shall be judged on its compliance with the applicable criteria. A building design is not acceptable solely on the basis that it is the only design the applicant has or that it is based on material image. When a building plan is submitted, the Planning Director will review the plan and may require architectural drawings consistent with this section.
- d. Remodeling work on historical buildings shall not destroy the distinguishing character of the property and its environment.
- e. Commercial buildings located in predominantly residential areas should imitate building setbacks and front yard landscaping patterns established by the residential uses.
- f. The entrance to service bays, for automotive service stations, shall not be open to the street and shall be designed to face the rear or interior side property lines;
- g. All outdoor storage areas, garbage collection, exterior vents, mechanical devices and noise-generating equipment areas shall be screened by sight obscuring fencing to compliment the existing structure or by vegetation located away from abutting residential development;
- h. The planes of exterior walls shall not run in one continuous direction for more than 60 feet without an offsets or setback;
- i. Positive methods to achieve distinctive entries include:
 - a) Changes in colors and materials;
 - b) Placement of windows;
 - c) Use of awnings and canopies;
 - d) Architectural details and features such as cornices;
 - e) Setbacks and offsets.
- j. All newly created or remodeled outdoor storage areas, garbage collection, exterior vents and mechanical devices and noise-generating equipment shall be screened by sight obscuring fencing to compliment the existing structure or by vegetation located away from abutting residential development.
- k. Ground level outdoor enclosures shall be composed of materials similar to the main structure;

1. Outdoor mechanical equipment shall be screened from view. The method of screening shall be architecturally integrated with the building with respect to materials, color, shape, and size.
7. Preliminary Grading Plan. A preliminary grading plan prepared by a registered engineer shall be required for development sites ½ acre or larger. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with Chapter 18.5.
8. Landscape Plan. A landscape plan may be required and at the direction of the Planning Director. The Landscaping Plan shall show the following:
 - a. The location and height of existing and proposed fences, buffering or screening materials;
 - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
 - c. The location, size, and species of the existing and proposed plant materials (at time of planting);
 - d. Existing and proposed building and pavement outlines;
 - e. Specifications for soil at time of planting, irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule;
 - f. Other information as deemed appropriate by the Planning Director. An arborist’s report may be required for sites with mature trees that are protected under Chapter 18.2. Landscape, Street Trees, Fences and Walls of this Code.
9. Sign drawings shall be required in conformance with the City’s Sign Code (Chapter 18.6).
10. Deed restrictions. Copies of all existing and proposed restrictions or covenants, including those for access control.
11. Narrative. Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 19.2.600 Approval Criteria.
12. Traffic Impact Study. When required, a traffic study shall be prepared in accordance with the requirements of the affected road authority. See Section 19.1.910, and Chapter 18.3 and 18.4 for relevant standards.

13. Other information determined by the Planning Director. The Planning Director, in the Director's sole discretion, may require other studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this Code.

19.2.600 SITE DESIGN REVIEW - APPROVAL CRITERIA

The City review authority shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying an application:

1. The application is complete, as determined in accordance with Chapter 19.1 - Types of Applications and Section 19.2.500.
2. The application complies with all of the applicable provisions of the underlying Land Use District (Title 17), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;
3. The applicant will upgrade to current standards any development on the site that does not comply with the applicable land use district standards;
4. The application complies with all of the Design Standards in Title 18, including:
 - a. Chapter 18.1 - Access and Circulation;
 - b. Chapter 18.2 - Landscaping, Significant Vegetation, Street Trees, Fences and Walls;
 - c. Chapter 18.3 - Parking and Loading, for automobiles and bicycles;
 - d. Chapter 18.4 - Public Facilities and Franchise Utilities;
 - e. Chapter 18.5 - Surface Water Management;
 - f. Chapter 18.6 - Other Standards, as applicable.
 - g. Section 19.1.910 – Traffic Studies
5. Existing conditions of approval required as part of a prior Land Division (Chapter 19.3), Conditional Use Permit (Chapter 19.4), Master Planned Development (Chapter 19.5) or other approval have been or will be met.

19.2.700 LANDSCAPING ASSURANCES

- A. **Completion of Landscape Installation.** Landscaping shall be installed prior to issuance of occupancy permits, unless a performance surety equal to the cost of the landscaping as determined by the Planning Director is filed with the Planning Director assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the 6 month period, the security may be used by the City to complete the installation.

- B. The developer shall ensure a 90-percent survival rate for all landscaping for a period of two-years following installation. The City may withhold from the performance surety an amount equal to 25 percent of the surety for a period of up to two (2) years to be used to replace dead or dying landscaping or otherwise ensure the 90-percent survival rate is achieved.

19.2.800 DEVELOPMENT IN ACCORDANCE WITH PERMIT APPROVAL; MODIFICATIONS; PERMIT EXPIRATION

Development shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., site design review approval) and building permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Sections 19.1.840 and 19.2.700. Development Review and Site Design Review approvals are subject to all of the following standards and limitations:

- A. Modifications to Approved Plans and Developments.** Minor modifications of an approved plan or existing development, as defined in Chapter 19.6, shall be processed as a Type I procedure and require only Land Use Review. Major modifications, as defined in Chapter 19.6, shall be processed as a Type II or Type III procedure and shall require Site Design Review. For information on Type I, Type II and Type III procedures, please refer to Chapter 19.1. For Modifications approval criteria, please refer to Chapter 19.6.
- B. Approval Period.** Development Review, Land Use Review and Site Design Review approvals are effective for a period of one year from the date of approval. The approval will lapse if:
1. A public improvement plan or building permit application for the project has not been submitted within one year of approval; or
 2. Construction on the site is in violation of the approved plan.
- C. Extension.** The Planning Commission may, upon written request by the applicant, grant a written extension of the approval period not to exceed one year; provided that:
1. No changes are made on the original approved site design review plan;
 2. The applicant the ability to initiate construction on the site within the one-year extension period;
 3. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted, in which case a new site design review is required; and
 4. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one year of site design approval was beyond the applicant's control.

D. Phased Development. Phasing of development may be approved with the Site Design Review application, subject to the following standards and procedures:

1. A phasing plan shall be submitted with the Site Design Review application.
2. The Planning Commission shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than 5 years without reapplying for site design review.
3. Approval of a phased site design review proposal requires satisfaction of all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Section 19.1.840. A temporary public facility is any facility not constructed to the applicable City or district standard, subject to review by the City Engineer;
 - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
 - d. An application for phasing may be approved after Site Design Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 19.6).

CHAPTER 19.3 – LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

SECTIONS:

- 19.3.100 PURPOSE**
- 19.3.110 GENERAL REQUIREMENTS**
- 19.3.112 PRE-PLANNING FOR LARGE SITES**
- 19.3.115 FLEXIBLE LOT SIZE; FLAG LOTS; LOTS ACCESSED BY MID-BLOCK LANES**
- 19.3.200 PRELIMINARY PLAT APPROVAL PROCESS**
- 19.3.210 PRELIMINARY PLAT SUBMISSION REQUIREMENTS**
- 19.3.220 BUILDING PLAN LAYOUT THROUGHOUT SUBDIVISION**
- 19.3.230 APPROVAL CRITERIA**
- 19.3.250 VARIANCES**
- 19.3.300 PARTITION APPROVAL PROCESS**
- 19.3.310 PARTITION PLAT SUBMISSION REQUIREMENTS**
- 19.3.320 APPROVAL CRITERIA**
- 19.3.350 VARIANCES AUTHORIZED**
- 19.3.400 RE-PLATTING AND VACATION OF PLATS**
- 19.3.500 FINAL PLAT SUBMITTED REQUIREMENTS AND APPROVAL CRITERIA**
- 19.3.510 PUBLIC IMPROVEMENTS REQUIRED**
- 19.3.520 PERFORMANCE GAURANTEE**
- 19.3.530 FILING AND RECORDING**
- 19.3.600 PROPERTY LINE ADJUSTMENT**
- 19.3.700 CONDOMINIUM DEVELOPMENT OF 6 OR FEWER UNITS**

19.3.100 PURPOSE

The purpose of this chapter is to:

A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and property line adjustments, as defined below and in Chapter 16.3:

1. Subdivisions are the creation of four or more lots from one lot or parcel within one calendar year.
2. Partitions are the creation of three or fewer lots from one lot or parcel within one calendar year.
3. A property line adjustment is the modification or elimination of a lot line or parcel boundary that does not result in the creation of a new lot or parcel. A property line adjustment includes the consolidation of two lot or parcels).

B. Carry out the City’s development pattern, as envisioned by the Comprehensive Plan.

- C. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
- D. Promote the public health, safety and general welfare through orderly and efficient urbanization;
- E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards; and
- G. Encourage the conservation of energy resources.

19.3.110 GENERAL REQUIREMENTS

A. For purposes of this Chapter 19:

1. Subdivisions are the creation of four or more lots from one lot or parcel within one calendar year.
2. Partitions are the creation of three or fewer lots from one lot or parcel within one calendar year.
3. A property line adjustment is the modification or elimination of a lot line or parcel boundary that does not result in the creation of a new lot or parcel. A property line adjustment includes the consolidation of two lot or parcels).

B. Subdivision and Partition Approval Through Two-Step Process. Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:

1. The preliminary plat must be approved before the final plat can be submitted for approval consideration; and
2. The final plat must demonstrate compliance with all conditions of approval of the preliminary plat.

C. Compliance With ORS Chapter 92. All subdivision and partition proposals shall conform to Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.

D. Future Re-division Plan. When subdividing or partitioning tracts into large lots (i.e., greater than two times or 200 percent the minimum lot size allowed by the underlying land use district), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use district and this Code. A re-division plan shall be submitted for large lots identifying:

1. Potential future lot division(s), consistent with the density and lot size standards of Title 17;
2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;
3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

- E. Temporary Sales Office.** A temporary sales office in conjunction with a subdivision may be approved as set forth in Chapter 19.9.100, Temporary Uses.
- F. Minimize Flood Damage.** All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway and, where possible, allow building outside of the flood fringe. Development in a 100-year flood plain shall comply with the National Flood Insurance Program (NFIP) and state building code requirements, including elevating structures above the base flood elevation. The applicant shall be responsible for obtaining floodplain development permit from the NFIP and local jurisdiction.
- G. Determination of Base Flood Elevation.** Where a development site consists of 5 or more acres or 50 or more lots, and is located in or near areas prone to inundation for which the base flood elevation has not been mapped, the applicant shall have the base flood elevation mapped and it shall be prepared by a qualified professional as part of the land division application.
- H. Need for Adequate Utilities.** All lots and parcels created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.
- I. Need for Adequate Drainage.** All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required as a condition of approval.
- J. Floodplain, Park, and Open Space Dedications.** Where land filling and/or development is allowed within or adjacent to identified flood plain and the Comprehensive Plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway and/or trail adjoining or within the flood plain for transportation, storm drainage/water quality, or park purposes in the public interest. When practicable, this area shall include portions at a suitable elevation for the construction of a multi-use pathway in accordance with the City’s adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development’s impact to the park and/or trail system, or stormwater management requirements, consistent with Chapter 18.4.200 and 18.4.400, and assist in obtaining any floodplain permit that may be required.

19.3.112 PRE-PLANNING FOR LARGE SITES

- A. Purpose.** The purpose of this Section is to require pre-planning of large sites (i.e., in conjunction with annexation or prior to subdivision approval) and ensure the development of fully integrated, mixed-use pedestrian-oriented neighborhoods. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation, particularly as new development takes place on large parcels of land.
- B. Applicability.** This Section applies to parcels, and development sites with more than one parcel in Residential District(s) that are 40 acres or larger.
- C. Area plan required.** Prior to annexation and land division approval, a specific area plan shall be prepared for all sites meeting the criteria in subsection D.
- D. Land use and design standards.** The specific area plan required under subsection C, above, shall be consistent with the following design criteria:
1. All neighborhoods have identifiable centers and outer boundaries;
 2. Edge lots are readily accessible to neighborhood commercial and recreational uses by walking and bicycling;
 3. Uses and housing types are mixed as outlined in the zoning district;
 4. Streets are connected and blocks are walkable in scale (e.g., 200-600 feet in length, with an average perimeter no greater than 1,400 feet), except where topography, existing development, or other physical features require longer blocks;
 5. Civic buildings, monuments and open spaces (e.g., parks, squares, greenbelts, natural areas, etc.), and scenic viewing points are given prominent sites throughout the neighborhood;
 6. Identify the requirements to be met in master plans for Parks, Emergency Services, and Schools;
 7. Overall, the master plan achieves a housing density that is consistent with the Comprehensive Plan.; and
 8. Land needed for public use (e.g., schools, parks, fire stations, and other facilities) shall be designated on the master plan, in accordance with the Comprehensive Plan.

