

# CITY OF DUNDEE

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**Meeting:** Planning Commission Meeting

**Location:** City Council Meeting Chambers  
620 S.W. 5<sup>th</sup> Street  
Dundee, Oregon 97115

**Date:** April 18, 2012

**Time:** 7:00 p.m.

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**I. Meeting called to order.**

Chairman Hinson called the meeting to order. Commissioners present, which consisted of quorum, were Wymore, Mock, Hinson, Manning, and Fiedler. Also present were Planner Nunley and CA Daykin.

**II. Approval of Minutes from Previous Meeting(s)**

Decision on the minutes was postponed to the May meeting in order to give the Commission time to review the new draft presented that evening.

**III. Public Comment**

There were no members of the public present.

**VI. Draft Development Code Workshop**

The Commission began a review of the Development Code draft revision Article IV.

Specific language change requests, questions, and comments are attached to these minutes as "Attachment A".

Planner Nunley summarized the things to be discussed and followed up on at the May meeting: Non-conforming uses; minor modifications; zoning checklist; decision notice timeline; posted notice; definition of legislative and whether legislative should be open for all to initiate; and, a follow up on the requirements of a grading plan.

**V. Planning Issues from Commission Members.**

No items to discuss were noted.

**VI. Adjournment**

It was moved and seconded to adjourn the meeting. Motion carries, unanimously.



\_\_\_\_\_  
David Hinson, Chairman

ATTEST:



\_\_\_\_\_  
Melody Osborne, Planning Secretary

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**Comment [M1]:** Table of Contents does not take into account page re-numbering as may be necessary.

## Article 4 – Application Review Procedures and Approval Criteria

### Chapters:

- 4.1 General Review Procedures and Zoning Checklist
- 4.2 Site Development Review
- 4.3 Land Divisions and Property Line Adjustments
- 4.4 Conditional Use Permits
- 4.5 Modifications to Approved Plans
- 4.6 Amendments to the Zoning Map or Code
- 4.7 Variances
- 4.8 Planned Unit Development

Note: Article 4 updates and replaces Dundee's land use procedures, which are currently incomplete and distributed among several code chapters. All of the following text is new. Much of what is contained here is based on minimum requirements under state law (e.g., public notice, hearings, etc.) or is adapted from the State's Model Development Code. The Adjustment criteria in Chapter 4.7 are adapted from the Newberg Development Code. Options and key issues for discussion are in italics; potential policy issues are highlighted.

## Chapter 4.1 – General Review Procedures

### Sections:

- 4.1.010 Purpose and Applicability
- 4.1.020 Type I Procedure (Ministerial Staff Review and Zoning Checklist)
- 4.1.030 Type II Procedure (Administrative Review)
- 4.1.040 Type III Procedure (Quasi-Judicial Review - Public Hearing)
- 4.1.050 Type IV Procedure (Legislative Review)
- 4.1.060 General Provisions Applicable to All Reviews

#### 4.1.010 Purpose and Applicability

- A. **Purpose.** The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 4.1.010 provides a key for determining the review procedure and the decision-making body for particular approvals.
- B. **Applicability of Review Procedures.** All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections 1-4 below. Table 4.1.010 lists the City’s land use and development approvals and corresponding review procedure(s).
1. Type I Procedure (Staff Review – Zoning Checklist). Type I decisions are made by the City Planning Official, or his or her designee, without public notice and without a public hearing. A Type I procedure is used in applying City standards and criteria that do not require the use of discretion (i.e., clear and objective standards);
  2. Type II Procedure (Administrative/Staff Review with Notice). Type II decisions are made by the City Planning Official with public notice and an opportunity for appeal to the Planning Commission. Alternatively the City Planning Official may refer a Type II application to the Planning Commission for review in a public meeting;
  3. Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council.
  4. Type IV Procedure (Legislative Review). The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Type IV reviews are considered by the Planning Commission, who makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

