EXHIBIT X

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February 8, 2021

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VIA E-MAIL

Mr. Kelly O'Neill, Jr.
Development Services Director
City of Sandy
Sandy City Hall
39250 Pioneer Blvd.
Sandy, OR 97055

RE: Roll Tide Properties, LLC / Bull Run

Dear Mr. O'Neill:

As we will discuss on February 10 for Bull Run, attached are sections of the Sandy Development Code that (a) include subjective standards and procedures and provide for subjective conditions; and (b) improperly incorporate or fail to incorporate the Sandy Comprehensive Plan, the Sandy TSP, and other public facilities plans. Also included for your reference are related Oregon statutes and case law discussing same. For ease of review, we have highlighted the subjective criteria and procedures (and related statutes/case law) in gold or yellow; and the incorporation of the various Plans (and related statutes/case law) in aqua.

We are looking forward to our next meeting.

Very truly yours,

Michael C. Robinson

MCR:jmhi
Enclosures

cc: Mr. Dave Vandehey *(via email) (w/enclosures)*
Mr. Alex Reverman *(via email) (w/enclosures)*
Mr. Carey Sheldon *(via email) (w/enclosures)*
Mr. Mike Ard *(via email) (w/enclosures)*
Mr. Ray Moore *(via email) (w/enclosures)*
Mr. Tracy Brown *(via email) (w/enclosures)*
Christopher D. Crean, Esq. *(via email) (w/enclosures)*
Ms. Shelley Denison *(via email) (w/enclosures)*
Ms. Erin Forbes *(via email) (w/enclosures)*

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197.195 Limited land use decision; procedures. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.763.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision. [1991 c.817 §3; 1995 c.595 §1; 1997 c.844 §1]

197.303 "Needed housing" defined. (1) As used in ORS 197.286 to 197.314, "needed housing" means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. "Needed housing" includes the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036 and shall consider and adopt findings related to changes in each of the following factors since the last review under ORS 197.296 (2)(a)(B) and the projected future changes in these factors over a 20-year planning period:

(a) Household sizes;

(b) Household demographics;

(c) Household incomes;

(d) Vacancy rates; and

(e) Housing costs.

(3) A local government shall make the estimate described in subsection (2) of this section using a shorter time period than since the last review under ORS 197.296 (2)(a)(B) if the local government finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) A local government shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to

subsection (2) of this section. The local government must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

(5) Subsection (1)(a) and (d) of this section does not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(6) A local government may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals. [1981 c.884 §6; 1983 c.795 §2; 1989 c.380 §1; 2011 c.354 §2; 2017 c.745 §4; 2019 c.639 §6; 2019 c.640 §10a]

197.307 Effect of need for certain housing in urban growth areas; approval standards for residential development; placement standards for approval of manufactured dwellings. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the Low-Rise Residential Dwelling Code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject. [1981 c.884 §5; 1983 c.795 §3; 1989 c.380 §2; 1989 c.964 §6; 1993 c.184 §3; 1997 c.733 §2; 1999 c.357 §1; 2001 c.613 §2; 2011 c.354 §3; 2017 c.745 §5; 2019 c.401 §7]

PARKVIEW TERRACE DEVELOPMENT LLC, Petitioner,
and JOSEPHINE HOUSING AND COMMUNITY
DEVELOPMENT COUNCIL, Intervenor-Petitioner,
v.
CITY OF GRANTS PASS, Respondent,
and DAVID R. MANNIX, MELISSA S. CANON
EAVES, CAREY GILBERT, JAMES FREGO, CYNTHIA FREGO, SHAUN HOBACK, RANDY R. LEMMON, TONI J. LEMMON, DAVID J. HOLMAN and JOANNA H. LOFASO, Intervenors-Respondents.

LUBA No. 2014-024

LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

July 23, 2014

FINAL OPINION AND ORDER

Appeal from City of Grants Pass.

Michael C. Robinson, Portland, filed a joint petition for review and argued on behalf of petitioner. With him on the brief were Seth J. King, Perkins Coie LLP, Benjamin E. Freudenberg and Davis, Adams, Freudenberg, Day & Galli.

Benjamin E. Freudenberg, Grants Pass, filed a joint petition for review

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on behalf of intervenor-petitioner. With him on the brief were Davis, Adams, Freudenberg, Day & Galli, Michael C. Robinson, Seth J. King, and Perkins Coie LLP.

No appearance by City of Grants Pass.

David R. Mannix, Grants Pass, filed the response brief and argued on his own behalf. Melissa S. Canon Eaves, Carey Gilbert, James Frego, Cynthia Frego, Shaun Hoback, Randy R. Lemmon, Toni J. Lemmon, David J. Holman and Joanna H. Lofaso, Grants Pass, represented themselves.

HOLSTUN, Board Member; RYAN, Board Chair; BASSHAM, Board Member, participated in the decision.

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a city council decision denying its application for site plan approval and a variance from street and block length standards to permit construction of 50 units of federally assisted housing for low-income individuals.

INTERVENORS-RESPONDENTS

In a June 19, 2014 order, we allowed intervenor-respondent Mannix's response brief. In that order, we determined we would not consider intervenor-respondent Gilbert's response brief because it was not timely filed. No other intervenor-respondent filed a response brief. In this opinion, we therefore refer in the singular to the only intervenor-respondent who timely filed a response brief.

MOTION TO FILE REPLY BRIEF

Petitioner Parkview Terrace Development LLC, the applicant below, and intervenor-petitioner Josephine Housing and Community Development Council, which administers a federally supported housing voucher program and supports the proposal (together petitioners) move for permission to file a reply brief to respond to alleged "new matters" raised in the response brief. The reply brief is allowed.

MOTION TO STRIKE RESPONSE BRIEF

Petitioners move to strike portions of intervenor-respondent's response brief, including three exhibits that are not included in the record filed by the city in this matter, as well as related passages in the response brief that rely upon those exhibits, and additional parts of the response brief that include

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factual assertions that petitioners contend are not supported by evidence in the record.

With exceptions that do not apply here, LUBA's review is limited to the record filed by the local government. ORS 197.835(2). The three exhibits (exhibits A, C and D) are not included in the record, and we understand intervenor-respondent to offer those exhibits for their evidentiary value. Petitioners' motion to strike the exhibits is granted.

With regard to the portions of the response brief that petitioners contend rely on those exhibits and are not supported by the record, LUBA disregards any allegations of material fact that are not supported by the record. However, a lack of evidentiary support for arguments and factual allegations in a response brief is not a basis for striking those portions of the brief. *Hammock & Associates, Inc. v. Washington County,* 16 Or LUBA 75, 78, *aff'd* 89 Or App 40, 747 P2d 373 (1987).

STANDING

In his response brief, intervenor-respondent challenges intervenor-petitioner's standing, arguing that the Josephine Housing and Community Development Council, as an entity, did not "appear through counsel" in the local proceedings in this matter. Intervenor-Respondent's Brief 1. In our May 1, 2014 Order, we concluded that the Council had appeared through its executive director and that intervenor-respondent failed to establish that the Council was required under county procedures to appear through counsel. Intervenor-respondent offers no reason in his response brief to question those conclusions, and we adhere to them.

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FACTS

The subject property is zoned High Density Residential (R-3) and includes approximately 3.02 acres. There are residential townhouses (Maple Park) to the south of the subject property, a warehouse to the north, a mini-storage facility to the east, and a city park to the west. Many of the intervenors-respondents reside in Maple Park.

In 2006, the City of Grants Pass approved the Maple Park planned unit development (Maple Park PUD). The city's Maple Park PUD approval decision authorized an 88-unit residential development in three phases. Simultaneously, the city also approved a major variance to the street section design, maximum cul-de-sac length, and street separation standards. The Maple Park PUD developer constructed 28 townhouse units in developing Phase I but failed to complete the remaining units that were to be constructed as Phases II and III, apparently due to the recent recession. Petitioner is a successor-in-interest to the original developer. Petitioner wishes to construct a 50-unit multi-family housing project (Parkview Terrace) in place of Phases II and III of the Maple Park PUD. The 50 units would be multi-family rental units, all owned by petitioner, rather than town houses that would be separately owned.

In addition to seeking approval for the site plan, petitioner also sought approval for a variance to the city's street block length standards. The city's staff reviewed petitioner's applications and recommended approval, subject to a number of conditions. The Urban Area Planning Commission (UAPC) held a public hearing on the applications and, on December 11, 2013, approved the site plan and variance applications with conditions.

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On December 19, 2013, intervenors-respondents and others appealed the UAPC's decision to the city council. The city council reversed the UAPC's decision and denied petitioner's applications. This appeal followed.

MAPLE PARK PUD PHASES II AND III

Before turning to petitioners' assignments of error, we note that a recurring point of dispute between the parties is the current status of Maple Park PUD Phases II and III. Many of the parties' evidentiary disputes also have to do with Maple Park PUD Phases II and III. The city council's decision is a revision of the UAPC's decision with unchanged text, strikeouts (city council deletions) and bold italic text (city council additions). In the city council's decision, text from the UAPC's decision stating that that Maple Park PUD Phases II and III are "active" is stricken through, indicating that text was deleted from the city council's decision and findings. Record 13. The following finding from the UAPC's decision was not changed by the city council:

> "The applicant has notified the Planning Department of its withdrawal of the previous approval(s) for Phases II and III of Maple Park PUD." *Id.*

According to petitioners, the reference to the applicant's withdrawal is a reference to a January 17, 2014 letter from petitioner's executive director to the planning department that makes the following request:

> "As the owner of the property identified by Josephine County Assessor's map ID #36-05-20-DC and tax lot #2201, we request irrevocable termination of any and all land development entitlement rights under the tentative PUD approval for Phase II & Phase III of the Maple Park Townhomes * * * and hereby waive any right to forever rely on any entitlement rights granted by said approval." Record 201.

We understand the city council to have determined that the city's approval for Phases II and III of Maple Park PUD has been withdrawn or terminated and are no longer active.

In his response brief, intervenor-respondent argues:

> "This particular application ignored the existence of the PUD when it submitted its plans. When opponents raised the question, supporters of the application came up with an ad hoc series of increasingly bizarre theories as to why the PUD did not currently exist. The last one was that a successor in interest (3 parties away from the original) could simply unilaterally revoke the PUD, and accordingly, in mid-process (February 2014) submitted a letter to the Planning Department saying in effect, 'I revoke.' The theory that a successor in interest may years later simply unilaterally revoke a PUD upon which many other parties have relied, is of course, logical nonsense. * * *. Intervenor-Respondent's Brief 18.

We understand intervenor-respondent to challenge the above finding that the city's approval of Maple Park PUD Phases II and III has been withdrawn. Intervenor-respondent contends that the city's approval of Maple Park PUD Phases II and III remains effective and provides an independent basis for affirming the city council's decision to deny petitioner's site plan, which is inconsistent with Maple Park PUD Phases II and III.

There are two problems with intervenor-respondent's position regarding Maple Park PUD

Phases II and III. First, the city council adopted the opposite position from intervenor-respondent's regarding the continued existence of the city's prior approval of Maple Park PUD Phases II and III. Intervenor-respondent contends the above-quoted finding—that petitioner withdrew that approval—was prepared by the planning staff and was not adopted by the city council. While the above-quoted finding apparently was prepared by planning staff and adopted initially by the UAPC, the city council adopted the UAPC's

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decision, including its findings, as its own, except where the city council adopted additions and deletions. Those findings, as amended, were "Approved by the City Council." Record 24. Thus, while the city council may not have been the author of the disputed finding, the city council clearly adopted the finding.

The second problem with intervenor-respondent's position is that LUBA's rules expressly authorize intervenors-respondents to assign error to aspects of a decision on appeal, whether they agree or disagree with the ultimate disposition in the decision.

> "Cross Petition: Any respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review may file a cross petition for review that includes one or more assignments of error. *A respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal only if the decision on appeal is reversed or remanded under the petition for review may file a cross petition for review that includes contingent cross-assignments of error, clearly labeled as such.* The cover page shall identify the petition as a cross petition and the party filing the cross petition. *The cross petition shall be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review,* except that a notice of intent to appeal need not have been filed by such party." OAR 661-010-0030(7) (emphases added).

Intervernor-respondent asks LUBA to reverse the finding regarding the city's prior approval of Maple Park PUD Phases II and III, so that the continued viability of Maple Park PUD Phases II and III would provide an independent basis for affirming the city council's denial decision in the event LUBA sustains one or more of petitioners' assignment of error. Intervenor-respondent did not file a cross petition for review with a contingent assignment of error

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assigning error to the city council's finding and making the arguments it makes in its response brief.

Citing *BenjFran Development v. Metro Service Dist.,* 17 Or LUBA 1009, 1011-1012 (1988), intervenor-respondent contends it was not required to file a cross petition for review. *BenjFran* was decided in 1988, when LUBA's rules simply authorized cross petitions for review, without specifying the circumstances in which they are to be filed. The reason LUBA adopted OAR 661-010-0030(7) is to require that arguments such as the one intervenor-respondent advances in its response brief be set out earlier in a cross petition for review, to avoid the possibility of delay, since response briefs typically are filed shortly before the date set for oral argument. Because intervenor-respondent did not file a cross petition for review in accordance with OAR 661-010-0030(7), we do not consider intervenor-respondent's arguments that the city's prior approval of Maple Park PUD Phases II and III remains effective or that the possible continued existence of city approval for Phases II and III

provides an independent basis for affirming the city council's decision to deny petitioner's application for site plan approval.

FIRST ASSIGNMENT OF ERROR

Under their first assignment of error, petitioners argue the proposal is a proposal for "needed housing," as that term is defined at ORS 197.303.[1] Because the proposal is a proposal for "needed housing," petitioners contend the proposal may only be subject to approval standards that are "clear and objective." Petitioners argue that the city was advised, during the proceedings below, that petitioners took the position that a number of standards that would

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otherwise apply to the proposal are not "clear and objective standards" and for that reason may not be applied to deny the proposal. Petitioners contend that the city council nevertheless applied a number of standards that are not "clear and objective" to deny the application for site plan approval. Petitioners argue the city council never responded to petitioners' contention that those standards may not be applied to a proposal for "needed housing." Petitioners assign error to the city's failure to respond to this issue in its findings and separately assign error to the city council's decision to apply those standards as bases for denial of the site plan.

A. Needed Housing

The Oregon Legislature has recognized a need to make housing available to people earning low, middle, or fixed incomes. ORS 197.307(1).[2] ORS

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197.303 defines "needed housing" as "housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels * * *." Among other types, the statute identifies "[g]overnment assisted housing" as a type of "needed housing." ORS 197.303(1)(b). The city's comprehensive plan identifies a need for over 4,100 housing units that are affordable to households with incomes of less than $37,200. Record 832. The proposal is for government assisted housing that is affordable to persons with incomes of less than $37,200 and therefore qualifies as "needed housing."

Intervenor-respondent does not really dispute that the proposal qualifies as "needed housing," but argues that the housing that would have been provided if Phases II and III of Maple Park PUD were completed as approved also qualifies as "needed housing." The definition of "needed housing" in ORS 197.303 is so broad that intervenor-respondent is likely correct. However, even if the proposal is a proposal to substitute one type of "needed housing" for another type of "needed housing," that does not mean the proposal is a proposal for something other than "needed housing."

B. Petitioners' Findings Challenge

As we explain in more detail below, we agree with petitioners that a number of standards that the city applied in this case to deny the proposal are not "clear and objective standards," as is required by ORS 197.307(4). Before doing so, we agree initially with petitioners that it was error for the city not to

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respond in its decision to the issue of whether those standards qualify as "clear and objective standards." As we explained in *Rosenzweig v. City of McMinnville,* 64 Or LUBA 402, 410-11 (2011):

> "LUBA has consistently held 'that when a relevant issue is adequately raised by testimony or other evidence in the record, that issue must be addressed in the decision maker's findings.' *Blosser v. Yamhill County,* 18 Or LUBA 253, 264 (1989) (citing *Norvell v. Portland*

> *Metropolitan LGBC,* 43 Or App 849, 852-53, 604 P2d 896 (1979)); *see also Friends of Umatilla County,* 55 Or LUBA 333, 337 (2007); *Marcott Holdings, Inc. v. City of Tigard;* 30 Or LUBA 101, 107-08 (1995). However, as we pointed out in *Faye Wright Neighborhood Planning Council v. Salem,* 1 Or LUBA 246, 252 (1980), 'not every assertion by a participant in a land use decision warrants a specific finding.' A petitioner at LUBA must (1) identify the issue raised, (2) demonstrate that the issue was *adequately* raised and (3) establish that the issue is relevant in some way (usually by showing that the issue raises a question regarding an applicable approval standard). * * *." (Emphasis in original.)

Petitioner identified seven standards that the city ultimately applied to deny the proposal and took the position that they are not "clear and objective" and could not be applied to deny petitioner's request for approval of a proposal for "needed housing." Grants Pass Development Code (GPDC) 19.052(2) (Record 261); GPDC 19.052(4) (Record 271); GPDC 19.052(5) (Record 272); GPDC 19.052(6) (Record 272); GPDC 19.052(8)(a) and (e) (Record 273-74); GPDC 19.052(9) (Record 274-75); GPDC 19.052(11) (Record 275). Petitioners have adequately identified the issue and demonstrated that the issue was adequately raised. Since the city relied on all of those subjective standards to deny the application, the issue is relevant. The city should have responded to that issue in its findings, and it erred by failing to do so.

C. Clear and Objective Standards

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ORS 197.307(4) provides that local governments are only authorized to apply "clear and objective standards, conditions and procedures" in reviewing applications for "needed housing." *See* n 2.

1. Intervenor-Respondent's Arguments

Intervenor-respondent offers a number of reasons why he believes the "clear and objective standards" requirement of ORS 197.307(4) either does not apply or was satisfied in this case.

First, intervenor-respondent contends the requirement for "clear and objective standards" only applies to "[a]esthetic criteria." Intervenor-Respondent's Brief 13. Intervenor-respondent does not identify the basis for that argument, and there is nothing in the text of ORS 197.307(4) that limits the requirement for "clear and objective standards" to aesthetic criteria. Petitioners speculate that intervenor-respondent may be relying on the pre-2011 version of ORS 197.307(3)(b). If so, that version of ORS 197.307(3)(b) was repealed in 2011. Or Laws 2011, ch 354, sec 3. Intervenor-respondent also fails to recognize that the pre-2011 version of ORS 197.307(3) subsections (b) and (c) were a nested exception to the general requirement for "clear and objective standards" for "needed housing" to allow certain large jurisdictions to impose aesthetic regulations on "needed housing." The pre-2011 version of ORS 197.307 also included a general requirement for "clear and objective standards." ORS 197.307(6) (2009).

Intervenor-respondent next argues that the requirement for "clear and objective standards" only applies in cases where the applicant establishes "impermissible bias or prejudice in the application process." Intervenor-Respondent's Brief 14. Again, there is simply no text in ORS 197.307(4) that

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limits the statute to cases where the decision maker exhibits bias or prejudice. *See* n 2.

Next, citing *Rogue Valley Assoc. of Realtors v. City of Ashland,* 158 Or App 1, 4, 970 P2d 685 (1999), intervenor-respondent contends a

standard only violates ORS 197.307(4) if the applicant demonstrates that the standards are "categorically incapable of being clearly and objectively applied under any circumstances where they may be applicable." The appeal in *Rogue Valley* was a facial challenge to an ordinance that adopted new standards and the requirement imposed by the quoted language in the Court of Appeals' decision was limited to facial challenges. We do not understand petitioners to make a facial challenge here. Even if they do, that part of the Court of Appeals' decision was overruled by the legislature in 1999. ORS 197.831.[3]

Intervenor-respondent next argues that the ORS 197.307(4) "clear and objective standards" requirement does not apply to requests for a variance. Intervenor-respondent is correct. *Linstromberg v. City of Veneta,* 47 Or LUBA 99, 108-09 (2004). But petitioners do not argue the city's standards for granting a variance must be "clear and objective." Rather, petitioners contend the city erroneously concluded under the applicable variance standards that

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petitioner's request for a variance could be denied.[4] Petitioners' "clear and objective standards" challenge is limited to standards the city applied to the proposed site plan.

2. The Challenged Site Plan Review Standards

Petitioners contend that seven of the site plan review standards that the city relied on in denying its application for site plan review approval are not "clear and objective standards," and thus may not be applied to the site plan.

a. GPDC 19.052(2)

GPDC 19.052(2) requires that the proposal comply "with applicable elements of the Comprehensive Plan, including: Traffic Plan, Water Plan, Sewer Plan, Storm Drainage Plan, Bicycle Plan, and Park Plan." Record 19. The UAPC found that the proposal satisfies GPDC 19.052(2) and adopted findings to support that conclusion. The city council adopted the UAPC's findings. However, the city council struck through the part of the UAPC's findings that concluded "Satisfied with conditions," and added the following sentence at the end of the UAPC's findings:

> "The City Council found the request was not incompliance with the Comprehensive Plan for traffic management (Element 11 ~ Master Transportation Plan)." Record 19. (Bold and italics deleted.)

GPDC 19.052(2) includes no guidance for determining which elements of the city's comprehensive plan are applicable. The only element identified by the city council's decision is Element 11. Element 11 is the city's Master Transportation Plan. The Master Transportation Plan is eight chapters long.

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One of those chapters is chapter 3, which is 13 pages long and sets out numerous goals and objectives. Many of those goals and objectives are not "clear and objective."[5] We assume the city council was not applying the entire eight-chapter Master Transportation Plan, but the city council's findings do not identify what part it was applying. We agree with petitioners that in this case the city council's application of the Master Transportation Plan, without identifying what part of that plan it was applying, applies a standard that is not "clear and objective," which is prohibited by ORS 197.307(4). The city council erred in doing so.

b. GPDC 19.052(4)

GPDC 19.052(4) requires that "[p]otential land use conflicts have been mitigated through specific conditions of development." Record 21. The UAPC decision found the proposal, with conditions, complies with GPDC 19.052(4). The City Council found that the criterion was "Not Satisfied," but did not identify why. Record 21.

We agree with petitioners that a standard that requires mitigation of "potential land use conflicts" is not a "clear and objective" standard. *See Rogue Valley,* 35 Or LUBA 159-60 (a standard requiring an applicant to "mitigate any potential negative impact caused by the development," is not "clear and objective"). GPDC 19.052(4) is not a "clear and objective" standard, and the city council erred in applying it to deny site plan approval.

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c. GPDC 19.052(5)

GPDC 19.052(5) requires that "[a]dequate basic urban services are available, or can be made available by the applicant as part of a proposed development, or are scheduled by the City Capital Improvement Plan." Record 21. The City Council found that this criterion was not satisfied. Record 21.[6]

Petitioners first argue that the meaning of the key terms "adequate" "basic urban services" and "available" is not explained in GPDC 19.052(5), and without some explanation, those terms are not "clear and objective." We agree with petitioners. *See Home Builders Association of Lane County v. City of Eugene,* 41 Or LUBA 370, 410, 414 (2002) (code requirement to provide "adequate" drainage is not "clear and objective;" a standard that requires an applicant to show that "public facilities and services are available to the site" but does not define the key terms "public facilities and services" or "available" is not "clear and objective"). The city council erred in applying GPDC 19.052(5) to deny petitioner's application for site plan approval.

d. GPDC 19.052(6)

GPDC 19.052(6) requires that the "[p]rovision of public facilities and services to the site will not cause service delivery shortages to existing development." Record 21. The City Council found that this criterion was not satisfied. *Id.*

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Petitioners argue that GPDC 19.052(6) provides no guidance regarding the scope of "public facilities and services" or how to go about determining if the proposal will "cause service delivery shortages to existing development" or what qualifies as a "shortage." Therefore, petitioners argue, GPDC 19.052(6) is not "clear and objective." We agree with petitioners. *See Home Builders Association of Lane County v. City of Eugene,* 41 Or LUBA 370, 414 (2002) (a standard that requires an applicant to show that "public facilities and services are available to the site" but does not define the key terms "public facilities and services" or "available" is not "clear and objective"). The city council erred by applying GPDC 19.052(6) to deny petitioner's application for site plan approval.

e. GPDC 19.052(8)(a) and (e)

GPDC 19.052(8) requires that "[t]he characteristics of existing adjacent development have been determined and considered in the development of the site plan. At a minimum, special design consideration shall be given to:

> "(a) Areas of land use conflicts, such as more restrictive use adjacent or across street from proposal. Mitigate by orienting business operations away from use, additional setbacks, screening/buffering, landscaping, direct traffic away from use.
>
> "* * * * *
>
> "(e) Lighting. Exterior lighting shall not impact adjacent development or traveling motorist." Record 22. (Underscoring in original.)

The City Council found that these criteria were not satisfied. Record 22.

Neither the requirement to "mitigate" in GPDC 19.052(8)(a) nor the methods of suggested mitigation are "clear and objective," as ORS 197.307(4) requires. Neither is the GPDC 19.052(8)(e) requirement that "[e]xterior

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lighting shall not impact adjacent development or traveling motorist." *See Rogue Valley,* 35 Or LUBA at 158 ("'[n]eeded housing' is not to be subjected to standards, conditions, or procedures that involved subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on * * * adjoining properties or community").

We agree with petitioners that GPDC 19.052(a) and (e) are not "clear and objective standards," as required by ORS 197.307(4). The city council erred in applying GPDC 19.052(a) and (e) to deny petitioner's application for site plan approval.

f. GPDC 19.052(9)

GPDC 19.052(9) requires that "[t]raffic conflicts and hazards are minimized on-site and off-site, as provided in Article 27." Record 23. The City Council found that this criterion was not satisfied. *Id.*

The GPDC 19.052(9) requirement that "[t]raffic conflicts and hazards [be] minimized on-site and off-site" is not, by itself, "clear and objective." *See Home Builders Association,* 41 Or LUBA 399 (a standard that requires that "on-site vehicular and pedestrian circulation shall be designed to minimize vehicular/pedestrian conflicts at driveway crossings within parking lots and at vehicle ingress/egress points," is not "clear and objective").

Petitioners next argue that GPDC's 19.052(9)'s reference to Article 27 is not sufficient to make GPDC 19.052(9) "clear and objective" because the code does not identify which standards in Article 27 apply. Joint Petition for Review 19. GPDC Article 27 is 32 pages long and includes a variety of requirements. Petitioners point out that although GPDC 27.121(3) requires a traffic impact analysis, and the city council found the applicant's traffic impact analysis was flawed, GPDC 27.121(3) does not mention "traffic conflicts." A

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different section of Article 27, GPDC 27.121(11)(h)(8), does mention "traffic conflicts," but GPDC 27.121(11)(h)(8) only applies to developments that "abut[] or contain[] an existing or proposed arterial street." The subject property does not abut or contain an arterial street. Even if it did apply, GPDC 27.121(11)(h)(8) requires that the development design "minimize the traffic conflicts." That is not a "clear and objective" standard.

We agree with petitioners that GPDC's 19.052(9) is not "clear and objective" as required by ORS 197.307(4), and the City Council erred in applying GPDC's 19.052(9) to deny petitioner's application for site plan approval.

g. GPDC 19.052(11)

GPDC 19.052(11) requires that "[t]here are adequate provisions for maintenance of open space and other common areas." Record 23. The City Council found that this criterion was not satisfied. *Id.*

Petitioners argue that the City engaged in a subjective analysis to determine whether the maintenance of open space and other common areas is "adequate," because neither the text nor context of the code defines "adequate." For the same reasons explained in our discussion of GPDC 19.052(5), we agree with petitioners that a standard that requires an unguided inquiry to whether something is "adequate" is not a "clear and objective" standard.

Accordingly, we agree with petitioners that GPDC 19.052(11) is not a "clear and objective" standard, as it must be under ORS 197.307(4), if it is to be applied to an application for land use approval of "needed housing." The City Council erred in applying GPDC 19.052(11) to deny petitioner's application for site plan approval.

The first assignment of error is sustained.

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SECOND ASSIGNMENT OF ERROR

Under the second assignment of error, petitioners argue that even if some site plan approval criteria were not barred by ORS 197.307(4) because they are not "clear and objective," the city erred on the merits in its application of all ten site plan approval standards it relied on to deny its application for site plan approval. We have concluded under the first assignment of error that seven of the nine site plan review standards that the city applied to deny petitioner's application for site plan approval are not "clear and objective" and should not have been applied to petitioner's application for "needed housing." We therefore need not and do not consider whether the city also erred on the merits in applying those seven standards.

Petitioners do not argue that two of the site plan review standards are not "clear and objective." We therefore limit our consideration under the second assignment of error to petitioners' challenge to the city council's decision with regard to the variance application and the two site plan review standards that petitioners do not argue the city was precluded from applying under ORS 197.307(4).

A. The Remaining Site Plan Approval Standards

1. GPDC 19.052(3)

GPDC 19.052(3) requires a site plan applicant to demonstrate the proposal "[c]omplies with all other applicable provisions of this Code, including off-street parking, landscaping, buffering and screening, signage, environmental standards, and Special Purpose District standards." Record 20. The UAPC identified the off-street parking requirements set out at GPDC 25.042. GPDC 25.042 requires 1, 1.5 or 2 spaces per unit, depending on the number of bedrooms in each unit. The UAPC concluded that the 86 parking

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spaces petitioner proposed are sufficient to comply with GPDC 25.042. The city council adopted that finding, but added the following finding: "[t]he City Council found that the site plan did not provide adequate parking facilities." Record 20. (Boldface and italics deleted.)

Like the UAPC, the city council found that the proposal to provide 86 parking spaces complies with GPDC 25.042. *Id.* The city council did not identify any GPDC or other standard that requires the applicant to demonstrate that the proposed parking facilities are "adequate." Even if there were such a standard, it would not be "clear and objective" and could not be applied consistently with ORS 197.307(4).

The city council erred in finding that the proposal does not comply with GPDC 19.052(3). The city council found that the proposal satisfies the only GPDC parking standard that it identified. The city council did not identify the source of the "adequacy" standard it imposed to deny the application, and even if such a standard existed, ORS 197.307(4) would preclude applying such a standard to an application for approval for "needed housing."

2. GPDC 19.052(12)

GPDC 19.052(12) requires that an applicant for site plan approval demonstrate that "[i]nternal circulation is accommodated for commercial, institutional and office park uses with walkways and bikeways as provided in Article 27." Record 23. The city council deleted the conditions of approval that the UAPC relied on to determine that the proposal satisfies GPDC 19.052(12). The

city council then concluded the standard is "Not Satisfied." Record 23-24.

Petitioners argue the City Council erred in denying its application based on GPDC 19.052(12). Petitioners contend the text of GPDC 19.052(12) makes

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it clear that it does not apply to its proposal for a *residential* development, because GPDC 19.052(12) only applies to "commercial, institutional and office park uses." We agree with petitioners.

B. The City Council's Denial of the Variance

As noted earlier, petitioner sought a variance from requirements for "[b]lock length for local streets * * * and [t]otal length of a perimeter block for local streets * * *. Record 9. The criteria that must be satisfied to grant the requested variances are set out at GPDC 6.060. The UAPC applied a total of 12 variance criteria, finding that with conditions of approval that were imposed by the UAPC and accepted by petitioner, all 12 variance criteria are satisfied. Record 224-29. Four of those criteria are relevant in this appeal.

Variance criterion 1 requires the applicant to demonstrate the variance is justified by a "unique physical constraint or characteristic of the property to which the variance application is related." Record 14. The UAPC found "[t]he property is constrained by existing development patterns in the area." *Id.* The UAPC set out a number of examples of those existing development patterns. *Id.*

Variance criterion 2 requires an applicant to establish that the unique physical constraint or characteristic identified under criterion 1 was not "self-created." *Id.* If it was self-created, criterion 2 imposes additional requirements. The UAPC found "[t]he existing constrains on the property were not self-created." Record 15.