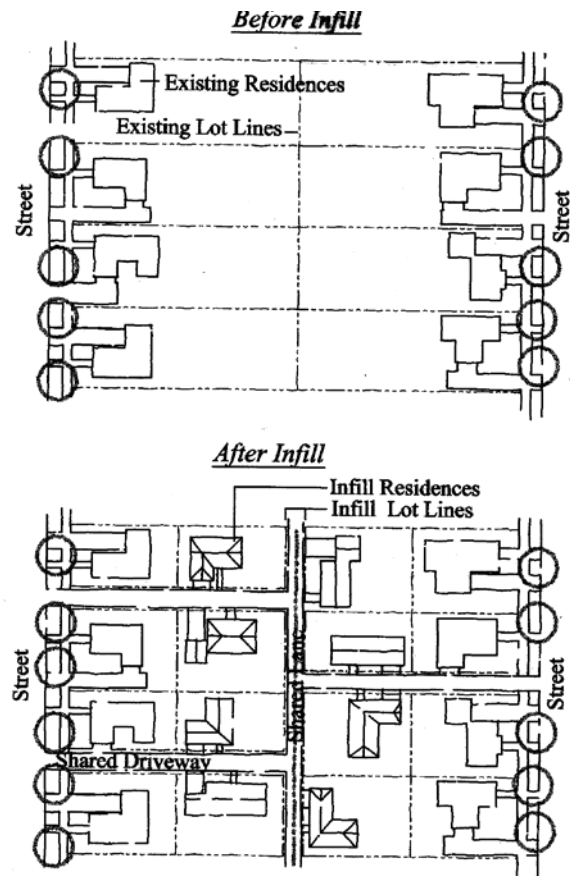
E. Implementation. Upon approval of a plan under the provisions of Chapter 19.3.112, the processing of development proposals shall follow the Land Division procedures in Chapter 19.3, and the Land Use Review and/or Site Design Review procedures in Chapter 19.2, as applicable. Any modifications to the approved master plan shall be subject to the standards and procedures in Chapter 19.6 - Modifications.

19.3.115 FLEXIBLE LOT SIZE; FLAG LOTS; LOTS ACCESSED BY MID-BLOCK LANES

A. Flexible Lot Size. To allow creativity and flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a 10 percent modification to the lot area and/or lot dimension (width/depth) standards in Chapter 17.2.130, provided that the overall density of the subdivision does not exceed the allowable density of the district and the approval body finds that granting the modification allows for a greater variety of housing types or it improves development compatibility with natural features or adjacent land uses. The approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than 25,000 square feet.

B. Mid-block lanes. Lots may be developed without frontage onto a public street when lot access is provided by mid-block lanes, as shown below. Mid-block lanes or shared driveways, as illustrated in Figure 19.3.115(B), may be required when practicable to provide connectivity between infill developments. Mid-block lanes with access easements for adjoining properties may be allowed as an alternative to requiring through streets where block lengths do not necessitate a through street. The lanes shall meet the standards for alleys, per Chapter 18.4.100, and the standards under subsections C-F, below.

Figure 4.3.115B - Mid-block Infill



- C. Flag lots.** Flag lots may be created only when a through street or mid-block lanes cannot be extended to serve abutting uses or future development. A flag lot driveway (“flag pole”) may serve no more than 2 dwelling units, including accessory dwellings and dwellings on individual lots, unless Uniform Fire Code (UFC) standards are met for more units. When UFC standards are met, the maximum number of dwellings shall be 4. A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots. No fence, structure or other obstacle shall be placed within the drive area. The Fire Marshal may require an emergency turn-around. Fire sprinklers may also be required for buildings that cannot be fully served by fire hydrants (i.e., due to distance from hydrant or insufficient fire flow).
- D. Driveway and lane width.** Driveway widths shall meet the standards of Chapter 21.02.
- E. Easement and improvement of drive lane.** The property owner shall record a 20-foot easement benefiting all properties that are to receive vehicle access. The drive lane shall be improved with an all weather surface approved by the City. Dedication or recording, as applicable, shall be so indicated on the face of the subdivision or partition plat.
- F. Maximum drive lane length.** The maximum drive lane length is subject to requirements of the Uniform Fire Code, but shall not exceed 150 feet for a shared side drive, unless approved by the Molalla Fire Department at which time access can be extended up to 400 feet for a shared rear lane.
- G. Future street plans.** Building placement and alignment of shared drives shall be designed so that future street connections can be made as surrounding properties develop (*i.e.*, as shown in the Figure 19.3.115.B).

19.3.200 PRELIMINARY PLAT APPROVAL PROCESS

A. Review of Preliminary Plat. Review of a partition plat shall be processed using the Type III procedure under Chapter 19.1.400. All preliminary plats shall be reviewed using approval criteria in Chapter 19.3.200. An application for subdivision may be reviewed concurrently with an application for a Master Planned Development under Chapter 19.5.

B. Preliminary Plat Approval Period. Preliminary plat approval shall be effective for a period of two years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the two year period.

C. Modifications and Extensions. The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 19.6 - Modifications. The Planning director may, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one year; provided that:

1. Any changes to the preliminary plat follow the procedures in Chapter 19.6;
2. The applicant has submitted written intent to file a final plat within the one-year extension period;
3. An extension of time will not prevent the lawful development of abutting properties;
4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application is required; and
5. The extension request is made before expiration of the original approved plan.

D. Phased Development.

1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be more than 4 years without reapplying for a preliminary plat;
2. The criteria for approving a phased land division proposal are:
 - a. Public facilities shall be constructed in conjunction with or prior to each phase;

- b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Chapter 19.2.700. A temporary public facility is any facility not constructed to the applicable City or district standard;
- c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
- d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.

19.3.210 PRELIMINARY PLAT SUBMISSION REQUIREMENTS

A. General Submission Requirements. A subdivision application shall contain all of the information required for a Type III procedure under Chapter 19.1.400, and the information in subsections 1-3, below:

1. **Public Facilities and Services Impact Study.** The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Chapter 19.1.610). The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users;
2. **Traffic Impact Study, if required by the road authority.** Traffic Impact Studies shall conform to the standards and procedures in Chapter 19.1.910;
3. Plans shall be drawn to a scale of not less than one inch equals 50 feet nor greater than one inch equals 200 feet; and
4. All plans shall be submitted in electronic (pdf) format. The City may charge a fee to transfer from paper to electronic format as set by City Council resolution.

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

1. General information:

- a. Proposed name of the subdivision. This name must not duplicate nor resemble the name of another subdivision in Clackamas County and shall be approved by the Clackamas County Surveyor;
- b. Date, north arrow, and scale of drawing;
- c. Appropriate identification clearly stating the map is a Preliminary Plat.
- d. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
- e. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the designer, and engineer and surveyor if any, and the date of the survey if submitted; and
- f. Total acreage of proposed development.
- g. Description of the particular page.

2. Site analysis:

- a. Streets. Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;
- b. Easements. Width, location and purpose of all existing easements of record on and abutting the site;
- c. Utilities. Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
- d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding 10 percent and at 2-foot intervals for ground slopes of less than 10 percent or as required by the City. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than 6 percent;
- e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
- f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;

- g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, Chapter 18.7 and relevant portions of the Comprehensive Plan.);
 - h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
 - i. Designated historic and cultural resources on the site and adjacent parcels or lots;
 - j. The location, size and species of trees having a caliper (diameter) of 6 inches or greater at 4 feet above grade in conformance with Chapter 18.2;
 - k. Existing zoning of the property;
 - l. Scaled location and use of all existing buildings within the proposed subdivision, indicating which buildings are to remain and which are to be removed including the dimension between the buildings on site and proposed property lines along with the approximate location of buildings;
 - m. The location and disposition of any wells, creeks, drainage courses, which may be found on the most recently published U.S. Geological Survey maps. Wetlands identified on the State Wetland Inventory, detention facilities, drainage ways, septic tanks, drain fields, and easements in or adjacent to the proposed subdivision;
 - n. The location of the Urban Growth Boundary, if within 1,000 feet;
 - o. Adjacent property boundaries and abutting land uses; and
 - p. Other information, as deemed appropriate by the Planning Director. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
3. Proposed Improvements:
- a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
 - b. Easements: location, width and purpose of all proposed easements;
 - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;

- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use; potential location of future buildings;
- e. Proposed improvements, as required by Title 18 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- f. Preliminary location of development showing those future buildings can meet siting and dimensional standards of the district.
- g. The proposed source of domestic water;
- h. The proposed method of sewage disposal;
- i. Proposed method of surface water drainage and treatment if required;
- j. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
- k. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s). If the rail line is inactive then no contact is necessary unless the development is adjacent to the rail line;
- l. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable;
- m. Identification of the base flood elevation for development of more than 3 lots or 1 acre, whichever is less. Written evidence of initiation of a Federal Emergency Management Agency (FEMA) flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain. FEMA approval of the amendment shall be a condition of City land use approval;
- n. A detailed plan or map of the proposed subdivision, drawn to scale. For subdivisions of 50 acres or more, the Planning Director may authorize a smaller scale where an entire subdivision cannot be shown on a single sheet. The detailed plan shall clearly show the following information:
 - 1) North arrow;
 - 2) Lot layout with approximate dimensions and square footage contained in each lot;

- 3) Topography maps certified by the engineer or surveyor within the proposed subdivision related to some established benchmark or other datum as approved by the Planning Director;
- 4) A geotechnical investigation report which shows the following:
 - a) Slope stability studies;
 - b) On-site grading, cutting, and filling;
 - c) Structural foundation requirements;
 - d) Surface and subsurface drainage recommendations;
 - e) Erosion vulnerability;
 - f) Building or grading limitations, including top of slope offsets and areas restricted for site grading;
- o. Projects meeting all of the following criteria are exempt from the requirement of (n) above.
 - 1) Construction value of the project is \$150,000 or less;
 - 2) The project will not involve the import, export, and/or on-site movement of more than 50 cubic yards of earth;
 - 3) There is no evidence of any previous fill on the site to a depth exceeding one foot;
 - 4) The project does not include proposed fill on the site to a depth exceeding one foot; and
 - 5) No portion of the site has a slope in excess of 10 percent.
- p. Street profile within 100 feet of any point where the street grade is proposed to be greater than 6% or the overall topography of the land is greater than 10%;
- q. Obtain certification from the Director of Public Works, on forms provided by the City, that the following are available to the site:
 - 1) Municipal water with sufficient volume and pressure to serve the proposed development;
 - 2) Sanitary sewer with sufficient treatment plant capacity and line capacity to serve the proposed development;

- 3) Storm sewer with sufficient line capacity to adequately provide necessary drainage;
 - 4) Preliminary storm detention plan;
 - 5) If any of these certifications cannot be made because the utilities cannot be provided at the property boundary, the Director of Public Works shall state on the form whether the utilities could be provided by extension or replacement of existing lines or construction of pumping stations and will provide an estimate of the cost of the extension, replacement, or the pump station costs. A signed statement by the developer that it is his/her intent to advance the funds necessary for the required extension, replacement or pump station will be acceptable in conjunction with the Director of Public Works statements' to serve in lieu of a full certification. If certification or statement in lieu of certification cannot be given due to lack of utilities, further processing of the proposed subdivision may proceed only when the developer furnishes a statement acknowledging his/her full realization that no development of the tract may proceed until utilities are available and that no time schedule for their availability currently exists.
- r. A statement from the property owner that no underground storage facilities exist and no known past or present DEQ issues exist on the properties.
 - s. Evidence of contact with the road authority for any development requiring access to its facility(ies); and
 - t. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 18.7.
4. Explanatory Information Required.
- a. Proposed deed restrictions in outline form;
 - b. Improvements to be requested of the City and the approximate time such request will be made along with the approximate costs and date of completion of such improvements;
 - c. Improvements to be made by the developer and the approximate time such improvements are to be completed;
 - 1) Sufficient detail regarding proposed improvements shall be submitted for review of compliance with the objectives of City ordinances as well as state and federal laws;

- 2) If the nature of the improvements are such that it is impractical to prepare necessary details prior to approval of the preliminary plat then additional detail shall be submitted at least 30 days prior to the request for approval of the final plat.
 - 3) Agreements on any recommended changes shall be obtained prior to approval of the final plat
- d. An analysis of existing traffic flows projected as a result of the subdivision;
 - e. The location and method of operation of required storm water detention facilities;
 - f. The location of required parks and recreation facilities consistent with MDC 17.60.700;
 - g. An analysis of the effects of the subdivision on the provision of other services, including, but not limited to, police, fire, water, sewer, and storm drainage;
 - h. Other public ways, sidewalks, bicycle routes, bikeways, pedestrian/bicycle/equestrian accessways and other pedestrian and bicycle connections;
 - i. Transit streets, facilities and stops, if any;
 - j. Neighborhood activity centers;
 - k. Any other information deemed necessary by the Planning Director and/or the Director of Public Works.