4.1 – General Review Procedures

Table 4.1.010 Summary of Approvals by Type of Review Procedure		
Approvals*	Review Procedures	Applicable Regulations
Zoning Checklist Review	Type I	Applicants <i>[are required to/may]</i> complete a Zoning Checklist before applying for any other permit or approval. See Section 4.1.020.
Access to a Street	Type I	Chapter 3.1 and the standards of the applicable roadway authority (City/County/ODOT)
Adjustment	Type I or II	Chapter 4.7
Annexation	Type IV	See Oregon Revised Statute 222
Code Interpretation	Type II or III	Chapter 1.5
Code Text Amendment	Type IV	Chapter 4.6
Comprehensive Plan Amendment	Type IV	Chapter 4.6
Conditional Use Permit	Type III	Chapter 4.4
Home Occupation	Type I	Chapter 2.3
Minor Modification to Approval Major Modification to Approval	Type I or II Type III	Chapter 4.5
Zoning District Map Change	Type III or IV	Chapter 4.6
Property Line Adjustments, including Lot Consolidations	Type I	Chapter 4.3
Legal Lot Determination	Type I	Chapter 1.3
Non-Conforming Use or Structure, Expansion of	Type I, II or III	Chapter 1.4
Partition or Re-plat of 2-3 lots Preliminary Plat Final Plat	Type II Type I	Chapter 4.3 <i>Discuss relative to State and process</i> Chapter 4.3
Sign Permit	Type I	Chapter 3.5
Site Development Review	Type II	Chapter 4.2
Park and Open Space Master Plan	Type III**	Chapter 2.3
Planned Unit Development	Type III	Chapter 4.8
Subdivision or Replat of >3 lots Preliminary Plat Final Plat	Type III Type I	Chapter 4.3 Chapter 4.3
Temporary Use	Type I	Chapter 2.3 (Special Uses - Section 2.3.170)
Variance	Type III	Chapter 4.7

**Comment [mo2]:** There was discussion regarding what type of application process would be required and whether the draft code was consistent from beginning to end. It was noted that in Article 1 non-conforming uses were listed as a Type III.

\* The applicant may be required to obtain building permits and other approvals. The City’s failure to notify the applicant of any requirement or procedure of another agency shall not invalidate a permit or other decision made by the City under this Code.

\*\*The City Council through the Type III procedure reviews Park and Open Space Master Plans.

4.1.020 Type I Procedure (Staff Review and Zoning Checklist)

Comment [m03]: It was requested to have an example presented for further clarification and discussion about whether it was necessary.

The City Planning Official, or his or her designee, without public notice and without a public hearing, makes ministerial decisions through the Type I procedure. The Type I procedure is used in applying City standards and criteria that do not require the exercise of discretion (i.e., clear and objective standards). The City Planning Official *[may use / uses]* a Zoning Checklist for review of some Type I applications. The Zoning Checklist is a preliminary review that is intended to ensure a project proposal meets the basic requirements of Article 2 (Zoning) before more detailed plans are prepared and before the City issues other permits or authorizes the Building Official to issue building permits.

A. Application Requirements.

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

B. **Requirements**. The City shall not act upon an application for land use approval and a building permit shall not be issued until the City Planning Official has approved a Zoning Checklist for the proposed project.

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

D. **Effective Date**. A Zoning Checklist decision is final on the date it is signed by the City Planning Official. It is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the State Land Use Board of Appeals. See also, Section 1.2.090, Zoning Checklist and Building Permits.

**4.1.030 Type II Procedure (Administrative Review)**

The City Planning Official, or his or her designee performs Administrative Staff Reviews through the Type II procedure. Type II decisions are made by the City Planning Official with public notice and an opportunity for appeal to the Planning Commission.  
~~Alternatively the City Planning Official may refer a Type II application to the Planning Commission for its review and decision in a public meeting.~~

**A. Application Requirements.**

1. Applications for projects requiring Administrative Review shall be made on forms provided by the City Planning Official.
2. The City Planning Official shall advise the applicant ~~on of the~~ application submittal requirements. At a minimum, the application shall include all of the following information:
  - a. The information requested on the application form;
  - b. Plans and exhibits required for the specific approval(s) being sought (~~ff~~or example, requirements for property line adjustments are in Chapter 4.3.);
  - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail; and
  - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and
  - e. ~~Draft public notice and public mailing list, of property owners within 100 feet of the subject property.~~
  - ef. The required fee.

**B. Procedure.**

1. The City Planning Official shall mail notice of a pending Type II decision to the following individuals and agencies not less than fourteen (14) days prior to making the Type II decision.
2. The purpose of the Administrative decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Planning Official issues the decision. The intent is to invite people to participate early in the decision-making process. Therefore all of the following individuals and agencies shall be notified:

**Comment [mo4]:** Requested to reword and combine 1. and 2., similar to the wording in Section B.1. on page 4-12.

#### 4.1 – General Review Procedures – Type II (Administrative Review)

- a. All owners of record of real property within a minimum of 100 feet of the subject site;
  - b. Any person who submits a written request to receive a notice; and
  - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City Planning Official shall notify the road authority if different than the City of Dundee. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.
3. The notice of pending Administrative Decision, at a minimum, shall contain all of the following information:
- a. The deadline for submitting written comments, ~~which must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled Planning Commission meeting date where an application is referred to the Commission for review;~~
  - b. A summary of the proposal and the relevant approval criteria. The notice must have sufficient detail to help the public identify and locate applicable code requirements;
  - c. The address and City contact person for submitting written comments; ~~and the date, time and location the City Planning Official or Planning Commission, as applicable, is scheduled to make a decision on the application;~~
  - d. The street address or other easily understandable reference to the location of the proposed use or development;
  - e. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
  - f. Statement that all evidence relied upon by the City Planning Official ~~or Planning Commission, as applicable,~~ to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the City; and
  - g. Statement that after the comment period closes the City will issue its decision and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

#### 4.1 – General Review Procedures – Type II (Administrative Review)

4. At the conclusion of the comment period, the City Planning Official shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria. ~~Alternatively, the City Planning Official may transmit all written comments received, if any, along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.~~
5. ~~Except as provided by subsections (6) and (7), below, where the City Planning Official refers an application subject to Administrative Review to the Planning Commission, the Planning Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Code criteria.~~
6. ~~The Planning Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in Section 4.1.060 of this Code.~~
7. ~~Alternatively, the Planning Commission may decide to accept oral and written testimony in a public hearing (Type III) review of the application, pursuant to Section 4.1.040; in which case a public notice must be mailed to those who received the original notice indicating the change to a Type III (quasi-judicial) review. The City may ask the applicant to voluntarily waive his or her right to a final decision within the 120-day timeframe where a Type II application is elevated to a Type III and additional time is required to review the application.~~
8. ~~Within seven (7) days of a Type II (Administrative) decision, t~~The City Planning Official shall ~~proceed to~~ prepare a notice of decision and mail it to the applicant, property owner (if different), those who provided written comments on the proposal, and those who requested a copy of the decision. The ~~City Planning Official~~Applicant shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
9. The Administrative Notice of Decision shall contain all of the following information:
  - a. A description of the applicant’s proposal and the City’s decision on the proposal. The notice may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (i.e., copy of assessor’s map may be used);

**Comment [mo5]:** Planning Commission requested the change be made unless there is a legal standard requiring the 7 days.

4.1 – General Review Procedures – Type II (Administrative Review)

- c. A statement of where the City’s decision can be obtained;
  - d. The date the decision shall become final, unless appealed; and
  - e. A statement that all persons entitled to notice may appeal the decision to City Council pursuant to subsection 4.1.030(D).
- C. **Effective Date of Decision.** Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective ten (10) days after the City mails the decision notice unless the decision is appealed pursuant to subsection 4.1.030(D).
- D. **Appeal of Type II (Administrative) Decision.** A Type II Administrative Decision made the City Planning Official may be appealed to the Dundee Planning Commission; and a Type II Administrative Decision made by the Planning Commission may be appealed to the City Council, as applicable, pursuant to the following:
- 1. Who May Appeal. The following people have legal standing to appeal a Type II Administrative Decision:
    - a. The applicant or owner of the subject property;
    - b. Any person who was entitled to written notice of the Type II decision;
    - c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.
  - 2. Appeal filing procedure.
    - a. *Notice of appeal.* Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures.
    - b. *Time for filing.* A Notice of Appeal shall be filed with the City Planning Official within the timeframe specified on the Notice of Decision; *typically,* this will be within ten (10) days of the date the Notice of Decision is mailed.
    - c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required filing fee and shall contain:
      - (1) An identification of the decision being appealed, including the date of the decision;
      - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;

#### 4.1 – General Review Procedures – Type II (Administrative Review)

- (3) A statement explaining the specific issues being raised on appeal; and
  - (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. Scope of appeal. The appeal of a Type II Administrative Decision shall be a hearing de novo ~~either~~ before the Planning Commission, where the contested decision was made by the City Planning Official, ~~or before the City Council, where the Planning Commission made the contested decision.~~ The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Administrative Decision, but may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
  4. Appeal Hearing Procedure. Hearings on appeals of Type II decisions shall follow the same procedure used for public hearings on Type III reviews under Section 4.1.040. Section 4.1.040 contains requirements for public hearing notices, conduct of hearings, and decision-making procedures.

4.1.040 Type III Procedure (Quasi-Judicial Review – Public Hearing)

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

A. Application Requirements.

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

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B. Procedure.

1. Mailed and Published Notice. The City shall mail public notice of a public hearing on a Quasi-Judicial application at least 20 days before the hearing date to the individuals and organizations listed below. The City Planning Official shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed. ~~At least fourteen (14) days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. A copy of the newspaper's publication of the notice shall be made part of the administrative record.~~ Notice shall be mailed to:

Newspaper publication of hearing notices is optional under ORS 197.763. If the City decides not to publish all hearing notices in the newspaper, it should require applicants to post their property with a large notice poster.