In relevant part, variance criterion 3 requires the applicant to demonstrate "that a variance is necessary to overcome at least one of three situations:

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> "(a) Allow Reasonable Use of an Existing Property. Due to the unique physical constraint or characteristic of an existing lot or parcel, strict application of the provisions of the Development Code would create a hardship by depriving the owner of the rights commonly enjoyed by other properties in the same zoning district subject to the same regulation. *The variance is necessary for preservation of a property right of the owner,* substantially the same as is possessed by owners of other property in the same district subject to the same regulation.
>
> "* * * * *
>
> "(c) Allow Flexibility for Expansion of Existing Development. The location of existing development on the property poses a unique constraint to expansion in full compliance with the Code. The variance is needed for new construction and site improvements in order to provide for efficient use of the land or avoid demolition of existing development, where the public purpose can be substantially furthered in alternate ways with minimal deviation from standards." Record 15 (emphasis added).

The UAPC found "[t]he variance is necessary to overcome the conditions described under sub

criterion (a) and (b) [of variance criterion 3] * * *." *Id.* For purposes of this appeal, this finding is particularly significant since in finding the variance was necessary under sub criterion (a), the UAPC found the variance was "necessary to preserve a property right."

Finally, criterion 9 imposes the following requirement:

> "Mitigate Adverse Impacts. Adverse impacts shall be avoided where possible and mitigated to the extent practical. If a variance is not necessary to preserve a property right, or if the unique constraint in Subsection (1) was self-created, adverse impacts may be grounds for denial." Record 17.

Variance criterion 9 requires mitigation of adverse impacts, but may be grounds for denial in only two circumstances: (1) where the "variance is not

necessary to preserve a property right" and (2) where the unique physical constraint or characteristic identified under criterion 1 is found to be self-created under criterion 2. The UAPC found criterion 9 was satisfied: "[a]dverse impacts that may occur as a result of approval of the requested variances can be mitigated by the conditions of approval listed below."[7]

In its decision, the city council adopted the UAPC's findings regarding 11 of the 12 variance criteria, including criteria 1, 2, and 3. The only deviation from the UAPC's findings in the city council decision was for criterion 9. The city council struck through the UAPC's criterion 9 finding that "[a]dverse impacts that may occur as a result of approval of the requested variances can be mitigated by the conditions of approval listed below." The city council added the following finding:

> "Not Satisfied. The City Council found that the applicant did not provide adequate mitigation to avoid the adverse impacts of the development for traffic entering Fruitdale Drive." Record 17-18.

Under variance criterion 9, the city council could have required additional mitigation if it believed additional mitigation is required to avoid adverse traffic impacts on Fruitdale Drive. But variance criterion 9 authorizes the city council to deny the variance based on adverse impacts in only two circumstances: (1) where the "variance is not necessary to preserve a property right" and (2) where the unique physical constraint or characteristic identified under criterion 1 is found to be self-created under criterion 2. In the city's council's findings addressing criteria 1, 2 and 3, the city council found that

neither of those circumstances is present here. The city council erred by applying criterion 9 to deny the application.

The second assignment of error is sustained.

REMEDY

Petitioners argue LUBA should reverse the city council's decision and order the city to approve its applications for a variance and site plan approval. ORS 197.835(10)(a)(A). ORS 197.835(10)(a) provides, in part:

> "The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:
>
> "(A) Based on the evidence in the record, that the local government decision is outside the range of

> discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

The question posed under ORS 197.835(10)(a)(A) is whether the city council's decision to deny petitioner's site plan and variance application was "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]" The city council gave a total of ten reasons why it denied the applications. Seven of the site plan review criteria the city council relied on to support its denial decision are barred by ORS 197.307(4), because the application for site plan approval is an application for approval of "needed housing" and those standards are not "clear and objective." As to those seven standards, the city council's decision was "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

Under GPDC 19.052(3), the city council relied on an "adequate" parking standard, but there is no "adequate" parking standard and the proposal

complies with the only identified parking standard. Accordingly, as to GPDC 19.052(3), the city council's decision was "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

GPDC 19.052(12) applies to "commercial, institutional and office park uses." GPDC 19.052(12) does not apply to the "residential" use proposed by petitioner. Therefore, as to GPDC 19.052(12), the city council's decision was "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

Finally, variance criterion 9 can only be applied to deny a request for variance approval in two circumstances. The city council found that neither of those circumstances is present here. Therefore as to variance criterion 9, the city council's decision was "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

Because the city council's application of all ten of the reasons it gave for denying petitioner's applications for variance and site plan approval were "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances," the city council's decision is reversed and the city is ordered to approve petitioner's application.

The UAPC imposed a number of conditions of approval in its decision granting site plan and variance approval. Record 216-20. Since petitioner agreed to all of the conditions of approval that were imposed by the UAPC, the city council's decision to approve the application may include all of those conditions of approval. *Stewart v. City of Salem,* 58 Or LUBA 605, 622 (2009).

The city council's decision is reversed.

Footnotes:

[1.] We set out the relevant statutory text later in this opinion.

[2.] ORS 197.307 provides, in part:

> "(1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.
>
> "(2) Many persons of lower, middle and fixed income depend on government assisted housing as a

source of affordable, decent, safe and sanitary housing.

"(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

"(4) [*A*] *local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section.* The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay." (Emphasis added.)

[3.] ORS 197.831 provides:

"In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner."

[4.] We address petitioner's challenge to the city's variance findings later in this opinion.

[5.] For example, policy 2.4.1 provides:

"Policy 2.4.1: Integrate decisions about development and transportation investments to ensure the best fit between development in the urban area and the transportation facilities and services needed to serve it."

[6.] The city council found:

"Based upon the testimony, the City Council found that the application did not provide adequate service area and internal circulation with regards to fire access and trash/refuse removal." (Boldface and italics omitted.)

[7.] A large number of conditions of approval were attached to the UAPC decision. Record 216-220.

GENE R. OSTER, Petitioner,
v.
CITY OF SILVERTON, Respondent,
and
MARY ROSE BRANDT, Intervenor-Respondent.

LUBA No. 2018-103

LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

May 7, 2019

FINAL OPINION AND ORDER

Appeal from City of Silverton.

Alan M. Sorem, Salem, filed the petition for review and argued on behalf of petitioner. With him on the brief was Saalfeld Griggs PC.

Spencer Q. Parsons, Portland, filed a response brief and argued on behalf of respondent. With him on the brief was Beery, Eisner & Hammond, LLP.

David E. Coulombe, Corvallis, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Fewel, Brewer & Coulombe.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board Member, participated in the decision.

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You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner challenges a city council limited land use decision denying a tentative subdivision plan.

REPLY BRIEF

On January 15, 2019, petitioner filed a motion to file a reply brief. On January 29, 2019, the city filed an objection to petitioner's motion to file a reply brief. Petitioner's appeal was filed in 2018 and is subject to OAR 661-010-0039 (2017), which confines reply briefs "solely to new matters raised in the respondent's brief."[1] "Generally, responses warranting a reply brief tend to be arguments that assignments of error should fail regardless of their stated merits, based on facts or authority not involved in those assignments." *Wal-mart Stores*, *Inc. v. City of Gresham*, 54 Or LUBA 16, 19 (2007). Where arguments in a reply brief respond to arguments raised in the response brief that could not have been

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reasonably anticipated in the petition for review, we will generally allow the reply brief. *Id.* at 20.

In the petition for review, petitioner argued that the city's decision violated the Takings Clause of the Fifth Amendment of the United States Constitution, relying on *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S Ct 2586 (2013). Petitioner also argued that ORS 197.522 is immaterial to the city's constitutional obligations. The city responded, arguing that the *Koontz* case is distinguishable, citing ORS 197.522(4). City's Response Brief 17-18.

In his reply brief, petitioner argues that ORS 197.522(4) is inapposite to his arguments and responds to the city's argument that *Koontz* is distinguishable. The two "matters" petitioner seeks to address in his reply brief at not "new matters" within the meaning of OAR 661-010-0039 (2017). In his petition for review, petitioner relied heavily on *Koontz* and argued that ORS 197.522 was immaterial. Petitioner could have anticipated that the city would attempt to distinguish *Koontz* and would rely on ORS

197.522. Petitioner's reply brief seeks to introduce surrebuttal arguments to the city's arguments in the response brief, and to elaborate upon arguments already set out in the petition for review. A reply brief making surrebuttal to argument in the response brief is not allowed. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 351, 353, *aff'd*, 258 Or App 534, 311 P3d 527 (2013).

The motion to file a reply brief is denied.

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FACTS

The subject property is comprised of approximately 9.5 acres and is zoned single-family residential (R-1). The city annexed the subject property in 2016. On May 11, 2018, petitioner submitted an application for tentative plat approval to subdivide the property into 40 lots, at sizes permitted in the zone, and to develop those lots with housing at densities permitted in the R-1 zone under clear and objective standards. *See* ORS 197.307(4).[2]

The planning commission denied the application because the proposal would not result in improved performance of two off-site intersections to a level of service (LOS) that would satisfy the city, based on a level of service standard contained in the city's transportation system plan document (the LOS D standard). Petitioner's engineer estimated that improvements to comply with the LOS D standard would cost $2,118,550.

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Petitioner appealed the planning commission decision to the city council. After an on-the-record hearing, the city council issued a decision adopting and affirming the planning commission's denial and adopting as findings the staff report in support of the denial. This appeal followed.

SECOND ASSIGNMENT OF ERROR

The city determined that Silverton Municipal Code, Title 18, Development Code and Zoning Map (SDC) incorporated by reference traffic standards in the City of Silverton Transportation System Plan (TSP). The city applied a minimum LOS D standard, derived from the TSP. The city denied the application because petitioner's traffic study showed that the proposed development would send additional peak hour traffic to two intersections at N 1st Street and Hobart Road, and N 1st Street and Jefferson Street, and the proposal did not include transportation system improvements that would bring those intersections to LOS D. No party disputes that the proposed development would slightly exacerbate traffic; however, even without the proposed development, at existing traffic volumes, those two intersections are failing to meet the LOS D standard and operating at LOS F. Record 13.

Under SDC 4.3.130 preliminary plat applicants must "describe the proposed access to and from the site and estimate potential vehicle traffic increases resulting from the project," and the community development director may require a traffic impact study, in accordance with SDC 4.1.900. Neither SDC

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4.3.130 or SDC 4.1.900 define traffic standards or include the LOS D standard that we describe above.

The city concluded that the LOS D standard was incorporated by reference into the SDC by SDC 4.3.140(A)(1) and (B)(7), which provide:

> "A. General Review Criteria. The city shall consider the following review criteria and may approve, approve with conditions, or deny a preliminary plat based on the following; the applicant shall bear the burden of proof.
>
> "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 article, and the applicable chapters and sections of Article 2, Land Use (Zoning) Districts, and Article 3, Community Design Standards shall apply.
> * * *
>
> "* * * * *
>
> "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:
>
> "* * * * *
>
> "7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met."

The city determined that those criteria incorporate SDC 3.4.010(A), which governs public facilities and provides:

> "A. Purpose. This chapter provides general development standards and approval criteria for public improvements. The code incorporates by reference the city's public facility

> master plans, including plans for domestic water, sanitary sewer, storm drainage, parks, and transportation. The code also incorporates by reference Silverton's public works design standards. This chapter is intended to provide minimum requirements for public facilities. It is not intended to duplicate or replace the design standards contained in the above documents."

The city found that SDC 3.4.010(A) effectively incorporated the city's TSP, Chapter 2, Goal 4, Policy (f), which provides, in part:

> "(f) The City shall implement performance standards for use in evaluating new development proposals.
>
> "*Action: City performance standards shall be used to evaluate developments impacting City or County facilities. The level of service standard shall be LOS D based on the Highway Capacity Manual methodology and a* [volume to capacity] *v/c ratio of 0.85 for signalized and all-way stop controlled intersections. For unsignalized intersection, the level of service standard shall be LOS D based on the Highway Capacity Manual and*

> *a v/c ratio of 0.90. ODOT v/c ratio standards shall apply to ODOT facilities*." (Italics in original.)[3]

In the second assignment of error, petitioner argues that city's decision violates ORS 197.195(1), which governs limited land use decisions and provides:

> "A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties

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> shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision."

Petitioner argues that *Paterson v. City of Bend*, 49 Or LUBA 160, *aff'd*, *in part*, *rev'd and rem'd on other grounds*, 201 Or App 344, 118 P3d 842 (2005), supports his argument and is dispositive. We agree. In *Paterson*, the petitioner appealed a limited land use decision in which the city approved a tentative subdivision plan. The petitioner contended that the city had incorporated all comprehensive plan standards applicable to subdivision approvals within the meaning of ORS 197.195(1), by requiring in Bend Subdivision Ordinance (BSO) 3.040(3) that the applicant for a tentative subdivision plan approval demonstrate compliance with the Bend Area General Plan. The petitioner identified several General Plan policies relating to transportation that petitioner argued applied to the proposed subdivision. We rejected that argument and explained:

> "[I]n our view ORS 197.195(1) contemplates more than a broad injunction to comply with unspecified portions of the comprehensive plan. In order to 'incorporate' a comprehensive plan standard into a local government's land use regulations within the meaning of ORS 197.195(1), the local government must at least amend its land use regulations to make clear what specific policies or other provisions of the comprehensive plan apply to a limited land use decision as approval criteria. Under that standard, BSO 3.040(3) falls far short of incorporating any comprehensive plan provisions."

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> *Id*. at 167.

The city responds that the city adopted the TSP in March 3, 2008, by a comprehensive plan text amendment, Ordinance 08-01.[4] That ordinance adopted the TSP "as a support document to the 2002 Silverton Comprehensive Plan." City's Response Brief, App 2, page 2. It is undisputed that the city adopted the TSP as a support document to the comprehensive plan. The dispute is whether the SDC sections applicable to a limited land use decision application sufficiently incorporated the action items in the TSP as approval criteria. Ordinance 08-01 does not support the city's position that the city has incorporated action items in the TSP as approval criteria. Instead, the findings for

Ordinance 08-01 indicate that the city intended further SDC amendments to implement the TSP. The findings attached to Ordinance 08-01 explain that the TSP "goals and policies have been developed to guide the City's twenty-year vision of transportation system needs. Each goal has a number of policies designed to guide the community in the direction of completing each goal. Some policies are provided with details of potential implementing actions." City's Response Brief, App 2, page 5.

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Intervenor argues that the city incorporated the TSP policies into the SDC by Ordinance 08-06, which codified SDC 3.1.100.[5] SDC 3.1.100 provides:

> "The purpose of this chapter is to ensure that developments provide safe and efficient access and circulation for pedestrians and vehicles. SDC 3.1.200 provides standards for vehicular access and circulation. SDC 3.1.300 provides standards for pedestrian access and circulation. General street improvement requirements are provided in SDC 3.4.100, *with more specific requirements provided in the city of Silverton transportation system plan and the city's public works design standards*." (Emphasis added.)

Intervenor argues that the "more specific requirement," *i.e.*, the LOS D standard, is incorporated into the SDC by SDC 3.4.100. The city did not rely on SDC 3.1.100 in the challenged decision and does not cite to it in defense of its decision on appeal. Nevertheless, intervenor's argument and the city's argument rely on the same underlying premise: that the city effectively incorporated the action items of the TSP into the SDC as approval criteria applicable to a limited land use decision by incorporating by reference the entire TSP into sections of the SDC.

The city attempts to distinguish *Paterson* by arguing that, unlike general comprehensive plan policies, "the City's TSP provides specific action items to be implemented under Policies." City's Response Brief 21. The city contends that ORS 197.195(1) does not require the city to codify all approval criteria and

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standards for limited land use decisions. Instead, the city emphasizes, ORS 197.195(1) requires the city to "*incorporate* all comprehensive plan standards applicable to limited land use decisions into their land use regulations." (Emphasis added.) However, the city's arguments are directed at the wrong question. The question under ORS 197.195(1) and *Paterson* is not whether the LOS D standard is clear in the TSP or "codified" in the SDC; instead, the question is whether the SDC provisions that the city concluded incorporated the LOS D standard make clear what specific policies or standards in the TSP apply to a limited land use decision as approval criteria.

We conclude that the sections of the SDC that the city relied upon to deny the application, SDC 4.3.140(A)(1), (B)(7), and SDC 3.4.010(A), fall far short of incorporating the LOS D traffic performance standard in TSP, Chapter 2, Goal 4, Policy (f), under the "incorporation" standard in ORS 197.195(1), as interpreted in *Paterson*. Those provisions do not make clear what specific policies, action items, or performance standards contained in the TSP apply as approval criteria for a limited land use decision. For example, SDC 4.3.140(A)(1) and (B)(7) do not refer to the TSP at all. Similarly, SDC 3.4.010(A) generally "incorporates by reference the city's public facility master plans, including plans for domestic water, sanitary sewer, storm drainage, parks, and transportation." Incorporation by reference of the entirety of each of the city's public facilities plans falls far short of satisfying the incorporation standard in ORS 197.195(1). We agree with petitioner that by applying the LOS D standard, the city violated ORS 197.195(1).

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The second assignment of error is sustained.

FIRST AND THIRD ASSIGNMENTS OF ERROR

In the first assignment of error, first subassignment of error, petitioner argues that the city's decision violated ORS 197.307(4) by applying ambiguous approval standards in a manner that would result in unreasonable cost and unreasonable delay. See n 2. In the first assignment of error, second subassignment of error, petitioner argues that the city's decision violated his constitutional rights. ORS 197.835(9)(a)(E). Under the third assignment of error, petitioner argues that the city's decision misconstrued applicable law and lacks adequate findings with respect to the offsite traffic impacts. ORS 197.835(9)(a)(D), (C).

The city's denial relied solely on its application of the TSP standards. We conclude under the second assignment of error that, because the city did not incorporate the TSP standards into its subdivision regulations, the TSP does not apply to petitioner's application and the city may not use the TSP standard as a basis to deny the subdivision. Because we find that the TSP does not provide applicable approval criteria for a limited land use decision, we need not and do not decide whether the city's application of the TSP standard violates petitioner's constitutional rights or the requirement in ORS 197.307(4) that the city may apply only clear and objective standards in a manner that would not result in unreasonable cost or delay. Accordingly, we do not reach the first and third assignments of error.

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DISPOSITION

Petitioner requests that, if we reverse the city's decision under the first assignment of error, we instruct the city to approve the application subject only to unappealed conditions of approval. Petition for Review 2. We will reverse a decision and order the local government to grant approval if the decision "is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances." ORS 197.835(10)(a)(A).[6] Petitioner's request for relief invokes the authority granted to LUBA in ORS 197.835(10)(a)(A), notwithstanding petitioner's failure to specifically cite that statute. *See Stewart v. City of Salem*, 58 Or LUBA 605, 619, *aff'd*, 231 Or App 356, 219 P3d 46 (2009), *rev den*, 348 Or 415 (2010) (applying ORS 197.835(10)(a)(A), even where petitioner failed to cite that subsection).

ORS 197.835(10)(a) "requires reversal, and precludes remand, of a denial decision when LUBA determines on the basis of the record that the local

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government lacks the discretion to deny the development application." *Stewart*, 231 Or App at 375.

In *Parkview Terrace Dev. LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014), we reversed a city council decision denying site plan approval and variance for a needed housing development. The city council gave a total of ten reasons why it denied the applications. Seven of the site plan review criteria the city council relied on to support its denial decision could not be applied to the application under ORS 197.307(4), because the application for site plan approval was an application for approval of "needed housing" and we determined those standards are not "clear and objective." The city council also inappropriately relied on three inapplicable criteria: (1) an "adequate" parking standard that did not exist in the city's code, (2) an internal circulation standard that did not apply to the proposed residential use, and (3) a variance criterion that did not apply under the circumstances surrounding the development. We concluded that all ten of the reasons that the city council gave for denying petitioner's applications were "outside the range of discretion allowed the local government under its comprehensive plan and

implementing ordinances." *Id*. at 57-58. Accordingly, we reversed the city council's decision and ordered the city to approve the petitioner's applications for variance and site plan approval. We instructed that the city council's decision to approve the application may include conditions of approval imposed by the urban area planning commission that the petitioner had agreed to. *Id*. at 58 (citing *Stewart*, 58 Or LUBA at 622).

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In this case, the city council gave only one reason for denial, failure of the development proposal to include improvements to failing intersections to satisfy the LOS D traffic performance standard. We have concluded that the TSP does not provide applicable criteria because the city failed to specifically incorporate TSP traffic standards into its land use regulations with the level of specificity required by ORS 197.195(1). Thus, the only reason that the city council gave for denying petitioner's application is "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances." Accordingly, we reverse the city council's decision and order the city to approve the petitioner's application.

On appeal, the city has not identified any applicable standards that would require any further review. Petitioner does not dispute that the city may impose conditions of approval that are "roughly proportional to the impact of the development on public facilities." SDC 3.4.010(D).[7] During the city proceedings,

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petitioner offered, as a compromise condition of approval, to construct a westbound left turn lane at the Highway 214/Hobart Road intersection to mitigate the impact of the proposed development on public facilities at an estimated cost of over twice the estimated proportionate share. Record 14. Despite denying the application, the city's decision appears to accept and adopt that condition of approval, subject to terms and conditions. *Id*. Petitioner does not challenge that condition on appeal.[8] Accordingly, the city council's decision to approve the application may include that condition of approval.[9] *Parkview Terrace*, 70 Or LUBA at 58; *Stewart*, 58 Or LUBA at 622.

The city's decision is reversed, and the city is ordered to approve the application.

Footnotes:

[1.] OAR 661-010-0039 (2017) provided:

> "A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies within seven days of the date the respondent's brief is filed. A reply brief shall be confined solely to new matters raised in the respondent's brief, state agency brief, or amicus brief. A reply brief shall not exceed five pages, exclusive of appendices, unless permission for a longer reply brief is given by the Board. A reply brief shall have gray front and back covers."

[2.] ORS 197.307(4) provides:

> "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:
>
> "(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

> "(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

[3.] In a prior order in this appeal, we granted the city's motion to take official notice of Chapter 2 of the TSP. *Oster v. City of Silverton*, ___ Or LUBA ___ (LUBA No 2018-103, Order, Apr 5, 2019) (slip op at 9).

[4.] In a prior order in this appeal, we granted the city's motion to take official notice of Ordinance 08-01. *Oster*, ___ Or LUBA ___ (LUBA No 2018-103, Order, Apr 5, 2019) (slip op at 9).

[5.] In a prior order in this appeal, we granted intervenor's motion to take official notice of Ordinance 08-06. *Oster*, ___ Or LUBA ___ (LUBA No 2018-103, Order, Apr 5, 2019) (slip op at 10).

[6.] ORS 197.835(10)(a), provides, in part:

> "The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:
>
> "(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]"

[7.] SDC 3.4.010(D) provides:

> "Conditions of Development Approval. Development shall not occur until all required public facilities are in place or guaranteed, in conformance with the provisions of this code and the city's design standards. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, must be roughly proportional to the impact of the development on public facilities. Findings in the development approval must indicate how the required improvements are directly related and roughly proportional to the impact of development."

[8.] In *Stewart*, we explained that the "application" required to be approved under ORS 197.835(10)(a) "refers to the application as proposed at the time of the local government's denial, including any conditions of approval that the applicant has proposed and the local government has accepted. Such applicant-proposed conditions can be understood to effectively modify or amend the application." *Stewart*, 58 Or LUBA at 622.

[9.] We do not intend to foreclose the possibility that, at the time that the city grants approval of the application as required by ORS 197.835(10)(a) and this decision, the city and petitioner might agree to include additional or modified conditions of approval.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT PATERSON
Petitioner,

vs.

CITY OF BEND
Respondent,

and

BRIAN DRAMEN, MARK DRAMEN
and GORDON DRAMEN
Intervenors-Respondent.

LUBA No. 2004-155

FINAL OPINION
AND ORDER

Appeal from City of Bend.

William H. Sherlock, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Hutchinson, Cox Coons, DuPriest, Orr, and Sherlock P.C.

No appearance by the City of Bend.

Elizabeth A. Dickson, Bend, filed the response brief and argued on behalf of intervenors-respondent. With her on the brief was Hurley, Lynch and Re, P.C.

BASSHAM, Board Member; HOLSTUN, Board Chair; DAVIES, Board Member, participated in the decision.

REMANDED 04/05/2005

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals city approval of a tentative subdivision plan authorizing a private road terminating in a cul-de-sac.

FACTS

The subject property is a narrow, rectangular 5-acre parcel zoned RS, Urban Standard Density Residential. The subject parcel is 165 feet wide from north to south, and 1,100 feet deep east to west. The property includes an existing single family dwelling at its east end, adjacent to Eagle Road. To the north the property abuts land owned by petitioner that has recently been approved for development as a residential subdivision. Petitioner's subdivision includes Yellow Ribbon Drive, an east-west street that connects to Eagle Road. A short street, known only as "Future Street," is stubbed from Yellow Ribbon Drive to the subject property's northern property line, in the approximate middle of the subject property. The west end of the subject property adjoins a developed subdivision, where Red Oak Drive is stubbed to the property line. Red Oak Drive is a city-standard 60-foot wide right of way, with parking, curbs, planting strips and sidewalks. To the south the property abuts a large parcel for which a subdivision application (the Conners Park subdivision) has been approved.[1]

Intervenors-respondent (intervenors) seek to develop the subject property with 31 residential lots in three phases. Intervenors initially proposed that Red Oak Drive extend the length of the subject property, curve north around the existing dwelling, and connect to Eagle Road. However, to address neighbors' concerns about through traffic, and to reduce impacts on the existing single family dwelling, intervenors modified the tentative plan to propose that Red Oak Drive end in a cul-de-sac just west of the existing dwelling, rather than extend all the way to Eagle Road. Additional access to the subdivision would be provided by connecting northward to Yellow

[1] We understand that the Conners Park subdivision approval was withdrawn sometime after the decision in the present case.

Ribbon Drive via Future Street, and through two proposed connecting streets ("A" and "C") to the Conners Park subdivision to the south. To maximize the number of lots on the narrow subject property, intervenors also proposed that after entering the property at the west end, Red Oak Drive would become a private street, with a reduced paved width and sidewalks flush with the road surface.

A city hearings officer approved the tentative plan on July 14, 2004. Petitioner, concerned that the design of Red Oak Drive directed traffic through his subdivision, appealed the hearings officer's decision to the city council. The city council declined to hear petitioner's appeal. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the hearings officer erred in (1) approving the subdivision without ensuring street access for the first phase and without an adequate facility development plan, under Bend Subdivision Ordinance (BSO) 3.040, and (2) finding that the applicant need not demonstrate compliance with the Bend Area General Plan (General Plan), contrary to BSO 3.040(2).[2]

[2] BSO 3.040 provides, in relevant part:

> "**PHASED TENTATIVE PLAN**. An overall development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The Review Authority shall review a master development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased tentative plan shall include * * * the following elements:
>
> "1. Overall development plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.
>
> "2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.
>
> "3. Overall facility development plan, including transportation and utility facilities plans, that specify the traffic pattern plan for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans."

A. BSO 3.040(1) and (3)

BSO 3.040(1) and (3) require that the development plan include a "schedule for initiation of improvements," and "transportation and utility facilities plans." *See* n 2. The application proposed development in three phases, with facilities development and final plan approval issuing for each phase before commencing with the next phase. The first phase is at the east end of the property, and includes the existing dwelling, cul-de-sac and surrounding lots. Noting that access to the phase 1 area currently does not exist, the hearings officer stated:

> "It is unclear from the information provided where street access during phase 1 is located. It will be a requirement of approval that the applicant demonstrate that there will be street access for each phase of development in accordance with City Standards prior to final plat approval. Based on the information provided by the applicant and this condition of approval the hearings officer finds the proposal satisfies [BSO 3.040(1)]." Record 30.

Petitioner argues that the hearings officer substituted a condition of approval for a finding of compliance with BSO 3.040(1). However, the hearings officer clearly found compliance with BSO 3.040(1), based on the submitted development plan and the condition of approval. Generally, where there is conflicting evidence regarding whether compliance with an approval criterion is feasible, the local government may determine that compliance is feasible and impose conditions of approval as necessary to ensure compliance. *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992). Although the application did not propose a specific plan for providing access to phase 1, the hearings officer obviously believed that providing such access was feasible, and imposed a condition requiring intervenors to specify how access would be provided. Petitioner does not argue that there is any reason to believe that providing access to phase 1 from Red Oak Drive or from one or more of the three connecting streets to the north and south is infeasible, prior to development of phases 2 and 3. Under these circumstances, we see no error in finding that the development plan complies with BSO 3.040(1), as conditioned.

With respect to BSO 3.040(3), petitioner argues that the hearings officer failed to find that the "overall facility plan" includes a transportation plan that specifies the "traffic pattern plan for

motor vehicles, bicycles, and pedestrians," with respect to phase 1 development. *See* n 2. Instead, petitioner argues, the hearings officer's finding regarding BSO 3.040(3) discusses only utility facilities and does not mention a transportation plan, other than a reference to a traffic study:

> "The applicant has submitted an overall facility plan showing all existing and proposed utility extensions for the proposal. This data is shown on the face of the tentative plat and will be supplemented by engineered drawings for utility construction. A traffic study is included in the supporting materials for the tentative plan application." Record 31.

It is not clear what BSO 3.043(3) requires in terms of a "transportation plan." The above-quoted finding appears to view the tentative plan itself as being the "overall facility plan," at least with respect to utilities. The finding does not expressly reference transportation facilities, but the same approach seems equally applicable. As with utilities, the approved tentative plan depicts the proposed street network and pedestrian pathways, with road and sidewalk cross-sections and details. The finding refers to the transportation impact analysis at Record 601 to 664, which includes a detailed analysis of the proposed and existing street network. It seems reasonably clear that the hearings officer believed that the tentative plan itself, as supplemented by engineered utility drawings and the transportation impact analysis, constituted the "transportation and utility facilities plans" required by BSO 3.043(3). While the finding could have stated that more clearly, petitioner identifies no error in that approach, and we see none. This subassignment of error is denied.

B. BSO 3.040(3)

BSO 3.040(3) requires that the tentative plan shall "[s]how compliance with the Bend Area General Plan and implementing land use ordinances and policies." Intervenors argued, and the hearings officer agreed, that compliance with the General Plan is demonstrated by compliance with its implementing land use regulations, and that intervenors were not required to demonstrate that the plan complied with General Plan policies or provisions:

> "The applicant states that it will comply with the General Plan and the implementing land use ordinances and policies by meeting the requirements of the regulations governing the tentative plan review process. While multiple decisions of the City have found that certain plan policies under specific circumstances constitute

> mandatory criteria, the applicant is not required to demonstrate compliance with the provisions of the comprehensive plan inasmuch as the plan does not establish these mandatory approval criteria for land divisions. This is supported by two facts: (1) ORS 197.195(1) provides that comprehensive plan provisions do not apply to the review of limited land use decisions, such as subdivisions, unless the provisions are adopted as part of the City's zoning or subdivision ordinances. A review of discrete Plan policies is therefore not appropriate; (2) the [General] Plan states that '[t]he policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. * * *" Record 30-31.

ORS 197.195(1) provides in relevant part that in order to apply comprehensive plan policies directly to a limited land use decision as approval criteria, the local government must "incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations" within two years of September 29, 1991.[3] A limited land use decision includes a decision that approves or denies a subdivision application within an urban growth boundary. ORS 197.015(12).

Petitioner contends that the city has "incorporated" all comprehensive plan standards applicable to subdivision approvals within the meaning of ORS 197.195(1), by requiring at BSO 3.040(3) that the applicant for a tentative subdivision plan approval demonstrate "compliance with the Bend Area General Plan." Petitioner then identifies several comprehensive plan policies relating to transportation that petitioner believes are applicable to the proposed subdivision.