19.3.220 BUILDING PLAN LAYOUT THROUGHOUT SUBDIVISIONS

- A. There shall be a minimum change of 5% in all wall structures (size, shape, and special arrangement) within 4 houses in any direction of a subdivision. This shall be in place throughout the subdivision and not just in phases of the subdivision.
 - 1. The builder shall supply staff with a series of plan types and numbers to be used throughout the subdivision. This requirement allows the Planning Department the ability to review plan types ahead of time. New building types shall be allowed as long as they meet the requirements of this code;
 - 2. Where such plans as mentioned above do not exist, the developer shall reference each lot by number. This reference number should relate to a specific plan that will become available at the time materials are submitted with a building permit application and shall adhere to the minimum variability requirements of this code.

19.3.230 APPROVAL CRITERIA

A. General Approval Criteria. The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this Title, and the applicable chapters of Title 17 (Land Use Districts) and Title 18 (Design Standards) apply. Where a variance, annexation, or zone change is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Title 20;
2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat;
5. Evidence that any required State and federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Meet the requirements of Section 19.1.910- Traffic Studies
7. Evidence that improvements or conditions required by the City, road authority, Clackamas County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and
8. If any part of the site is located within a Specific Area Plan District, Overlay Zone, or previously approved Master Planned Development, it shall conform to the applicable regulations and/or conditions.

B. Layout and Design of Streets, Blocks and Lots. All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use district (Title 17), and the standards of Chapter 18.1.200 - Street Connectivity and Formation of Blocks.
2. Setbacks shall be as required by the applicable land use district (Title 17).

3. Each lot shall conform to the standards of Title 18.1 - Access and Circulation.
4. Landscape or other screening may be required to maintain privacy for abutting uses. See Title 17 - Land Use Districts, and Chapter 18.2 - Landscaping.
5. In conformance with the Uniform Fire Code, a 20-foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See Chapter 18.1- Access and Circulation.
6. Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.

C. Conditions of Approval. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, to offset any impacts of the development, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 18.4 (Public Facilities).

19.3.250 VARIANCES AUTHORIZED

Variations to the standards of this Chapter shall be processed in accordance with Chapter 20.1 - Variations. An application for a variance shall be submitted at the same time an application for land division or property line adjustment is submitted, and the applications shall be reviewed together.

19.3.300 PARTITION APPROVAL PROCESS

- A. Review of Preliminary Plat.** Review of a partition shall be processed with a Type II procedure, under Chapter 19.1.300.
- B. Partition Approval Period.** Partition approval shall be effective for a period of two years from the date of approval. The partition shall lapse if a final plat has not been submitted within the two-year period.
- C. Modifications and Extensions.** The applicant may request changes to the approved partition or conditions of approval following the procedures and criteria provided in Chapter 19.6 - Modifications. The Planning Director may, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one year; provided that:
1. Any changes to the preliminary plat follow the procedures in Chapter 19.6;
 2. The applicant has submitted written intent to file a final plat within the one-year extension period;
 3. An extension of time will not prevent the lawful development of abutting properties;
 4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application is required; and
 5. The extension request is made before expiration of the original approved plan.

19.3.310 PARTITION PLAT SUBMISSION REQUIREMENTS

A. General Submission Requirements. For a partition, the application shall contain all of the information required for a Type II procedure under Chapter 19.1.300, and the information described in Section B below.

1. The application shall include a partition plan drawn to a scale of not less than one inch equals 50 feet nor greater than one inch equals 200 feet; and
2. All plans shall be submitted in electronic (pdf) format. The City may charge a fee to transfer from paper to electronic format as set by City Council resolution.

B. Partition Information. In addition to the general information described in subsection A above, a partition application shall include drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. General information:
 - a. Proposed partition name.
 - b. Date, north arrow, and scale of drawing;
 - c. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
 - d. Total square footage of the proposed development.
 - e. The application shall include a tentative plan drawn to a scale of not less than 1" = 20', nor more than 1" = 200', and containing the following information:
 - 1) The date, north point, scale and sufficient description to define the location and boundaries of the parcel to be partitioned and its location in the planning control area;
 - 2) Name and address of the record owner and the person who prepared the map;
 - 3) Approximate acreage of the parcel under a single ownership or, if more than one owner is involved, the total contiguous acreage of all owners of land directly involved in the partitioning;
 - 4) For land adjacent to and within the partition to be partitioned, the location, width and names of all streets, location and size of sewers, water lines, drainage ways and power poles;
 - 5) Outline and location of existing buildings to remain in place;

- 6) Outline and location of existing buildings to be removed;
- 7) Lot layout showing size and relationship to existing or proposed streets and utility easements;

2. Site analysis:

- a. Streets: Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;
- b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
- c. Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
- d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding 10 percent and at 2-foot intervals for ground slopes of less than 10 percent or as required by the City. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than 6 percent;
- e. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
- f. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, Chapter 18.7 and relevant portions of the Comprehensive Plan.);
- g. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
- h. Designated historic and cultural resources on the site and adjacent parcels or lots;
- i. The location, size and species of trees having a caliper (diameter) of 6 inches or greater at 4 feet above grade in conformance with Chapter 18.2;
- j. Name and address of project designer, if applicable; and
- k. Other information, as deemed appropriate by the Planning Director. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.

3. Proposed improvements:

- a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
- b. Easements: location, width and purpose of all proposed easements;
- c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;
- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use; potential location of future buildings;
- e. Proposed improvements, as required by Title 18 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- h. Preliminary location of development showing those future buildings can meet siting and dimensional standards of the district;
- i. The proposed source of domestic water;
- j. The proposed method of sewage disposal;
- k. Proposed method of surface water drainage and treatment if required;
- l. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
- m. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s);
- n. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable;
- o. Identification of the base flood elevation for development of more than 2 lots or ½ acre, whichever is less. Written evidence of initiation of a Federal Emergency Management Agency (FEMA) flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain. FEMA approval of the amendment shall be a condition of City land use approval;

- p. Evidence of contact with from the road authority for any development requiring access to its facility(ies); and
- q. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 18.7.

19.3.320 APPROVAL CRITERIA

A. General Approval Criteria. The City may approve, approve with conditions or deny a partition based on the following approval criteria:

1. The proposed partition complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this Title, and the applicable chapters and sections of Title 17 (Land Use Districts) and Title 18 (Design Standards) shall apply. Where a variance is necessary to receive partition approval, the application shall also comply with the relevant sections of Title 20;
2. The proposed plat name is not already recorded for another partition, and satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat;
5. Evidence that any required State and federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Evidence that improvements or conditions required by the City, road authority, Clackamas County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and
7. If any part of the site is located within a Specific Area Plan District, Overlay Zone, or previously approved Master Planned Development, it shall conform to the applicable regulations and/or conditions.

C. Layout and Design of Streets, Blocks and Lots. All proposed blocks (i.e., one or more parcels bound by public streets) parcels conform to the specific requirements below:

1. All parcels shall comply with the parcel size, setback, and dimensional requirements of the applicable land use district (Title 17), and the standards of Chapter 18.1.200. - Street Connectivity and Formation of Blocks;
2. Setbacks shall be as required by the applicable land use district (Title 17);
3. Each parcel shall conform to the standards of Chapter 18.1 - Access and Circulation;

4. Landscape or other screening may be required to maintain privacy for abutting uses. See Title 17 - Land Use Districts, and Chapter 18.2 – Landscaping;
5. In conformance with the Uniform Fire Code, a 20-foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See Chapter 18.1- Access and Circulation;
6. Where a common drive is to be provided to serve more than one parcel, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition plat;
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.

D. Conditions of Approval. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 18.4 (Public Facilities).

19.3.350 VARIANCES AUTHORIZED

Variations to the standards of this Chapter shall be processed in accordance with Chapter 20.1 - Variations. An application for a variance shall be submitted at the same time the application for land division is submitted, and the applications shall be reviewed together.

19.3.400 RE-PLATTING AND VACATION OF PLATS

- A. Re-platting and Vacations.** Any plat or portion thereof may be re-platted or vacated upon receiving an application signed by all of the owners of record.
- B. Procedure.** All applications for a re-plat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition (i.e., the same process used to create the plat shall be used to re-plat or vacate the plat). The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See Chapter 19.1 - Types of Applications and Review Procedures.) The road authority(ies) shall be notified of all applications for re-plats and street vacations. All street vacations shall also conform to the ORS Chapter 271.
- C. Basis for Denial.** A re-plat or vacation application may be denied if it abridges, inhibits or destroys any public right in any of its public uses, improvements, streets or alleys, or if it fails to meet any applicable criteria.
- D. Recording of Vacations.** All approved plat vacations shall be recorded in accordance with 19.3.190 and the following procedures:
1. Once recorded, a re-plat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
 2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications described on the plat.
- E. After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.
- F. Street Requirement.** Except as prohibited by law (*e.g.*, ORS 92.837, Manufactured Home Park), in approving a right-of-way vacation or re-plat, the City may require dedication of access ways, paths or trails as a condition of the vacation of any public easement or right-of-way, in order to establish or maintain a safe, convenient and direct pedestrian and bicycle circulation system. Such requirements shall be coordinated with the applicable road authority.

19.3.500 FINAL PLAT SUBMISSION REQUIREMENTS AND APPROVAL CRITERIA

- A. Submission Requirements.** Final plats shall be reviewed and approved by the City prior to recording with Clackamas County. The applicant shall submit the final plat within one year of the approval of the preliminary plat as provided by Chapter 19.3.120. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the Planning Director.
- B. Approval Criteria.** By means of a Type I procedure, the Planning Director and Public Works Director/City Engineer shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:
1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
 2. The City has received adequate assurances that the subdivider or partitioner has agreed to make all public improvements which are required as conditions of approval of the tentative plan, including, but not limited to; streets, alleys, pedestrian ways, storm drainage, sewer water systems and parks. The following constitute acceptable adequate assurances:
 - a. Certification by the Public Works Director/City Engineer that all required public improvements are completed and approved.
 - b. An improvement agreement between the City and the developer, executed and file with the City. The agreement shall be accompanied by a performance guarantee as specified by the City. Upon the developer's request, the agreement may be extended for an additional 6 months if the performance guarantees are modified to reflect any change in cost of construction. The agreement shall state that all improvements completed within the term of the agreement or its extension shall be completed by the City at the expense of the developer. The City shall estimate the cost of completing the work, call upon the bond or deposit for funds necessary to cover the cost, and complete the improvement(s) from funds collected under the performance guarantee. If the funds collected under the performance guarantee are not sufficient to install the required improvement(s), the city may either hold the collected funds until additional funds are authorized for the improvements(s) or expend the collected funds on a revised improvement(s) or on a portion of the improvement(s) as determined reasonable by the Director of Public Works.
 - c. If the Planning Director finds that the conditions specified in subsection (2.b) of this section have not been met, the Director shall advise the applicant of the changes that must be made and afford the applicant an opportunity to comply. Rejection of a final plat shall not affect tentative plan approval.