Comment [m06]: Language requiring property signage to be added and different jurisdiction's codes be considered for possible wording.

- a. All owners of record of real property located within a minimum of 100 feet of the subject site.

4.1 – Types of Applications and Review Procedures – Type III (Quasi-Judicial Review)

- b. Any person who submits a written request to receive a notice; and
  - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City Planning Official shall notify the road authority if different than the City of Dundee. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.
2. Content of Notice. Notice of a Quasi-Judicial hearing to be mailed and published per Subsection 1 above shall contain all of the following information:
- a. A summary of the proposal and the relevant approval criteria. The notice must have sufficient detail to help the public identify and locate applicable code requirements;
  - b. The date, time and location of the scheduled hearing;
  - c. The street address or other easily understandable reference to the location of the proposed use or development;
  - d. A disclosure statement that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the City Council, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
  - e. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards shall be available for review at the office of the City Planning Official and that copies shall be provided at a reasonable cost;
  - f. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven (7) days before the hearing, and that a copy shall be provided on request at a reasonable cost;
  - g. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
  - h. A statement that after the public hearing closes, the City Council will issue its decision, and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

**C. Conduct of the Public Hearing.**

1. Hearing Instructions. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
  - a. The applicable approval criteria by Code chapter that apply to the application;
  - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
  - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the State Land Use Board of Appeals on that issue;
  - d. At the conclusion of the initial evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing.
  - e. Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
2. Impartial Tribunal. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to ex parte contact are concerned, members of the hearing body shall follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where State law provides otherwise. Where the appearance of a conflict of interest is likely, ~~the~~ member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.
3. Presenting and receiving evidence.
  - a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;

4.1 – Types of Applications and Review Procedures – Type III (Quasi-Judicial Review)

- b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this Section;
  - c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
4. Record. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports) upon announcing its intention to take notice of such facts in its deliberations and allowing persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.
5. Continuances. If the hearing body decides to continue the hearing, the hearing shall be continued to a date that is at least seven (7) days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven (7) days, so that they can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the hearing body may limit additional testimony to arguments and not accept additional evidence.
6. Record Left Open for Additional Testimony. If the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven (7) days after the hearing. Any participant may ask the hearing body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the hearing body shall reopen the record, as follows:
- a. When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
  - b. An extension of the hearing or record granted pursuant to this Section is subject to the limitations of Section 4.1.060 (ORS 227.178 - “120-day rule”), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and
  - c. If requested by the applicant, the hearing body shall grant the applicant at least seven (7) days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly

4.1 – Types of Applications and Review Procedures – Type III (Quasi-Judicial Review)

waive this right.

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

- a. A description of the applicant’s proposal and the City’s decision on the proposal. The notice may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (i.e., copy of assessor’s map may be used);
- c. A statement of where the City’s decision can be obtained;
- d. The date the decision shall become final, unless appealed; and
- e. A statement that all persons entitled to notice may appeal the Planning Commission’s decision to City Council pursuant to subsection 4.1.040(D), or may appeal the City Council’s decision to the State Land Use Board of Appeals, as applicable

C. **Effective Date of Decision.** Unless the conditions of approval specify otherwise, a Quasi-Judicial Decision becomes effective ten (10) days after the City mails the decision notice unless the decision is appealed pursuant to subsection 4.1.040(D).

D. **Appeal of Planning Commission Decision.** The Planning Commission’s decision may be appealed to the Dundee City Council as follows:

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

- a. The applicant or owner of the subject property;
- b. Any person who was entitled to written notice;
- d.f. Any other person who testified orally or in writing during Planning Commission hearing before the close of the public record.

**Comment [M7]:** Questions about whether this is legally required and whether they can appeal even if they don't appear at the hearing.

**Comment [mo8]:** Should be “c”.

2. **Appeal Filing Procedure.**

- a. *Notice of appeal.* Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.

4.1 – Types of Applications and Review Procedures – Type III (Quasi-Judicial Review)

- b. *Time for filing.* A Notice of Appeal shall be filed with the City Planning Official within the timeframe specified on the Notice of Decision; typically, this will be within ten (10) days of the date the Notice of Decision is mailed.
  - c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required filing fee and shall contain:
    - (1) An identification of the decision being appealed, including the date of the decision;
    - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
    - (3) A statement explaining the specific issues being raised on appeal; and
    - (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. Scope of Appeal. The appeal of a Type III Quasi-Judicial Decision shall be a **de novo** hearing ~~[de novo / on the record]~~ before the City Council, ~~which. The appeal [shall / shall not] be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Quasi-Judicial Decision, [and may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony or argument concerning any issue raised at the Planning Commission]~~ applicable standard, criterion, condition, or issue.