However, in our view ORS 197.195(1) contemplates more than a broad injunction to comply with unspecified portions of the comprehensive plan. In order to "incorporate" a

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[3] ORS 197.195(1) provides:

> "A 'limited land use decision' shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision."

comprehensive plan standard into a local government's land use regulations within the meaning of ORS 197.195(1), the local government must at least amend its land use regulations to make clear what specific policies or other provisions of the comprehensive plan apply to a limited land use decision as approval criteria. Under that standard, BSO 3.040(3) falls far short of incorporating any comprehensive plan provisions. The hearings officer did not err in concluding that the applicant was not required to demonstrate compliance with the comprehensive plan policies cited by petitioner. Because we sustain the hearings officer's conclusion under ORS 197.195(1), we need not address petitioner's challenges to the hearings officer's alternative conclusion under the comprehensive plan.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

BSO 3.060(1)(A) and (C) require in relevant part that the proposed land division contribute to the "orderly development" of the area.[4] Petitioner contends that the hearings officer erred in concluding that the proposed private street, ending in a cul-de-sac, contributes to "orderly development." According to petitioner, the hearings officer's determination on this point is

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[4] There are actually two separate "orderly development" standards, at BSO 3.060(1)(A) and (C). We follow petitioner in discussing them together as a single standard. BSO 3.060(1) provides, in relevant part:

> "No application for subdivision or partition shall be approved unless the following requirements are met:
>
> "A. The land division contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources and other natural resources to the maximum degree practicable as determined by the City of Bend.
>
> "* * * * *
>
> "C. The land division contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and does not conflict with existing public access easements within or adjacent to the land division."

inconsistent with another hearings officer's decision regarding a similar proposal for a private street in a different development application, known as the "Wolfe" decision.

The hearings officer rejected that argument, finding:

> "* * * The applicant proposes to extend Red Oak Drive as a private street through the subdivision culminating in a cul-de-sac at the [east] end of the property. Staff questioned whether this design constitutes orderly development within the meaning of [BSO 3.060(1)(A)]. It did because of a City hearings officer's decision in file numbers PZ 03-651 and 03-652 (the 'Wolfe Application'). There the hearings officer found that the proposed connection between public streets and private streets would not be orderly for the reason that the private street was found by the hearings officer to be an 'integral link in the city's street grid system' and for the reason that the private street would also largely serve persons accessing land and subdivisions outside of the subdivision proposed in that application. It is noted that the same hearings officer has considered different facts (the Coulter subdivision) and allowed the use of a private street system, provided that certain factors or conditions were met, such as demonstrating a permanent maintenance source, lot configuration, etc. * * * Other decisions of the City have also allowed private street connections under certain circumstances. * * * In point of fact there are many private streets with public overlays that connect to publicly owned streets within the City. I agree with the applicant in that here the private street would not be an integral link to the City grid system given the number of existing and proposed connections to Eagle Road from other areas. Further, the private street will have public overlay, be permanently maintained by a homeowner's association and would terminate before Eagle Road, thus serving mostly subdivision residents, at least from the connection with the 'Future Road' [to Yellow Ribbon Drive] to the north. The code provides for private streets in certain cases and sets standards for their construction. *See* table 'B,' Land Division Ordinance. * * * I find that under the present circumstances, including the shape of the lot at issue, the density goal of the zone and the connections to the surrounding developments, the proposed private street would constitute orderly development. The traffic engineer does not object, but has commented that construction should be in accordance with Table B. These standards require a street that is 24 feet in width and bordered by sidewalks. The applicant intends to comply with such standards. Compliance with Table 'B' shall be a condition of approval and this will promote safety, continuity and compatibility with street connections and the established density of surrounding development." Record 33-34.

Petitioner quotes long passages from the Wolfe decision, and argues that for the same reasons expressed by the hearings officer in the Wolfe decision the hearings officer in the present

case should also conclude that the proposed private street and cul-de-sac do not constitute "orderly development."

Even if the reasoning in the Wolfe decision is not persuasive, petitioner contends, the facts in the present case demonstrate that the proposed private street and cul-de-sac are not "orderly development." With respect to the cul-de-sac, petitioner argues that it forces traffic to and from the subdivision to access Eagle Road through adjoining subdivisions. With respect to the private street, petitioner argues that it is unsafe to have public streets with 60-foot wide rights of way, parking, curbs, planting strips and sidewalks transition abruptly to a private street with 20-foot paved width, no parking, curbs or dividers and with sidewalks flush with the road pavement. Further, petitioner questions the ability of the homeowner's association to enforce the no parking prohibition on the private street, or adequately maintain the private street.

Given the imprecision of the "orderly development" standard, the city has significant latitude in determining whether development complies with that standard.[5] As the hearings officer noted, there are significant factual distinctions between the circumstances in the Wolfe decision and the present case. In any case, petitioner does not explain why the present hearings officer is required to apply the same understanding of "orderly development" that was applied in the Wolfe case.

With respect to the cul-de-sac, it is often the case that traffic from a cul-de-sac will travel across local streets to reach collector or arterial streets. Petitioner does not explain why the

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[5] Elsewhere in the decision, the hearings officer notes in addressing the "orderly development" standard in BSO 3.060(1)(C):

> "In other City land use decisions, and based upon the purpose statements contained in the land use ordinances, the term 'orderly' as applied to the above criteria has been found to mean a system or order that is a logical extension of the transportation system, that does not overtax the system, provides for maintenance thereof, that recognizes the limitations that the shape of the parcel and the topography have on the development, does not have internal conflicts with the very development being proposed, meets code layout and design requirements and does not foreclose future development." Record 36.

Petitioner does not challenge that view of the "orderly development" standard, or explain why the hearings officer's application of the standard under that view is erroneous.

"orderly development" standard requires the city to connect Red Oak Drive directly to Eagle Road, or prohibits the city from directing some traffic onto Yellow Ribbon Drive or other adjoining streets.

With respect to the safety of transitioning between a public street and a private street, the code allows private streets to be built to different standards than public streets, and the two must meet somewhere. The fact that private streets may be built to lesser standards, and need not include such amenities as curbs, planting strips, and parking lanes does not mean that such streets do not comply with the orderly development standard. Similarly, that private streets are maintained by homeowners' associations rather than the city does not indicate disorderly development. Petitioner has not demonstrated that the hearings officer erred in concluding that the proposed private street complies with the orderly development standard.

Finally, petitioner argues that at several points in the decision the hearings officer indicated that he understood the proposed private street to have a paved width of 24 or perhaps 28 feet with curbs, whereas the approved tentative plan clearly provides for a private street with paved width of 20 feet and no curbs. *See* above-quoted finding ("These standards require a street that is 24 feet in width and bordered by sidewalks. The applicant intends to comply with such standards"); Record 44 ("The private street will be bounded by curbed sidewalks directing water to catch basins"); and Record 58 (condition of approval stating that "'No Parking' signs on 28-foot wide streets are required"). Petitioner speculates that the hearings officer's confusion on these points may have erroneously led him to conclude that the private street complies with the orderly development standard, and that remand is necessary to allow the hearings officer to apply the standard under a correct appreciation of the facts.

It is not clear to us why the hearings officer referred to the private street as being 24 feet in width and bounded by curbs, in the above-quoted findings. The approved tentative plan, the application materials, the staff report, and everything cited to us in the record indicate that the private street was and always had been proposed as 20 feet in width, with no curbs, a design that is apparently allowed under Table B. Elsewhere in the hearings officer's decision he indicates that he

understood that the private street will have a paved width of 20 feet. Record 47 ("Since the applicant is proposing a private street with a width of 20 feet, as a condition of approval, 'No Parking' signs shall be placed on both sides of the road * * *"). Almost certainly the reference to the width of the street as 24 feet at Record 34 was simply a typographic error. Likewise, the reference to a requirement for "No Parking" signs for 28-foot wide streets is almost certainly a misstatement, since the hearings officer elsewhere indicates his understanding that "No Parking" signs are required for a 20-foot wide street. Record 47.

The reference to curbs at Record 44 may also be a misstatement, although that is less clear. That reference to curbs is part of the findings under BSO 6.020(7), which we discuss below, not part of the findings addressing the orderly development standard at BSO 3.040(1) or (3). As discussed below, we remand the hearings officer's finding under BSO 6.020(7) for clarification with respect to curbs. For present purposes, however, it seems unlikely that the hearings officer relied upon the presence or absence of curbs in finding compliance with BSO 3.040(1) or (3). The findings addressing the orderly development do not mention curbs. Petitioner has not established that any misstatement with respect to curbs provides an independent basis for reversal or remand with respect to the orderly development standard.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner contends that the hearings officer misconstrued street and sidewalk design requirements of BSO 6.020 and failed to make adequate findings supported by substantial evidence in concluding that the proposed cul-de-sac and private street comply with those requirements.

A. BSO 6.020(1)

As relevant here, BSO 6.020(1) requires that "[f]acilities providing safe and convenient motor vehicle, pedestrian and bicycle access shall be provided within new subdivisions." Petitioner repeats his arguments under the BSO 3.060(1) "orderly development" standard, but does not

explain why those arguments establish a basis for reversal or remand under BSO 6.020(1). This subassignment of error is denied.

B. BSO 6.020(2)

BSO 6.020(2) requires in relevant part that "[a]ll streets shall be improved to City standards with curbs, paving, drainage facilities and medians if required."[6] Petitioner argues that the hearings officer's finding under BSO 6.020(2) does not explain why that standard does not require curbs on the proposed private street.

The hearings officer finds that the private street will be constructed under standards for private streets set out in Table B. There is no dispute that Table B does not require curbs for a 20-foot wide private street. Petitioner's quotation of BSO 6.020(2) in the petition for review omits the last two words, "if required." That phrase is somewhat ambiguous, as it could modify only the preceding word "medians" or the entire list of design features including curbs. Petitioner apparently reads BSO 6.020(2) to require curbs on all streets, even if the applicable standards for certain streets do not require curbs. Petitioner's interpretation brings the last sentence of BSO 6.020(2) and Table B into conflict. Although the hearings officer's findings under BSO 6.020(2) do not address this issue, it seems to us that the better reading of the last sentence of BSO 6.020(2) is one that does not bring it into conflict with Table B. In other words, "[a]ll streets" must have curbs and other listed design features only "if required." If other, more specific standards explicitly do not

[6] BSO 6.020(2) provides, in full:

> "New Streets. The location, width, and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. The subdivision shall provide for the continuation of the principal streets existing in the adjoining subdivision or of their proper projection. Where, in the opinion of the Hearings Body, topographic conditions make such continuation or conformity impractical, exception may be made. In cases where the City may adopt a plan or plat of a neighborhood or area of which the subdivision is a part, the subdivision shall conform to such adopted neighborhood or area plan. All streets shall be improved to City standards with curbs, paving, drainage facilities and medians if required."

require curbs for a particular type of street, neither does BSO 6.020(2). With that understanding, we see no reversible error in the hearings officer's findings under BSO 6.020(2). This subassignment of error is denied.

C. BSO 6.020(3)

BSO 6.020(3) permits a cul-de-sac only when certain circumstances are present, including where "existing development on adjacent property prevents a street connection."[7] The hearings officer approved the cul-de-sac because "the applicant's property contains a large established family home and any such connection [of Red Oak Drive to Eagle Road] would require its removal." Record 43.[8]

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[7] BSO 6.020(3) provides:

> "Street Layout and Cul-de-sacs. The street layout shall be generally in a rectangular grid pattern to provide or continue a network of inter-connecting streets. The subdivision streets shall be oriented on an east/west axis to the greatest extent possible to ensure solar access for lots within the subdivision. The grid pattern may be modified to adapt to topography and natural conditions. Cul-de-sacs and dead end streets shall only be permitted when the following conditions are met:
>
> "A. One or more of the following conditions prevent a required street connection:
>
> - natural slopes of 18% or more where it is not practical to construct streets with grades of 12%; or
>
> - presence of a wetland or water body which cannot be crossed; or existing development on adjacent property prevents a street connection; and
>
> "B. A street pattern which either meets standards for connections and spacing or requires less deviation from standards is not possible; * * *"

[8] The decision states, in relevant part:

> "The applicant has modified the subdivision proposal to include a cul-de-sac instead of another road connection to Eagle Road. The hearings officer finds that this connection is unnecessary given the number of already approved or planned connections. As described above the applicant's property contains a large established family home and any such connection would require its removal. The cul-de-sac includes a pedestrian access corridor at its terminus. While private streets are reviewed on case by case bases, the existing home, shape of the lot, requirements to create compatible infill and reduce neighborhood cut-through, makes the private road extension of Red Oak Drive appropriate in this case. The 'Future Street' and 'C' Street connections are proposed as a way to address block length and continue the street grid to adjoining properties where appropriate." Record 43.

Petitioner points out that BSO 6.020(3)(A) allows a cul-de-sac based on "existing development" only where the development is on "adjacent property." The existing dwelling at the east end of the subject property is part of the property, petitioner argues, not on "adjacent property." Even if the dwelling were on adjacent property, petitioner contends, there is no finding or explanation that a street pattern that either meets the standards for connections or requires less deviation from those standards is not possible, under BSO 6.020(3)(B). Petitioner notes, as do the findings, that the original tentative plan proposed that Red Oak Drive connect to Eagle Road, by going north of the existing dwelling. That proposed street pattern was changed, apparently at the request of neighbors to the west of the subject property, who did not want Red Oak Drive to become a through-street to Eagle Road. Petitioner argues that a street pattern without a cul-de-sac and without removing the existing dwelling is obviously possible. Even if moving or removing the existing dwelling were necessary to connect Red Oak Drive to Eagle Road, petitioner contends, there is no reason why the city could not require that the dwelling be moved or removed.

Intervenors do not respond to this argument. The hearings officer's finding that "any connection" of Red Oak Drive to Eagle Road would require removing the existing dwelling is not supported by the record, as evidenced by the originally submitted tentative plan, which proposed just such a connection without removing the house. Further, petitioner is correct that under BSO 6.020(3)(A) "existing development" is only a basis for allowing a cul-de-sac where that development is on "adjacent property." One could presumably avoid that restriction in the present case, by simply partitioning the parcel including the dwelling from the rest of the subject property, and then seeking subdivision plan approval for that remainder parcel. However, even if we assume that the restriction can be avoided in that manner, petitioner is correct that BSO 6.020(3)(A) and

(B) are conjunctive, and the decision does not explain why a cul-de-sac is warranted under BSO 6.020(3)(B).[9] This subassignment of error is sustained.

D. BSO 6.020(7)

BSO 6.020(7) requires that "street right-of-way and roadway surfacing widths shall be in conformance with the standards and specifications" set forth in Table A for public streets and Table B for private streets. As noted, Table B allows a private street with 20 feet of paved width if no curbs are proposed, but requires 24 feet of paved width if curbs are proposed. The hearings officer's finding under BSO 6.020(7) states, in full:

> "According to the latest revised tentative plan all existing and proposed streets will meet the City of Bend standards for both public and private streets. The private street will be bounded by curbed sidewalks directing water to catch basins. This criterion is met." Record 44.

Petitioner argued below that without curbs there is nothing that will direct storm drainage to catch basins, and that water will simply flow over the flush sidewalks onto the adjoining lots, given the slope depicted on the street cross-sections. *See* Record 182 (letter from engineer opining that curbs are necessary to direct water to catch basins); Record 195. Petitioner also argued that adding curbs would require an additional four feet of right-of-way, in order to comply with the standards in Table B, which may affect lot configuration and minimum lot sizes. Petitioner notes the additional complication that the hearings officer found that the private street "will be bounded by curbed sidewalks directing water to catch basins," notwithstanding that the approved tentative plan does not appear to propose curbs on the private street.[10] According to petitioner, remand is necessary to address the following issues: (1) whether the decision requires curbs; (2) if so,

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[9] It was suggested at oral argument that there may be access spacing or sight line reasons why a connection between Red Oak Drive and Eagle Road would be inconsistent with applicable standards. The hearings officer should address such matters on remand.

[10] At oral argument, intervenors' attorney first asserted that the tentative plan did propose curbs, but later seemed to withdraw that assertion. As far as we can tell from the approved plan, no curbs are proposed on the private street portion of Red Oak Drive.

whether the plan needs to be revised to reflect a 24-foot paved width and a 34-foot right of way to comply with Table B; (3) if not, how storm drainage will be directed to the catch basins absent curbs.

Intervenors again do not provide any meaningful response to this subassignment of error. We agree with petitioner that remand is necessary to address the foregoing issues. This subassignment of error is sustained.

E. BSO 6.020(14)

BSO 6.020(14) requires that sidewalks shall be installed at the property line. Petitioner cites language from the Wolfe decision in which the hearings officer opines that sidewalks on private streets must include planting strips just like public streets, and therefore that sidewalks on private streets cannot be street tight. Petitioner adopts that language as his argument that, in the present case, BSO 6.020(14) and Table B effectively require planting strips on all streets and effectively prohibit street-tight sidewalks.

The hearings officer in the present case found that the applicant proposes sidewalks installed at the property line, which is all that BSO 6.020(14) requires. BSO 6.020(14) says nothing about planting strips, and nothing about street-tight sidewalks. Unlike Table A, governing public streets, Table B requires no planting strip at all for any private street.[11] We do not understand petitioner's adopted argument from the Wolfe decision. This subassignment of error is denied.

F. BSO 6.020(16)

BSO 6.020(16) requires in relevant part that "[t]he street is connected to a grid pattern at both ends" and that "[b]locks shall have dedicated public alley access constructed to City standards."[12] The hearings officer's finding under BSO 6.020(16) states, in full: "Since the

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[11] Table B indicates "N/A" for all private streets under the column for "Minimum Planter Strip Width."

[12] BSO 6.020(16) provides:

"Performance Standards for Local Residential Streets.

applicant is proposing a private street with a width of 20-feet, as a condition of approval, 'No Parking' signs shall be placed on both sides of the road and spaced to City of Bend Standards and Specifications." Record 47.

Petitioner argues that while the above-quoted finding may be responsive to BSO 6.020(16)(D) and (E), it does not address the requirements at BSO 6.020(16)(B) and (C) that "the street is connected to a grid pattern at both ends" and that blocks "shall have dedicated public alley access."

Intervenor again does not respond to this argument. Although it is not clear to us that BSO 6.020(16)(B) and (C) apply to a private street ending in a cul-de-sac, or what they would require if they do apply, absent some finding or response on this point we agree with petitioner that remand is necessary to adopt findings addressing the applicability of and compliance with BSO 6.020(16)(B) and (C). This subassignment of error is sustained.

The third assignment of error is sustained, in part.

FOURTH ASSIGNMENT OF ERROR

BSO 6.030(2) requires in relevant part that

> "No block shall be longer than 1,200 feet between the centerline of through cross streets *except in residential subdivisions where no block shall be longer than 600 feet between the centerline of through cross streets* and where street location is restricted by natural topography, wetlands, or other bodies of water." (Emphasis added.)

> "A. Average daily traffic volumes on the local street does not exceed 300 ADT.
>
> "B. The street is connected to a grid street pattern at both ends.
>
> "C. Blocks shall have dedicated public alley access constructed to City standards.
>
> "D. 'No Parking' zones are established 55 feet from the centerline of intersecting local streets.
>
> "E. For block lengths exceeding 300 feet, 'No Parking' zones shall be established on either sides of the street spaced no greater than 250 feet apart. The 'No Parking' zones shall be a minimum of 30 feet in length."

The hearings officer found that "[a]s shown on the tentative plan block, the proposed block lengths meet this proposal." Record 47. Petitioner argues that in order to comply with the 600-foot block length requirement, the city must require a new street somewhere east of the "Future Street" connecting Red Oak Drive and Yellow Ribbon Drive.

We do not understand petitioner's argument or the hearings officer's terse finding. For that matter, we are unclear what BSO 6.030(2) requires. It appears to require in residential subdivisions that a block be no longer than 600 feet between the centerline of "through cross-streets." As far as we can tell there are no "through cross-streets" depicted anywhere on the approved tentative plan: only T-intersections where Future, A and C streets intersect Red Oak Drive. It is not clear how one applies BSO 6.030(2) to a residential subdivision with a cul-de-sac and T-intersections. Given the lack of alternatives, it may be appropriate to determine block length for purposes of BSO 6.030(2) on some other basis than "through cross-streets." However, the hearings officer needs to explain how block length is determined under BSO 6.030(2). Petitioner appears to be correct that, depending on where the "block" begins and ends, it is possible that at least the "block" that runs eastward from Future Street toward the end of the cul-de-sac is longer than 600 feet. Given the lack of assistance from the decision and intervenor on these issues, we agree with petitioner that remand is necessary to adopt more adequate findings addressing BSO 6.030(2).

The fourth assignment of error is sustained.

The city's decision is remanded.

CHAPTER 17.10
DEFINITIONS

17.10.00 INTENT

These definitions are intended to provide specific meanings for words and terms commonly used in zoning and land use regulations.

17.10.10 MEANING OF WORDS GENERALLY

All words and terms used in this Code have their commonly accepted dictionary meaning unless they are specifically defined in this Code or the context in which they are used clearly indicated to the contrary.

17.10.20 MEANING OF COMMON WORDS

A. All words used in the present tense include the future tense.

B. All words used in the plural include the singular, and all words used in the singular include the plural unless the context clearly indicates to the contrary.

C. The word "shall" is mandatory and the word "may" is permissive.

D. The word "building" includes the word "structure."

E. The phrase "used for" includes the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

F. The word "land" and "property" are used interchangeably unless the context clearly indicates to the contrary.

G. The word "person" may be taken for persons, associations, firms, partnerships or corporations.

17.10.30 MEANING OF SPECIFIC WORDS AND TERMS

The listed specific words and terms are defined as follows:

Abandonment: To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of sewer, water and other public utilities, or other outside proof of continuance such as bills of lading, delivery records, etc.

Abandonment, Discontinued Use: Discontinued use shall mean nonuse and shall not require a determination of the voluntary or involuntary use or intent to resume the use.

Abutting Lots: Two or more lots joined by a common boundary line or point. For the purposes of this definition, no boundary line shall be deemed interrupted by a road, street, alley or public

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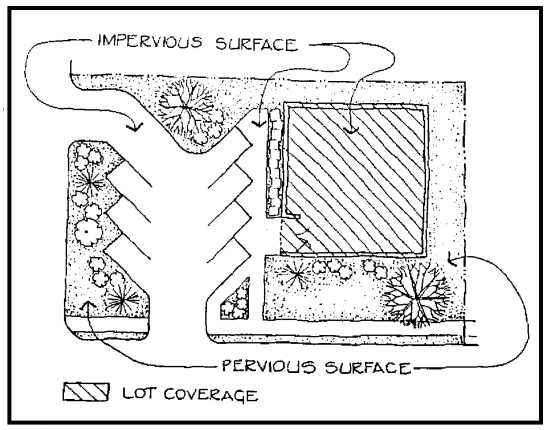

Impervious Surface Example

Irrigation System: Method of supplying water (which can be manually or mechanically controlled) to a needed area.

Junkyard: An area used for the dismantling, storage or handling in any manner of junked vehicles or other machinery, or for the purpose of storage of dismantled material, junk and scrap, and/or where wastes and used or secondhand materials are bought, sold, exchanged, stored, processed, or handled. Materials include, but are not limited to, scrap iron and other metals, paper, rags, rubber tires, and bottles, if such activity is not incidental to the principal use of the same lot.

Kennel: Any premises or building in which four or more dogs or cats at least four months of age are kept commercially for board, propagation or sale.

Kitchen: Any room used, intended or designed for preparation and storage of food, including any room having a sink and provision for a range or stove.

Land Area, Net: That land area remaining after all area covered by impervious surfaces has been excluded (subtracted).

Land Division: Land divided to create legally separate parcels in one of the following ways**:**

A. Partition: A division of land that creates three or fewer lots within a calendar year when such parcel exists as a unit or contiguous units of land under single ownership at the beginning of the year. See also, "Replat, Minor."

A partition does not include division of land resulting from any of the following**:**

1. Establishment or modifications of a "tax lot" by the County Assessor;
2. A lien foreclosure, foreclosure of a recorded contract for the sale of real property or creation of cemetery lots;
3. An adjustment of a property line by relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable development district criteria established by this Code;
4. Sale or grant by a person to a public agency or public body for state highway, county road, city street or other right-of-way purposes provided that such road or

right-of-way complies with the applicable Comprehensive Plan policies and ORS 215.213 (2)(q)-(s) and 215.283 (2)(p)-(r). See "Property Line Adjustment."

B. **Subdivision:** Division of an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year. See also, "Replat, Major."

Land, Intensity of: Relative measure of development impact as defined by characteristics such as the number of dwelling units per acre, amount of traffic generated, and amount of site coverage.

Land, Parcel of: Any quantity of land capable of being described with such definiteness that its location and boundaries may be established. Also, a unit of land created by a partition.

Landscape Management Corridor: The required yards abutting Highway 26 within the C-2, I-I and I-2 zoning districts where the Development Code requires native conifer and deciduous landscaping, creating the appearance of a forested corridor; openings or breaks in the landscape corridor are minimized, allowing for transportation access and framed views into development sites.

Landscaping: The arrangement of trees, grass, bushes, shrubs, flowers, gardens, fountains, patios, decks, outdoor furniture, and paving materials in a yard space. It does not include the placing or installation of artificial plant materials.

Legislative Decision: Involves formulation of policy and as such, it is characteristic of the actions by a city council. *Ex-parte* contact requirements are not applicable to legislative hearings. Personal notice to citizens advising them of proposed changes is not required in most cases, although the Sandy Development Code specifies that in some cases notice shall be mailed to property owners if a decision will change the land-use designation. In general, the burden of being informed rests on the citizen. (See definition for "Limited Land Use Decision" and "Quasi-judicial Decision.")

Lien Foreclosure: A lien foreclosure, foreclosure of a recorded contract for the sale of real property or creation of cemetery lots.

Limited Land Use Decision: A land use decision made by staff through an administrative process and that qualifies as a Limited Land Use Decision under ORS 197.015.

Loading Space: An off-street space within a building or on the same lot with a building for the temporary parking of commercial vehicles or trucks while loading or unloading merchandise or materials and which space has direct access to a street.

Lot Area: The total horizontal area within the lot lines of a lot.

Lot, Corner: A lot situated at the intersection of 2 streets, the interior angle of such intersection not exceeding 135 degrees.

CHAPTER 17.12 - PROCEDURES FOR DECISION MAKING

17.12.00 TYPES OF PROCEDURES FOR TAKING PUBLIC ACTION

Three separate procedures are established for processing quasi-judicial development applications (Types I, II, and III) and one procedure (Type IV) is established for processing both legislative public actions which do not involve land use permits or which require consideration of a plan amendment, land use regulation or city policies and quasi-judicial applications.

17.12.10 TYPE I – Administrative Review

Type I decisions are made by the Planning Director or someone he or she designates without public notice or a public hearing. The Type I procedure is used when applying standards and criteria to an application requires no use of discretion. A decision of the Director under the Type I procedure may be appealed by an affected party or referred by the Director in accordance with Chapter 17.28.

Administrative Decision Requirements. The City Planning Official or designee's decision shall address all of the approval criteria, including applicable requirements of any road authority. Based on the criteria and the facts contained within the record, the City Planning Official shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

Type of Applications:

A. Design review for single-family dwellings, duplex dwellings, manufactured homes on individual lots, manufactured homes within MH parks, accessory dwellings and structures.
B. Design review for exterior building remodel or addition on a commercially or industrially zoned lot, where the proposed remodel or addition meets criteria in Section 17.90.40(A).
C. Adjustments less than 10% of a quantifiable dimension which does not increase density
D. Flood Slope and Hillside Development-Uses listed in 17.60.40 A.
E. Minor Alteration of an Historic Resource
F. Property Line Adjustments
G. Tree removal involving less than 50 trees
H. Type I FSH Review
I. Minor Partition (no new street created)
J. Administrative Variance

17.12.20 TYPE II – Noticed Administrative Review

Type II decisions are made by the Planning Director or designee with public notice, and an opportunity for a public hearing if appealed. An appeal of a Type II decision is heard by the Planning Commission according to the provisions of Chapter 17.28. Notification of a Type II decision is sent according to the requirements of Chapter 17.22. If the Director contemplates persons other than the applicant can be expected to question the application's compliance with the Code, the Director may elevate an application to a Type III review.

Types of Applications:

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A. Design Review, except Type I Design Reviews under 17.12.10(B) and Type III Design Reviews under 17.12.30.
B. Historic Preservation Provisions Procedures for Alteration of an Historic Resource
C. Adjustments & Variances of up to 20% of a Quantifiable Dimension which does not increase density
D. Subdivisions in compliance with all standards of the Development Code
E. Partitions and Minor Replats
F. Flood, Slope and Hillside Development and Density Transfer-Uses listed in 17.60.40
G. Request for Interpretation
H. Tree Removal Permit (greater than 50 trees)
I. Minor Conditional Use Permit

17.12.30 TYPE III

Type III decisions generally use discretionary approval criteria and are made by the Planning Commission after a public hearing, in accordance with the provisions of Chapter 17.20. Appeal of a Type III decision is heard by the City Council according to the provisions of Chapter 17.28. Notification of a Type III decision is sent according to the requirements in Chapter 17.22. The Planning Commission may attach certain development or use conditions beyond those warranted for compliance with the standards in granting an approval if the Planning Commission determines the conditions are necessary to avoid imposing burdensome public service obligations on the City, to mitigate detrimental effects to others where such mitigation is consistent with an established policy of the City, and to otherwise fulfill the criteria for approval. If the application is approved, the Director will issue any necessary permits when the applicant has complied with the conditions set forth in the Final Order and other requirements of this Code.

Types of Applications:

A. Appeal of a Director's decision
B. Conditional Use Permit
C. Design Review for projects on commercially or industrially zoned lots where the applicant has requested Type III Design Review or the Director has determined that the request involves one or more deviations from the design standards in Chapter 17.90.80 or 17.90.90 (C-1 Design Standards and C-2/I-1/I-2 Design Standards) and such deviation is not subject to an Adjustment or Variance process under 17.66.
D. Flood, Slope, and Hillside Development-Uses not listed in 17.50.60 A & B
E. Major Amendment to a Specific Area Plan
F. Special Variance
G. Subdivisions and Major Replats that are elevated by the Director or not in conformance with the Development Code
H. Variances greater than 20% of a quantifiable dimension or variances which increase density
I. Village Concept Plan and Village Master Plan
J. Zoning map amendment, where the proposal comprises one parcel (or multiple parcels covering a small area) and the proposed zoning conforms to the Comprehensive Plan Map.

17.12.40 TYPE IV

Type IV decisions are usually legislative but may be quasi-judicial.

Type IV (Quasi-Judicial) procedures apply to individual properties. This type of application is generally considered initially by the Planning Commission with final decisions made by the City Council.

Type IV (Legislative) procedures apply to legislative matters. 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 typically considered first by the Planning Commission with final decisions made by the City Council. Occasionally, the Planning Commission will not consider a legislative matter prior to its consideration by the City Council.

Applications processed under a Type IV procedure involve a public hearing pursuant to the requirements of Chapter 17.20. Notification of this public hearing shall be noticed according to the requirements of Chapter 17.22 with appeal of a Type IV decision made to the state Land Use Board of Appeals according to the provisions of Chapter 17.28.

A. The City Council shall consider the recommendation of the Planning Commission and shall conduct a public hearing pursuant to Chapter 17.20. The Director shall set a date for the hearing. The form of notice and persons to receive notice are as required by the relevant sections of this Code. At the public hearing, the staff shall review the report of the Planning Commission and provide other pertinent information, and interested persons shall be given the opportunity to present new testimony and information relevant to the proposal that was not heard before the Planning Commission and make final arguments why the matter should or should not be approved and, if approved, the nature of the provisions to be contained in approving action.

B. To the extent that a finding of fact is required, the City Council shall make a finding for each of the applicable criterion and in doing so may sustain or reverse a finding of the Planning Commission. The City Council may delete, add or modify any of the provisions pertaining to the proposal or attach certain development or use conditions beyond those warranted for compliance with standards in granting an approval if the City Council determines the conditions are appropriate to fulfill the criteria for approval.