- d. When the Planning Director finds that the final plat is in substantial conformity to the approved tentative plan and is otherwise in lawful form the Director shall so endorse the plat.
 - e. Final plat approval is not a land use decision subject to review by the Land Use Board of Appeals.
 - f. The Planning Director shall determine that the final plat conforms with the preliminary plat as approved or has met applicable conditions if approved conditionally, the requirements of this Ordinance have been met, and the final plat includes the signature of the Public Works Director/City Engineer, whose signature shall certify the platting laws of this State have been met. Approval of the Final Plan shall be evidenced by the signature of the Planning Director and the Public Works Director/City Engineer with the date of such approval. If the final plat is disapproved, the Planning Director shall enter findings of fact stating the basis of disapproval. The applicant may then either submit a new plat for consideration or appeal the decision as provided in Chapter 19.1.
 - g. Following approval by the Hearing Body the Planning Director shall notify the applicant that the final plat has been approved by the City. The applicant shall deliver the Final Plat to the City’s surveyor. Once approved by the City’s surveyor the applicant shall deliver the Final Plat to the County Surveyor if different from the City surveyor for the purpose of conducting the plat check in conformance with O.R.S. Chapter 92, and subsequent processing by Clackamas County to result in recording of the plat.
 - h. Performance guarantees shall meet the requirements in accordance with Chapter 19.3.520;
3. The plat contains, free and clear of all liens and encumbrances, a donation to the public of all common improvements, including but not limited to; streets, roads, sewage disposal, water supply systems, and public parks – the donation of which is required by this chapter or was made a condition of the approval of the tentative plan;
 4. Explanations of all common improvements required as conditions of approval of the tentative plan have been recorded and referenced on the plat;
 5. All deeded areas shown on the tentative plan or required conditions of the tentative plan approval have been met and deeded to the City of Molalla;
 6. The applicant has provided copies of all recorded homeowners association Covenants, Conditions and Restrictions (CC&R’s); deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;

7. The plat complies with the applicable sections of this code (i.e., there have been no changes in land use or development resulting in a code violation since preliminary plat approval);
8. Certification by the City or service district, as applicable, that water and sanitary sewer service is available to every lot depicted on the plat; or bond, contract or other assurance has been provided by the subdivider/partitioner to the City that such services will be installed in accordance with Chapter 18.4 - Public Facilities, and the bond requirements of Section 19.3.520. The amount of the bond, contract or other assurance by the subdivider/partitioner shall be determined by a registered professional engineer, subject to review and approval by the City;
9. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner established by the U.S. Geological Survey, or giving two or more permanent objects for identifying its location.

19.3.510 PUBLIC IMPROVEMENTS REQUIRED

Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the applicant shall provide a performance guarantee, in accordance with Chapter 19.1.840.

19.3.520 PERFORMANCE GUARANTEE

- A. Performance Guarantee Required.** When a performance guarantee is required, developer shall file an assurance of performance with the City as described in Section 19.1.840. The performance guarantee may include one or more of the following as determined by the City:
1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
 2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
 3. Cash.
- B. Determination of Sum.** The assurance of performance shall be for a sum determined by the City as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses and an adequate reserve.
- C. Itemized Improvement Estimate.** The developer shall furnish to the City an itemized improvement estimate, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.
- D. When Subdivider Fails to Perform.** Consistent with the provisions of Section 19.1.840, in the event the developer fails to carry out all of the conditions of approval regarding the design, construction and maintenance of public improvements, and the City has un-reimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.
- E. Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

19.3.530 FILING AND RECORDING

- A. Filing Plat with County.** Within 60 days of the City approval of the final plat, the applicant shall submit the final plat to Clackamas County for signatures of County officials as required by ORS Chapter 92.
- B. Proof of Recording.** Upon final recording with the County, the applicant shall submit to the City a mylar copy and 5 paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots or parcels.

C. Prerequisites to Recording the Plat.

1. A plat shall not be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;
2. A plat shall not be recorded until it is approved by the County Surveyor in the manner provided by ORS Chapter 92.

D. Review of Final Plat. Review of a final plat for a subdivision or partition shall be processed as a Type I procedure under Section 19.1.200, using the approval criteria in Section 19.3.160. Review of a final plat is not a land use decision subject to review by the Land Use Board of Appeals.

19.3.600 PROPERTY LINE ADJUSTMENTS

A Property Line Adjustment is the modification of lot or parcel boundaries, when a new lot or parcel is not created or removed. The application submission and approval process is as follows:

A. Submission Requirements. An application for a Property Line Adjustment shall be made on forms provided by the City and shall include information required for a Type II application, as governed by Section 19.1.300. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of sensitive lands and significant vegetation; existing fences and walls; and any other information deemed necessary by the Planning Director or designee for ensuring compliance with City codes.

1. Each application shall be accompanied by a tentative plan drawn to scale of not less than 1":20', nor more than 1":200', and containing at least the following:
 - a. Complete names, addresses and phone numbers of the owners of the properties to be adjusted;
 - b. A description of the affected properties by quarter section, tax lot numbers, addresses and lot area;
 - c. A description of the property to be transferred, including dimensions and size in square feet or acres;
 - d. Identification arrows showing the land to be transferred;
 - e. North arrow;
 - f. All adjacent roads, noting whether public or private, including name and road width;
 - g. Zoning of affected properties;
 - h. All existing structures on the tracts and their setbacks to property lines, with notations as to whether property lines referred to are existing or proposed;
 - i. Location of any septic tanks and drain fields;
 - j. The location of any natural drainage ways, streams, wetlands, escarpments, slopes of 40 percent or greater, outcroppings, or other significant natural features of the tracts;

- k. Other pending applications, including building permits, on the subject tracts;
- l. All easements, including widths and types, labeled as existing or proposed noting the use and which properties they serve; and
- m. A copy of the unsigned deed describing the proposed adjustment.

B. Approval Process.

- 1. Decision-making process. Property line adjustments shall be reviewed by means of a Type II procedure, as governed by Section 19.1.300. Affected road authority(ies) shall be notified of lot line adjustments that may affect property access or traffic volumes or operations on their facilities.
- 2. Time limit on approval. Approval of a property line adjustment is effective for a period of one (1) year from the date of approval, during which time it must be recorded.
- 3. Lapsing of approval. The property line adjustment approval shall lapse if:
 - a. The property line adjustment is not recorded within one year;
 - b. The property line adjustment has been improperly recorded with Clackamas County without the satisfactory completion of all conditions attached to the approval; or
 - c. The final recording is a departure from the approved plan.

C. Approval Criteria. The Planning Director or designee shall approve or deny a request for a property line adjustment in writing based on all of the following criteria:

- 1. Parcel Creation. An additional parcel or lot is not created or removed by the lot line adjustment;
- 2. Lot standards. All subject lots and parcels conform to the applicable standards of the land use district (Title 17) including lot area, dimensions, setbacks, and coverage, and a resulting lot or parcel is not wholly comprised of a flood hazard area or jurisdictional wetland;
- 3. Access and Road authority Standards. All lots and parcels conform to the standards or requirements of Chapter 18.1 – Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made less conforming by the property line adjustment;

D. Recording Property Line Adjustments.

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

D. Extension.

Upon written request by the applicant and payment of the required fee, the City may grant a written extension of a property line adjustment approval for a period not to exceed one year provided that:

1. No changes are made to the original property line adjustment as approved by the City;
2. The applicant can show intent of recording the approved plan within the one-year extension period;
3. There have been no changes in the applicable Code or plan provisions on which the approval was based. In the case where the property line adjustment conflicts with a code change, the extension shall be denied; and
4. The extension request is made before expiration of the originally-approved permit.

19.3.700 CONDOMINIUM DEVELOPMENT OF 6 OR FEWER UNITS

- 19.3.710 Generally
- 19.3.720 Standards Generally
- 19.3.730 Review by Planning Director
- 19.3.740 Responsibilities of Applicant
- 19.3.750 Conversion to Condominium

19.3.710 GENERALLY

Because the construction of small condominium projects are not expected to have and adverse impact on the appropriate growth and development of the city, the regulations set out in this chapter apply to projects involving 6 or fewer units on a single lot or parcel.

19.3.720 STANDARDS GENERALLY

1. All utilities shall be separated on a unit-to-unit basis, except in cases where the units are to be in multi-story structures where some of the units will not have ground floors, in which case the utilities shall be separated as much as possible from one unit to the next. The developer shall present plans for utility separation to the City Engineer, PGE, Molalla Telephone Company, and if appropriate Northwest Natural Gas.
2. The applicant is responsible for compliance with all applicable city, county and state regulations governing the construction, platting and sale of condominium units.
3. Improvement requirements for small condominium projects are the same as those that would be required for a subdivision of the property. These include:
 - A. Curb, gutter and sidewalk construction to city standards;
 - B. Installation and extension of utilities;
 - C. Street improvements adjacent to site;
 - D. Dedication of right-of-way sufficient to allow for the widening or expansion of the street;
 - E. Filing of a waiver of the right to remonstrate against any future public facility or utility improvements which would benefit the property.

19.3.730 REVIEW BY PLANNING DIRECTOR

1. The Planning Director shall review the information submitted by the applicant and shall determine whether it meets the requirements of the development code and other applicable ordinances. Upon completion of this review, the Planning Director shall

notify the applicant in writing of the required conditions to be met prior to sale or occupancy of the units.

2. If modifications to the project are necessary to assure compliance with the applicable regulations, the Planning Director shall notify the applicant of such modifications.
3. Included with the written notification from the Planning Director will be one copy of the proposed plot plan labeled "tentatively approved," or "tentatively denied" and making any modification or correction which may be necessary.

19.3.740 RESPONSIBILITIES OF APPLICANT

1. The applicant is responsible for compliance with all applicable requirements prior to sale or occupancy of the units.
2. The applicant shall file with the Planning Director a reproducible copy (Mylar or sepia) of the recorded plat of the development.
3. The developer must provide the City with a copy of the by-laws of the owners' association and any contracts, covenants, restrictions or waivers of remonstrance recorded for the property along with the copy of the recorded plat.

19.3.750 CONVERSION TO CONDOMINIUM

A proposal to convert an existing rental or leased property to condominium ownership shall comply with the requirements of section Chapter 19.3, regardless of the number of units involved. Applicants intending to utilize the provisions of this chapter must file the appropriate application and receive written approval from the Planning Director prior to receipt of a certificate of occupancy for the units.

CHAPTER 19.4 CONDITIONAL USE PERMITS

SECTIONS:

19.4.100 PURPOSE

19.4.200 APPROVALS PROCESS

19.4.300 APPLICATION SUBMISSION REQUIREMENTS

19.4.400 CRITERIA, STANDARDS AND CONDITIONS OF APPROVAL

19.4.500 ADDITIONAL DEVELOPMENT STANDARDS

19.4.100 PURPOSE

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as “Conditional Uses” in Title 17 - Land Use Districts. The purpose of this chapter is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

19.4.200 APPROVAL PROCESS

- A. Initial Application.** An application for a new conditional use shall be processed using the Type III procedure (Chapter 19.1.400). The application shall meet submission requirements in this chapter.
- B. Modification of Approved or Existing Conditional Use.** Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 19.6 - Modifications.

19.4.300 APPLICATION SUBMISSION REQUIREMENTS

In addition to the submission requirements required in Chapter 19.1, an application for conditional use approval must include the following information (1-8), as applicable. For a description of each item, please refer to Section 19.2.500 - Site Design Review Application Submission Requirements:

1. Existing site conditions;
2. Site plan;
3. Preliminary grading plan;
4. A landscape plan;
5. Architectural drawings of all structures;
6. Drawings of all proposed signs;

7. A copy of all existing and proposed restrictions or covenants;
8. Narrative report or letter documenting compliance with all applicable approval criteria in Chapter 19.4.400.

19.4.400 CRITERIA, STANDARDS AND CONDITIONS OF APPROVAL

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on written findings of fact with respect to each of the standards and criteria in A-C.

A. Use Criteria.

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
2. Meet the requirements of Section 19.1.910 – Traffic Studies.
3. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and
4. All required public facilities have adequate capacity to serve the proposal.

B. Site Design Standards. The Site Design Review approval criteria (Chapter 19.2.600) are met.

C. Conditions of Approval. The City may impose conditions necessary to ensure that the use is compatible with other uses in the vicinity and that any negative impacts from the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. Limiting the hours, days, place and/or manner of operation;
2. Requiring site or architectural design features that minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size or lot coverage, and/or location on the site;
5. Designating the size, number, location and/or design of vehicle access points or parking areas;

6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height and/or lighting of signs;
9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands (Chapter 8.7);
13. Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same.

19.4.500 ADDITIONAL DEVELOPMENT STANDARDS

- A. Concurrent Variance Application(s).** Approval of a conditional use permit shall not grant a variance to regulations otherwise required by the Development Code. Variance application(s) may be filed in conjunction with the conditional use application, and both applications may be reviewed at the same hearing.
- B. Additional Development Standards.** Development standards for specific uses are contained in Title 17 - Land Use Districts.

CHAPTER 19.5 MASTER PLANNED DEVELOPMENTS AND PLANNED UNIT DEVELOPMENTS

SECTIONS:

19.5.100 PURPOSE

19.5.110 APPLICABILITY

19.5.120 REVIEW AND APPROVALS PROCESS

19.5.130 MODIFICATIONS OF DISTRICT STANDARDS (TITLE 17) AND DESIGN STANDARDS (TITLE 18)

19.5.140 OVERLAY ZONE AND CONCEPT PLAN SUBMISSION

19.5.150 OVERLAY ZONE AND CONCEPT PLAN APPROVAL CRITERIA

19.5.160 ADMINISTRATIVE PROCEDURES

19.5.170 DETAILED DEVELOPMENT PLAN SUBMISSION REQUIREMENTS

19.5.180 DETAILED DEVELOPMENT PLAN APPROVAL CRITERIA

19.5.190 LAND USE REVIEW, SITE DESIGN REVIEW, FINAL PLAT, AND BUILDING PERMIT APPROVALS

19.5.100 PURPOSE

The purpose of this Chapter is to:

- A. Implement the Comprehensive Plan and applicable land use district(s) by providing a means for master planning large development sites;
- B. Encourage innovative planning that results in projects that benefit the community (i.e., through compatible mixed use development, improved protection of open spaces, transportation options and consistent application of standards in phased developments);
- C. Encourage developments that recognize the relationship between buildings, their use, open space, and transportation options, providing varied opportunities for innovative and diversified employment environments;
- D. Facilitate the efficient use of land;
- 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 conservation and improved air and water quality and;
- H. Assist the City in planning infrastructure improvements.

19.5.110 APPLICABILITY

The master planned development designation is an overlay zone that may be applied over any of the City’s land use districts. An applicant may elect to develop a project as a master planned development in compliance with the requirements of this Chapter. In addition, the City may require that subdivisions of large residential sites (40 acres and larger) be reviewed in accordance with the Master Planned Development standards of this Chapter 19.5.

19.5.120 REVIEW AND APPROVALS PROCESS

A. Review Steps. There are three required steps to planned development approval, which may be reviewed individually or combined into one package for concurrent review:

1. The approval of a planned development overlay zone and concept plan;
2. The approval of a detailed development plan; and
3. The approval of a preliminary subdivision plat(s) and/or site design review application(s).

B. Approval Process.

1. The Master Planned Development (PD) overlay zone and Concept Plan shall be reviewed together using the Type III procedure in Chapter 19.1.400, the submission requirements approval criteria of Chapter 19.5.
2. The detailed development plan shall be reviewed using the Type III procedure in Chapter 19.1.400, to ensure substantial compliance with the approved concept plan.
3. Preliminary subdivision plats and site design review applications for approved planned developments shall be reviewed using a Type II procedure, as governed by Chapter 19.2.400.
4. Steps 1-3, above, may be combined in any manner, so long as the decision-making sequence follows this chapter. Notification and hearings may be combined.

19.5.130 MODIFICATION OF DISTRICT STANDARDS (TITLE 17) AND DESIGN STANDARES (TITLE 18)

The district standards in Title 17 and design standards of Title 18 may be modified through the master plan approval without the need for variances, except that the following standards within Title 17 and 18 shall not be modified:

- A. **Public improvement standards and engineering design criteria** shall not be modified without variance to such standards approved by the Public Works Director/City Engineer. The City may grant such variances concurrently with other Planned Development approvals;
- B. **Residential densities**, as allowed under the Comprehensive Plan; and
- C. **Industrial and commercial uses, if not otherwise allowed in a Residential District**, shall not be allowed in a Residential District master plan.

19.5.140 OVERLAY ZONE AND CONCEPT PLAN SUBMISSION

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by Chapter 19.1.400. In addition, the applicant shall submit the following:

1. A statement of planning objectives to be achieved by the 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. A development schedule indicating the approximate dates when construction of the planned development and its various phases are expected to be initiated and completed.
3. A 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 Chapter 19.5.180.
5. Special studies prepared by qualified professionals may be required by the Planning Director, Planning Commission or City Council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

B. Additional Information. In addition to the general information described in Subsection “A” above, the concept plan, data, and narrative shall include the following exhibits and information:

1. Existing Conditions map, as defined in Chapter 19.2.500 - 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., information sufficient to describe architectural styles, building heights, and general materials);
6. Sign concept plan (e.g., locations, general size, style and materials of signs);
7. Copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

19.5.150 OVERLAY ZONE AND CONCEPT PLAN APPROVAL CRITERIA

The City shall make findings that all of the following criteria are satisfied when approving or approving with conditions, the overlay zone and concept plan. The City shall make findings that not all of the criteria are not satisfied when denying an application:

- A. **Comprehensive Plan.** All relevant provisions of the Comprehensive Plan are met;
- B. **Land Division Chapter.** All of the requirements for land divisions, as applicable, shall be met (Chapter 19.3);
- C. **Title 17 and Title 18 Standards.** All of the land use, development, and design standards contained in Title 17 and 18 are met, except as may be modified in Chapter 19.5.130
- D. **Open Space.** Master plans shall contain a minimum of 20 percent open space. Public open space shall be integral to the master plan. Plans shall emphasize public gathering places such as plazas, neighborhood parks, trails, and other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open space is designated, the following standards apply;
 1. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument; and
 2. The open space shall be conveyed in accordance with one of the following methods:

- a. 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 City Planning Director with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities;
- b. By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the City retaining the development rights to the property. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to and approved by the City.

19.5.160 ADMINISTRATIVE PROCEDURES

- A. Land Use District Map Designation.** After a planned development overlay zone has been approved, the land use district map shall be amended in accordance with Chapter 19.7, to indicate the approved planned development designation for the subject development site. The approval of the planned development overlay zone shall not expire.
- B. Time Limit on Filing of Detailed Development Plan.** Within 2 years after the date of approval of the concept plan, the applicant or his or her successor shall prepare and file with the City a detailed development plan, in conformance with Chapter 19.5.170 through 19.5.180.
- C. Extension.** The City may, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:
 1. No changes have been made on the original conceptual development plan as approved;
 2. The applicant can show intent of applying for detailed development plan review within the one- year extension period;
 3. There have been no changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based; and
 4. The extension request is made before expiration of the original approval period.

19.5.170 DETAILED DEVELOPMENT PLAN SUBMISSION REQUIREMENTS

The contents of the detailed development plan shall be determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features, prior to approval of a development permit. The detailed development plan may combine land division, development review, site design review, and/or other applications for concurrent review and approval. The detailed development plan shall be reviewed using a Type III procedure.

19.5.180 DETAILED DEVELOPMENT PLAN APPROVAL CRITERIA

The City shall approve the detailed development plan upon finding that the final plan conforms to the concept plan and required conditions of approval. If the detailed plan request combines other land use and development applications, as provided in Chapter 19.5.180, those applications are also subject to the applicable approval criteria in Title 19. Minor changes to the approved concept plan may be approved with the detailed plan, when the approval body finds that the modification(s) is/are consistent with the criteria in A-H, below. Changes exceeding those in subsections A-H, below, must be reviewed as major modifications under Chapter 19.6.

- A. Increased residential densities** (overall or reallocated between development phases) by not more than 20 percent, provided such increase conforms to the Comprehensive Plan and underlying District;
- B. Increase in lot coverage or impervious surface** (overall or reallocated between development phases) by not more than 15 percent over that which is approved;
- C. Reduction in open space or landscaping** by not more than 10 percent;
- D. Increase in overall automobile parking spaces** by not more than 10 percent;
- E. Land use.** No change in land use shall be permitted without a major modification to the concept plan;
- F. Proposals to add or increase lot coverage within an environmentally sensitive areas (sensitive lands) or areas subject to a potential hazard** require a major modification to the concept plan;
- G. Major changes in the location of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements require a Major Modification pursuant to Chapter 19.6.** “Major” in this subsection means by more than 100 feet, or 15 percent, relative to setbacks; and
- H. Other substantial modifications** not listed in A-G, above, require approval of a major modification, in conformance with Chapter 19.6.

**19.5.190 LAND USE REVIEW, SITE DESIGN REVIEW, FINAL PLAT AND
BUILDING PERMIT APPROVALS**

- A. Land Use and Site Design Reviews.** For projects that require land use or site design review, all such approvals must be final and appeal periods expired before the City may issue building permits. Chapter 19.2 applies to site design review.
- B. Land Divisions.** For projects that require a land division, the preliminary land division plats must be final and appeal periods expired before a final plat is approved and building permits issued. Chapter 19.3 applies to land divisions.
- C. Streamlined Review Option.** At the applicant’s option, an application for preliminary land division plats, land use reviews, and site design review applications that are part of an approved master planned development may be reviewed using a Type II procedure, rather than the Type III procedure. The variation from the standard procedures of Chapter 19.2 - Site Design Review, and Chapter 19.3 - Land Divisions is intended to streamline review of projects that have received master planned development approvals, since those projects have previously been subject to public review and hearings.

19.5.500 PLANNED UNIT DEVELOPMENT

19.5.505	Purpose
19.5.510	Approval Process
19.5.520	Administrative Positions
19.5.530	Concept Plan Submission Requirements
19.5.540	Concept Plan Approval Criteria
19.5.550	Detailed Development Plan Submission Requirements
19.5.560	Detailed Development Plan Approval Criteria

19.5.505 PURPOSE

The purposes of Planned Unit Development Overlay Zones are to:

1. Provide a means for property development that is consistent with Molalla's Comprehensive Plan through the application of flexible standards which consider and mitigate for the potential impacts to the city;
2. Provide such added benefits as increased as natural areas or open space in the City, alternative building designs, walk able communities, preservation of significant natural resources, aesthetic appeal, and other types of assets that contribute to the larger community in lieu of strict adherence to many of the rules of the Molalla Development Code;
3. Achieve unique neighborhoods (by varying the housing styles through architectural accents, use of open space, innovative transportation facilities) which will retain their character and city benefits, while respecting the characteristics of existing neighborhoods through appropriate buffering and lot size transitioning;
4. Preserve to the greatest extent possible the existing landscape features and amenities (trees, water resources, ravines, etc) through the use of a planning procedure (site design and analysis, presentation of alternatives, conceptual review, then detailed review) that can relate the type and design of a development to a particular site;
5. Consider the amount of development on a site, within the limits of density requirements, which will balance the interests of the owner, developer, neighbors, and the City; and
6. Provide a means to better relate the built environment to the natural environment through sustainable and innovative building and public facility construction methods and materials.