C. To the extent that a policy is to be established or revised, the City Council shall make its decision after information from the hearing has been received. The decision shall become effective by passage of an ordinance.

D. Types of Applications
1. Appeal of Planning Commission decision
2. Comprehensive Plan text or map amendment
3. Zoning District Map changes
4. Planned Developments
5. Village Specific Area Plan (master plan)
6. Annexations
7. Extension of City Services Outside the City Limits
8. Vacating of Public Lands and Plats
9. Zoning Map Overlay Districts

E. Timing of Requests. The City accepts legislative requests twice yearly, in March and September. The City Council may initiate its own legislative proposals at any time.

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CHAPTER 17.18 - PROCESSING APPLICATIONS

17.18.00 PROCEDURES FOR PROCESSING LAND USE APPLICATIONS

An application shall be processed under a Type I, II, III or IV procedure. The differences between the procedures are generally associated with the different nature of the decisions as described in Chapter 17.12.

When an application and proposed development is submitted, the Director shall determine the type of procedure the Code specifies for its processing and the potentially affected agencies.

If a development proposal requires an applicant to file a land use application with the city (e.g. a design review application) and if there is a question as to the appropriate procedure to guide review of the application (e.g. a Type II versus a Type III design review process), the question will be resolved in favor of the lower type number.

If a development proposal requires an applicant to file more than one land use application with the city (e.g. a design review application and a variance) and if the development code provides that the applications are to be reviewed under separate types of procedures (e.g. a Type II design review and a Type III variance):

- the Director will generally elevate all of the required applications to the highest number procedure for review (e.g. the Type II design review application would be reviewed by the Planning Commission along with the Type III variance).

In situations where an applicant has attended a pre-application conference and has reviewed the application with the Director prior to submitting the applications, the Director may exercise his/her discretion to review the Type II application(s) at the staff level and only schedule a public hearing for the Type III portion(s) of the development proposal.

17.18.10 COORDINATION OF PERMIT PROCEDURE

The Director shall be responsible for the coordination of the permit application and decision-making procedure and shall issue any necessary permits to an applicant whose application and proposed development is in compliance with the provisions of this Code. Sufficient information shall be submitted to resolve all determinations that require furnishing notice to persons other than the applicant. In the case of a Type II or Type III procedure, an applicant may defer submission of details demonstrating compliance with standards where such detail is not relevant to the approval under those procedures. Before issuing any permits, the Director shall be provided with the detail required to establish full compliance with the requirements of this Code.

17.18.20 PRE-APPLICATION CONFERENCE

A pre-application conference is required for all Type II, III, and IV applications unless the Director determines a conference is not needed. A request for a pre-application conference shall be made on the form provided by the city and will be scheduled following submittal of required materials and payment of fees. The purpose of the conference is to acquaint the applicant with the substantive and procedural requirements of the Code, provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, arrange such technical and design assistance which will aid the applicant, and to otherwise

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identify policies and regulations that create opportunities or pose significant constraints for the proposed development. The Director will provide the applicant with notes from the conference within 10 days of the conference. These notes may include confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the applicable code sections and criteria that may apply to the application. Any opinion expressed by the Director or City staff during a pre-application conference regarding substantive provisions of the City's code is advisory and is subject to change upon official review of the application.

17.18.30 LAND USE APPLICATION MATERIALS

Unless otherwise specified in this code, an application shall consist of the materials specified in this section, plus any other materials required by this Code.

A. A completed application form and payment of fees.

B. List and mailing labels of Affected Property Owners.

C. An explanation of intent, stating the nature of the proposed development, reasons for the request, pertinent background information, information required by the Development Code and other material that may have a bearing in determining the action to be taken.

D. Proof that the property affected by the application is in the exclusive ownership of the applicant, that the applicant has the consent of all parties in ownership of the affected property, or the applicant is the contractual owner.

E. Legal description of the property affected by the application.

F. Written narrative addressing applicable code chapters and approval criteria.

G. Vicinity Map showing site in relation to local and collector streets, plus any other significant features in the nearby area.

F. Site plan of proposed development

G. Number of Copies to be Submitted:
   1. One copy of items A through D listed above;
   2. Type I: 2 copies of site plan and other materials required by the Code.
   3. Type II: 8 copies of site plan and other materials required by the Code
   4. Type III: 15 copies of site plan and other materials required by the Code
   5. Type IV 20 copies of site plan and other materials required by the Code

The Director may vary the quantity of materials to be submitted as deemed necessary.

17.18.40 APPLICATION ACCEPTANCE AND COMPLETENESS REVIEW

A. Acceptance. When an application is received by the City, the Director or designee shall determine whether the following essential items are present. If the following items are not present, the application shall not be accepted by the City and it shall be returned to the applicant;

1. The required form;
2. The required fee;
3. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

B. Completeness Review. After an application is accepted, the Director or designee shall review the application for completeness. If the application is incomplete, the Director or designee shall notify the applicant in writing of what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information.

C. Application deemed complete for review. In accordance with the application submittal requirements, the application shall be deemed complete upon the receipt by the Director or designee of:

(1) All of the missing information identified by the Director; or
(2) Some of the missing information and written notice that no other information will be provided to the City; or
(3) Written notice that none of the missing information will be provided to the City.

D. Application void. On the 181st day after first being submitted, the application is void if the Director has notified the applicant of missing information and the applicant has not responded as described in subsection C (1) – (3) above.

17.18.50 REFERRAL AND REVIEW OF APPLICATIONS

Within 10 working days of accepting an application as complete, the Director shall:

A. Transmit one copy of the application, or appropriate parts of the application, to each referral agency for review and comment, including those responsible for determination of compliance with state and federal requirements.

B. If a Type II, III or IV procedure is required, provide for notice and hearing as set forth in Chapters 17.20 and 17.22.

17.18.60 STAFF EVALUATION

The Director shall prepare a report that evaluates whether the proposal complies with the review criteria.

17.18.70 TYPE II DEVELOPMENT DECISION

A. Within 60 days of the date of accepting an application, the Director shall grant or deny the request. The decision of the Director shall be based upon the application, the evidence, comments from referral agencies and affected property owners, and approvals required by others. After the decision is made, the Director shall notify the applicant and, if required, others entitled to notice of the disposition of the application. The notice shall indicate the date that the decision will take effect and describe the right of appeal pursuant to Chapter 17.28.

B. The Director shall approve a development if he finds that applicable approvals by others have been granted and the proposed development otherwise conforms to the requirements of this Code.

C. The Director shall deny the development if required approvals are not obtained or the application otherwise fails to comply with Code requirements. The notice shall describe the reason for denial.

17.18.80 TYPE III OR IV DECISION

The Director shall schedule a public hearing in accordance with procedures listed in Chapter 17.20.

17.18.90 REAPPLICATION FOLLOWING DENIAL

Upon final denial of a development proposal or a denial of an annexation request by the City Council or the voters, a new application for the same development or any portion thereof or the same annexation or any portion thereof may not be heard for a period of one year from the date of denial. Upon consideration of a written statement by the applicant showing how the proposal has been sufficiently modified to overcome the findings for denial or that conditions have changed sufficiently to justify reconsideration of the original of a similar proposal, the Director may waive the one-year waiting period.

17.18.100 LEGISLATIVE ENACTMENTS NOT RESTRICTED

Nothing in Chapter 17 shall limit the authority of the City Council to make changes in zoning districts or requirements as part of some more extensive revision of the Comprehensive Plan or the implementing ordinances. Nothing in this article shall relieve a use or development from compliance with other applicable laws.

17.18.110 EXPEDITED LAND DIVISION

A land division shall be processed pursuant to the expedited land division procedures set forth in ORS Chapter 197 if (a) the land division qualifies as an expedited land division as that term is defined in ORS Chapter 197 and (b) the applicant requests the land division to be processed as an expedited land division.

17.18.120 120-DAY RULE; TIME COMPUTATION

Final Decision. Except as allowed for Type IV decisions and applications subject to Section 17.18.110, a land use decision on a “permit” as that term is defined in state law must be finalized, including resolution of any local appeal by the City Council, no later than 120 days from the date the application is deemed complete, unless the applicant requests an extension in writing.

Time Computation. In computing any period of time prescribed or allowed by this Code, the day of the act or event from which the specified 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 Saturday, Sunday, or legal holiday, including a holiday falling on Sunday, in which event, the period runs until close of business the next day which is not a Saturday, Sunday, or legal holiday.

CHAPTER 17.30 - ZONING DISTRICTS

17.30.00 ZONING DISTRICT DESIGNATIONS

For the purposes of this title, the city is divided into districts designated as follows:

DISTRICT	SYMBOL
Parks and Open Space	**POS**
Residential	
Single Family Residential	**SFR**
Low Density Residential	**R-1**
Medium Density Residential	**R-2**
High Density Residential	**R-3**
Commercial	
Central Business District	**C-1**
General Commercial	**C-2**
Village Commercial	**C-3**
Industrial	
Industrial Park	**I-1**
Light Industrial	**I-2**
General Industrial	**I-3**
Overlay Districts	
Planned Development	**PD**
Cultural & Historic Resource	**CHR**
Flood Slope Hazard	**FSH**
Specific Area Plan Overlay	**SAP**

17.30.10 ZONING MAP

The Zoning Map is incorporated herein and is deemed as much a part of this Code as if fully set forth. If a conflict appears between the Zoning Map and the written portion of this Code, the written portion shall control. The map and each amendment shall remain on file in the Planning Director's Office.

The boundaries of all districts are established as shown on the Zoning Map, which is made a part of this Code. All notations and references and other matters shown shall be and are hereby made part of this Code.

17.30.20 RESIDENTIAL DENSITY CALCULATION PROCEDURE

The number of dwelling units permitted on a parcel of land is calculated after the determination of the net site area and the acreage of any restricted development areas (as defined by Chapter 17.60). Limited density transfers are permitted from restricted development areas to unrestricted areas consistent with the provisions of the Flood and Slope Hazard Area Overlay District, Chapter 17.60.

Calculation of Net Site Area (NSA): Net site area should be calculated in acres based upon a survey of the property boundaries excluding areas dedicated for public use.

Revised by Ordinance 2013-04 effective 07/03/13

A. Minimum and Maximum Dwelling Units for Sites with No Restricted Areas

The allowable range of housing units on a piece of property is calculated by multiplying the net site area (NSA) in acres by the minimum and maximum number of dwelling units allowed in that zone.

For example: A site (NSA) containing 10 acres in the Single Family Residential Zoning District requires a minimum of 30 units and allows a maximum of 58 units. (NSA x 3 units/acre = 30 units minimum) (NSA x 5.8 units/acre = 58 units maximum)

B. Minimum and Maximum Dwelling Units for Sites with Restricted Areas

1. Unrestricted Site Area: To calculate unrestricted site area (USA): subtract all restricted development areas (RDA) as defined by Section 17.60.20(A) from the net site area (NSA), if applicable.

NSA - RDA = USA

2. Minimum Required Dwelling Units: The minimum number of dwelling units required for the site is calculated using the following formula:

USA (in acres) x Minimum Density (Units per Acre) of Zoning District = Minimum Number of Dwelling Units Required.

3. Maximum Allowed Dwelling Units: The maximum number of dwelling units allowed on a site is the lesser of the results of these two formulas:

a. NSA (in acres) x Maximum Density of Zoning District (units/acre)

b. USA (in acres) x Maximum Density of Zoning District (units/acre) x 1.5 (maximum allowable density transfer based on Chapter 17.60)

For example: suppose a site in a zone with a maximum density of eight (8) units per acre has 6 acres of unrestricted site area (USA= 6) and two acres of restricted development area (RDA=2), for a total net site area of 8 acres (NSA= 8). Then NSA (8) x 8 units/acre = 64 and USA (6) x 8 units/acre x 1.5 = 72, so the maximum permitted number of dwelling units is 64 (the lesser of the two results).

C. Lot Sizes: Lot sizes shall comply with any minimum lot size standards of the underlying zoning district.

D. Rounding: A dwelling unit figure is rounded down to the nearest whole number for all total maximum or minimum figures less than four dwelling units. For dwelling unit figures greater than four dwellings units, a partial figure of one-half or greater is rounded up to the next whole number.

For example: A calculation of 3.7 units is rounded down to 3 units. A calculation of 4.2 units is rounded down to 4 units and a calculation of 4.5 units is rounded up to 5 units.

Revised by Ordinance 2013-04 effective 07/03/13

CHAPTER 17.34 - SINGLE-FAMILY RESIDENTIAL (SFR)

17.34.00 INTENT

The district is intended to implement the Low Density Residential Comprehensive Plan designation by providing for low-density residential development in specific areas of the city. The purpose of this district is to allow limited development of property while not precluding more dense future development, as urban services become available. Density shall not be less than 3 or more than 5.8 units per net acre.

17.34.10 PERMITTED USES

A. Primary Uses Permitted Outright:
   1. Single detached dwelling subject to design standards in Chapter 17.90;
   2. Single detached manufactured dwelling subject to design standards in Chapter 17.90;

B. Accessory Uses Permitted Outright:
   1. Accessory dwelling unit subject to the provisions in Chapter 17.74;
   2. Accessory structure, detached or attached subject to the provisions in Chapter 17.74;
   3. Family day care, as defined in Chapter 17.10 subject to any conditions imposed on the residential dwellings in the zone;
   4. Home business subject to the provisions in Chapter 17.74;
   5. Livestock and small animals, excluding carnivorous exotic animals: The keeping, but not the propagating, for solely domestic purposes on a lot having a minimum area of one acre. The structures for the housing of such livestock shall be located within the rear yard and at a minimum distance of 100 feet from an adjoining lot in any residential zoning district;
   6. Minor utility facility;
   7. Other development customarily incidental to the primary use.

17.34.20 MINOR CONDITIONAL USES AND CONDITIONAL USES

A. Minor Conditional Uses:
   1. Accessory structures for agricultural, horticultural or animal husbandry use in excess of the size limits in Chapter 17.74;
   2. Single detached or attached zero lot line dwelling;
   3. Duplex;
   4. Projections or free-standing structures such as chimneys, spires, belfries, domes, monuments, fire and hose towers, observation towers, transmission towers, flagpoles, radio and television towers, masts, aerials, cooling towers and similar structures or facilities not used for human occupancy exceeding 35 feet in height;
   5. Other uses similar in nature.

B. Conditional Uses:
   1. Community services;
   2. Funeral and interment services, cemetery, mausoleum or crematorium;
   3. Golf course and club house, pitch-and-putt, but not garden or miniature golf or golf driving range;

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4. Hospital or home for the aged, retirement, rest or convalescent home;
5. Lodges, fraternal and civic assembly;
6. Major utility facility;
7. Preschool, orphanage, kindergarten or commercial day care;
8. Residential care facility [ORS 443.000 to 443.825];
9. Schools (public, private, parochial or other educational institution and supporting dormitory facilities, excluding colleges and universities);
10. Other uses similar in nature.

17.34.30 DEVELOPMENT STANDARDS

Type	Standard
A. Minimum Lot Area - Single detached dwelling - Other permitted uses	7,500 square ft. No minimum
B. Minimum Average Lot Width - Single detached dwelling	 60 ft.
C. Minimum Lot Frontage	20 ft. except as allowed by Section 17.100.160
D. Minimum Average Lot Depth	No minimum
E. Setbacks (Main Building) Front yard Rear yard Side yard (interior) Corner Lot	 10 ft. minimum 20 ft. minimum 7.5 ft. minimum 10 ft. minimum on side abutting the street [1]
F. Setbacks (Garage/Carport)	22 ft. minimum for front vehicle access 15 ft. minimum if entrance is perpendicular to street (subject to Section 17.90.220) 5 ft. minimum for alley or rear access
G. Projections into Required Setbacks	See Chapter 17.74
H. Accessory Structures in Required Setbacks	See Chapter 17.74
I. Structure Height	35 ft. maximum
J. Building Site Coverage	No minimum
K. Off-Street Parking	See Chapter 17.98

17.34.40 MINIMUM REQUIREMENTS

A. Must connect to municipal water.
B. Must connect to municipal sewer if service is currently within 200 feet of the site. Sites more than 200 feet from municipal sewer, may be approved to connect to an alternative disposal system provided all of the following are satisfied:
   1. A county septic permit is secured and a copy is provided to the city;
   2. The property owner executes a waiver of remonstrance to a local improvement district and/or signs a deed restriction agreeing to complete improvements, including but not limited, to curbs, sidewalks, sanitary sewer, water, storm sewer or other improvements which directly benefit the property;

[1] Must comply with clear vision requirements of Chapter 17.74.

3. The minimum size of the property is one acre or is a pre-existing buildable lot, as determined by the city;
4. Site consists of a buildable parcel(s) created through dividing property in the city, which is less than five acres in size.

C. The location of any real improvements to the property must provide for a future street network to be developed.

D. Must have frontage or approved access to public streets.

17.34.50 ADDITIONAL REQUIREMENTS

A. Design review as specified in Chapter 17.90 is required for all uses.

B. Lots with 40 feet or less of street frontage shall be accessed by a rear alley or a shared private driveway.

C. Lots with alley access may be up to 10 percent smaller than the minimum lot size of the zone.

D. Zero Lot Line Dwellings: Prior to building permit approval, the applicant shall submit a recorded easement between the subject property and the abutting lot next to the yard having the zero setback. This easement shall be sufficient to guarantee rights for maintenance purposes of structures and yard, but in no case shall it be less than 5 ft. in width.

CHAPTER 17.80 - ADDITIONAL SETBACKS ON COLLECTOR & ARTERIAL STREETS

17.80.00 INTENT

The requirement of additional special setbacks for development on arterial or collector is intended to provide better light, air and vision on more heavily traveled streets. The additional setback, on substandard streets, will protect collector and arterial streets and permit the eventual widening of streets.

17.80.10 APPLICABLITY

These regulations apply to all collector and arterial streets as identified in the latest adopted Sandy Transportation System Plan (TSP). The Central Business District (C-1) is exempt from Chapter 17.80 regulations.

17.80.20 SPECIFIC SETBACKS

Any structure located on streets listed above or identified in the Transportation System Plan as arterials or collectors shall have a minimum setback of 20 feet measured from the property line. This applies to applicable front, rear and side yards.

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CHAPTER 17.82 - SPECIAL SETBACKS ON TRANSIT STREETS

17.82.00 INTENT

The intent is to provide for convenient, direct, and accessible pedestrian access to and from public sidewalks and transit facilities; provide a safe, pleasant and enjoyable pedestrian experience by connecting activities within a structure to the adjacent sidewalk and/or transit street; and, promote the use of pedestrian, bicycle, and transit modes of transportation.

17.82.10 APPLICABILITY

This chapter applies to all residential development located adjacent to a transit street. A transit street is defined as any street designated as a collector or arterial, unless otherwise designated in the Transit System Plan.

17.82.20 BUILDING ORIENTATION

A. All residential dwellings shall have their primary entrances oriented toward a transit street rather than a parking area, or if not adjacent to a transit street, toward a public right-of-way or private walkway which leads to a transit street.

B. Dwellings shall have a primary entrance connecting directly between the street and building interior. A clearly marked, convenient, safe and lighted pedestrian route shall be provided to the entrance, from the transit street. The pedestrian route shall consist of materials such as concrete, asphalt, stone, brick, permeable pavers, or other materials as approved by the Director. The pedestrian path shall be permanently affixed to the ground with gravel subsurface or a comparable subsurface as approved by the Director.

C. Primary dwelling entrances shall be architecturally emphasized and visible from the street and shall include a covered porch at least 5 feet in depth.

D. If the site has frontage on more than one transit street, the dwelling shall provide one main entrance oriented to a transit street or to a corner where two transit streets intersect.

CHAPTER 17.84
IMPROVEMENTS REQUIRED WITH DEVELOPMENT

17.84.00 INTENT

This chapter provides general information regarding improvements required with residential, commercial, and industrial development. It is intended to clarify timing, extent, and standards for improvements required in conjunction with development. In addition to the standards in this chapter, additional standards for specific situations are contained in other chapters.

17.84.10 EXCEPTIONS

Single family residential development on existing lots is exempt from this chapter, with the exception of 17.84.30 Pedestrian and Bicyclist Requirements**.**

17.84.20 TIMING OF IMPROVEMENTS

A. All improvements required by the standards in this chapter shall be installed concurrently with development, as follows:
   1. Where a land division is proposed, each proposed lot shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to approval of the final plat.
   2. Where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures.

B. Where specific approval for a phasing plan has been granted for a planned development and/or subdivision, improvements may similarly be phased in accordance with that plan.

17.84.30 PEDESTRIAN AND BICYCLIST REQUIREMENTS

A. Sidewalks shall be required along both sides of all arterial, collector, and local streets, as follows:
   1. Sidewalks shall be a minimum of five (5) ft. wide on local streets. The sidewalks shall be separated from curbs by a tree planting area that provides separation between sidewalk and curb, unless modified in accordance with Subsection 3 below.
   2. Sidewalks along arterial and collector streets shall be separated from curbs with a planting area, except as necessary to continue an existing curb-tight sidewalk. The planting area shall be landscaped with trees and plant materials approved by the City. The sidewalks shall be a minimum of six (6) ft. wide.
   3. Sidewalk improvements shall be made according to City standards, unless the City determines that the public benefit in the particular case does not warrant imposing a severe adverse impact to a natural or other significant feature such as requiring removal of a mature tree, requiring undue grading, or requiring modification to an existing building. Any exceptions to the standards shall generally be in the following order.
      a) Narrow landscape strips
      b) Narrow sidewalk or portion of sidewalk to no less than four (4) feet in width
      c) Eliminate landscape strips
      d) Narrow on-street improvements by eliminating on-street parking

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e) Eliminate sidewalks

4. The timing of the installation of sidewalks shall be as follows:
   a) Sidewalks and planted areas along arterial and collector streets shall be installed with street improvements, or with development of the site if street improvements are deferred.
   b) Sidewalks along local streets shall be installed in conjunction with development of the site, generally with building permits, except as noted in (c) below.
   c) Where sidewalks on local streets abut common areas, tracts, drainageways, or other publicly owned or semi-publicly owned areas, the sidewalks and planted areas shall be installed with street improvements.

B. Safe and convenient pedestrian and bicyclist facilities that strive to minimize travel distance to the extent practicable shall be provided in conjunction with new development within and between new subdivisions, planned developments, commercial developments, industrial areas, residential areas, public transit stops, school transit stops, and neighborhood activity centers such as schools and parks, as follows:

1. For the purposes of this section, "safe and convenient" means pedestrian and bicyclist facilities that: are reasonably free from hazards which would interfere with or discourage travel for short trips; provide a direct route of travel between destinations; and meet the travel needs of pedestrians and bicyclists considering destination and length of trip.
2. To meet the intent of "B" above, rights-of-way connecting cul-de-sacs or passing through unusually long or oddly shaped blocks shall be a minimum of 15 ft. wide with eight (8) feet of pavement.
3. 12 ft. wide pathways shall be provided in areas with high bicycle volumes or multi-use by bicyclists, pedestrians, and joggers.
4. Pathways and sidewalks shall be encouraged in new developments by clustering buildings or constructing convenient pedestrian ways. Pedestrian walkways shall be provided in accordance with the following standards:
   a) The pedestrian circulation system shall be at least five (5) feet in width and shall connect the sidewalk on each abutting street to the main entrance of the primary structure on the site to minimize out of direction pedestrian travel.
   b) Walkways at least five (5) feet in width shall be provided to connect the pedestrian circulation system with existing or planned pedestrian facilities which abut the site but are not adjacent to the streets abutting the site.
   c) Walkways shall be as direct as possible and avoid unnecessary meandering.
   d) Walkway/driveway crossings shall be minimized. Internal parking lot design shall maintain ease of access for pedestrians from abutting streets, pedestrian facilities, and transit stops.
   e) With the exception of walkway/driveway crossings, walkways shall be separated from vehicle parking or vehicle maneuvering areas by grade, different paving material, painted crosshatching or landscaping. They shall be constructed in accordance with the sidewalk standards adopted by the City. (This provision does not require a separated walkway system to collect drivers and passengers from cars that have parked on site unless an unusual parking lot hazard exists).
   f) Pedestrian amenities such as covered walk-ways, awnings, visual corridors and benches will be encouraged. For every two benches provided, the minimum parking requirements will be reduced by one, up to a maximum of four benches per site. Benches shall have direct access to the circulation system.

C. Where a development site is traversed by or adjacent to a future trail linkage identified within the Transportation System Plan, improvement of the trail linkage shall occur concurrent with development. Dedication of the trail to the City shall be provided in accordance with 17.84. 90(D).

D. To provide for orderly development of an effective pedestrian network, pedestrian facilities installed concurrent with development of a site shall be extended through the site to the edge of adjacent property(ies).

E. To ensure improved access between a development site and an existing developed facility such as a commercial center, school, park, or trail system, the Planning Commission or Director may require off-site pedestrian facility improvements concurrent with development.

17.84.40 TRANSIT AND SCHOOL BUS TRANSIT REQUIREMENTS

A. Development sites located along existing or planned transit routes shall, where appropriate, incorporate bus pull-outs and/or shelters into the site design. These improvements shall be installed in accordance with the guidelines and standards of the transit agency. School bus pull-outs and/or shelters may also be required, where appropriate, as a condition of approval for a residential development of greater than 50 dwelling units where a school bus pick-up point is anticipated to serve a large number of children.

B. New developments at or near existing or planned transit or school bus transit stops shall design development sites to provide safe, convenient access to the transit system, as follows:
   1. Commercial and civic use developments shall provide a prominent entrance oriented towards arterial and collector streets, with front setbacks reduced as much as possible to provide access for pedestrians, bicycles, and transit.
   2. All developments shall provide safe, convenient pedestrian walkways between the buildings and the transit stop, in accordance with the provisions of 17.84.30 B.

17.84.50 STREET REQUIREMENTS

A. Transportation Impact Study (No Dwellings). For development applications that do not propose any dwelling units, the City may require a transportation impact study that evaluates the impact of the proposed development on the transportation system. Unless the City does not require a transportation impact study, the applicant shall prepare the study in accordance with the following:
   1. A proposal establishing the scope of the study shall be submitted for review to the City Traffic Engineer. The scope shall reflect the magnitude of the project in accordance with accepted transportation planning and engineering practices. Large projects shall assess intersections and street segments where the development causes increases of more than 20 vehicles in either the AM or PM peak hours. Once the City Traffic Engineer has approved the scope of the study, the applicant shall submit the results of the study as part of its development application. Failure to submit a required study will result in an incomplete application. A traffic impact study shall bear the seal of a Professional Engineer licensed in the State of Oregon and qualified in traffic or civil engineering.
   2. If the study identifies level-of-service conditions less than the minimum standard established in the development code or the Sandy Transportation System Plan, or fails to demonstrate that average daily traffic on existing or proposed streets will meet the ADT

standards established in the development code, the applicant shall propose improvements and funding strategies for mitigating identified problems or deficiencies that will be implemented concurrent with the proposed development.

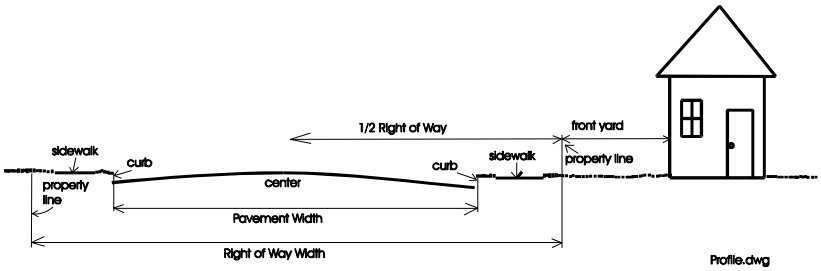
B. Transportation Impact Study (Dwellings). For development applications that propose dwelling units, an applicant must submit a transportation impact study unless the application is exempt from this requirement pursuant to subsection (B)(6), below. Failure to submit the study will result in an incomplete application. A traffic impact study shall bear the seal of a Professional Engineer licensed in the State of Oregon and qualified in traffic or civil engineering. The applicant shall prepare the study in accordance with the following:
   1. The study area must include all existing and proposed site accesses and all existing and proposed streets and intersections where the development adds more than 20 vehicles during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineers Trip Generation Manual. The determination of peak hour vehicle addition shall include the cumulative impact of the proposed development and development on abutting properties that received a certificate of occupancy or recorded a plat within the past 5 years.
   2. The study must analyze existing conditions and projected conditions upon completion of the proposed development.
   3. The study must be performed for the weekday a.m. peak hour (one hour between 7 a.m. and 9 a.m.) and p.m. peak hour (one hour between 4 p.m. and 6 p.m.). Analysis of other time periods may be required for uses that generate their highest traffic volumes at other times of the day or on weekends.
   4. The study must demonstrate that the transportation impacts from the proposed development will comply with the City's level-of-service and average daily traffic standards and the Oregon Department of Transportation's mobility standard.
   5. If the study identifies level-of-service conditions less than the minimum standard established in the development code or the Sandy Transportation System Plan, or fails to demonstrate that average daily traffic on existing or proposed streets will meet the ADT standards established in the development code or fails to meet the Oregon Department of Transportation's mobility standard, the applicant shall propose improvements and funding strategies for mitigating identified problems or deficiencies that will be implemented concurrent with the proposed development.
   6. A transportation impact study is not required under this section if:
      a) The cumulative impact of the proposed development and development on abutting properties that received a certificate of occupancy or recorded a plat within the past 5 years will generate no more than 20 vehicle trips in any weekday a.m. or p.m. peak hour as determined by using the most recent edition of the Institute of Transportation Engineers Trip Generation Manual; or
      b) The proposed development completed a transportation impact study at the time of annexation within the past 5 years and that study assessed the impact of the same or more dwelling units than proposed under the new land use action; or
      c) The application only proposes to convert an existing detached single family dwelling to a duplex.

C. Transportation Impact Study (Dwellings) – Discretionary Track. As an alternative to the process outlined in Section 17.84.50(B), an applicant may choose to follow the process in Section 17.84.50(A).

D. Location of new arterial streets shall conform to the Transportation System Plan in accordance with the following:
   1. Arterial streets should generally be spaced in one-mile intervals.
   2. Traffic signals should generally not be spaced closer than 1,500 ft. for reasonable traffic progression.

E. Local streets shall be designed to discourage through traffic. NOTE: for the purposes of this section, "through traffic" means the traffic traveling through an area that does not have a local origination or destination. To discourage through traffic and excessive vehicle speeds the following street design characteristics shall be considered, as well as other designs intended to discourage traffic:
   1. Straight segments of local streets should be kept to less than a quarter mile in length. As practical, local streets should include traffic calming features, and design features such as curves and "T" intersections while maintaining pedestrian connectivity.
   2. Local streets should typically intersect in "T" configurations rather than 4-way intersections to minimize conflicts and discourage through traffic. Adjacent "T" intersections shall maintain a minimum of 150 ft. between the nearest edges of the two rights-of-way.
   3. Cul-de-sacs shall not exceed 400 ft. in length nor serve more than 20 dwelling units, unless a proposal is successfully processed through the procedures in Chapter 17.66 of the Sandy Development Code.. Cul-de-sacs longer than 400 feet or developments with only one access point may be required to provide an alternative access for emergency vehicle use only, install fire prevention sprinklers, or provide other mitigating measures, determined by the City.