19.5.510 APPROVAL PROCESS

1. Applicable in All Zones. The Planned Development designation is an overlay zone applicable to all zones.

2. An applicant may elect to develop the project as a planned development, in compliance with the requirements of this chapter, or in the case of a commercial or industrial project an approval authority may apply the provisions of this chapter as a condition of approving any application for the development. The provisions of Sections 19.5.500 to 19.5.560 do not apply and an application may not be submitted for an area of less than 5 acres in any zone.
3. Elements of Approval Process. There are three elements to the Planned Development approval process, as follows:
 - A. The approval of the Planned Development Concept plan;
 - B. The approval of a detailed development plan; and
 - C. The approval of the Planned Development Overlay Zone
4. Decision Making Process
 - A. The concept plan shall be processed by means of the Type III land use procedure described in Title 17.
 - B. The detailed development plan shall be reviewed using the Type III (Planning Commission) land use procedure described in Title 17, to ensure that it is substantially in compliance with the approved concept plan.
 - C. The Planned Development Overlay zone will be applied concurrently with the approval of the detailed plan.
 - D. In the case of existing Planned Development Overlay Zone, once construction of the detailed plans has been completed, subsequent applications conforming to the detailed plan shall be reviewed under the provisions required in the chapter which apply to the particular land use application.
 - E. If the application involves subdivision of land, the applicant may also apply for preliminary plat approval and the applications shall be heard concurrently with the detailed plan.
5. Concurrent applications for concept plan and detailed plan. In the case of concurrent applications for concept plan and detailed development plan, including subdivision applications, the applicant shall clearly distinguish the concept from the detailed plan. The Planning Commission shall take separate actions on each element of the Planned Development application (i.e. the concept approval must precede the detailed development approval); however each required action may be made at the same hearing.

19.5.520 ADMINISTRATIVE PROVISIONS

1. Time limit on filing of detailed development plan. The concept plan approval expires after 1 year unless an application for detailed development plan and, if applicable, a preliminary plat approval or request for extension is filed. Review of the detailed development plan shall follow the Type III procedure described in Title 17.
2. Zoning Map Designation. An application for a Planned Development Overlay Zone may be concurrently approved if the detailed development plan is approved. The zoning map shall be amended to indicate the approved planned development designation for the subject development site. Approval of the planned development overlay zone does not expire.
3. Extension. The Planning Director may, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year provided that:
 - A. No changes have been made on the original concept development plan as approved by the Planning Commission;
 - B. The applicant can show intent of applying for detailed development plan or preliminary plat review within the one year extension period; and
 - C. There have been no changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based.
4. Phased Development
 - A. The Planning Commission shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases exceed that required in the land division section of the Molalla Development Code.
 - B. The development and occupancy of any phase shall not be dependent on the use of temporary public facilities. A temporary public facility is any facility not constructed to the applicable City or district standards.
5. Substantial Modifications to the Concept Plan. If the Planning Commission finds that the detailed development plan or preliminary plat does not substantially conform to the concept plan, a new concept plan is required.
6. Noncompliance. Noncompliance with an approved detailed development plan is a violation of this Chapter 19.

7. Issuance of Occupancy Permits. The development shall be completed in accordance with the approved detailed development plan including landscaping and recreation areas before any occupancy permits are issued. However, if the Planning Director determines that substantial completion is impractical due to climatic conditions, unavailability of materials, or other temporary conditions, the Planning Director may, as a precondition of the issuance of a required permit or certificate of occupancy, require the posting of a performance bond or other surety to secure execution of the feature at a time certain not to exceed one year.

19.5.530 CONCEPT PLAN SUBMISSION REQUIREMENTS

1. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III decision as described in Title 17 and the following:
 - A. A statement of planning objectives to be achieved by the Planned Development through the particular approach proposed by the applicant. The statement should include:
 - 1) A description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
 - 2) An explanation of the architectural style, and what innovative site planning principles are utilized including any innovations in building techniques that will be employed: and;
 - 3) An explanation of how the proposal relates to the purposes of the Planning Development Chapter as expressed in 19.5.505.
 - B. A general development schedule indicating the approximate dates when construction of the Planned Development and its various phases are expected to be initiated and completed.
 - C. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the Planned Development. In the case where a residential subdivision is proposed, the statement shall include the applicant's intentions whether the applicant will build the homes, or sell the lots to the other builders.
2. Additional Information. In addition to the general information described in Subsection A above, the concept plan, data, and narrative shall include the following information, the detailed content of which can be obtained by the Planning Director:
 - A. Existing site conditions;
 - B. A site concept including the types of proposed land uses and structures, including housing types, and their general arrangement on the site;

- C. A grading concept;
 - D. A landscape concept indicating a percentage range for the amount of proposed open space and landscaping, and general location and types of proposed open space(s);
 - E. Parking concept;
 - F. A sign concept;
 - G. A streets and utility concept; and
 - H. Structure setback and development standards concept, including the proposed residential density target if applicable.
3. Allowable Uses
- A. In Residential Zones. In all residential zones, an approved Planned Development may be developed to contain a mixture of uses subject to the density provisions of the underlying zone and the density bonus provisions of 19.5.560(1.C.3). The following uses are allowed with Planned Development Approval:
 - 1) All uses allowed outright in the underlying zoning district;
 - 2) Single-Family detached and attached residential units;
 - 3) Duplex Residential Units;
 - 4) Manufactured Homes;
 - 5) Accessory services and commercial uses directly serving the Planned Development only and which are customary or associated with, but clearly incidental to the uses permitted in the zone, such as personal services, pre-school, or daycare, and retail uses less than 5,000 square feet in sum total;
 - 6) Community building;
 - 7) Indoor recreation facility; athletic club, fitness center, racquetball court, swimming pool, tennis court or similar use;
 - 8) Equestrian Estates including stables;
 - 9) Outdoor recreation facility, golf course, golf driving range, swimming pool, tennis court, or similar use; and
 - 10) Recreational vehicle storage area

- B. In Commercial Zones. In all commercial zones, an approved Planned Development may be developed to contain all of the uses permitted outright in the underlying zone and, in addition, a maximum of 25% of the total gross floor area may be used for multi-family dwellings in those commercial zones that do not list multi-family dwellings as an outright use. Such a use must be located above or behind the central commercial retail.
- C. In industrial Zones. In all industrial zones, a Planned Development shall contain only those uses allowed outright in the underlying zone.

19.5.540 CONCEPT PLAN APPROVAL CRITERIA

- 1. The concept plan may be approved only if all of the following criteria are met:
 - A. The concept plan includes specific designations on the concept map for areas of open space, and describes their intended level of use, how they relate to other proposed uses on the site, and how they protect natural features of the site.
 - B. The concept plan identifies areas of significant natural resources, if any, and identifies methods for their maximized protection, preservation, and/or management.
 - C. The concept plan identifies how the future development will integrate into the existing neighborhood, either through compatible street layout, architectural style, housing type, or by providing a transition between the existing neighborhood and the project with compatible development or open space buffers.
 - D. The concept plan identifies methods for promoting walk ability or transit ridership, such methods may include separated parking bays, off-street walking paths, shorter pedestrian routes than vehicular routes, linkages to or other provisions for bus stops, etc.
 - E. The concept plan identifies the proposed uses, and their general arrangement on site. In the case of projects that include a residential component, housing type, unit density, or generalized lot sizes shall be shown in relation to their proposed location on site.
 - F. The concept plan must demonstrate that development of the property pursuant to the plan results in development that has significant advantages over a standard development. A concept plan has a significant advantage if it provides development consistent with the general purpose of the zone in which it is located at or above overall densities consistent with the zone, while protecting natural features or providing additional amenities or features not otherwise available that enhance the development project or the neighborhood.

19.5.550 DETAILED DEVELOPMENT PLAN SUBMISSION REQUIREMENTS

1. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III Land Use Application as well as the requirements in 19.5.530 (2) and the approval criteria of 19.5.560.
2. Additional Information. In addition to the general information described in subsection 1 above, the detailed development plan, data and narrative shall include the following information:
 - A. Contour intervals of 2' to 5', depending on slope gradients, and spot elevations at breaks in grade, along drainage channels or swales, and at selected points, as needed.
 - B. A specific development schedule indicating the approximate dates of construction activity, including demolition, tree protection installations, tree removal, ground breaking, grading, public improvements and building construction for each phase.
 - C. A copy of all existing and/or proposed restrictions or covenants.
3. Compliance with specific development standards. The detailed development plan shall show compliance with base zone provisions, with the following modification:
 - A. Lot Dimensional Standards: The minimum lot depth and lot width standards shall not apply. There shall be no minimum lot size except that lots on the perimeter of the project shall not be less than 80% of the minimum size required in the base zone.
 - B. Site Coverage. The maximum site coverage is 80%, except in R-1 zone where the maximum site coverage shall be 75%. Site coverage includes all buildings and impervious surfaces such as streets and sidewalks;
 - C. Building Height. Any increase in building height in any zone shall follow the conditional use process as outlined in Title 17.
 - D. Structure setback provision:
 - 1) Setbacks for structures on the perimeter of the project shall be the same as that required by the base zone unless otherwise provided by section 19.5.550;
 - 2) The setback provision for all setbacks on the interior of the project shall not apply except that:
 - a) All structures shall meet the Uniform Building and Fire Code Requirements;

- b) A minimum front yard setback of 20 feet is required for any garage structure which opens facing a street. This setback may be reduced for rear or side loaded garages, if specified on the detailed plan and proper clearances for backing movements are accounted for.
 - c) A minimum front yard setback of eight feet is required for any garage opening for an attached single-family dwelling facing a private street as long as the required off-street parking spaces are provided. This setback may be reduced for rear or side loaded garages, if specified on the detailed plan and proper clearances for backing movements are accounted for.
- 3) If seeking to modify the base zone setbacks, the applicant shall specify the proposed setbacks, either on a lot by lot, or project wide bases. The Planning Commission may require site specific building envelopes.
- E. Other Provisions of the Base Zone. All other provisions of the base zone shall apply except as modified by this chapter.

19.5.560 DETAILED DEVELOPMENT PLAN APPROVAL CRITERIA

1. Detailed Development Plan Approval Criteria. A detailed development plan may be approved only if all the following criteria are met:
- A. The detailed plan is generally consistent with the concept plan. Minor changes form the concept plan do not make the detailed plan inconsistent with the concept plan unless:
 - 1) The change increases the residential densities, increases the lot coverage by buildings or reduces the amount of parking;
 - 2) The change reduces the amount of open space and landscaping;
 - 3) The change involves a change in use;
 - 4) The change commits land to development which is environmentally sensitive or subject to a potential hazard; or
 - 5) The change involves a major shift in the location of buildings, proposed streets, parking lots, landscaping or other site improvements.
 - B. All the applicable land division provisions in Title 19 shall be met;

- C. Except as noted, the provisions of the following chapters shall be utilized as guidelines. A Planned Development need not meet these requirements where a development plan provides alternative designs and methods, if acceptable to the Planning Commission. In each case, the applicant must provide findings to justify the modification of the standards in the chapters listed below. The applicant shall respond to all the applicable criteria of each chapter as part of these findings and clearly identify where their proposal is seeking a modification to the strict application of the standards. For those chapters not specifically exempted, the applicant bears the burden of fully complying with those standards, unless a variance has been requested.
- 1) The detailed development plan review is intended to address the same type of issues as the Site Development Review.
 - 2) Access, Egress and Circulation. The Planning Commission may grant an exception to the access standards, upon a demonstration by a professional engineer that the resulting access will not be detrimental to the public safety considering emergency vehicle needs, and provisions are provided for all modes of transportation using the site (vehicles, bicycles, pedestrians, and transit).
 - 3) Density Computation and Limitations. Unless authorized below, density shall be governed by the density established in the underlying zoning district, using the minimum lot size established for that district. Where a project site encompasses more than one underlying zoning district, density shall be aggregated for each district, and may be allocated anywhere within the project site, as deemed appropriate by the commission. The Planning Commission may further authorize a density bonus not to exceed 10% as an incentive to increase or enhance open space, architectural character and/or site variation incorporated into the development. These factors must make a substantial contribution to objectives of the planned development. The degree of distinctiveness and the desirability of variation achieved shall govern the amount of density increase which the Commission may approved according to the following:
 - a) At 1 percent bonus for each 5 percent of the gross site area set aside in open space, up to a maximum of 5 percent, is allowed for the provision of active use recreational open space, exclusive of areas contained in floodplain, steep slopes, drainage ways, or wetlands that would otherwise be precluded from development;
 - b) Up to a maximum of 5 percent is allowed for the development of pedestrian amenities, streetscape development, recreation areas, plazas, or other Planning Commission approved recreation items.