F. Development sites shall be provided with access from a public street improved to City standards in accordance with the following:
   1. Where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to City standards along the full frontage of the property concurrent with development.
   2. Half-street improvements are considered the minimum required improvement. Three-quarter-street or full-street improvements shall be required where traffic volumes generated by the development are such that a half-street improvement would cause safety and/or capacity problems. Such a determination shall be made by the City Engineer.
   3. To ensure improved access to a development site consistent with policies on orderly urbanization and extension of public facilities the Planning Commission or Director may require off-site improvements concurrent with development. Off-site improvement requirements upon the site developer shall be reasonably related to the anticipated impacts of the development.
   4. Reimbursement agreements for three-quarter-street improvements (i.e., curb face to curb face) may be requested by the developer per Chapter 12 of the SMC.
   5. A half-street improvement includes curb and pavement 2 feet beyond the center line of the right-of-way. A three-quarter-street improvement includes curbs on both sides of the side and full pavement between curb faces.



G. As necessary to provide for orderly development of adjacent properties, public streets installed concurrent with development of a site shall be extended through the site to the edge of the adjacent property(ies) in accordance with the following:
   1. Temporary dead-ends created by this requirement to extend street improvements to the edge of adjacent properties may be installed without a turn-around, subject to the approval of the Fire Marshal.
   2. In order to assure the eventual continuation or completion of the street, reserve strips may be required.

H. Where required by the Planning Commission or Director, public street improvements may be required through a development site to provide for the logical extension of an existing street network or to connect a site with a nearby neighborhood activity center, such as a school or park. Where this creates a land division incidental to the development, a land partition shall be completed concurrent with the development.

I. Except for extensions of existing streets, no street names shall be used that will duplicate or be confused with names of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area and be subject to approval of the Director.

J. Location, grades, alignment, and widths for all public streets shall be considered in relation to existing and planned streets, topographical conditions, public convenience and safety, and proposed land use. Where topographical conditions present special circumstances, exceptions to these standards may be granted by the City Engineer provided the safety and capacity of the street network are not adversely affected. The following standards shall apply:
   1. Location of streets in a development shall not preclude development of adjacent properties. Streets shall conform to planned street extensions identified in the Transportation Plan and/or provide for continuation of the existing street network in the surrounding area.
   2. Grades shall not exceed 6 percent on arterial streets, 10 percent on collector streets, and 15 percent on local streets.
   3. As far as practical, arterial streets and collector streets shall be extended in alignment with existing streets by continuation of the street centerline. When staggered street alignments resulting in "T" intersections are unavoidable, they shall leave a minimum of 150 ft. between the nearest edges of the two rights-of-way.
   4. Centerline radii of curves shall not be less than 500 ft. on arterial streets, 300 ft. on collector streets, and 100 ft. on local streets.
   5. Streets shall be designed to intersect at angles as near as practicable to right angles and shall comply with the following:
      a) The intersection of an arterial or collector street with another arterial or collector street shall have a minimum of 100 ft. of straight (tangent) alignment perpendicular to the intersection.

b) The intersection of a local street with another street shall have a minimum of 50 ft. of straight (tangent) alignment perpendicular to the intersection.
c) Where right angle intersections are not possible, exceptions can be granted by the City Engineer provided that intersections not at right angles have a minimum corner radius of 20 ft. along the right-of-way lines of the acute angle.
d) Intersections with arterial and collector streets shall have a minimum curb corner radius of 20 ft. All other intersections shall have a minimum curb corner radius of 10 ft.

6. Right-of-way and improvement widths shall be as specified by the Transportation System Plan. Exceptions to those specifications may be approved by the City Engineer to deal with specific unique physical constraints of the site.

K. Private streets may be considered within a development site provided all the following conditions are met:
1. Extension of a public street through the development site is not needed for continuation of the existing street network or for future service to adjacent properties;
2. The development site remains in one ownership, or adequate mechanisms are established (such as a homeowner's association invested with the authority to enforce payment) to ensure that a private street installed with a land division will be adequately maintained; and
3. Where a private street is installed in connection with a land division, paving standards consistent with City standards for public streets shall be utilized to protect the interests of future homeowners.

17.84.60 PUBLIC FACILITY EXTENSIONS

A. All development sites shall be provided with public water, sanitary sewer, broadband (fiber), and storm drainage.

B. Where necessary to serve property as specified in "A" above, required public facility installations shall be constructed concurrent with development.

C. Off-site public facility extensions necessary to fully serve a development site and adjacent properties shall be constructed concurrent with development.

D. As necessary to provide for orderly development of adjacent properties, public facilities installed concurrent with development of a site shall be extended through the site to the edge of adjacent property(ies).

E. All public facility installations required with development shall conform to the City's facilities master plans.

F. Private on-site sanitary sewer and storm drainage facilities may be considered provided all the following conditions exist:
1. Extension of a public facility through the site is not necessary for the future orderly development of adjacent properties;
2. The development site remains in one ownership and land division does not occur (with the exception of land divisions that may occur under the provisions of 17.84.50 F above);

3. The facilities are designed and constructed in accordance with the Uniform Plumbing Code and other applicable codes, and permits and/or authorization to proceed with construction is issued prior to commencement of work.

17.84.70 PUBLIC IMPROVEMENT PROCEDURES

It is in the best interests of the community to ensure public improvements installed in conjunction with development are constructed in accordance with all applicable City policies, standards, procedures, and ordinances. Therefore, prior to commencement of installation of public water, sanitary sewer, storm drainage, broadband (fiber), street, bicycle, or pedestrian improvements for any development site, developers shall contact the City Engineer to receive information regarding adopted procedures governing plan submittal, plan review and approval, permit requirements, inspection and testing requirements, progress of the work, and provision of easements, dedications, and as-built drawings for installation of public improvements. All work shall proceed in accordance with those adopted procedures, and all applicable City policies, standards, and ordinances.

Whenever any work is being done contrary to the provisions of this Code, the Director may order the work stopped by notice in writing served on the persons engaged in performing the work or causing the work to be performed. The work shall stop until authorized by the Director to proceed with the work or with corrective action to remedy substandard work already completed.

17.84.80 FRANCHISE UTILITY INSTALLATIONS

These standards are intended to supplement, not replace or supersede, requirements contained within individual franchise agreements the City has with providers of electrical power, telephone, cable television, and natural gas services (hereinafter referred to as “franchise utilities”).

A. Where a land division is proposed, the developer shall provide franchise utilities to the development site. Each lot created within a subdivision shall have an individual service available or financially guaranteed prior to approval of the final plat.

B. Where necessary, in the judgment of the Director, to provide for orderly development of adjacent properties, franchise utilities shall be extended through the site to the edge of adjacent property(ies), whether or not the development involves a land division.

C. The developer shall have the option of choosing whether or not to provide natural gas or cable television service to the development site, providing all of the following conditions exist:
   1. Extension of franchise utilities through the site is not necessary for the future orderly development of adjacent property(ies);
   2. The development site remains in one ownership and land division does not occur (with the exception of land divisions that may occur under the provisions of 17.84.50 F above); and,
   3. The development is non-residential.

D. Where a land division is not proposed, the site shall have franchise utilities required by this section provided in accordance with the provisions of 17.84.70 prior to occupancy of structures.

E. All franchise utility distribution facilities installed to serve new development shall be placed underground except as provided below. The following facilities may be installed above-ground:
   1. Poles for street lights and traffic signals, pedestals for police and fire system communications and alarms, pad mounted transformers, pedestals, pedestal mounted terminal boxes and meter cabinets, concealed ducts, substations, or facilities used to carry voltage higher than 35,000 volts;
   2. Overhead utility distribution lines may be permitted upon approval of the City Engineer when unusual terrain, soil, or other conditions make underground installation impracticable. Location of such overhead utilities shall follow rear or side lot lines wherever feasible.

F. The developer shall be responsible for making necessary arrangements with franchise utility providers for provision of plans, timing of installation, and payment for services installed. Plans for franchise utility installations shall be submitted concurrent with plan submittal for public improvements to facilitate review by the City Engineer.

G. The developer shall be responsible for installation of underground conduit for street lighting along all public streets improved in conjunction with the development in accordance with the following:
   1. The developer shall coordinate with the City Engineer to determine the location of future street light poles. The street light plan shall be designed to provide illumination meeting standards set by the City Engineer.
   2. The developer shall make arrangements with the serving electric utility for trenching prior to installation of underground conduit for street lighting.

17.84.90 LAND FOR PUBLIC PURPOSES

A. Easements for public sanitary sewer, water, storm drain, pedestrian and bicycle facilities shall be provided whenever these facilities are located outside a public right-of-way in accordance with the following:
   1. When located between adjacent lots, easements shall be provided on one side of a lot line.
   2. The minimum easement width for a single utility is 15 ft. The minimum easement width for two adjacent utilities is 20 ft. The easement width shall be centered on the utility to the greatest extent practicable. Wider easements may be required for unusually deep facilities.

B. Public utility easements with a minimum width of eight (8) feet shall be provided adjacent to all street rights-of-way for franchise utility installations.

C. Where a development site is traversed by a drainageway or water course, a drainage way dedication shall be provided to the City.

D. Where a development is traversed by, or adjacent to, a future trail linkage identified within the Transportation System Plan, dedications of suitable width to accommodate the trail linkage shall be provided. This width shall be determined by the City Engineer, considering the type of trail facility involved.

E. Where existing rights-of-way and/or easements within or adjacent to development sites are nonexistent or of insufficient width, dedications may be required. The need for and widths of those dedications shall be determined by the City Engineer.

F. Where easement or dedications are required in conjunction with land divisions, they shall be recorded on the plat. Where a development does not include a land division, easements and/or dedications shall be recorded on standard document forms provided by the City Engineer.

G. If the City has an interest in acquiring any portion of a proposed subdivision or planned development site for a public purpose, other than for those purposes listed above, or if the City has been advised of such interest by a school district or other public agency, and there is a reasonable assurance that steps will be taken to acquire the land, the Planning Commission may require those portions of the land be reserved for public acquisition for a period not to exceed one (1) year.

H. Environmental assessments for all lands to be dedicated to the public or City may be required to be provided by the developer. An environmental assessment shall include information necessary for the City to evaluate potential liability for environmental hazards, contamination, or required waste cleanups related to the dedicated land. An environmental assessment shall be completed prior to the acceptance of dedicated lands in accordance with the following:
   1. The initial environmental assessment shall detail the history of ownership and general use of the land by past owners. Upon review of the information provided by the grantor, as well as any site investigation by the City, the Director will determine if the risks of potential contamination warrant further investigation. When further site investigation is warranted, a Level I Environmental Assessment shall be provided by the grantor.

17.84.100 MAIL DELIVERY FACILITIES

A. In establishing placement of mail delivery facilities, locations of sidewalks, bikeways, intersections, existing or future driveways, existing or future utilities, right-of-way and street width, and vehicle, bicycle and pedestrian movements shall be considered. The final location of these facilities shall meet the approval of the City Engineer and the Post Office. Where mail delivery facilities are being installed in conjunction with a land division, placement shall be indicated on the plat and meet the approval of the City Engineer and the Post Office prior to final plat approval.

B. Where mail delivery facilities are proposed to be installed in areas with an existing or future curb-tight sidewalk, a sidewalk transition shall be provided that maintains the required design width of the sidewalk around the mail delivery facility. If the right-of-way width will not accommodate the sidewalk transition, a sidewalk easement shall be provided adjacent to the right-of-way.

C. Mail delivery facilities and the associated sidewalk transition (if necessary) around these facilities shall conform to the City's standard construction specifications. Actual mailbox units shall conform to the Post Office standards for mail delivery facilities.

D. Installation of mail delivery facilities is the obligation of the developer. These facilities shall be installed concurrently with the public improvements. Where development of a site does not require public improvements, mail delivery facilities shall be installed concurrently with private site improvements.

   Mail delivery facilities may not be placed on arterial or collector streets or in sight distance zones or vision clearance areas.

CHAPTER 17.86 - PARKLAND & OPEN SPACE

17.86.00 INTENT

The availability of parkland and open space is a critical element in maintaining and improving the quality of life in Sandy. Land that features trees, grass and vegetation provides not only an aesthetically pleasing landscape but also buffers incompatible uses, and preserves sensitive environmental features and important resources. Parks and open space, together with support facilities, also help to meet the active and passive recreational needs of the population of Sandy. This chapter implements policies of Goal 8 of the Comprehensive Plan and the Parks Master Plan by outlining provisions for parks and open space in the City of Sandy.

17.86.10 MINIMUM PARKLAND DEDICATION REQUIREMENTS

Parkland Dedication: New residential subdivisions, planned developments, multi-family or manufactured home park developments shall be required to provide parkland to serve existing and future residents of those developments. Multi-family developments which provide some "congregate" services and/or facilities, such as group transportation, dining halls, emergency monitoring systems, etc., but which have individual dwelling units rather than sleeping quarters only, are considered to be multi-family developments for the purpose of parkland dedication. Licensed adult congregate living facilities, nursing homes, and all other similar facilities which provide their clients with individual beds and sleeping quarters, but in which all other care and services are communal and provided by facility employees, are specifically exempt from parkland dedication and system development fee requirements.

1. The required parkland shall be dedicated as a condition of approval for the following:

    a. Tentative plat for a subdivision or partition;

    b. Planned Development conceptual or detailed development plan;

    c. Design review for a multi-family development or manufactured home park; and

    d. Replat or amendment of any site plan for multi-family development or manufactured home park where dedication has not previously been made or where the density of the development involved will be increased.

2. Calculation of Required Dedication: The required parkland acreage to be dedicated is based on a calculation of the following formula rounded to the nearest 1/100 (0.00) of an acre:

    Required parkland dedication (acres) = (proposed units) x (persons/unit) x 0.0043 (per person park land dedication factor)

    a. Population Formula: The following table shall be used to determine the number of persons per unit to be used in calculating required parkland dedication:

Revised by Ordinance No. 2013-03 (effective 07/03/13)

Type of Unit	Total Persons Per Unit
Single family residential	3.0
Standard multi-family unit	2.0
Manufactured dwelling park	2.0
Congregate multi-family unit	1.5

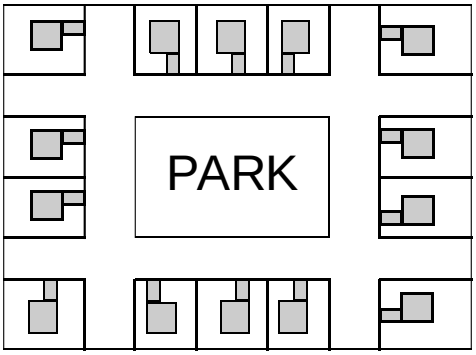
Persons per unit, age distribution, and local conditions change with time. The specific formula for the dedication of land will, therefore, be subject to periodic review and amendment.

b. Per Person Parkland Dedication Factor: The total parkland dedication requirement shall be 0.0043 of an acre per person based on the adopted standard of 4.3 acres of land per one thousand of ultimate population per the Parks Master Plan[1]. This standard represents the citywide land-to-population ratio for city parks, and may be adjusted periodically through amendments to the Parks Master Plan.

17.86.20 MINIMUM PARKLAND STANDARDS

Land required or proposed for parkland dedication shall be contained within a continuous unit and must be suitable for active use as a neighborhood or mini-park, based on the following criteria:

1. Homes must front on the parkland as shown in the example below:



2. The required dedication shall be contained as a contiguous unit and not separated into pieces or divided by roadways.

3. The parkland must be able to accommodate play structures, play fields, picnic areas, or other active park use facilities. The average slope of the active use parkland shall not exceed 15%.

[1] Parks Master Plan, Implementation Plan section, Pages 4 and 5 indicate a required park acreage total of 64.5 acres. This number, divided by population (2015) of 15,000 equates to 4.3 acres per 1000 population or 0.0043 per person.

4. Any retaining wall constructed at the perimeter of the park adjacent to a public right-of-way or private street shall not exceed 4 feet in height.

5. Once dedicated, the City will assume maintenance responsibility for the neighborhood or mini parkland.

17.86.30 DEDICATION PROCEDURES

Prior to approval of the final plat, the developer shall dedicate the land as previously determined by the City in conjunction with approval of the tentative plat. Dedication of land in conjunction with multi-family development shall be required prior to issuance of permits and commencement of construction.

A. Prior to acceptance of required parkland dedications, the applicant/developer shall complete the following items for all proposed dedication areas:

   1. The developer shall clear, fill, and/or grade all land to the satisfaction of the City, install sidewalks on the park land adjacent to any street, and seed the park land; and,

   2. The developer shall submit a Phase I Environmental Site Assessment completed by a qualified professional according to American Society of Testing and Materials (ASTM) standards (ASTM E 1527). The results of this study shall indicate a clean environmental record.

B. Additional Requirements

   1. In addition to a formal dedication on the plat to be recorded, the subdivider shall convey the required lands to the city by general warranty deed. The developer of a multi-family development or manufactured home park shall deed the lands required to be dedicated by a general warranty deed. In any of the above situations, the land so dedicated and deeded shall not be subject to any reservations of record, encumbrances of any kind or easements which, in the opinion of the Director, will interfere with the use of the land for park, open space or recreational purposes.

      The subdivider or developer shall be required to present to the City a title insurance policy on the subject property ensuring the marketable state of the title.

   2. Where any reservations, encumbrances or easements exist, the City may require payment in lieu of the dedication of lands unless it chooses to accept the land subject to encumbrances.

C. Phased Developments. In a phased development, the required park land for the entire development shall be dedicated prior to approval of the final plat for the first phase. Improvements to the land as required by 17.86.30 (A.1.) shall be made prior to approval of the final plat for the phase that includes the park land.

Revised by Ordinance No. 2013-03 (effective 07/03/13)

17.86.40 CASH IN LIEU OF DEDICATION

At the city's discretion only, the city may accept payment of a fee in lieu of land dedication. The city may require payment in lieu of land when the park land to be dedicated is less than 3 acres. A payment in lieu of land dedication is separate from Park Systems Development Charges, and is not eligible for a credit of Park Systems Development Charges. The amount of the fee in lieu of land dedication (in dollars per acre) shall be set by City Council Resolution, and it shall be based on the typical market value of developed property (finished lots) in Sandy net of related development costs.

1. The following factors shall be used in the choice of whether to accept land or cash in lieu:

    a. The topography, geology, access to, parcel size, and location of land in the development available for dedication;

    b. Potential adverse/beneficial effects on environmentally sensitive areas;

    c. Compatibility with the Parks Master Plan, Public Facilities element of the Comprehensive Plan, and the City of Sandy Capital Improvements Program in effect at the time of dedication;

    d. Availability of previously acquired property; and

    e. The feasibility of dedication.

2. Cash in lieu of parkland dedication shall be paid prior to approval of the final plat or as specified below:

    a. 50 percent of the payment shall be paid prior to final plat approval, and

    b. The remaining 50 percent of the payment pro-rated equally among the lots, plus an administrative surcharge as determined by the City Council through a resolution, will constitute a lien against the property payable at the time of sale.

17.86.50 MINIMUM STANDARDS FOR OPEN SPACE DEDICATION

The applicant through a subdivision or design review process may propose the designation and protection of open space areas as part of that process. This open space will not, however, be counted toward the parkland dedication requirement of Sections 17.86.10 through 17.86.40.

1. The types of open space that may be provided are as follows:

    a. Natural Areas: areas of undisturbed vegetation, steep slopes, stream corridors, wetlands, wildlife habitat areas or areas replanted with native vegetation after construction.

    b. Greenways: linear green belts linking residential areas with other open space areas. These greenways may contain bicycle paths or footpaths. Connecting greenways between residences and recreational areas are encouraged.

2. A subdivision or design review application proposing designation of open space shall include the following information as part of this application:

   a. Designate the boundaries of all open space areas; and

   b. Specify the manner in which the open space shall be perpetuated, maintained, and administered; and

   c. Provide for public access to trails included in the Park Master Plan, including but not limited to the Tickle Creek Path.

3. Dedication of open space may occur concurrently with development of the project. At the discretion of the city, for development that will be phased, the open space may be set aside in totality and/or dedicated in conjunction with the first phase of the development or incrementally set aside and dedicated in proportion to the development occurring in each phase.

4. Open space areas shall be maintained so that the use and enjoyment thereof is not diminished or destroyed. Open space areas may be owned, preserved, and maintained by any of the following mechanisms or combinations thereof:

   a. Dedication to the City of Sandy or an appropriate public agency approved by the City, if there is a public agency willing to accept the dedication. Prior to acceptance of proposed open space, the City may require the developer to submit a Phase I Environmental Site Assessment completed by a qualified professional according to American Society of Testing and Materials (ASTM) standards (ASTM E 1527). The results of this study shall indicate a clean environmental record.

   b. Common ownership by a homeowner's association that assumes full responsibility for its maintenance;

   c. Dedication of development rights to an appropriate public agency with ownership remaining with the developer or homeowner's association. Maintenance responsibility will remain with the property owner; and/or

   d. Deed-restricted private ownership preventing development and/or subsequent subdivision and providing for maintenance responsibilities.

5. In the event that any private owner of open space fails to maintain it according to the standards of this Code, the City of Sandy, following reasonable notice, may demand that the deficiency of maintenance be corrected, and may enter the open space for maintenance purposes. All costs thereby incurred by the City shall be charged to those persons having the primary responsibility for maintenance of the open space.

CHAPTER 17.92 - LANDSCAPING & SCREENING
GENERAL STANDARDS - ALL ZONES

17.92.00 INTENT

The City of Sandy recognizes the aesthetic and economic value of landscaping and encourages its use to establish a pleasant community character, unify developments, and buffer or screen unsightly features; to soften and buffer large scale structures and parking lots; and to aid in energy conservation by providing shade from the sun and shelter from the wind. The community desires and intends all properties to be landscaped and maintained.

This chapter prescribes standards for landscaping, buffering, and screening. While this chapter provides standards for frequently encountered development situations, detailed planting plans and irrigation system designs, when required, shall be reviewed by the City with this purposes clause as the guiding principle.

17.92.10 GENERAL PROVISIONS

A. Where landscaping is required by this Code, detailed planting plans shall be submitted for review with development applications. No development may commence until the Director or Planning Commission has determined the plans comply with the purposes clause and specific standards in this chapter. All required landscaping and related improvements shall be completed or financially guaranteed prior to the issuance of a Certificate of Occupancy.

B. Appropriate care and maintenance of landscaping on-site and landscaping in the adjacent public right-of-way is the right and responsibility of the property owner, unless City ordinances specify otherwise for general public and safety reasons. If street trees or other plant materials do not survive or are removed, materials shall be replaced in kind within 6 months.

C. Significant plant and tree specimens should be preserved to the greatest extent practicable and integrated into the design of a development. Trees of 25-inches or greater circumference measured at a height of 4-½ ft. above grade are considered significant. Plants to be saved and methods of protection shall be indicated on the detailed planting plan submitted for approval. Existing trees may be considered preserved if no cutting, filling, or compaction of the soil takes place between the trunk of the tree and the area 5-ft. outside the tree's drip line. Trees to be retained shall be protected from damage during construction by a construction fence located 5 ft. outside the dripline.

D. Planter and boundary areas used for required plantings shall have a minimum diameter of 5-ft. (2-½ ft. radius, inside dimensions). Where the curb or the edge of these areas are used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of 7-½ ft.

E. In no case shall shrubs, conifer trees, or other screening be permitted within vision clearance areas of street, alley, or driveway intersections, or where the City Engineer otherwise deems such plantings would endanger pedestrians and vehicles.

F. Landscaped planters and other landscaping features shall be used to define, soften or screen the appearance of off-street parking areas and other activity from the public street. Up to 35 percent of the total required landscaped area may be developed into pedestrian amenities,

including, but not limited to sidewalk cafes, seating, water features, and plazas, as approved by the Director or Planning Commission.

G. Required landscaping/open space shall be designed and arranged to offer the maximum benefits to the occupants of the development as well as provide visual appeal and building separation.

H. Balconies required for entrances and exits shall not be considered as open space except where such exits and entrances are for the sole use of the unit.

I. Roofed structures shall not be included as open space except for open unenclosed public patios, balconies, gazebos, or other similar structures or spaces.

J. Driveways and parking areas shall not be included as open space.

K. All areas not occupied by paved roadways, walkways, patios, or buildings shall be landscaped.

L. All landscaping shall be continually maintained, including necessary watering, weeding, pruning and replacing.

17.92.20 MINIMUM IMPROVEMENTS - LANDSCAPING AND SCREENING

The minimum landscaping area of a site to be retained in landscaping shall be as follows:

ZONING DISTRICT OR USE	PERCENTAGE
R-3	25%
Manufactured Home Park	20%
C -1 Central Business District	10%
C - 2 General Commercial	20%
C - 3 Village Commercial	10%
I - 1 Industrial Park	20%
I - 2 Light Industrial	15%
I - 3 Heavy Industrial	10%

17.92.30 REQUIRED TREE PLANTINGS

Planting of trees is required for all parking lots with 4 or more parking spaces, public street frontages, and along private drives more than 150 feet long. Trees shall be planted outside the street right-of-way except where there is a designated planting strip or City adopted street tree plan.

The City maintains a list of appropriate trees for street tree and parking lot planting situations. Selection of species should be made from the city-approved list. Alternate selections may be approved by the Director following written request. The type of tree used shall determine frequency of trees in planting areas. Trees in parking areas shall be dispersed throughout the lot to provide a canopy for shade and visual relief.

Area/Type of Planting	Canopy	Spacing
Street Tree	Medium	30 ft. on center
Street Tree	Large	50 ft. on center
Parking Lot Tree	Medium	1 per 8 cars
Parking Lot Tree	Large	1 per 12 cars

Trees may not be planted:

- Within 5 ft. of permanent hard surface paving or walkways, unless specific species, special planting techniques and specifications approved by the Director are used.
- Unless approved otherwise by the City Engineer:
  - Within 10 ft. of fire hydrants and utility poles
  - Within 20 ft. of street light standards
  - Within 5 ft. from an existing curb face
  - Within 10 ft. of a public sanitary sewer, storm drainage or water line
- Where the Director determines the trees may be a hazard to the public interest or general welfare.
- Trees shall be pruned to provide a minimum clearance of 8 ft. above sidewalks and 12 ft. above street and roadway surfaces.

17.92.40 IRRIGATION

Landscaping shall be irrigated, either with a manual or automatic system, to sustain viable plant life.

17.92.50 TYPES AND SIZES OF PLANT MATERIALS

A. At least 75% of the required landscaping area shall be planted with a suitable combination of trees, shrubs, or evergreen ground cover except as otherwise authorized by Chapter 17.92.10 F.

B. Plant Materials. Use of native plant materials or plants acclimatized to the Pacific Northwest is encouraged where possible.

C. Trees shall be species having an average mature spread of crown greater than 15 feet and having trunks which can be maintained in a clear condition with over 5 feet of clear wood (without branches). Trees having a mature spread of crown less than 15 feet may be substituted by grouping the same so as to create the equivalent of a 15-foot crown spread.

D. Deciduous trees shall be balled and burlapped, be a minimum of 7 feet in overall height or 1 ½ inches in caliper measured 6 inches above the ground, immediately after planting. Bare root trees will be acceptable to plant during their dormant season.

E. Coniferous trees shall be a minimum five feet in height above ground at time of planting.

F. Shrubs shall be a minimum of 1 gallon in size or 2 feet in height when measured immediately after planting.

G. Hedges, where required to screen and buffer off-street parking from adjoining properties shall be planted with an evergreen species maintained so as to form a continuous, solid visual screen within 2 years after planting.

H. Vines for screening purposes shall be a minimum of 1 gallon in size or 30 inches in height immediate after planting and may be used in conjunction with fences, screens, or walls to meet physical barrier requirements as specified.

I. Groundcovers shall be fully rooted and shall be well branched or leafed. If used in lieu of turf in whole or in part, ground covers shall be planted in such a manner as to provide complete coverage in one year.

J. Turf areas shall be planted in species normally grown as permanent lawns in western Oregon. Either sod or seed are acceptable. Acceptable varieties include improved perennial ryes and fescues used within the local landscape industry.

K. Landscaped areas may include architectural features or artificial ground covers such as sculptures, benches, masonry or stone walls, fences, rock groupings, bark dust, decorative hard paving and gravel areas, interspersed with planted areas. The exposed area developed with such features shall not exceed 25% of the required landscaped area. Artificial plants are prohibited in any required landscape area.

17.92.60 REVEGETATION IN UNLANDSCAPED OR NATURAL LANDSCAPED AREAS

A. Areas where natural vegetation has been removed or damaged through grading or construction activity in areas not affected by the landscaping requirements and that are not to be occupied by structures or other improvements shall be replanted.

B. Plant material shall be watered at intervals sufficient to assure survival and growth.

C. The use of native plant materials or plants acclimatized to the Pacific Northwest is encouraged to reduce irrigation and maintenance demands.

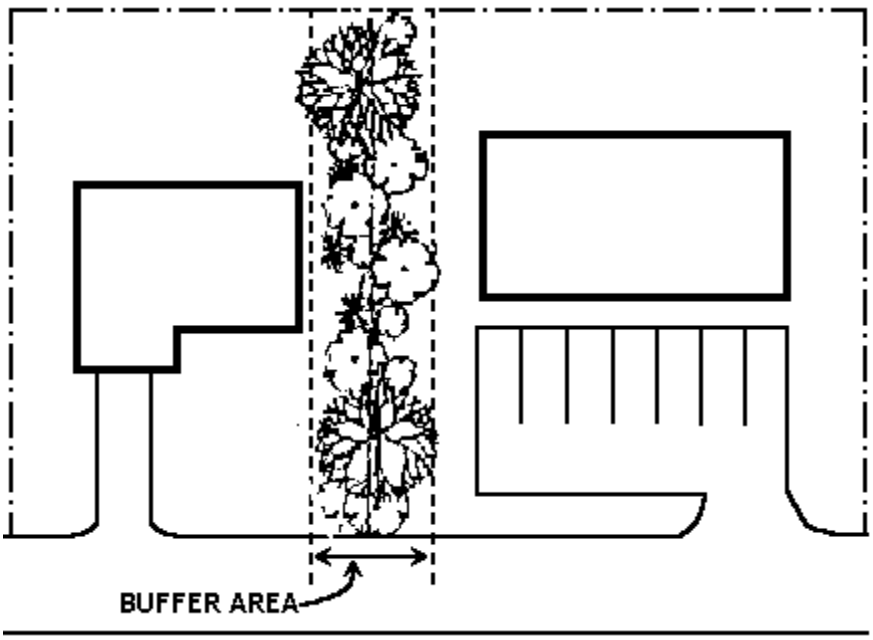
17.92.70 LANDSCAPING BETWEEN PUBLIC RIGHT-OF-WAY AND PROPERTY LINES

Except for portions allowed for parking, loading, or traffic maneuvering, a required setback area abutting a public street and open area between the property line and the roadway in the public street shall be landscaped. That portion of the landscaping within the street right-of-way shall not count as part of the lot area percentage to be landscaped.

17.92.80 BUFFER PLANTING - PARKING, LOADING AND MANUEVERING AREAS

Buffer plantings are used to reduce building scale, provide transition between contrasting architectural styles, and generally mitigate incompatible or undesirable views. They are used to soften rather than block viewing. Where required, a mix of plant materials shall be used to achieve the desired buffering effect.

Buffering is required in conjunction with issuance of construction permits for parking areas containing 4 or more spaces, loading areas, and vehicle maneuvering areas. Boundary plantings shall be used to buffer these uses from adjacent properties and the public right-of-way. On-site plantings shall be used between parking bays, as well as between parking bays and vehicle maneuvering areas. A balance of low-lying ground cover and shrubs, and vertical shrubs and trees shall be used to buffer the view of these facilities. Decorative walls and fences may be used in conjunction with plantings, but may not be used by themselves to comply with buffering requirements. Exception: truck parking lots are exempt from parking bay buffer planting requirements.



17.92.90 SCREENING (HEDGES, FENCES, WALLS, BERMS)

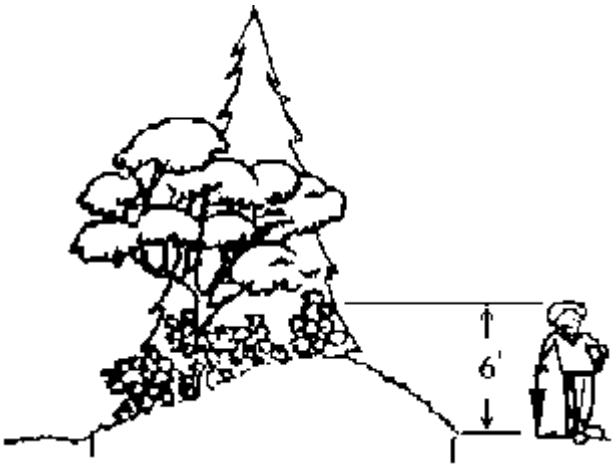
Screening is uses where unsightly views or visual conflicts must be obscured or blocked and where privacy and security are desired. Fences and walls used for screening may be constructed of wood, concrete, stone, brick, and wrought iron, or other commonly used fencing/wall materials. Acoustically designed fences and walls are also used where noise pollution requires mitigation.

A. Height and Opacity. Where landscaping is used for required screening, it shall be at least 6 ft. in height and at least 80 percent opaque, as seen from a perpendicular line of sight, within 2 years following establishment of the primary use of the site.

B. Chain Link Fencing. A chain link fence with slats shall qualify for screening only if a landscape buffer is also provided in compliance with Section 17.92.00 above.

C. Height Measurement. The height of hedges, fences, walls, and berm shall be measured from the lowest adjoining finished grade, except where used to comply with screening requirements for parking, loading, storage, and similar areas. In these cases, height shall be measured from the finished grade of such improvements. Screening is not permitted within vision clearance areas.

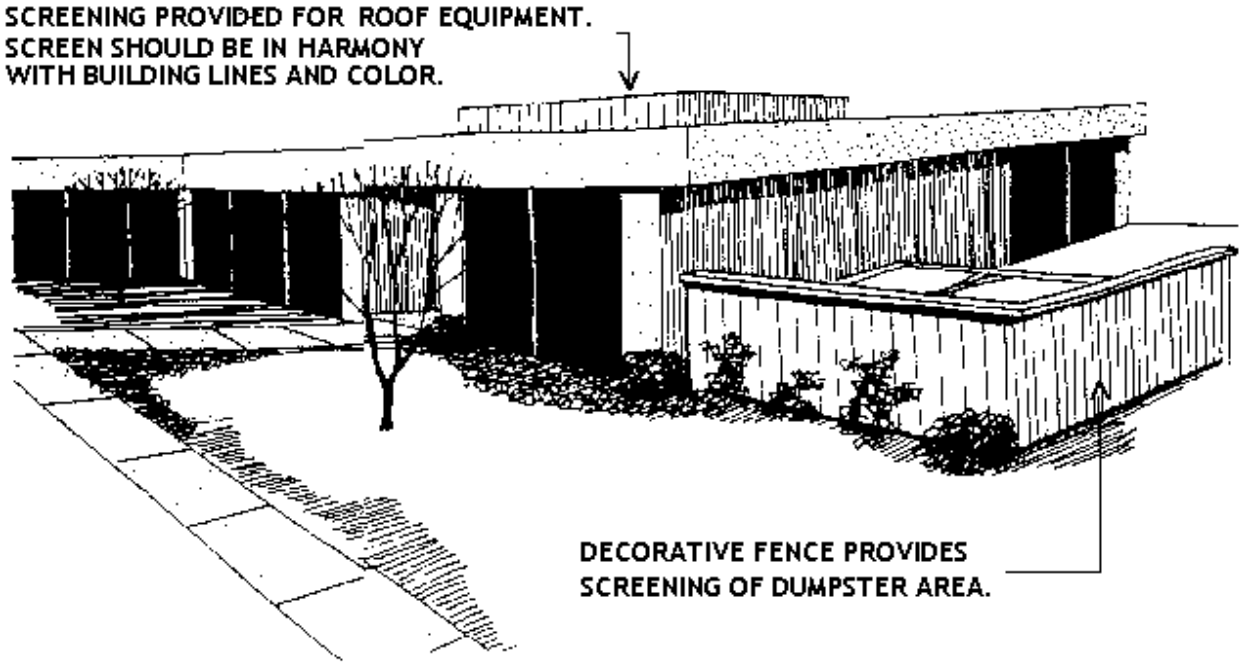
D. Berms. Earthen berms up to 6 ft. in height may be used to comply with screening requirements. Slope of berms may not exceed 2:1 and both faces of the slope shall be planted with ground cover, shrubs, and trees.



A. Long expanses of fences and walls shall be designed to prevent visual monotony through use of offsets, changes of materials and textures, or landscaping.

17.92.100 SCREENING OF SERVICE FACILITIES

Site-obscuring shrubbery or a berm, wall or fence shall be placed along a property line between residential and commercial and industrial zones and around unsightly areas such as trash and recycling areas, gas meters, ground level air conditioning units, disc antennas exceeding 36 inches in diameter and equipment storage or an industrial or commercial use with outside storage of equipment or materials.



17.92.110 OUTDOOR STORAGE

All outdoor storage areas for commercial, industrial, public and semi-public uses are to be entirely screened by a sight obscuring fence, vegetative materials, or other alternative deemed appropriate by the Director. Exceptions to the preceding requirements include: new or used cars, cycles and trucks (but not including car parts or damaged vehicles); new or used boat sales; recreational vehicle sales; new or used large equipment sales or rentals; manufactured home sales; florists and plants nurseries.

17.92.130 PERFORMANCE BOND

If weather conditions or other circumstances beyond the control of the developer or owner make completion of the landscaping impossible prior to desired occupancy, an extension of up to 6 months may be applied for by posting "security" equal to 120% of the cost of the landscaping, assuring installation within 6 months. "Security" may consist of a performance bond payable to the city, cash, certified check, time certificates of deposit, assignment of a saving account, letter of credit, or other such assurance of access to funds necessary for completion as shall meet the approval of the City Attorney. Upon acceptance of the security, the developer or owner may be allowed occupancy for a period of up to 180 days. If the installation of the landscaping improvement is not completed within 180 days, the City shall have access to the security to complete the installation and/or revoke occupancy. Upon completion of the installation by the city, any portion of the remaining security minus administrative charges of 30% shall be returned to the owner. Costs in excess of the posted security shall be assessed against the property and the City shall thereupon have a valid lien against the property, which will come due, and payable.

17.92.140 GUARANTEE

All landscape materials and workmanship shall be guaranteed by the installer and/or developer for a period of time not to exceed two years. This guarantee shall insure that all plant materials survive in good condition and shall guarantee replacement of dead or dying plant materials.

CHAPTER 17.98 - PARKING, LOADING, & ACCESS REQUIREMENTS

17.98.00 INTENT

The intent of these regulations is to provide adequate capacity and appropriate location and design of parking and loading areas as well as adequate access to such areas. The parking requirements are intended to provide sufficient parking in close proximity for residents, guests/visitors, customers, and/or employees of various land uses. These regulations apply to both motorized vehicles (hereinafter referred to as vehicles) and bicycles.

17.98.10 GENERAL PROVISIONS

A. Provision and Maintenance. The provision of required off-street parking for vehicles and bicycles and loading facilities for vehicles is a continuous obligation. Building permits or other permits will only be issued after review and approval of site plans showing location of permanent access, parking and loading facilities.

B. Unspecified Requirements. Vehicle and bicycle parking requirements for uses not specified in this chapter shall be determined by the Director based upon the requirements of similar specified uses.

C. New Structure or Use. When a structure is constructed or a new use of land is commenced, on-site vehicle and bicycle parking and loading spaces shall be provided in accordance with Section 17.98.20 below or as otherwise modified through a planned development or specific area plan.

D. Alteration of Existing Structures. When an existing structure is altered to the extent that the existing use is intensified, on-site vehicle and bicycle parking shall be provided in the amount required for such intensification. Alteration of existing structures, increased intensity, and change in use per Sections 17.98.10 (D.), (E.) and (F.) does not apply to commercial uses in the Central Business District (C-1).

E. Increased Intensity. When increased intensity requires no more than four (4) vehicle spaces, no additional parking facilities shall be required. However, the effects of changes, additions, or enlargements shall be cumulative. When the net effect of one or more changes generates a need for more than four spaces, the additional required spaces shall be provided. Additional spaces shall be required for the intensification but not for the original use.

F. Change in Use. When an existing structure or use of land is changed in use from one use to another use as listed in Section 17.98.20 below and the vehicle and bicycle parking requirements for each use type are the same; no additional parking shall be required. However, where a change in use results in an intensification of use in terms of number of vehicle and bicycle parking spaces required, additional parking space shall be provided in an amount equal to the difference between the number of spaces required for the existing use and number of spaces required for the more intensive use.

G. Time of Completion. Required parking spaces and loading areas shall be improved and available for use prior to issuance of a temporary certificate of occupancy and/or final building inspection or final certificate of occupancy.

H. Inoperative Motor Vehicles. In all residential zoning districts, all motor vehicles incapable of movement under their own power or lacking legal registration shall be completely screened from public view.

I. Truck Parking. In all residential zoning districts, no overnight parking of trucks or other equipment on wheels or tracks exceeding a 1-ton capacity used in the conduct of a business activity shall be permitted except vehicles and equipment necessary for farming on the premises where such use is conducted.

J. Mixed Uses. In the case of mixed uses, the total required vehicle and bicycle parking shall be the sum of requirements of individual uses computed separately.

K. Conflicting Parking Requirements. When a building or use is planned or constructed in such a manner that more than one standard is applicable, the use that requires the greater number of parking spaces shall govern.

L. Availability of Parking Spaces. Required vehicle and bicycle parking spaces shall be unobstructed, available for parking of vehicles and bicycles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials or for parking of vehicles and bicycles used in conducting the business or use and shall not be used for sale, repair, or servicing of any vehicle or bicycle.

M. Residential Parking Analysis Plan. A Residential Parking Analysis Plan shall be required for all new residential planned developments, subdivisions, and partitions to include a site plan depicting all of the following:
   1. Location and dimension of required parking spaces as specified in Section 17.98.200.
   2. Location of areas where parking is not permitted as specified in Sections 17.98.200(A)(3) and (5).
   3. Location and design of parking courts (if applicable).

N. Location of Required Parking.
   1. Off-street vehicle parking required for single family dwellings (both attached and detached) and duplexes shall be provided on the development site of the primary structure. Except where permitted by 17.98.40 below, required parking for all other uses in other districts shall be provided on the same site as the use or upon abutting property.
   2. Bicycle parking required for all uses in all districts shall be provided on the development site in accordance with Section 17.98.160 below.

O. Unassigned Parking in Residential Districts.
   1. Multi-family dwelling units with more than 10 required vehicle parking spaces shall provide unassigned parking. The unassigned parking shall consist of at least 15 percent of the total required parking spaces and be located to be available for use by all occupants and guests of the development.
   2. Multi-family dwelling units with more than 10 required bicycle parking spaces may provide shared outdoor bicycle parking. The shared bicycle parking shall consist of at least 15 percent of the total required parking spaces and be located such that they are available for shared use by all occupants and guests of the development.

P. Fractions. When the sum of the required vehicle and bicycle parking spaces is a fraction of a space (0.5 or more of a space) a full space shall be required.

Q. Maximum Parking Allowed. Commercial or Industrial zoned properties shall not be permitted to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent.

17.98.20 OFF-STREET PARKING REQUIREMENTS

A. **Off Street Parking Requirements.** Off street parking shall conform to the following standards:

1. Commercial uses in the Central Business District (C-1) are exempt from off street parking requirements. Residential uses in the Central Business District (C-1) have to provide off street parking per this section but may get a reduction per Section 17.98.30 (B.).
2. All square footage measurements are gross square feet of total floor area.
3. 24 lineal inches of bench shall be considered 1 seat.
4. Except as otherwise specified, parking for employees shall be provided based on 1 space per 2 employees for the largest shift in addition to required parking specified in Sections 8 – 11 below.
5. Where less than 5 parking spaces are required, then only one bicycle space shall be required except as otherwise modified in Sections 8 – 11 below.
6. In addition to requirements for residential off-street parking, new dwellings shall meet the on-street parking requirements in Section 17.98.200.
7. Uses that rely on square footage for determining parking requirements may reduce the overall square footage of the use by deducting bathrooms, mechanical rooms, and other auxiliary rooms as approved by the Director.

8.

Residential Uses	**Number of Parking Spaces**	**Number of Bicycle Spaces**
Single Family Detached/Attached	2 per dwelling unit	Exempt
Duplexes	2 per dwelling unit	Exempt
Manufactured Home Park	2 per dwelling, plus 1 visitor space for each 10 vehicle spaces	Exempt
Multi-Family Dwellings	1.5 per studio unit or 1-bedroom unit 2.0 per 2-bedroom unit or greater	1 per dwelling unit
Congregate Housing, Retirement Homes, Intermediate Care Facilities, Group Care Facilities, and Halfway Houses	1 per each 3 residents, plus 1 per 2 employees	5% or 2 whichever is greater

9.

Community Service, Institutional and Semi-Public Uses	**Number of Parking Spaces**	**Number of Bicycle Spaces**
Administrative Services	1 per 400 sq. ft., plus 1 per 2 employees	5% or 2 whichever is greater
Community Recreation Buildings, Library, or Museum	1 per 250 sq. ft., plus 1 per 2 employees	5% or 2 whichever is greater
Church, Chapel, Auditorium, or Fraternal Lodge without eating and drinking facilities	1 per 4 fixed seats or 1 per each 50 sq. ft. of public assembly area where there are no fixed seats, plus 1 per 2 employees	5% or 2 whichever is greater
Hospitals	1 per examine room or bed, and 1 per 4 seats in waiting room or chapel, plus 1 per 2 employees	5% or 2 whichever is greater
Commercial Daycare	2 for the facility, plus 1 per employee on the largest shift	2
School – Preschool/Kindergarten	2 per classroom, plus 1 per 2 employees	2
School – Elementary or Middle School/Junior High	2 per classroom, plus 1 per 2 employees	5% or 2 whichever is greater
School – Senior High, Vocational or College	6 per classroom, plus 1 per employee on the largest shift	5% or 2 whichever is greater

10.

Commercial Uses	**Number of Parking Spaces**	**Number of Bicycle Spaces**
Retail Sales, General or Personal Services, Professional Offices, Shopping Centers, Grocery Stores, Convenience Stores	1 per 400 sq. ft., plus 1 per 2 employees	5% or 2 whichever is greater
Retail Sales of Bulky Merchandise (examples: furniture or motor vehicles)	1 per 1,000 sq. ft., plus 1 per 2 employees	2
Eating or Drinking Establishments	1 per 250 sq. ft. of gross floor area or 1 per 4 fixed seats or stools, plus 1 per 2 employees	5% or 2 whichever is greater
Funerals and Interment Services: Crematory and Undertaking *Interring and Cemeteries are exempt*	1 per 4 fixed seats or 1 space for each 50 sq. ft. of public assembly area where there are no fixed seats, plus 1 per 2 employees	2
Fuel Sales (without store)	1 per employee on the largest shift	2
Medical or Dental Office or Clinic	1 per examine room or bed, and 1 per 4 seats in waiting room, plus 1 per 2 employees	5% or 2 whichever is greater
Participant Sports or Recreation: Indoor or Outdoor; Spectator Sports;	1 per 4 fixed seats or 1 space per 4 participants based on projected	5% or 2 whichever is greater

Theater or similar use	participant capacity, plus 1 per 2 employees	
Campground or RV Park	1 per designated space, plus 1 visitor space for each 8 designated spaces, plus 1 per 2 employees	Exempt
Hotel or Motel	1 per guest room or suite, plus 1 per 2 employees	2

11.

Industrial Uses	**Number of Parking Spaces**	**Number of Bicycle Spaces**
Sales, Storage, Rental, Services and Repairs of: Agricultural and Animals Automotive/Equipment Fleet Storage Light Equipment Non-operating vehicles, boats and recreational vehicles Building Equipment	1 per 1,000 sq. ft., plus 1 per 2 employees	2
Sales, Storage, Rental, and Repairs of: Heavy Equipment, or Farm Equipment	1 per 1,000 sq. ft., plus 1 per 2 employees	2
Storage, Distribution, Warehousing, or Manufacturing establishment; trucking freight terminal	1 per employee on the largest shift	2

17.98.30 REDUCTION OF PARKING REQUIREMENTS

A. Transit Amenity Reduction.
   1. Any existing or proposed use in the C-2, C-3, or I-1 Zoning Districts subject to minimum parking requirements and located within 400 feet of an existing transit route may reduce the number of required parking spaces by up to 10 percent by providing a transit stop and related amenities including a public plaza, pedestrian sitting areas, or additional landscaping provided such landscaping does not exceed 25 percent of the total area dedicated for transit oriented purposes.
   2. Required parking spaces may be reduced at a ratio of 1 parking space for each 100 square feet of transit amenity space provided above and beyond the minimum requirements.
   3. Uses, which are not eligible for these reductions, include truck stops, building materials and lumber sales, nurseries and similar uses not likely to be visited by pedestrians or transit customers.

B. Residential uses in the Central Business District and Village Commercial District Reduction. Required off-street parking for residential uses in the C-1 and C-3 Zoning District may be reduced by 25 percent.

17.98.40 SHARED USE OF PARKING FACILITIES

A. Except for single family dwellings (both attached and detached) and duplexes, required parking facilities may be located on an adjacent parcel of land or separated only by an alley or local street, provided the adjacent parcel is maintained in the same ownership as the use it is required to serve or a shared parking agreement that can only be released by the Director is recorded in the deed records of Clackamas County.

B. In the event that several parcels occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements for the uses computed separately.

C. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facility used jointly, to the extent that it can be shown by the owners or operators that the needs of the facilities do not materially overlap (e.g., uses primarily of day time versus night time uses) and provided that such right of joint use is evidenced by a deed, lease, contract or similar written instrument recorded in the deed records of Clackamas County establishing such joint use.

17.98.50 SETBACKS

A. Parking areas, which abut a residential zoning district, shall meet the setback of the most restrictive adjoining residential zoning district.

B. Required parking shall not be located in a required front or side yard setback area abutting a public street except in industrial districts. For single family and duplexes, required off-street parking may be located in a driveway.

C. Parking areas shall be setback from a lot line adjoining a street the same distance as the required building setbacks. Regardless of other provisions, a minimum setback of 5 feet shall be provided along the property fronting on a public street. The setback area shall be landscaped as provided in this code.

17.98.60 DESIGN, SIZE AND ACCESS

All off-street parking facilities, vehicular maneuvering areas, driveways, loading facilities, accessways, and private streets shall conform to the standards set forth in this section.

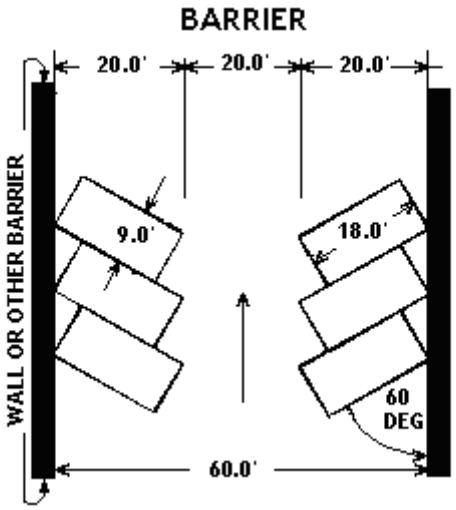
A. Parking Lot Design. All areas for required parking and maneuvering of vehicles shall have a durable hard surface such as concrete or asphalt.

B. Size of Space.
   1. A standard parking space shall be 9 feet by 18 feet.
   2. A compact parking space shall be 8 feet by 16 feet.
   3. Accessible parking spaces shall be 9 feet by 18 feet and include an adjacent access aisle meeting ORS 447.233. Access aisles may be shared by adjacent spaces. Accessible parking shall be provided for all uses in compliance with the requirements of the State of Oregon (ORS 447.233) and the Americans with Disabilities Act.
   4. Parallel parking spaces shall be a length of 22 feet.

5. No more than 40 percent of the parking stalls shall be compact spaces.

C. Aisle Width.

Parking Aisle	Single Sided One-Way	Single Sided Two-Way	Double Sided One-Way	Double Sided Two-Way
90 degree	20 feet	22 feet	25 feet	25 feet
60 degree	20 feet	20 feet	20 feet	20 feet
45 degree	20 feet	20 feet	20 feet	20 feet
Parallel	12 feet	12 feet	16 feet	16 feet



17.98.70 ON-SITE CIRCULATION

A. Groups of more than three (3) parking spaces shall be permanently striped. Accessible parking spaces and accompanying access aisles shall be striped regardless of the number of parking spaces.

B. Backing and Maneuvering. Except for a single family dwelling, duplex, or accessory dwelling unit, groups of more than 3 parking spaces shall be provided with adequate aisles or turnaround areas so that all vehicles enter the right-of-way (except for alleys) in a forward manner. Parking spaces shall not have backing or maneuvering movements for any of the parking spaces occurring across public sidewalks or within any public street, except as approved by the City Engineer. Evaluations of requests for exceptions shall consider constraints due to lot patterns and impacts to the safety and capacity of the adjacent public street, bicycle and pedestrian facilities.

17.98.80 ACCESS TO ARTERIAL AND COLLECTOR STREETS

A. Location and design of all accesses to and/or from arterials and collectors (as designated in the Transportation System Plan) are subject to review and approval by the City Engineer. Where practical, access from a lower functional order street may be required. Accesses to

arterials or collectors shall be located a minimum of 150 ft. from any other access or street intersection. Exceptions may be granted by the City Engineer. Evaluations of exceptions shall consider posted speed of the street on which access is proposed, constraints due to lot patterns, and effects on safety and capacity of the adjacent public street, bicycle and pedestrian facilities.

B. No development site shall be allowed more than one access point to any arterial or collector street (as designated in the Transportation System Plan) except as approved by the City Engineer. Evaluations of exceptions shall be based on a traffic impact analysis and parking and circulation plan and consider posted speed of street on which access is proposed, constraints due to lot patterns, and effects on safety and capacity of the adjacent public street, bicycle and pedestrian facilities.

C. When developed property is to be expanded or altered in a manner that significantly affects on-site parking or circulation, both existing and proposed accesses shall be reviewed under the standards in A and B above. As a part of an expansion or alteration approval, the City may require relocation and/or reconstruction of existing accesses not meeting those standards.

17.98.90 ACCESS TO UNIMPROVED STREETS

Access to Unimproved Streets. At the Director's discretion development may occur without access to a City standard street when that development constitutes infill on an existing substandard public street. A condition of development shall be that the property owner signs an irrevocable petition for street improvements and/or a declaration of deed restrictions agreeing to future completion of street improvements. The form shall be provided by the City and recorded with the property through the Clackamas County Recorder's Office. This shall be required with approval of any of the following applications:

- Land partitions
- Conditional uses
- Building permits for new non-residential construction or structural additions to non-residential structures (except accessory development)
- Building permits for new residential units

17.98.100 DRIVEWAYS

A. A driveway to an off-street parking area shall be improved from the public right-of-way to the parking area a minimum width of 20 feet for a two-way drive or 12 feet for a one-way drive, but in either case not less than the full width of the standard approach for the first 20 feet of the driveway.

B. A driveway for a single-family dwelling shall have a minimum width of 10 feet. The driveway approach within the public right-of-way shall not exceed 24 feet in width measured at the bottom of the curb transition. A driveway approach shall be constructed in accordance with applicable city standards and the entire driveway shall be paved with asphalt or concrete. Shared driveway approaches may be required for adjacent lots in cul-de-sacs in order to maximize room for street trees and minimize conflicts with utility facilities (power and telecom pedestals, fire hydrants, streetlights, meter boxes, etc.)

C. A driveway for a two-family dwelling shall have a minimum width of 20 feet. The driveway approach in the public right-of-way shall not exceed 24 feet in width as measured in section B above. A driveway approach shall be constructed in accordance with applicable city standards and the entire driveway shall be paved with asphalt or concrete.

D. Driveways, aisles, turnaround areas and ramps shall have a minimum vertical clearance of twelve feet for their entire length and width, but such clearance may be reduced in parking structures as approved by the Director.

E. No driveway shall exceed a grade of 15 percent at any point along the driveway length, measured from the right-of-way line to the face of garage or furthest extent of the driveway.

F. The nearest edge of a driveway approach shall be located a minimum of 15 feet from the point of curvature or tangency of the curb return on any street.

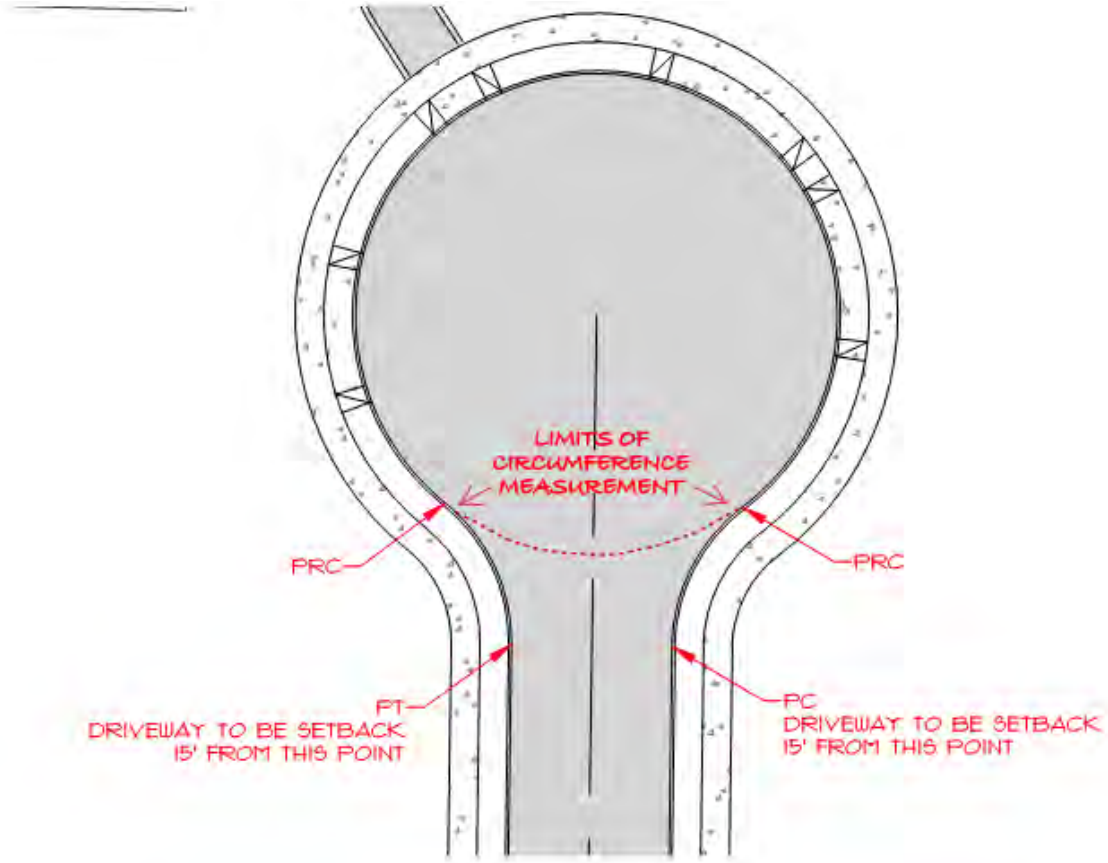
G. The sum of the width of all driveway approaches within the bulb of a cul-de-sac as measured in section B above shall not exceed fifty percent of the circumference of the cul-de-sac bulb. The cul-de-sac bulb circumference shall be measured at the curb line and shall not include the width of the stem street. The nearest edge of driveway approaches in cul-de-sacs shall not be located within 15 feet of the point of curvature, point of tangency or point of reverse curvature of the curb return on the stem street.

Acronyms on the next page:
PT = point of tangency
PC = point of curvature
PRC = point of reverse curvature

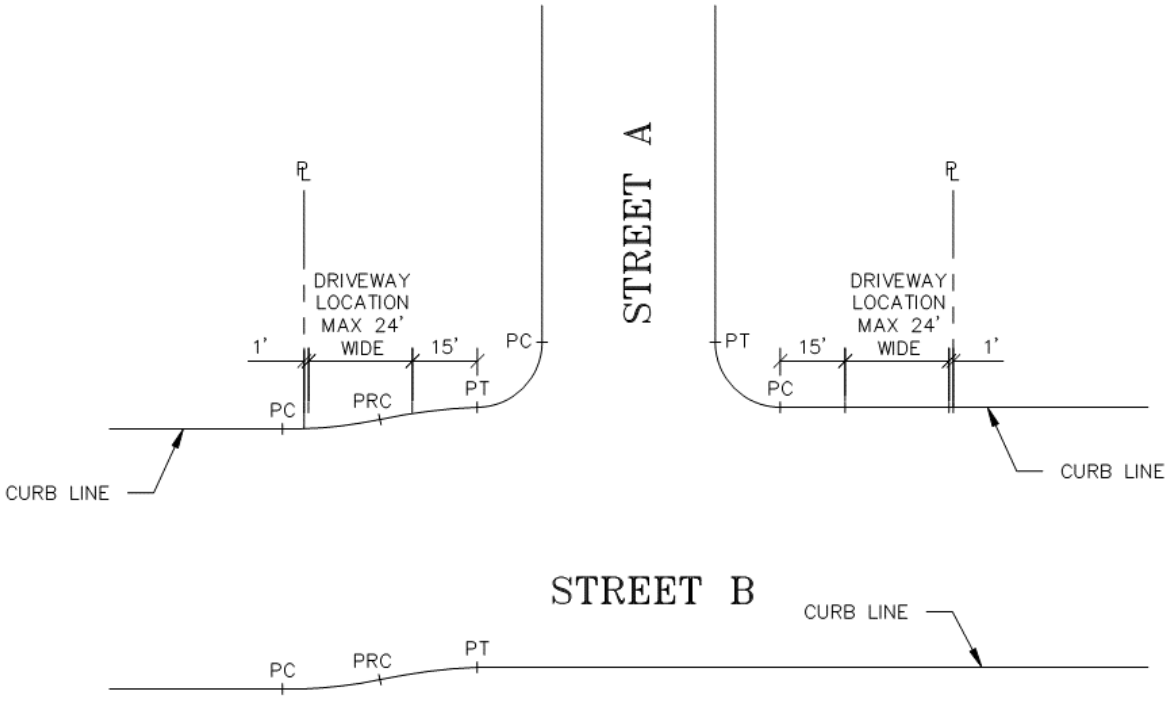
H. The location and design of any driveway approach shall provide for unobstructed sight per the vision clearance requirements in section 17.74.30. Requests for exceptions to these requirements will be evaluated by the City Engineer considering the physical limitations of the lot and safety impacts to vehicular, bicycle, and pedestrian traffic.

I. Driveways shall taper to match the driveway approach width to prevent stormwater sheet flow from traversing sidewalks.

CUL-DE-SAC EXHIBIT



DRIVEWAY LOCATION EXHIBIT



Revised by Ordinance No. 2020-06 (effective 05/06/2020)

17.98.110 VISION CLEARANCE

A. Except within the Central Business District, vision clearance areas shall be provided at intersections of all streets and at intersections of driveways and alleys with streets to promote pedestrian, bicycle, and vehicular safety. The extent of vision clearance to be provided shall be determined from standards in Chapter 17.74 and taking into account functional classification of the streets involved, type of traffic control present at the intersection, and designated speed for the streets.

B. Traffic control devices, streetlights, and utility installations meeting approval by the City Engineer are permitted within vision clearance areas.

17.98.120 LANDSCAPING AND SCREENING

A. Screening of all parking areas containing 4 or more spaces and all parking areas in conjunction with an off-street loading facility shall be required in accordance with zoning district requirements and Chapter 17.98. Where not otherwise specified by district requirement, screening along a public right-of-way shall include a minimum 5 feet depth of buffer plantings adjacent to the right-of-way.