- 4) Landscaping and Screening. The Commission may grant an exception to the landscape requirements of this title upon a finding that the overall landscape plan was prepared by a licensed landscape architect, provides for 20 percent of the net site area to be professionally landscaped, and meets the intent of the specific standard being modified.
- 5) Off-Street Parking and Loading Requirements. The Planning Commission may grant an exception to the off-street parking dimensional and minimum number of space requirements in the applicable zone if:
 - a) The minimum number of parking spaces is not reduced by more than 10 percent of the required parking; and
 - b) The application is for a use designed for a specific purpose which is intended to be permanent in nature, e.g., a nursing home, and which has a low demand for off-street parking; or
 - c) There is an opportunity for sharing parking and there is written evidence that the property owners are willing to enter into a legal agreement; or
 - d) Public transportation is available to the site, and reducing the standards will not adversely affect adjoining uses; or
 - e) There is a community interest in the preservation of particular natural features of the site which make it in the public interest to grant an exception to the parking standards.
- 6) Signs. The Planning Commission may grant an exception to the sign dimensional requirements in the applicable zone if:
 - a) The sign is not increased by more than 10 percent of the required applicable dimensional standard for signs; and
 - b) The exception is necessary for adequate visibility of the sign on the property; and
 - c) The sign will be compatible with the overall site plan, the structural improvements and with the structures and uses on adjoining properties.
- 7) Visual Clearance Areas. The Planning Commission may grant an exception to the visual clearance requirements, when adequate sight distance is or can be met;

- 8) Street and Utility Improvements. Deviations from street standards shall be made on a limited basis, and nothing in this section shall obligate the City Engineer to grant an exception. The Planning Commission has the authority to reject an exception request. The Planning Commission can only grant an exception to street sections if sanctioned by the City Engineer. The City Engineer may determine that certain exceptions to the street and utility standards are permissible when it can be shown that:
 - a) The City Engineer may determine that certain exceptions to the street and utility standards are permissible when it can be shown that:
 - i. Public safety will not be compromised; and
 - ii. In the case of public streets, maintenance costs will not be greater than with a conforming design; and
 - iii. The design will improve storm water conveyance either by reducing the rate or amount of runoff from present standards or increasing the amount of pollutant treatment.

D. In addition the following criteria shall be met:

- 1) Relationship to the natural and physical environment:
 - a) The streets, buildings and other site elements shall be designed and located to preserve the existing trees, topography and natural drainage to the greatest degree possible. The Planning Commission may require the applicant to provide an alternate site plan to demonstrate compliance with this criterion;
 - b) Structures located on the site shall not be in areas subject to ground slumping and sliding as demonstrated by the inclusion of a specific geotechnical evaluation; and
 - c) Using the basic site analysis information from the concept plan submittal, the structures shall be oriented with consideration for the sun and wind directions where possible.
- 2) Buffering, screening and compatibility between adjoining uses:
 - a) Buffering shall be provided between different types of land uses, e.g., between single-family and multi-family residential, and residential and commercial uses;
 - b) In addition to buffer requirements, the requirements of the buffer may be reduced if a landscape plan prepared by a registered Landscape Architect is

submitted that attains the same level of buffering and screening with alternate materials or methods. The following factors shall be considered in determining the adequacy and extent of the buffers.

- i. The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier;
 - ii. The size of the buffer needs in terms of width and height to achieve the purpose;
 - iii. The direction(s) from which buffering work is needed;
 - iv. The required density of the buffering, and
 - v. Whether the viewer is stationary or mobile.
- c) On-site screening from view from adjoining properties of such activities as service areas, storage areas, parking lots and mechanical devices on roof tops shall be provided and the following factors shall be considered in determining the adequacy of the type and extent of the screening:
- i. What needs to be screened;
 - ii. The direction from which it is needed; and
 - iii. Whether the screening needs to be year-round.
- 3) Privacy and Noise: Non-residential structures which abut existing residential dwellings shall be located on the site or be designed in a manner, to the maximum degree possible, to protect the private areas on the adjoining properties from view and noise;
- E. Exterior Elevations - Single-family attached and multiple-family structures: Along the vertical face of single-family attached and multiple-family structures, offsets shall occur at a minimum of every 30 feet by providing any two of the following:
- 1) Recesses, e.g., decks, patios, entrances, floor area, of a minimum depth of eight feet;
 - 2) Extensions, e.g., decks, patios, entrances, floor area, of a minimum depth of eight feet, a maximum length of an overhang shall be 25 feet; and
 - 3) Offsets or breaks in roof elevations of three or more feet in height.

F. Private outdoor area - residential use:

- 1) Exclusive of any other required open space facility, each ground-level residential dwelling unit shall have an outdoor private area (patio, terrace, or porch) of not less than 48 square feet with a minimum width dimension of 4 feet.
- 2) Wherever possible, private outdoor open spaces should be oriented toward the sun; and
- 3) Private outdoor spaces shall be screened or designed to provide privacy for the use of the space.

G. Shared outdoor spaces shall be screened or designed to provide privacy for the use:

- 1) Exclusive of any other required open space facilities, each residential dwelling development shall incorporate shared usable outdoor recreation areas within the development plan as follows:
 - a) Studio units up to and including 2 bedroom units, 200 square feet per unit;
 - b) Three or more bedroom units, 300 square feet per unit.
 - i. This does not apply to multi-family residential development in the CBD.
- 2) Shared outdoor recreation space shall be readily observable from adjacent units for reasons of crime prevention and safety;
- 3) The required recreation space may be provided as follows:
 - a) Additional outdoor passive use open space facilities;
 - b) Additional outdoor active use open space facilities;
 - c) Indoor recreation center; or
 - d) A combination of the above.

H. Access and Circulation:

- 1) The number of required access points for a development shall be provided as required in the Molalla Development Code.
- 2) All circulation patterns within a development must be designed to accommodate emergency and service vehicles; and

- 3) Provisions shall be made for pedestrian and bicycle ways abutting a through site if such facilities are shown on an adopted plan or terminate at the boundaries of the project site.

I. Landscaping and Open Space:

- 1) Residential Development. In addition to the buffering and screening requirements of this subsection, and any minimal use open space facilities, a minimum of 20 percent of the site shall be landscaped. This may be accomplished in improved open space tracts, or with landscaping on individual lots provided the developer includes a landscape plan, prepared or approved by a licensed landscape architect, and surety for such landscape installation.

J. Public Transit:

- 1) Provisions for public transit may be required where the site abuts or is within a quarter mile of a public transit route. The required facilities shall be based on:
 - a) The location of other transit facilities in the area; and
 - b) The size and type of the proposed development.
- 2) The required facilities may include but are not necessarily limited to such facilities as:
 - a) Awaiting shelter;
 - b) A turn-out area for loading and unloading, and
 - c) Hard surface paths connecting the development to the waiting area.
- 3) If provision of such public transit facilities on or near the site is not feasible, the developer may contribute to a fund for public transit improvements provided the Planning Commission establishes a direct relationship and rough proportionality between the impact of the development and the requirement.

K. Parking:

- 1) All parking and loading areas shall be generally laid out in accordance with the requirements set forth in the Molalla Development Code;
- 2) Up to 50 percent of required off-street parking spaces for single-family attached dwellings may be provided on one or more common parking lots within the planned development as long as each single-family lot contains one off-street parking space.

- L. Drainage. All drainage provisions shall be generally laid out in accordance with the requirements set forth in the Molalla Development Code. An applicant may propose an alternate means for storm water conveyance on the basis that a reduction of storm water runoff or an increase in the level of treatment will result from the use of such means as green streets, porous concrete, or eco roofs.
- M. Floodplain Dedication. Where landfill and/or development are allowed within or adjacent to the 100-year floodplain, the City shall require consideration of the dedication of sufficient open land area for greenway adjoining and within the floodplain. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway with the floodplain in accordance with the adopted pedestrian bicycle pathway plan.
- N. Shared Open Space Facilities: The detailed development plan shall designate a minimum of 20 percent of the gross site area as a shared open space facility. The open space facility may be comprised of any combination of the following:
- 1) Minimal Use Facilities. Up to 75 percent of the open space requirement may be satisfied by reserving areas for minimal use. Typically these areas are designated around sensitive lands (steep slopes, wetlands, streams, or 100 year floodplain).
 - 2) Passive Use Facilities. Up to 100 percent of the open space requirement may be satisfied by providing a detailed development plan for improvements (including landscaping, irrigation, pathway and other structural improvements) for passive recreational use.
 - 3) Active Use Facilities. Up to 100 percent of the open space requirement may be satisfied by providing a detailed development plan for improvements (including landscaping, irrigation, pathway and other structural improvements) for active recreational use.
 - 4) The open space area shall be shown on the final plan and recorded on the final plat or covenants.
- O. Open Space Conveyance. Where a proposed park, playground or other public use shown in the plan adopted by the City is located in whole or in part in a subdivision, the Commission may require the dedication is roughly proportional to the impact of the subdivision on the park system. Where considered desirable by the Commission in accordance with adopted Comprehensive Plan polices, and where a development plan of the City does not indicate proposed public use areas, the Commission may require dedication or reservation of areas within the subdivision or sites of a character, extent and location suitable for the development of parks or other public use, provided that the reservation or dedication is roughly proportional to the impact of the subdivision on the park system. The open space shall be conveyed in accordance with one of the following methods:

- 1) Public Ownership. Open space proposed for dedication to the City must be acceptable to it with regard to the size, shape, location, improvement and budgetary and maintenance limitations. A determination of City acceptance shall be made in writing by the City Manager prior to final approval.
- 2) Private Ownership. By conveying title (including beneficial ownership) to a corporation, home association or other legal entity, and granting a conservation easement to the City in a form acceptable by the City. The terms of the conservation easement must include provisions for the following:
 - a) The continued use of such land for the intended purposes;
 - b) Continuity of property maintenance;
 - c) When appropriate, the availability of funds required for such maintenance;
 - d) Adequate insurance protection; and
 - e) Recovery for loss sustained by casualty and condemnation or otherwise.

CHAPTER 19.6 MODIFICATIONS TO APPROVED PLANS AND CONDITIONS OF APPROVAL

SECTIONS:

19.6.100 PURPOSE

19.6.200 APPLICABILITY

19.6.300 MAJOR MODIFICATIONS

19.6.400 MINOR MODIFICATIONS

19.6.100 PURPOSE

The purpose of this Chapter is to provide an efficient process for modifying land use decisions and approved development plans, in recognition of the cost and complexity of land development and the need to conserve City resources.

19.6.120 APPLICABILITY

- A. This Chapter applies to all development applications approved through the provisions of Chapter 19, including:
1. Land Use Review approvals;
 2. Site Design Review approvals;
 3. Subdivisions, Partitions, and Property Line Adjustments;
 4. Conditional Use Permits;
 5. Master Planned Developments; and
 6. Conditions of approval on any of the above permit types.
- B. This Chapter does not apply to Comprehensive Plan amendments, land use district changes, text amendments, annexations, temporary use permits, or other permits not listed in subsection A.

19.6.130 MAJOR MODIFICATIONS

A. Major Modification Defined. The Planning Director shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:

1. A change in land use. A proposed use is considered to be a change from the prior use if both uses are listed separately in the zone;
2. An increase in density by more than 10 percent, provided the resulting density does not exceed that allowed by the land use district;
3. A change in setbacks or lot coverage by more than 10 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district;
4. A change in the type and/or location of access-ways, drives or parking areas affecting off-site traffic;
5. An increase in the floor area proposed for non-residential use by more than 15 percent where previously specified;
6. A reduction of more than 10 percent of the area reserved for common open space; or
7. Change to a condition of approval, or a change similar to items 1-6, that could have a detrimental impact on adjoining properties. The Planning Director shall have discretion in determining detrimental impacts warranting a major modification.

B. Major Modification Applications; Approval Criteria. An applicant may request a major modification using a Type II or Type III review procedure, as follows:

1. If the Planning Director determines that the proposed modification is a major modification, the applicant shall submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Director may require other relevant information, as necessary, to evaluate the request.
2. The application shall be subject to the same review procedure (Type II or III), decision making body, and approval criteria used for the initial project approval, except that adding a conditional use to an approved project shall be reviewed using a Type III procedure.
3. The scope of review shall be limited to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping. Notice shall be provided in accordance with Chapter 19.1.
4. The decision making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the criteria.