B. When parking in a commercial or industrial district adjoins a residential zoning district, a sight-obscuring screen that is at least 80 percent opaque when viewed horizontally from between 2 and 8 feet above the average ground level shall be required. The screening shall be composed of materials that are an adequate size so as to achieve the required degree of screening within 3 years after installation.

C. Except for a residential development which has landscaped yards, parking facilities shall include landscaping to cover not less than 10 percent of the area devoted to parking facilities. The landscaping shall be uniformly distributed throughout the parking area and may consist of trees, shrubs, and ground covers.

D. Parking areas shall be divided into bays of not more than 20 spaces in parking areas with 20 or more spaces. Between, and at the end of each parking bay, there shall be planters that have a minimum width of 5 feet and a minimum length of 17 feet for a single depth bay and 34 feet for a double bay. Each planter shall contain one major structural tree and ground cover. Truck parking and loading areas are exempt from this requirement.

E. Parking area setbacks shall be landscaped with major trees, shrubs, and ground cover as specified in Chapter 17.92.

F. Wheel stops, bumper guards, or other methods to protect landscaped areas and pedestrian walkways shall be provided. No vehicle may project over a property line or into a public right-of-way. Parking may project over an internal sidewalk, but a minimum clearance of 5 feet for pedestrian circulation is required.

17.98.130 PAVING

A. Parking areas, driveways, aisles and turnarounds shall be paved with concrete, asphalt or comparable surfacing, constructed to City standards for off-street vehicle areas.

B. Gravel surfacing shall be permitted only for areas designated for non-motorized trailer or equipment storage, propane or electrically powered vehicles, or storage of tracked vehicles.

17.98.140 DRAINAGE

Parking areas, aisles and turnarounds shall have adequate provisions made for the on-site collection of drainage waters to eliminate sheet flow of such waters onto sidewalks, public rights-of-way and abutting private property.

17.98.150 LIGHTING

The Dark Sky Ordinance in Chapter 15 of the municipal code applies to all lighting. Artificial lighting shall be provided in all required off-street parking areas. Lighting shall be directed into the site and shall be arranged to not produce direct glare on adjacent properties. Light elements shall be shielded and shall not be visible from abutting residential properties. Lighting shall be provided in all bicycle parking areas so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or vehicle parking lots during all hours of use.

17.98.160 BICYCLE PARKING FACILITIES

Multi-family developments, industrial, commercial and community service uses, transit transfer stations, and park and ride lots shall meet the following standards for bicycle parking facilities. The intent of this section is to provide secure bicycle parking that is visible from a building's primary entrance and convenient to bicyclists.

A. Location.
   1. Bicycle parking shall be located on-site, convenient to primary building entrances, and have direct access to both the public right-of-way and to the main entrance of the primary structure.
   2. Bicycle parking areas shall be visible from building interiors where possible.
   3. For facilities with multiple buildings or parking lots, bicycle parking shall be located in areas of greatest use and convenience to bicyclists.
   4. If the bicycle parking area is located within the vehicle parking area, the bicycle facilities shall be separated from vehicular maneuvering areas by curbing or other barrier to prevent damage to parked bicycles.
   5. Curb cuts shall be installed to provide safe, convenient access to bicycle parking areas.

B. Bicycle Parking Space Dimensions.
   1. Each required bicycle parking space shall be at least 2 ½ feet by 6 feet. If bicycle parking is covered, vertical clearance of 7 feet shall be provided.
   2. An access aisle of at least 5 feet wide shall be provided and maintained beside or between each row of bicycle parking. Vertical or upright bicycle storage structures are exempted from the parking space length.

C. Security.
   1. Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (i.e., a "rack") upon which the bicycle can be located.
   2. Racks requiring user-supplied locks shall accommodate both cable and U-shaped locks.
   3. Bicycle racks shall be securely anchored to the ground or a structure and shall be designed to hold bicycles securely.
   4. All outdoor bicycle parking facilities shall provide adequate shelter from precipitation where possible.

D. Signing. Where bicycle facilities are not directly visible from the public right-of-way, primary structure entry, or civic space then directional signs shall be provided to direct bicyclists to the bicycle parking facility.

E. Exemptions. Temporary uses and other uses identified in Section 17.98.20 as not requiring bicycle parking are exempt from Section 17.98.160.

17.98.170 CARPOOL AND VANPOOL PARKING

New industrial, commercial, and community service uses with more than 100 employees shall meet the following minimum requirements for carpool and vanpool parking.

A. Number and Marking. At least 10 percent of the employee parking spaces shall be marked and signed for use as a carpool/vanpool space. The carpool/vanpool spaces shall be clearly marked "Reserved - Carpool/Vanpool Only".

B. Location. Designated carpool/vanpool parking spaces shall be the closest employee parking spaces to the building entrance normally used by employees except for any handicapped spaces provided.

17.98.180 SCHOOL DESIGN REQUIREMENTS

A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children shall be located on the site of a school having a capacity greater than 50 students.

17.98.190 OFF-STREET LOADING FACILITIES

B. All commercial and industrial uses that anticipate loading and unloading of products/materials shall provide an off-street area for loading/unloading of products/materials.

C. The required loading berth shall be not less than 10 feet in width by 35 feet in length and shall have an unobstructed height clearance of 14 feet.

D. Loading areas shall be screened from public view from public streets. The loading areas shall be screened from adjacent properties except in industrial districts and shall require the same screening as parking lots.

E. Sufficient space for turning and maneuvering of vehicles shall be provided on the site in accordance with the standard specifications established by the City Engineer.

17.98.200 RESIDENTIAL ON-STREET PARKING REQUIREMENTS

A. Residential On-Street Parking Requirements. Residential on-street parking shall conform to the following standards:

1. In addition to required off-street parking, all new residential planned developments, subdivisions and partitions shall provide one (1) on-street parking space within 300 feet of each dwelling except as provided in Section 17.98.200(A)(6) below. The 300 feet shall be measured from the primary entrance of the dwelling.

2. The location of residential on-street parking shall be reviewed for compliance with this section through submittal of a Residential Parking Analysis Plan as required in Section 17.98.10(M).

3. Residential on-street parking shall not obstruct required clear vision areas and shall not violate any local or state laws.

4. Parallel residential on-street parking spaces shall be a minimum of 22 feet in length.

5. Residential on-street parking shall be measured along the curb from the outside edge of a driveway wing or curb cut. Parking spaces shall be set back a minimum of 15 feet from the point of tangency or curvature at an intersection and may not be located within 10 feet of a fire hydrant.

6. Portions of residential on-street parking required by this section may be provided in parking courts that are interspersed throughout a development when the following standards are met:
   a. No more than ten (10) parking spaces shall be provided in a parking court, except parking courts that utilize backing movements into the right-of-way in which case the parking court shall be limited to two (2) parking spaces;
   b. Parking spaces within a parking court shall be nine (9) feet wide and 18 feet in depth. In no instance shall a vehicle or any appurtenances parked in a parking court protrude into the public right-of-way;
   c. Notwithstanding Section 17.98.70, vehicles parked in a parking court on a local street as defined in the Transportation System Plan are permitted to back onto the public right-of-way from the parking court so long as the parking court is limited to two (2) parking spaces;
   d. A parking court shall be located within 300 feet of the dwellings requiring parking in accordance with the requirements of Section 17.98.10(M);
   e. No more than two (2) parking courts shall be provided within a block, with only one (1) parking court provided along a block face;
   f. A parking court shall be paved in compliance with the standards of this chapter and constructed to the grading and drainage standards in 17.98.140;
   g. A parking court adjacent to a public right-of-way, shall be privately owned and maintained;

h. If a parking court is adjacent to a private drive, it shall be privately owned and maintained. For any parking court there shall be a legal recorded document which includes:
    - A legal description of the parking court;
    - Ownership of the parking court;
    - Use rights; and
    - A maintenance agreement and the allocation and/or method of determining liability for maintenance of the parking court;
i. A parking court shall be used solely for the parking of operable passenger vehicles.

CHAPTER 17.100
LAND DIVISION

17.100.00 INTENT

The intent of this chapter is to implement the Comprehensive Plan, to provide procedures, regulations, and design standards for land divisions and associated improvements and to provide for orderly and efficient land division patterns supported by a connected system of streets, fiber (broadband), water supply, sanitary sewer and stormwater drainage facilities.

The division of land is the initial step in establishing Sandy's ultimate development pattern. The framework of streets, blocks and individual lots is implemented through the land division process. Density, dimensional standards, setbacks, and building height are established in applicable zoning district regulations.

This chapter presents the review procedures, design standards and improvement requirements for land divisions. Procedures for replats and property line adjustments are also addressed in this chapter.

17.100.10 GENERAL PROVISIONS

A. No land shall be divided prior to approval of a minor partition, major partition or subdivision in accordance with this Code.

B. No sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of a lot with less than the minimum lot, yard or setback requirements of the zoning district.

C. Land division is processed by approval of a tentative plan prior to approval of the final land division plat or map. Where a Type II or Type III procedure is required for land division approval, that procedure shall apply to the tentative plan approval. As long as there is compliance with the approved tentative plat and conditions, the Director shall have the authority to approve final plats and maps for land divisions through a Type I procedure.

17.100.20 LAND DIVISION CLASSIFICATION - TYPE I, II OR III PROCEDURES

A. Type I Land Division (Property Line Adjustment). Property line adjustments shall be a Type I procedure if the resulting parcels comply with standards of the Development Code and this chapter.

B. Type I Land Division (Minor Partition). A minor partition shall be a Type I procedure if the land division does not create a street and the resulting parcels comply with the standards of the zoning district and this chapter.

C. Type II Land Division (Major Partition or Subdivision). A major partition or subdivision shall be a Type II procedure when a street is extended, satisfactory street conditions exist and the resulting parcels/lots comply with the standards of the zoning district and this chapter. Satisfactory street conditions exist when the Director determines one of the following:

Revised by Ordinance No. 2020-24 (effective 09/21/2020)

1. Existing streets are stubbed to the property boundaries and are linked by the land division.
2. An existing street or a new proposed street need not continue beyond the land division in order to complete an appropriate street system or to provide access to adjacent property.
3. The proposed street layout is consistent with a street pattern adopted as part of the Comprehensive Plan or an officially adopted City street plan.

D. Type II Land Division (Minor Replat). A minor replat of an existing platted subdivision shall be a Type II procedure when the street(s) are existing and no extension or reconstruction/realignment is necessary, when the replat does not increase the allowable density, the resulting parcels comply with the standards of the zoning district and this chapter, and the replat involves no more than six (6) lots.

E. Type III Land Division (Major Partition or Subdivision). A major partition or subdivision shall be a Type III procedure if unsatisfactory street conditions exist or the resulting parcels/lots do not comply with the standards of the zoning district and this chapter. The Director shall determine if unsatisfactory street conditions exist based on one of the following criteria:
1. The land division does not link streets that are stubbed to the boundaries of the property.
2. An existing street or a new proposed street will be extended beyond the boundaries of the land division to complete a street system or provide access to adjacent property.
3. The proposed street layout is inconsistent with a street pattern adopted as part of the Comprehensive Plan or an officially adopted City street plan.

F. Type III Land Division (Major Replat). A major replat involves the realignment of property lines involving more than six lots, even if the subdivision does not increase the allowable density. All parcels resulting from the replat must comply with the standards of the zoning district and this chapter. Any replat involving the creation, extension or modification of a street shall be processed as a major replat.

17.100.30 PROPERTY LINE ADJUSTMENT

Approval of a property line adjustment is required to move a common boundary between two parcels or lots. A Type I property line adjustment is not considered a development action for purposes of determining whether floodplain, greenway, or right-of-way dedication or improvements are required.

A. Application Requirements. Property line adjustment applications shall be made on forms provided by the City and shall be accompanied by:
1. Two (2) copies of the property line adjustment map;
2. The required fee;
3. Any data or narrative necessary to explain the application.

B. Map Information. The property line adjustment map and narrative shall include the following:
1. The names, addresses and phone numbers of the owner(s) of the subject parcels and authorized representative;
2. Scale of the drawing using an engineer's scale;
3. North arrow and date;

4. Legal description of the property;
5. Dimensions and size of the parcels involved in the property line adjustment;
6. Approximate locations of structures, utilities, rights-of-way and easements;
7. Points of access, existing and proposed;
8. Any natural features such as waterways, drainage area, significant vegetation or rock outcroppings;
9. Approximate topography, particularly noting any area of steep slope.

C. Approval Criteria. The Director shall approve a request for a property line adjustment if the following criteria are satisfied:
   1. No additional parcels are created.
   2. All parcels meet the density requirements and dimensional standards of the base zoning district.
   3. Access, utilities, easements, and proposed future streets will not be adversely affected by the property line adjustment.

D. Final Approval. Three paper copies of the final map shall be submitted within one year of approval of the property line adjustment. The final map shall include a boundary survey, which complies with ORS Chapters 92 and 209. The approved final map, along with required deeds, must be recorded with Clackamas County.

17.100.40 MINOR AND MAJOR PARTITIONS

Approval of a partition is required for a land division of 3 or fewer parcels in a calendar year. Partitions, which do not require creation or extension of a street for access, is classified as a Type I minor partition. Partitions, which require creation or extension of a street for access, are classified as Type II, major partitions.

A. Preapplication Conference. The applicant for a minor or major partition shall participate in a preapplication conference with City staff to discuss procedures for approval, applicable state and local requirements, objectives and policies of the Sandy Comprehensive Plan, and the availability of services. A preapplication conference is required.

B. Application Requirements. Partition applications shall be made on forms provided by the planning department and shall be accompanied by:
   1. Eight copies of the tentative plan for the minor or major partition;
   2. The required fee;
   3. Any data or narrative necessary to explain the application;
   4. List of affected property owners.

C. Tentative Partition Plan. The tentative plan shall be a minimum of 8 1/2 x 11 inches in size and shall include the following information:
   1. The date, north point, engineering scale, and legal description;
   2. Name and address of the owner of record and of the person who prepared the partition plan;
   3. Zoning, size and dimensions of the tract to be partitioned;
   4. Size, dimensions and identification of proposed parcels (Parcel 1, Parcel 2, Parcel 3);
   5. Approximate location of any structures on the tract to be partitioned, including setbacks to proposed parcel boundaries;

6. Location, names and widths of streets, sidewalks and bikeways within the tract to be partitioned and extending 400 feet beyond the tract boundaries;
7. Location, width and purpose of existing and proposed easements on the tract to be partitioned;
8. Location and size of sanitary sewer, water and stormwater drainage facilities proposed to serve the property to be partitioned;
9. Natural features such as waterways, drainage area, significant vegetation or rock outcroppings;
10. Approximate topography, particularly noting any area of steep slope;
11. A plan for future parcel redivision, if the proposed parcels are large enough to be redivided under the comprehensive plan or zoning designation.

D. Approval Criteria. The Director or Planning Commission shall review the tentative plan for a minor or major partition based on the classification procedure (Type I, II or III) and the following approval criteria:
1. The proposed partition is consistent with the density, setback and dimensional standards of the base zoning district.
2. The proposed partition is consistent with the design standards set forth in this chapter.
3. Adequate public facilities are available or can be provided to serve the proposed partition.
4. All proposed improvements meet City standards.
5. Traffic volumes shall not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions.
6. The plan preserves the potential for future redivision of the parcels, if applicable.

E. Conditions. The Director or Planning Commission may require dedication of land and easements and may specify such conditions or modifications of the tentative partition plan as deemed necessary. In no event, however, shall the Director or Planning Commission require greater dedications or conditions than could be required if the entire tract were subdivided.

F. Approval of Tentative Partition Plan. When a tentative partition plan has been approved, all copies shall be marked with the date and conditions of approval. One copy shall be returned to the applicant, one copy shall be sent to the county and one copy shall be retained by the City.

G. Approval Signatures for Final Partition Map. Following review and approval of a final partition map, the Director shall:
1. Review Plat for Accuracy. The Director may require field investigations to verify that the plat survey is accurate. The applicant shall be notified and afforded an opportunity to make corrections if needed.
2. Sign the plat to certify that the map is approved.
3. Notify the applicant that the partition map and accompanying documents have been approved and are ready for recording with the Clackamas County Recorder.
4. Deliver the signed original to the applicant who shall deliver the original and two exact copies to the County Recorder's office. One recorded copy shall be returned to the City of Sandy immediately after recording is completed.

H. Effective Date for Final Partition Map Approval. The partition shall become final upon recording of the approved partition map together with any required documents with the County Recorder. Work specifically authorized following tentative approval may take place

prior to processing of the final partition map. The documents effectuating a partition shall become null and void if not recorded with the County Recorder within one year following approval.

I. Improvements. The same improvements shall be installed to serve each parcel of a partition as required of a subdivision. Improvement standards are set forth in Section 17.90. If the Director and City Engineer find a need to vary the improvement standards for a partition, the application shall be processed through a Type III hearing and may exempt specific improvements.

J. Exceptions to Improvements. Exceptions to improvements may be approved in transition areas or other areas as deemed appropriate by the City. In lieu of excepting an improvement, the Planning Commission may recommend to the City Council that the improvement be installed in the area under special assessment financing or other facility extension policies of the City.

17.100.50 NONRESIDENTIAL PARTITIONS OR SUBDIVISIONS

This section includes special provisions for partitions or subdivisions of land that is zoned for commercial or industrial use.

A. Principles and Standards. In addition to the standards established for partitions or subdivisions, the applicant for a nonresidential partition or subdivision shall demonstrate that the street, parcel and block pattern proposed is adapted to uses in the vicinity. The following principles and standards shall be observed:
   1. Proposed commercial and industrial parcels shall be suitable in area and dimensions to the types of development anticipated.
   2. Street right-of-way and pavement shall be adequate to accommodate the type and volume of traffic anticipated.
   3. Special requirements may be imposed by the City with respect to street, curb, gutter and sidewalk design and construction.
   4. Special requirements may be imposed by the City with respect to the installation of public utilities, including but not limited to water, sanitary sewer, and stormwater drainage facilities.
   5. Efforts shall be made to protect adjacent residential areas from potential nuisance from a proposed commercial or industrial subdivision. Such efforts may include the provision of extra depth in parcels backing up on existing or potential residential development and landscaped buffers.
   6. Streets carrying nonresidential traffic, particularly truck traffic, should not normally be extended through adjacent residential areas.
   7. Traffic volumes shall not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions.

17.100.60 SUBDIVISIONS

Approval of a subdivision is required for a land division of 4 or more parcels in a calendar year. A two-step procedure is required for subdivision approval: (1) tentative plat review and approval; and (2) final plat review and approval.

A. Preapplication Conference. The applicant for a subdivision shall participate in a preapplication conference with City staff to discuss procedures for approval, applicable state and local requirements, objectives and policies of the Sandy Comprehensive Plan, and the availability of services. The preapplication conference provides the opportunity to discuss the conceptual development of the property in advance of formal submission of the tentative plan in order to save the applicant unnecessary delay and cost.

B. Application Requirements for a Tentative Plat. Subdivision applications shall be made on forms provided by the planning department and shall be accompanied by:
   1. 20 copies of the tentative plat;
   2. Required fee and technical service deposit;
   3. 20 copies of all other supplementary material as may be required to indicate the general program and objectives of the subdivision;
   4. Preliminary title search;
   5. List of affected property owners.

C. Format. The Tentative Plat shall be drawn on a sheet 18 x 24 inches in size and at a scale of one inch equals one hundred feet unless an alternative format is approved by the Director at the preapplication conference. The application shall include one copy of a scaled drawing of the proposed subdivision, on a sheet 8 1/2 x 11, suitable for reproduction.

D. Data Requirements for Tentative Plat.
   1. Scale of drawing, north arrow, and date.
   2. Location of the subdivision by section, township and range, and a legal description sufficient to define the location and boundaries of the proposed tract.
   3. A vicinity map, showing adjacent property boundaries and how proposed streets may be extended to connect to existing streets.
   4. Names, addresses, and telephone numbers of the owner(s) of the property, the engineer or surveyor, and the date of the survey.
   5. Streets: location, names, paved widths, alleys, and right-of-way (existing and proposed) on and within 400 feet of the boundaries of the subdivision tract.
   6. Easements: location, widths, purpose of all easements (existing and proposed) on or serving the tract.
   7. Utilities: location of stormwater drainage, sanitary sewers and water lines (existing and proposed) on and abutting the tract. If utilities are not on or abutting the tract, indicate the direction and distance to the nearest locations.
   8. Ground elevations shown by contour lines at two-foot vertical intervals for ground slopes of less than 10 percent and at ten-foot vertical intervals for ground slopes exceeding 10 percent. Ground elevation shall be related to an established benchmark or other datum approved by the Director.
   9. Natural features such as marshes, rock outcroppings, watercourses on and abutting the property, and location of wooded areas.
   10. Approximate location of areas subject to periodic inundation or storm sewer overflow, location of any floodplain or flood hazard district.
   11. Location, width, and direction of flow of all water courses.
   12. Identification of the top of bank and boundary of mandatory setback for any stream or water course.
   13. Identification of any associated wetland and boundary of mandatory setback.
   14. Identification of any wetland and boundary of mandatory setback.

15. Location of at least one temporary bench mark within the tract boundaries.
16. Existing uses of the property, including location and present use of all existing structures to remain on the property after platting.
17. Lots and Blocks: approximate dimensions of all lots, minimum lot sizes, and proposed lot and block numbers.
18. Existing zoning and proposed land use.
19. Designation of land intended to be dedicated or reserved for public use, with the purpose, conditions, or limitations of such reservations clearly indicated.
20. Proposed development phases, if applicable.
21. Any other information determined necessary by the Director such as a soil report or other engineering study, traffic analysis, floodplain or wetland delineation, etc.

E. Approval Criteria. The Director or Planning Commission shall review the tentative plat for the subdivision based on the classification procedure (Type II or III) set forth in Chapter 17.12 and the following approval criteria:
1. The proposed subdivision is consistent with the density, setback and dimensional standards of the base zoning district, unless modified by a Planned Development approval.
2. The proposed subdivision is consistent with the design standards set forth in this chapter.
3. The proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy.
4. Traffic volumes shall not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions.
5. Adequate public facilities are available or can be provided to serve the proposed subdivision.
6. All proposed improvements meet City standards.
7. The phasing plan, if requested, can be carried out in a manner that meets the objectives of the above criteria and provides necessary public improvements for each phase as it develops.

F. Conditions. The Director or Planning Commission may require dedication of land and easements, and may specify such conditions or modifications of the tentative plat as deemed necessary.

G. Improvements. A detailed list of required improvements for the subdivision shall be set forth in the approval and conditions for the tentative plat.

H. Tentative Plat Expiration Date. The final plat shall be delivered to the Director for approval within two (2) years following approval of the tentative plat, and shall incorporate any modification or condition required by approval of the tentative plat. The Director may, upon written request, grant an extension of the tentative plat approval for up to one (1) additional year. The one year extension by the Director is the maximum extension that may be granted for a subdivision.

I. Submission of Final Plat. The applicant shall survey the subdivision and prepare a final plat in conformance with the tentative plat approval and the requirements of ORS Chapter 92.

J. Information on Plat. In addition to information required for the tentative plat or otherwise specified by state law, the following information shall be shown on the final plat for the subdivision:
   1. Tract boundary lines, right-of-way lines of streets and property lines with dimensions, bearings or deflection angles and radii, arcs, points of curvature and tangent bearings. All bearings and angles shall be shown to the nearest one-second and all dimensions to the nearest 0.01 foot. If circular curves are proposed in the plat, the following data must be shown in table form: curve radius, central angles, arc length, and bearing of long chord. All information shown on the face of the plat shall be mathematically perfect.
   2. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded references. If an easement is not definitely located of record, a statement of the easement shall be given. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificates of dedication.
   3. Any building setback lines if more restrictive than the City zoning ordinance.
   4. Location and purpose for which sites, other than residential lots, are dedicated or reserved.
   5. Easements and any other areas for public use dedicated without any reservation or restriction.
   6. A copy of any deed restrictions written on the face of the plat or prepared to record with the plat with reference on the face of the plat.
   7. The following certificates that may be combined where appropriate:
      a) A certificate signed and acknowledged by all parties having any recorded title interest in the land, consenting to the preparation and recording of the plat.
      b) A certificate signed and acknowledged as above, dedicating all land intended for public use except land that is intended for the exclusive use of the lot owners in the subdivision, their licensees, visitors, tenants and servants.
      c) A certificate with the seal of and signed by the engineer or the surveyor responsible for the survey and final plat.
      d) Other certificates now or hereafter required by law.
   8. Supplemental Information with Plat. The following data shall accompany the final plat:
      a) A preliminary title report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary and their interest in the tract.
      b) Sheets and drawings showing the following:
         1) Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure, if any.
         2) The computation of distances, angles and courses shown on the plat.
         3) Ties to existing monuments, proposed monuments, adjacent subdivisions, street corners and state highway stationing.
      c) A copy of any deed restrictions applicable to the subdivision.
      d) A copy of any dedication requiring separate documents.
      e) A list of all taxes and assessments on the tract which have become a lien on the tract.
      f) A certificate by the engineer that the subdivider has complied with the improvement requirements.

9. Certification by the City Engineer or by the owner of a privately owned domestic water supply system, that water will be available to the property line of each and every lot depicted in the final plat.

K. Technical Plat Review. Upon receipt by the City, the plat and supplemental information shall be reviewed by the City Engineer and Director through a Type I procedure. The review shall focus on conformance of the final plat with the approved tentative plat, conditions of approval and provisions of city, county or state law applicable to subdivisions.
   1. The City Engineer may make field checks as needed to verify that the final plat is sufficiently correct on the ground, and City representatives may enter the subdivision property for this purpose.
   2. If the City Engineer or Director determines that full conformance has not been made, they shall advise the subdivider of the changes or additions that must be made and shall afford the subdivider an opportunity to make the changes or additions.
   3. All costs associated with the technical plat review and recording shall be the responsibility of the applicant.

L. Approval of Final Plat. The signatures of the Director and the City Engineer shall indicate approval of the final plat. After the plat has been approved by all city and county officials, a digital copy of the plat and a digital copy of any recorded documents shall be delivered to the Director within 20 working days of recording.

M. Recording of Final Plat. Approval of the plat by the City shall be conditioned on its prompt recording. The subdivider shall, without delay, submit the plat to the county assessor and the county governing body for signatures as required by ORS 92.100. The plat shall be prepared as provided by ORS 92.080. Approval of the final plat shall be null and void if the plat is not submitted for recording within 30 days after the date the last required approving signature has been obtained.

17.100.70 LAND DIVISION DESIGN STANDARDS

All land divisions shall be in conformance with the requirements of the applicable base zoning district and this chapter, as well as with other applicable provisions of this Code. Modifications to these requirements may be accomplished through a Planned Development. The design standards in this section shall be used in conjunction with street design standards included in the City of Sandy Transportation System Plan and standards and construction specifications for public improvements as set forth in adopted Public Facilities Plans and the Sandy Municipal Code.

17.100.80 CHARACTER OF THE LAND

Land which the Director or the Planning Commission finds to be unsuitable for development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements, or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the partition or subdivision and the surrounding areas, shall not be developed unless adequate methods are formulated by the subdivider and approved by the Director or the Planning Commission to solve the problems created by the unsuitable land conditions.

17.100.90 ACCESS CONTROL GUIDELINES AND COORDINATION

A. Notice and coordination with ODOT required. The city will coordinate and notify ODOT regarding all proposals for new or modified public and private accesses on to Highways 26 and 211.

B. It is the city policy to, over time, reduce noncompliance with the Oregon Highway Plan Access Management Policy guidelines.

C. Reduction of compliance with the cited State standards means that all reasonable alternatives to reduce the number of accesses and avoid new non-complying accesses will be explored during the development review. The methods to be explored include, but are not limited to: closure, relocation, and consolidation of access; right-in/right-out driveways; crossover easements; and use of local streets, alleys, and frontage roads.

17.100.100 STREETS GENERALLY

No subdivision or partition shall be approved unless the development has frontage or approved access to an existing public street. In addition, all streets shall be graded and improved in conformance with the City's construction standards, approved by the City Engineer, in accordance with the construction plans.

A. Street Connectivity Principle. The pattern of streets established through land divisions should be connected to: (a) provide safe and convenient options for cars, bikes and pedestrians; (b) create a logical, recognizable pattern of circulation; and (c) spread traffic over many streets so that key streets (particularly U.S. 26) are not overburdened.

B. Transportation Impact Studies. An applicant is required to prepare and submit a transportation impact study in accordance with the standards of Chapter 17.84 unless those standards exempt the application from the requirement.:
1.

C. Topography and Arrangement. All streets shall be properly related to special traffic generators such as industries, business districts, schools, and shopping centers and to the pattern of existing and proposed land uses.

D. Street Spacing. Street layout shall generally use a rectangular grid pattern with modifications as appropriate to adapt to topography or natural conditions.

E. Future Street Plan. Future street plans are conceptual plans, street extensions and connections on acreage adjacent to land divisions. They assure access for future development and promote a logical, connected pattern of streets. It is in the interest of the city to promote a logical, connected pattern of streets. All applications for land divisions shall provide a future street plan that shows the pattern of existing and proposed future streets within the boundaries of the proposed land divisions, proposed connections to abutting properties, and extension of streets to adjacent parcels within a 400 foot radius of the study area where development may practically occur.

F. Connections. Except as permitted under Exemptions, all streets, alleys and pedestrian walkways shall connect to other streets within the development and to existing and planned streets outside the development and to undeveloped properties that have no future street plan. Streets shall terminate at other streets or at parks, schools or other public land within a neighborhood.

Local streets shall align and connect with other roads when crossing collectors and arterials per the criteria in Section 17.84.50K(5)(e).

Proposed streets or street extensions shall be located to provide direct access to existing or planned transit stops, and existing or planned neighborhood activity centers, such as schools, shopping areas and parks.

G. Exemptions.
1. A future street plan is not required for partitions of residentially zoned land when none of the parcels may be redivided under existing minimum density standards.
2. Standards for street connections do not apply to freeways and other highways with full access control.
3. When street connection standards are inconsistent with an adopted street spacing standard for arterials or collectors, a right turn in/right turn out only design including median control may be approved. Where compliance with the standards would result in unacceptable sight distances, an accessway may be approved in place of a street connection.

17.100.110 STREET STANDARDS AND CLASSIFICATION

Street standards are illustrated in the figures included at the end of this chapter. Functional definitions of each street type are described in the Transportation System Plan as summarized below.

A. Major arterials are designed to carry high volumes of through traffic, mixed with some unavoidable local traffic, through or around the city. Major arterials should generally be spaced at 1-mile intervals.

B. Minor arterials are designed to collect and distribute traffic from major and minor arterials to neighborhood collectors and local streets, or directly to traffic destinations. Minor arterials should generally be spaced at 1-mile intervals.

C. Residential minor arterials are a hybrid between minor arterial and collector type streets that allow for moderate to high traffic volumes on streets where over 90% of the fronting lots are residential.

D. Collector streets are designed to collect and distribute traffic from higher type arterial streets to local streets or directly to traffic destinations. Collector streets should generally be spaced at 1/2-mile intervals.

E. Local streets provide direct access to abutting property and connect to collector streets. Local streets shall be spaced no less than 8 and no more than 10 streets per mile, except as the city may otherwise approve through an adjustment or variance pursuant to Chapter 17.66. Local

streets shall not exceed the ADT standards set forth in Chapter 17.10, except that the ADT standard for local streets shall not apply to outright permitted development within the C-1 zone.

F. Cul-de-sacs and dead end streets are discouraged. If deemed necessary, cul-de-sacs shall be as short as possible and shall not exceed 400 feet in length.

G. Public access lanes are designed to provide primary access to a limited number of dwellings when the construction of a local street is unnecessary.