19.6.140 MINOR MODIFICATIONS

- A. Minor Modification.** Any modification to a land use decision or approved development plan that is not within the description of a major modification.
- B. Minor Modification Review Procedure.** An application for approval of a minor modification shall be reviewed by the Planning Official using a Type I or a Type II review procedure under Chapter 19.1.200 or 19.1.300. The Planning Director is responsible for determining the appropriate review procedure based on the following criteria:
1. Minor modifications that involve only clear and objective code standards may be reviewed using a Type I procedure;
 2. Minor modifications that involve one or more discretionary standards shall be reviewed through Type II procedure; and
 3. When the code is unclear on whether the application should be a Type I or Type II review, a Type II procedure shall be used.
- C. Minor Modification Applications.** An application for minor modification shall include an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Director may require other relevant information, as necessary, to evaluate the request.
- D. Minor Modification Approval Criteria.** The Planning Director shall approve, deny, or approve with conditions an application for minor modification based on written findings that the modification is in compliance with all applicable requirements of the Development Code and conditions of approval on the original decision, and the modification is not a major modification.

CHAPTER 19.7 LAND USE DISTRICT MAP AND TEXT AMENDMENTS

SECTIONS:

19.7.100 PURPOSE

19.7.200 LEGISLATIVE AMENDMENTS

19.7.300 QUASI-JUDICIAL AMENDMENTS

19.7.400 CONDITIONS OF APPROVAL ON QUASI-JUDICIAL AMENDMENTS

19.7.500 RECORD OF AMENDMENTS

19.7.600 TRANSPORTATION PLANNING RULE COMPLIANCE

19.7.100 PURPOSE

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the land use district map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

19.7.200 LEGISLATIVE AMENDMENTS

A legislative amendment is a policy decision to be made by the City Council. A legislative amendment is reviewed using the Type IV procedure.

19.7.300 QUASI-JUDICIAL AMENDMENTS

A. Applicability of Quasi-Judicial Amendments. A quasi-judicial amendment involves the application of adopted policy to a specific development application or Code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial district map amendments shall follow the Type III procedure, as governed by Chapter 19.1.400, using standards of approval in (B) below. The approval authority shall be as follows:

1. The Planning Commission shall review and may approve land use district map changes that do not involve comprehensive plan map amendments;
2. The Planning Commission shall make a recommendation to the City Council on an application for a comprehensive plan map amendment. The City Council shall decide such applications; and
3. The Planning Commission shall make a recommendation to the City Council on a land use district change application that also involves a comprehensive plan map amendment application. The City Council shall decide both applications.

B. Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. Approval of the request is consistent with the Statewide Planning Goals;
2. Approval of the request is consistent with the Comprehensive Plan;
3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided in the planning period; and
4. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application; and
5. The amendment conforms to applicable administrative rules of the Oregon Land Conservation and Development Commission, including the transportation planning rules.

19.7.400 CONDITIONS OF APPROVAL FOR QUASI-JUDICIAL AMENDMENTS

A quasi-judicial decision may be approved, denied, or approved with conditions. Conditions imposed on quasi-judicial map or text amendment shall be based on applicable regulations and evidence in the record. A legislative amendment may only be approved or denied.

19.7.500 RECORD OF AMENDMENTS

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

19.7.600 TRANSPORTATION PLANNING RULE COMPLIANCE

Review of Applications for Effect on Transportation Facilities. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with applicable Oregon Administrative Rules. If the development or amendment will significantly affect a transportation facility as determined under the rules, the applicant shall demonstrate compliance with the rules.

CHAPTER 19.8 CODE INTERPRETATIONS

SECTIONS:

19.8.100 PURPOSE

19.8.200 PROCEDURE

19.8.100 PURPOSE

Some terms or phrases within the Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

19.8.200 PROCEDURE

- A. Requests.** A application for a code interpretation shall be made in writing to the Planning Director.
- B. Decision to Issue Interpretation.** The Planning Director has authority to interpret the code, or refer the application to the Planning Commission. The Planning Director shall advise the applicant in writing within 14 days after the application is submitted whether the Director will make the interpretation or refer the application to the Planning Commission.
- C. Written Interpretation.** A decision on an application for a code interpretation shall be in writing and shall be mailed or delivered to the applicant and any other person who requested a copy. The decision shall be issued within 30 days of the date the application was deemed complete. The decision shall become effective 14 days later, unless an appeal is filed.
- E. Type II Procedure.** Code Interpretations shall be made using a Type II procedure.
- F. Appeals.** The applicant and any party who received notice or who participated in the proceedings may appeal the decision. If the decision was made by the Planning Director, the appeal shall be heard by the Planning Commission. If the decision was made by the Planning Commission, the appeal shall be heard by the City Council. The appeal must be filed within 14 days after the decision was mailed to the applicant. Initiating an appeal requires filing a notice of appeal with the Planning Director pursuant to Chapter 19.1.400.
- G. Interpretations On File.** The City shall keep on file a record of all code interpretations. Code interpretations will be listed in Title 22.

CHAPTER 19.9 MISCELLANEOUS PERMITS

SECTIONS:

19.9.100 TEMPORARY USE PERMITS

19.9.200 HOME OCCUPATION PERMITS

19.9.100 TEMPORARY USE PERMITS

Temporary uses are short term or seasonal nature and do not include the construction or installation of permanent improvements to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Three types of temporary uses require permit approval (See A, B and C):

A. Seasonal and Special Events. These types of uses occur only once in a calendar year and for a period not longer than 30 days. Using the Type I procedure under Chapter 19.1.200, the City shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is permitted in the underlying land use district and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property-owner's permission to place the use on his/her property;
3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under Chapter 18.3 - Vehicle and Bicycle Parking;
4. The use provides adequate vision clearance, as required by Chapter 18.1.200(N), and shall not obstruct pedestrian access on public streets;
5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Chapter 18.1.200 - Vehicular Access and Circulation;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses allowed outright in the district do not affect the adjoining use; and
7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

B. Temporary Sales Office or Model Home. Using a Type I procedure under Chapter 19.1.200, the City may approve, approve with conditions or deny an application for the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary sales office:

- a. The temporary sales office is located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
- b. The property to be used for a temporary sales office is not permanently improved for that purpose;
- c. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

2. Model house:

- a. The model house is located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and
- b. The model house is designed as a permanent structure that meets all relevant requirements of this Code and other applicable codes and permit requirements.

C. Temporary Building, Trailer, Kiosk, or Structure. Temporary or permanent placement of a building, trailer, kiosk, or structure, including but not limited to prefabricated building(s), for use on any real commercial or industrial property within the City shall require a development permit. Using a Type II procedure, the City may approve, approve with conditions or deny an application for the placement of a building, trailer, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, based on following criteria:

1. The temporary trailer or building is located within the specified property line setbacks of the parcel of land on which it is located;
2. The primary use on the property to be used for a temporary trailer is already developed;
3. Ingress and egress are safe and adequate as demonstrated by an approach permit approved by the road authority, as applicable. See also, Chapter 18.1.200 - Vehicular Access and Circulation;
4. There is adequate parking for the customers or users of the temporary use as required by Chapter 18.3 - Bicycle and Vehicle Parking;

19.9 – Miscellaneous Permits – Temporary Uses

5. The use will not result in vehicular congestion on streets;
6. The use does not pose an impediment or hazard to pedestrians in the area of the use;
7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
8. The building complies with applicable building codes;
9. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
10. The length of time that the temporary building will be used does not exceed 6 months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit; and
11. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

19.9.200 HOME OCCUPATION PERMITS

A. Purpose.

The purpose of this Section 19.9.200 is to encourage small commercial ventures that do not otherwise conform to the Special Standards for Certain Uses.

These home occupations may be permitted, with conditions of approval when appropriate, in order to increase the benefits of people working and living in the same place, while protecting neighboring residents from adverse impacts of home occupation activities. The benefits to the business owner and to the general public include: reduced number of commute-to-work trips, and day-time “eyes on the street” at the residence. Approved home occupation permits are valid for 2 years from the date of issuance; it is the applicant’s responsibility to renew the home occupation permit before the end of the 2 year period.

B. Approval Process and Criteria.

1. Home Occupation Permit. An application for a home occupation permit shall be processed using the Type II Land Use Review procedure described in Chapter 19.1.300 and 19.2.300. In addition to the application requirements contained in Chapter 19.1.300(B), the applicant shall provide:
 - a. A written narrative or letter:
 - (1) describing the proposed home occupation;
 - (2) demonstrating compliance with those standards in Chapter 17.2.190 that can be met, and explaining why the other standards Chapter 17.2.190 cannot be met, and
 - (3) demonstrating compliance with the criteria in subsection 2 below;
 - b. A site plan, not necessarily to scale, of the lot proposed for the home occupation, including:
 - (1) the property lines and dimensions of the lot or parcel;
 - (2) outlines of the foundations of all buildings proposed for home occupation use with dimensions for each wall, and the distances from each wall to the nearest property line;
 - (3) boundaries and dimensions of driveways and parking areas;
 - (4) outlines of the foundations of abutting residences, and the distances from the shared property line to the nearest wall of each neighboring residence; and

- (5) identifying the buildings and areas of those buildings in which home occupation activities will take place, and identifying which activities will take place in which buildings and areas.
2. The City shall approve, approve with conditions, or deny an application for a Type II home occupation based on all of the following criteria:
 - a. Conditions of Approval. The Planning Director may impose conditions upon the approval of a home occupation permit to ensure compliance with the requirements of this chapter. These conditions may include, but are not limited to, the following:
 - 1) Further limiting the hours, days, place and manner of operation;
 - 2) Requiring site and building design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;
 - 3) Requiring additional building setbacks, and increased lot area, depth or width;
 - 4) Further limiting the building area and outdoor storage used by the home occupation and restricting the location of the use on the site in relationship to adjoining uses;
 - 5) Designating the size, number, location and design of vehicle access points;
 - 6) Requiring street right-of-way to be free at all times of vehicles associated with the home occupation;
 - 7) Requiring landscaping, buffering and/or screening, of the home occupation from adjoining uses and establishing standards for continued maintenance of these improvements;
 - 8) Requiring storm drainage improvements, and surfacing of parking and loading areas;
 - 9) Limiting the extent and type of interior or exterior building remodeling necessary to accommodate the home occupation;
 - 10) Limiting or setting standards for the location and intensity of outdoor lighting;
 - 11) Requiring and designating the size, height and location of fences and materials used for their construction;
 - 12) Requiring the protection and preservation of existing trees, and other vegetation, watercourses, slopes, wildlife habitat areas and drainage areas;

- 13) Limiting the type and number of vehicles or equipment to be parked or stored on the site; and
- 14) Any other limitations which the Planning Director considers to be necessary or desirable to make the use comply with the underlying zoning district.
 - b. The proposed use will not be materially detrimental to the stated purposes of applicable Code requirements and to other properties within a radius of 100 feet of the subject property;
 - c. Impacts to surrounding properties may exist but can be mitigated;
 - d. Existing physical and natural systems, such as, but not limited to drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred in compliance with Chapter 17.2.190.

C. Grounds for Revocation.

1. The Planning Director may revoke a home occupation permit if the conditions of approval have not been complied with and the home occupation is otherwise being conducted in a manner that violates the permit or this chapter. When revoking a home occupation permit, the Planning Director may require the property owner to take such actions as may be necessary to eliminate any impacts of the home occupation and to ensure compatibility with the neighborhood.
 2. The Planning Director shall review a home occupation upon receipt of a complaint. Complaints may be received by the City of Molalla or the public. The complaints shall clearly state the objection to the home occupations, such as:
 - a. Generation of excessive traffic;
 - b. Exclusive use of on-street parking spaces;
 - c. Other offensive activities not compatible with a residential neighborhood.
- D. Cessation of home occupation pending review. If it is determined by the Planning Director in exercise of reasonable discretion, that the home occupation in question may adversely affect public health and safety, the home occupation may be ordered to cease pending review and/or exhaustion of all appeals.
- E. Waiting Period for Re-Application. When a home occupation permit has been revoked due to violation of these standards, a minimum period of one year shall elapse before another application for a home occupation on the subject lot or parcel will be considered.

19.9 – Miscellaneous Permits – Temporary Uses

- F. Invalidation of Permit. A home occupation permit shall become invalid if the applicant moves his or her residence.