H. Alleys are designed to provide access to multiple dwellings in areas where lot frontages are narrow and driveway spacing requirements cannot be met.

17.100.120 BLOCKS AND ACCESSWAYS

A. Blocks. Blocks shall have sufficient width to provide for two tiers of lots at appropriate depths. However, exceptions to the block width shall be allowed for blocks that are adjacent to arterial streets or natural features.

B. Residential Blocks. Blocks fronting local streets shall not exceed 400 feet in length, unless topographic, natural resource, or other similar physical conditions justify longer blocks. Blocks may exceed 400 feet if approved as part of a Planned Development, Specific Area Plan, adjustment or variance.

C. Commercial Blocks. Blocks located in commercial districts shall not exceed 400 feet in length.

D. Pedestrian and Bicycle Access Way Requirements. In any block in a residential or commercial district over 600 feet in length, a pedestrian and bicycle accessway with a minimum improved surface of 10 feet within a 15-foot right-of-way or tract shall be provided through the middle of the block. To enhance public convenience and mobility, such accessways may be required to connect to cul-de-sacs, or between streets and other public or semipublic lands or through greenway systems.

17.100.130 EASEMENTS

A minimum eight (8) foot public utility easement shall be required along property lines abutting a right-of-way for all lots within a partition or subdivision. Where a partition or subdivision is traversed by a watercourse, drainage way, channel or stream, the land division shall provide a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width as determined needed for water quality and quantity protection.

17.100.140 PUBLIC ALLEYS

A. Public alleys shall have a minimum width of 20 feet. Structural section and surfacing shall conform to standards set by the City Engineer.

B. Existing alleys may remain unimproved until redevelopment occurs. When development occurs, each abutting lot shall be responsible for completion of improvements to that portion of the alley abutting the property.

C. Parking within the alley right-of-way is prohibited except as provided in Section 17.100.140(D) below.

D. An alley with a minimum width of 28 feet may permit parallel parking on one side of the alley only.

17.100.150 RESIDENTIAL SHARED PRIVATE DRIVES

A shared private drive is intended to provide access to a maximum of two (2) dwelling units.

A. Criteria for Approval
Shared private drives may be approved by the Director when one or more of the following conditions exist:
1. Direct access to a local street is not possible due to physical aspects of the site including size, shape, or natural features.
2. The construction of a local street is determined to be unnecessary.

B. Design
1. A shared private drive constructed to city standards shall not serve more than two (2) dwelling units.
2. A shared access easement and maintenance agreement shall be established between the two units served by a shared private drive. The language of the easement and maintenance agreement shall be subject to approval by the Director. Such easements shall be recorded in the Deed Records of Clackamas County.
3. Public utility easements shall be provided where necessary in accordance with Section 17.100.130.
4. Shared private drives shall be fully improved with an all weather surface (e.g. concrete, asphalt, permeable pavers) in conformance with city standards. The pavement width shall be 20 feet.
5. Parking shall not be permitted along shared private drives at any time and shall be signed and identified accordingly.

17.100.160 PUBLIC ACCESS LANES

Public access lanes are designed to provide primary access to a limited number of dwellings where the construction of a local street is not necessary. Public access lanes are intended to serve a maximum of six (6) dwelling units.

A. Criteria for Approval
Public access lanes may be approved by the Director when certain conditions exist which make the construction of a standard local street unnecessary. Approval of public access lanes shall be based on one or more of the following:
1. Physical conditions such as natural features, unusual lot size, shape, or other unique features prevent the construction of a local street.

2. It is determined that construction of a local street is not necessary to facilitate orderly development of a future street system.
3. It is determined that there are no logical extensions of an existing local street to serve the site.

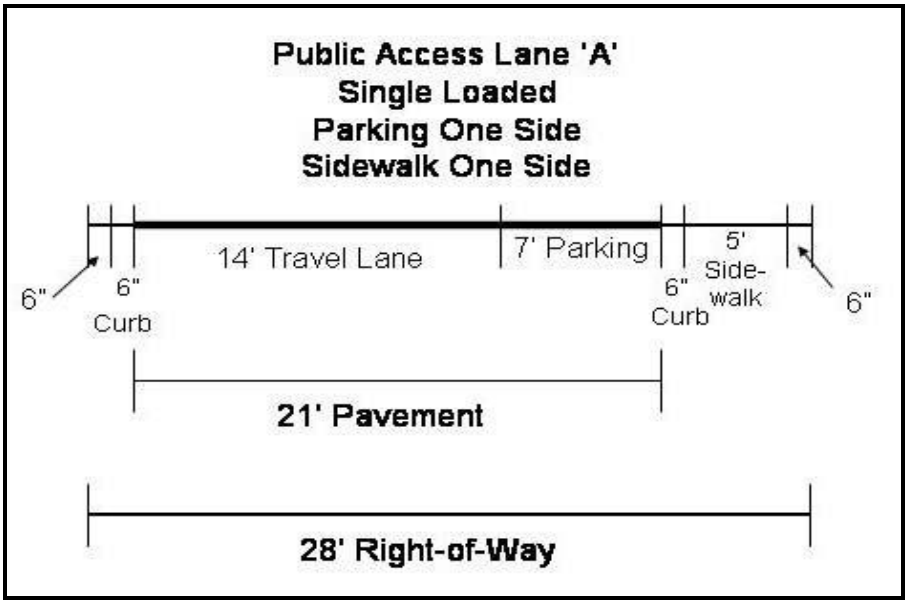
B. General Provisions
1. A public access lane may serve a maximum of six (6) dwelling units.
2. Public access lanes are subject to spacing requirements of Section 17.100.120.
3. Public utility easements shall be provided where necessary in accordance with Section 17.100.130.
4. If a public access lane is designed as a dead end, a turnaround shall be provided at the point where the lane terminates. The design of the turnaround shall be subject to approval by the Director and the Fire Department.
5. Parking shall be prohibited in public access lane turnarounds.
6. Street lighting may be required in public access lanes for traffic and pedestrian safety.

C. Public Access Lane Design

1. Public Access Lane 'A' (Figure 17.100 - A)

a) Public access lane 'A' is designed to be single loaded and provide access to lots located on one side of the lane only.
b) Public access lanes shall be constructed to city standards and must meet the required dimensions as specified in this section.
c) Curbside sidewalks on the side of the lane which abuts lot frontage are along public access lanes to achieve specified dimensions.
d) Planter strips are not required along public access lanes due to the minimal lots served. Lots abutting a public access lane are required to have street trees planted in accordance with Section 17.100.290.
e) Parking is permitted on one side of a public access lane 'A' as shown in Figure 17.100 - A. Parking shall be permitted on the side of the lane that abuts lot frontages only. Signage shall be displayed to indicate the parking regulations along the lane and in the turnaround.

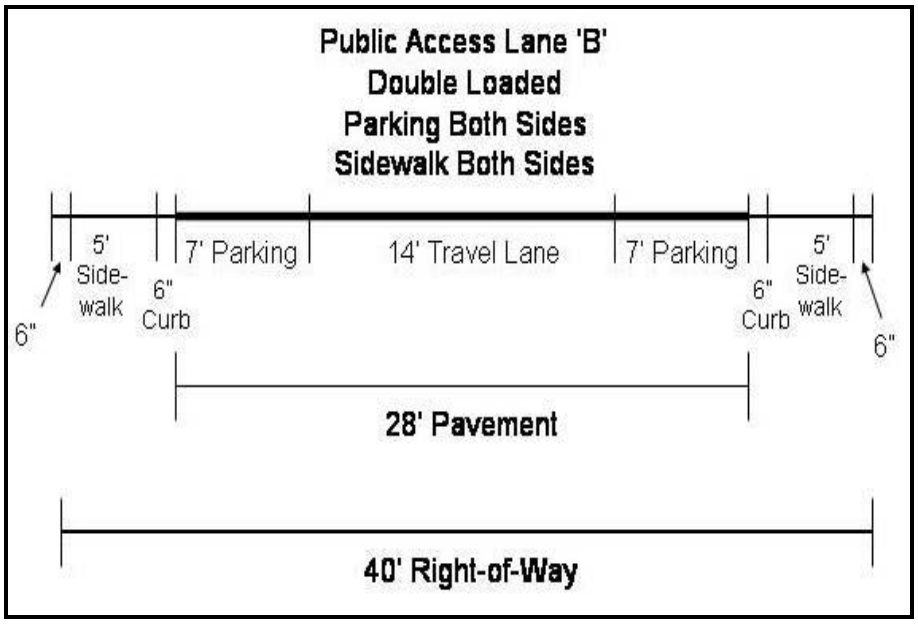
Figure 17.100 – A: Public Access Lane 'A'



2. Public Access Lane Option 'B' (Figure 17.100 - B).
   a) Public access lane 'B' is designed to be double loaded and provide access to lots located on both sides of the lane.
   b) Public access lanes shall be constructed to city standards and must meet the required dimensions as specified in this section.
   c) Curbside sidewalks are required along both sides of the access lane to achieve specified dimensions.
   d) Planter strips are not required along public access lanes due to the minimal lots served. Lots abutting a public access lane are required to have street trees planted in accordance with Section 17.100.290.
   e) Parking is permitted on both sides of a public access lane 'B' as shown in Figure 17.100 - B. Signage shall be displayed to indicate the parking regulations along the lane and in the turnaround.

Revised by Ordinance No. 2020-24 (effective 09/21/2020)

Figure 17.100 – B: Public Access Lane 'B'



17.100.170 FLAG LOTS

Flag lots can be created where it can be shown that no other street access is possible to achieve the requested land division. The flag lot shall have a minimum street frontage of 15 feet for its accessway. The following dimensional requirements shall apply to flag lots:

A. Setbacks applicable to the underlying zoning district shall apply to the flag lot.

B. The access strip (pole) may not be counted toward the lot size requirements.

C. The accessway shall have a minimum paved width of 10 feet.

17.100.180 INTERSECTIONS

A. Intersections. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two new streets at an angle of less than 75 degrees shall not be acceptable. No more than two streets shall intersect at any one point unless specifically approved by the City Engineer. The city engineer may require left turn lanes, signals, special crosswalks, curb extensions and other intersection design elements justified by a traffic study or necessary to comply with the Development Code.

B. Curve Radius. All local and neighborhood collector streets shall have a minimum curve radius (at intersections of rights-of-way) of 20 feet, unless otherwise approved by the City Engineer. When a local or neighborhood collector enters on to a collector or arterial street, the curve radius shall be a minimum of 30 feet, unless otherwise approved by the City Engineer.

17.100.190 STREET AND TRAFFIC CONTROL SIGNS

The City Engineer shall specify the type and location of traffic control signs, street signs and/or traffic safety devices.

17.100.200 STREET SURFACING

Public streets, including alleys, within the development shall be improved in accordance with the requirements of the City or the Oregon Standard Specifications. All streets shall be paved with asphaltic concrete or Portland cement concrete surfacing. Where required, speed humps shall be constructed in conformance with the City's standards and specifications.

17.100.210 STREET LIGHTING

A complete lighting system (including, but not limited to: conduits, wiring, bases, poles, arms, and fixtures) shall be the financial responsibility of the subdivider on all cul-de-sacs, local streets, and neighborhood collector streets. The subdivider will be responsible for providing the arterial street lighting system in those cases where the subdivider is required to improve or fronts on an arterial street. Standards and specifications for street lighting shall conform to IESNA roadway illumination standards and the City's streetlighting guidelines

17.100.220 LOT DESIGN

A. The lot arrangement shall be such that there will be no foreseeable difficulties, for reason of topography or other conditions, in securing building permits to build on all lots in compliance with the Development Code.

B. The lot dimensions shall comply with the minimum standards of the Development Code. When lots are more than double the minimum lot size required for the zoning district, the subdivider may be required to arrange such lots to allow further subdivision and the opening of future streets to serve such potential lots.

C. The lot or parcel width at the front building line shall meet the requirements of the Development Code and shall abut a public street other than an alley for a width of at least 20 feet. A street frontage of not less than 15 feet is acceptable in the case of a flag lot division resulting from the division of an unusually deep land parcel that is of a size to warrant division into not more than two parcels.

D. Double frontage lots shall be avoided except where necessary to provide separation of residential developments from arterial streets or to overcome specific disadvantages of topography or orientation.

E. Lots shall not take access from major arterials, minor arterials or collector streets if access to a local street exists. When driveway access from major or minor arterials may be necessary for several adjoining lots, the Director or the Planning Commission may require that such lots be served by a common access drive in order to limit traffic conflicts on such streets. Where possible, driveways shall be designed and arranged to avoid requiring vehicles to back into traffic on minor or major arterials.

17.100.230 WATER FACILITIES

Water lines and fire hydrants serving the subdivision or partition, and connecting the development to City mains, shall be installed to provide adequate water pressure to serve present and future consumer demand. The materials, sizes, and locations of water mains, valves, service laterals, meter boxes and other required appurtenances shall be in accordance with American Water Works Association and the Oregon Standard Specifications standards of the Fire District, the City, and the Oregon Health Authority Drinking Water Services section.

If the City requires the subdivider to install water lines in excess of eight inches, the City may participate in the oversizing costs. Any oversizing agreements shall be approved by the City manager based upon council policy and dependent on budget constraints. If required water mains will directly serve property outside the subdivision, the City may enter into an agreement with the subdivider setting forth methods for reimbursement for the proportionate share of the cost.

17.100.240 SANITARY SEWERS

Sanitary sewers shall be installed to serve the subdivision and to connect the subdivision to existing mains. Design of sanitary sewers shall take into account the capacity and grade to allow for desirable extension beyond the subdivision.

If required sewer facilities will directly serve property outside the subdivision, the City may enter into an agreement with the subdivider setting forth methods for reimbursement by nonparticipating landowners for the proportionate share of the cost of construction.

17.100.250 SURFACE DRAINAGE AND STORM SEWER SYSTEM

A. Drainage facilities shall be provided within the subdivision and to connect with off-site drainage ways or storm sewers. Capacity, grade and materials shall be by a design approved by the city engineer. Design of drainage within the subdivision shall take into account the location, capacity and grade necessary to maintain unrestricted flow from areas draining through the subdivision and to allow extension of the system to serve such areas.

B. In addition to normal drainage design and construction, provisions shall be taken to handle any drainage from preexisting subsurface drain tile. It shall be the design engineer's duty to investigate the location of drain tile and its relation to public improvements and building construction.

C. The roof and site drainage from each lot shall be discharged to either curb face outlets (if minor quantity), to a public storm drain or to a natural acceptable drainage way if adjacent to the lot.

17.100.260 UNDERGROUND UTILITIES

All subdivisions or major partitions shall be required to install underground utilities (including, but not limited to, electrical, fiber, cable, and telephone wiring). The utilities shall be installed pursuant to the requirements of the utility company.

17.100.270 SIDEWALKS

Sidewalks shall be installed on both sides of a public street and in any special pedestrian way within the subdivision.

17.100.280 BICYCLE ROUTES

If appropriate to the extension of a system of bicycle routes, existing or planned, the Director or the Planning Commission may require the installation of bicycle lanes within streets. Separate bicycle access ways may be required to reduce walking or cycling distance when no feasible street connection is available.

17.100.290 STREET TREES

Where planting strips are provided in the public right-of-way, a master street tree plan shall be submitted and approved by the Director. The street tree plan shall provide street trees approximately every 30' on center for all lots.

17.100.300 EROSION CONTROL

Grass seed planting shall take place prior to September 30th on all lots upon which a dwelling has not been started but the ground cover has been disturbed. The seeds shall be of an annual rye grass variety and shall be sown at not less than four pounds to each 1000 square feet of land area.

17.100.310 REQUIRED IMPROVEMENTS

The following improvements shall be installed at no expense to the City, consistent with the standards of Chapter 17.84, except as otherwise provided in relation to oversizing.

A. Lot, street and perimeter monumentation
B. Mailbox delivery units
C. Sanitary sewers
D. Stormwater drainage facilities
E. Sidewalks
F. Street lights
G. Street name signs
H. Street trees
I. Streets
J. Traffic control devices and signs
K. Underground communication lines, including broadband (fiber), telephone, and cable. Franchise agreements will dictate whether telephone and cable lines are required.
L. Underground power lines
M. Water distribution lines and fire hydrants
N. Fiber (broadband)

17.100.320 IMPROVEMENT PROCEDURES

Improvements installed by a land divider either as a requirement of these regulations or at their own option shall conform to the standards of Chapter 17.84 and improvement standards and

specifications adopted by the City. Improvements shall be installed in accordance with the following general procedure:

A. Improvement work shall not start until plans have been checked for adequacy and approved by the City Engineer. To the extent necessary for evaluation of the proposal, improvement plans may be required before approval of the tentative plan of a partition or subdivision.

B. Improvement work shall not start until after the City is notified. If work is discontinued for any reason it shall not resume until the City is notified.

C. Improvements shall be constructed under the inspection and to the satisfaction of the City Engineer.

D. All improvements installed by the subdivider shall be guaranteed for a period of one (1) year following acceptance by the City Engineer. Such guarantee shall be secured by cash deposit in the amount of the value of the improvements as set by the City Engineer. Subdividers may elect to provide a subdivision maintenance bond equal to ten (10) percent of the value of the public improvements for a period of two (2) years following acceptance by the City.

E. As-constructed plans in both digital and hard copy formats shall be filed with the City Engineer upon completion of the improvements.

17.100.330 OPTIONS FOR IMPROVEMENTS

Before the signature of the City Engineer is obtained on the final partition or subdivision plat, the applicant shall install the required improvements, agree to install required improvements, or have gained approval to form an improvement district for installation of the improvements required with the tentative plat approval. These procedures are more fully described as follows:

A. Install Improvements. The applicant may install the required improvements for the subdivision prior to recording the final subdivision plat. If this procedure is to be used, the subdivision plat shall contain all the required certifications except the County Surveyor. The City shall keep the subdivision plat until the improvements have been completed and approved by the City Engineer. Upon City Engineer's approval, the City shall forward the final subdivision plat for certification by the County Surveyor and then to the County Clerk for recording; or

B. Agree to Install Improvement. The applicant may execute and file with the City an agreement specifying the period within which required improvements shall be completed. The agreement shall state that if the work is not completed within the period specified, the City may complete the work and recover the full cost and expense from the applicant. A performance bond equal to 110 percent of the value of the guaranteed improvements shall be required. Performance bonds shall be issued by a surety registered to do business in Oregon. The value of the guaranteed improvements may include engineering, construction management, legal and other related expenses necessary to complete the work. The agreement may provide for the construction of the improvements in increments and for an extension of time under specified conditions; or

C. Form Improvement District. The applicant may have all or part of the public improvements constructed under an improvement district procedure. Under this procedure the applicant shall enter into an agreement with the City proposing establishment of the district for improvements to be constructed, setting forth a schedule for installing improvements, and specifying the extent of the plat to be improved. The City reserves the right under the improvement district procedure to limit the extent of improvements in a subdivision during a construction year and may limit the area of the final subdivision plat to the area to be improved. The performance bond described in section B above shall be required under the improvement district procedure. The formation of a Local Improvement District (LID) is entirely within the discretion of the City.

17.100.340 PERFORMANCE GUARANTEE

If the applicant chooses to utilize the opportunities provided under "A" or "B" above, the applicant shall provide a performance guarantee equal to 110 percent of the cost of the improvements to assure full and faithful performance thereof, in one of the following forms:

A. A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney.

B. In lieu of the surety bond, the applicant may:
   1. Deposit with the City cash money to be released only upon authorization of the City Engineer;
   2. Supply certification by a bank or other reputable lending institution that an irrevocable letter of credit in compliance with the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, UCP 600 or most current revision. has been established to cover the cost of required improvements, to be released only upon authorization of the City Engineer. The amount of the letter of credit shall equal 110% of the value of the improvements to be guaranteed; or
   3. Provide bonds in a form approved by the City Attorney.

C. Such assurance of full and faithful performance shall be for a sum determined by the City Engineer as sufficient to cover the cost of required improvements, including related engineering and incidental expenses.

D. If the applicant fails to carry out provisions of the agreement and the City has expenses resulting from such failure, the City shall call on the performance guarantee for reimbursement. If the amount of the performance guarantee exceeds the expense incurred, the remainder shall be released. If the amount of the performance guarantee is less than the expense incurred, the applicant shall be liable to the City for the difference.

CHAPTER 17.102 - URBAN FORESTRY

17.102.00 INTENT

A. This chapter is intended to conserve and replenish the ecological, aesthetic and economic benefits of urban forests, by regulating tree removal on properties greater than one acre within the Sandy Urban Growth Boundary.

B. This chapter is intended to facilitate planned urban development as prescribed by the Sandy Comprehensive Plan, through the appropriate location of harvest areas, landing and yarding areas, roads and drainage facilities.

C. This chapter shall be construed in a manner consistent with Chapter 17.60 Flood and Slope Hazard Overlay District. In cases of conflict, Chapter 17.60 shall prevail.

17.102.10 DEFINITIONS

Technical terms used in this chapter are defined below. See also Chapter 17.10, Definitions.

Urban Forestry Related Definitions:

- **Diameter at Breast Height (DBH)**: The diameter of a tree inclusive of the bark measured 4½ feet above the ground on the uphill side of a tree.
- **Hazard Tree**: A tree located within required setback areas or a tree required to be retained as defined in 17.102.50 that is cracked, split, leaning, or physically damaged to the degree that it is likely to fall and injure persons or property. Hazard trees include diseased trees, meaning those trees with a disease of a nature that, without reasonable treatment or pruning, is likely to spread to adjacent trees and cause such adjacent trees to become diseased or hazard trees.
- **Protected Setback Areas**: Setback areas regulated by the Flood and Slope Hazard Ordinance (FSH), Chapter 17.60 and 70 feet from top of bank of Tickle Creek and 50 feet from top of bank of other perennial streams outside the city limits, within the urban growth boundary.
- **Tree**: For the purposes of this chapter, tree means any living, standing, woody plant having a trunk 11 inches DBH or greater.
- **Tree Protection Area**: The area reserved around a tree or group of trees in which no grading, access, stockpiling or other construction activity shall occur.
- **Tree Removal**: Tree removal means to cut down a tree, 11 inches DBH or greater, or remove 50 percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. Tree removal includes topping but does not include normal trimming or pruning of trees.

17.102.20 APPLICABILITY

This chapter applies only to properties within the Sandy Urban Growth Boundary that are greater than one acre including contiguous parcels under the same ownership.

A. General**:** No person shall cut, harvest, or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter.

1. As a condition of permit issuance, the applicant shall agree to implement required provisions of this chapter and to allow all inspections to be conducted.

2. Tree removal is subject to the provisions of Chapter 15.44, Erosion Control, Chapter 17.56, Hillside Development, and Chapter 17.60 Flood and Slope Hazard.

B. Exceptions: The following tree removals are exempt from the requirements of this chapter.

1. Tree removal as required by the city or public utility for the installation or maintenance or repair of roads, utilities, or other structures.

2. Tree removal to prevent an imminent threat to public health or safety, or prevent imminent threat to public or private property, or prevent an imminent threat of serious environmental degradation. In these circumstances, a Type I tree removal permit shall be applied for within seven days following the date of tree removal.

17.102.30 PROCEDURES AND APPLICATION REQUIREMENTS

A person who desires to remove trees shall first apply for and receive one of the following tree cutting permits before tree removal occurs:

A. Type I Permit. The following applications shall be reviewed under a Type I procedure:

1. Tree removal on sites within the city limits under contiguous ownership where 50 or fewer trees are requested to be removed.
2. Removal of a hazard tree or trees that presents an immediate danger of collapse and represents a clear and present danger to persons or property.
3. Removal of up to two trees per year, six inches DBH or greater within the FSH Overlay District as shown on the City Zoning Map and described in Chapter 17.60.
4. Tree removal on sites outside the city limits and within the urban growth boundary and outside protected setback areas.
5. Removal of up to two trees per year outside the city limits within the UGB and within protected setback areas.

B. An application for a Type I Tree Removal permit shall be made upon forms prescribed by the City to contain the following information:

1. Two copies of a scaled site plan to contain the following information:

   a. Dimensions of the property and parcel boundaries.

   b. Location and species of trees 11” DBH or greater to be retained.

   c. Location and type of tree protection measures to be installed.

2. A brief narrative describing the project.

3. Estimated starting and ending dates.

4. A scaled re-planting plan indicating ground cover type, species of trees to be planted, and general location of re-planting.

5. An application for removal of a hazard tree within a protected setback area or a tree required to be retained as defined in Chapter 17.102.50 shall also contain a report from a certified arborist or professional forester indicating that the condition or location of the tree presents a hazard or danger to persons or property and that such hazard or danger cannot reasonably be alleviated by treatment or pruning.

C. Type II Permit. The following applications shall be reviewed under a Type II procedure:

1. Tree removal on sites under contiguous ownership where greater than 50 trees are requested to be removed as further described below:

a. Within City Limits: outside of FSH Restricted Development Areas as defined in Chapter 17.60.

D. An application for a Type II Permit shall contain the same information as required for a Type I permit above in addition to the following:

a. A list of property owners on mailing labels within 200 feet of the subject property.

b. A written narrative addressing permit review criteria in 17.102.40.

E. Type III Permit. The following applications shall be reviewed under a Type III procedure:

1. Request for a variance to tree retention requirements as specified in Section 17.102.50 may be permitted subject to the provisions of 17.102.70.

F. An application for a Type III Permit shall contain the same information as required for a Type I permit in addition to the following:

a. A list of property owners on mailing labels within 300 feet of the subject property.

b. A written narrative addressing applicable code sections 17.102.50, 17.102.60, and 17.102.70.

17.102.40 PERMIT REVIEW

An application for a Type II or III tree removal permit shall demonstrate that the provisions of Chapter 17.102.50 are satisfied. The Planning Director may require a report from a certified arborist or professional forester to substantiate the criteria for a permit.

A. The Director shall be responsible for interpreting the provisions of this chapter. The Director may consult with the Oregon Department of Forestry in interpreting applicable provisions of the Oregon Forest Practices Act (OAR Chapter 629). Copies of all forestry operation permit applications will be sent to the Oregon Department of Forestry and Department of Revenue. The City may request comments from the Oregon Department of Forestry, the Oregon Department of Fish & Wildlife or other affected state agencies.

B. Expiration of Tree Removal Permits. Tree removal permits shall remain valid for a period of one year from the date of issuance or date of final decision by a hearing body, if applicable. A 30-day extension shall be automatically granted by the Planning Director if requested in writing before the expiration of the permit. Permits that have lapsed are void.

17.102.50 TREE RETENTION AND PROTECTION REQUIREMENTS

A. Tree Retention**:** The landowner is responsible for retention and protection of trees required to be retained as specified below:

1. At least three trees 11 inches DBH or greater are to be retained for every one-acre of contiguous ownership.
2. Retained trees can be located anywhere on the site at the landowner's discretion before the harvest begins. Clusters of trees are encouraged.
3. Trees proposed for retention shall be healthy and likely to grow to maturity, and be located to minimize the potential for blow-down following the harvest.
4. If possible, at least two of the required trees per acre must be of conifer species.
5. Trees within the required protected setback areas may be counted towards the tree retention standard if they meet these requirements.

B. Tree Protection Area: Except as otherwise determined by the Planning Director, all tree protection measures set forth in this section shall be instituted prior to any development activities and removed only after completion of all construction activity. Tree protection measures are required for land disturbing activities including but not limited to tree removal, clearing, grading, excavation, or demolition work.

1. Trees identified for retention shall be marked with yellow flagging tape and protected by protective barrier fencing placed no less than 10 horizontal feet from the outside edge of the trunk.
2. Required fencing shall be a minimum of six feet tall supported with metal posts placed no farther than ten feet apart installed flush with the initial undisturbed grade.
3. No construction activity shall occur within the tree protection zone, including, but not limited to dumping or storage of materials such as building supplies, soil, waste items, equipment, or parked vehicles.

C. Inspection. The applicant shall not proceed with any tree removal or construction activity, except erosion control measures, until the City has inspected and approved the installation of tree protection measures. Within 15 days of the date of accepting an application for a Type I permit, the city shall complete an onsite inspection of proposed activities and issue or deny the permit. Within 15 days of is suing a Type II or Type III permit, the city shall complete an onsite inspection of proposed activities.

For ongoing forest operations, the permit holder shall notify the city by phone or in writing 24 hours prior to subsequent tree removal. The city may conduct an onsite re-inspection of permit conditions at this time.

17.102.60 TREE REPLANTING REQUIREMENTS

1. All areas with exposed soils resulting from tree removal shall be replanted with a ground cover of native species within 30 days of harvest during the active growing season, or by June 1st of the following spring.
2. All areas with exposed soils resulting from tree removal occurring between October 1 and March 31 shall also be covered with straw to minimize erosion.
3. Removal of hazard trees as defined shall be replanted with two native trees of quality nursery stock for every tree removed.
4. Tree Removal allowed within the FSH Overlay District shall be replanted with two native trees of quality nursery stock for every tree removed.
5. Tree Removal not associated with a development plan must be replanted following the provisions of OAR Chapter 629, Division 610, Section 020-060

17.102.70 VARIANCES

Under a Type III review process, the Planning Commission may allow newly-planted trees to substitute for retained trees if:

1. The substitution is at a ratio of at least two-to-one (i.e., at least two native quality nursery grown trees will be planted for every protected tree that is removed); and
2. The substitution more nearly meets the intent of this ordinance due to:
   a. The location of the existing and proposed new trees, or
   b. The physical condition of the existing trees or their compatibility with the existing soil and climate conditions; or
   c. An undue hardship is caused by the requirement for retention of existing trees.
   d. Tree removal is necessary to protect a scenic view corridor.

17.102.80 ENFORCEMENT

The provisions of Chapter 17.06, Enforcement, shall apply to tree removal that is not in conformance with this chapter. Each unauthorized tree removal shall be considered a separate offense for purposes of assigning penalties under Section 17.06.80. Funds generated as a result of enforcement of this ordinance shall be dedicated to the Urban Forestry Fund established under Section 17.102.100 below.

17.102.90 APPLICABILITY OF THE OREGON FOREST PRACTICES ACT

The following provisions of the Oregon Forest Practices Act (OAR Chapter 629) are adopted by reference for consideration by the City in the review of Forest Operations Plans. Although the Director may seek advice from the Department of Forestry, the Director shall be responsible for interpreting the following provisions.

Division 610 - Reforestation Stocking Standards. Where reforestation is required, the provisions of OAR Chapter 629, Division 610, Section 020-060 shall be considered by the Director, in addition to the requirements of Section 17.102.60.

Division 615 - Treatment of Slash. Slash shall not be placed within the protected setback areas. Otherwise, the Director shall consider the provisions of OAR Chapter 629, Division 615 in determining how to dispose of slash.

Division 620 - Chemical and Other Petroleum Products Rules. The storage, transferring, cleaning of tanks and mixing of chemicals and petroleum products shall occur outside the protected setback areas. Aerial spraying shall not be permitted within the Urban Growth Boundary. Otherwise, the provisions of Chapter 629, Division 620 shall apply.

Division 625 - Road Construction and Maintenance. Forest roads, bridges and culverts shall not be constructed within the protected setback areas, except where permitted within the FSH overlay area as part of an approved urban development. Otherwise, the Director shall consider the provisions of OAR Chapter 629, Division 625 in the review of road, bridge and culvert construction.

Division 630 - Harvesting. Forest harvesting operations, including but not limited to skidding and yarding practices, construction of landings, construction of drainage systems, treatment of waste materials, storage and removal of slash, yarding and stream crossings, shall not be permitted within protected setback areas. Otherwise, the provisions of Chapter 629, Division 630 shall apply.

17.102.100 URBAN FORESTRY FUND CREATED

In order to encourage planting of trees, the City will create a fund or account to be used for tree planting in rights-of-way, city parks, riparian areas, and other public property. The source of funds will be donations, grants, and any other funds the City Council may designate.