The decision whether to conduct appeal hearings "on the record" or "de novo" is a policy issue. De novo hearings offer the benefit of additional evidence, which, potentially, may have been overlooked or was not available during the hearings process. The downside to de novo hearings is that they can discourage full disclosure of evidence and arguments early on, i.e., in the decision process.

**E. Record of the Public Hearing.**

1. Official Record. The official public hearing record shall include all of the following information:
  - a. All materials considered by the hearings body;
  - b. All materials submitted by the City Planning Official to the hearings body regarding the application;
  - c. The minutes of the hearing;
  - d. The final written decision; and

4.1 – Types of Applications and Review Procedures – Type III (Quasi-Judicial Review)

- e. Copies of all notices given as required by this Chapter, and correspondence regarding the application that the City mailed or received.
  - 2. Minutes. The meeting minutes shall be filed in hardcopy form with the City Planning Official. The minutes and other evidence presented as a part of the hearing shall be part of the record.
  - 3. Exhibits. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.
- E. **Effective Date and Appeals to State Land Use Board of Appeals.** Final decisions, including appeal decisions, are effective the date the City mails the decision. Appeals of City Council final decisions under this Code shall be filed with the State Land Use Board of Appeals pursuant to ORS 197.805 - 197.860, except where State law requires review by a different court.

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

4.1.050 Type IV (Legislative Review)

**Comment [mo9]:** Noted that there is no definition in the code for “Legislative”. State Law will be consulted for specific language.

A. **Timing of Requests.** ~~The City Council may establish a schedule for when it will accept legislative code amendment or plan amendment requests, or~~ The City Council or Planning Commission may initiate ~~its own~~ legislative proposals at any time. Legislative requests are not subject to the 120-day review period under ORS 227.178.

**Comment [mo10]:** Language was proposed for a rewording, with discussion of whether it should change to a “Purpose” statement paired with an initiation statement.

**Comment [mo11]:** Questions regarding whether citizens should have the ability to initiate.

B. Application Requirements.

1. **Application forms.** Legislative applications shall be made on forms provided by the City Planning Official.
2. **Submittal Information.** The application shall contain all of the following information:
  - a. The information requested on the application form;
  - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
  - c. The required fee, except when City of Dundee initiates request; and
  - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

**Comment [mo12]:** Citizen initiation again discussed.

C. **Procedure.** Hearings on Legislative Land Use requests are conducted similar to City Council hearings on other legislative proposals, except the notification procedure for Legislative Land Use requests must conform to State land use laws (ORS 227.175), as follows:

1. The City Planning Official shall notify in writing the Oregon Department of Land Conservation and Development (DLCDC) of proposed legislative amendments (~~zone change, rezoning with annexation, or comprehensive plan amendment~~) at least fortythree (~~fortythree~~) days before the first public hearing at which public testimony or new evidence will be received. The notice shall include a DLCDC Certificate of Mailing.
2. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
  - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one Comprehensive Plan land use designation to another). See also, ORS 227.186 for instructions;

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

- b. Any affected governmental agency;
  - c. Any person who requests notice in writing[; and]
  - [d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.]*
  - 3. At least ten (10) days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the City.
  - 4. For each mailing and publication of notice, the City Planning Official shall keep an affidavit of mailing/publication in the record.
- D. **Final Decision and Effective Date.** A Legislative Land Use decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant. Notice of a Legislative Land Use decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development within five (5) business days after the City Council decision is filed with the City Planning Official. The City shall also provide notice to all persons as required by other applicable laws.

**4.1.060 Time Limit; Consolidated Review; City Planning Official's Duties**

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

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

D. **City Planning Official's Duties.** The City Planning Official, or his or her designee, shall perform all of the following duties with regard to administration of this Code:

1. Prepare application forms based on in the provisions of this Code and applicable State law;
2. Prepare ~~Assist or r~~Review required notices, and process applications ~~for review and action by City Council~~;
3. Assist Planning Commission and City Council in administering the hearings process;
4. Answer questions from the public regarding the City's land use regulations.
5. Prepare staff reports summarizing pending applications, including applicable decision criteria;
6. Prepare findings consistent with City Council decisions on land use and development applications;
7. Prepare notices of final decisions, file the notices in the City's records and mail a copy of the notices to all parties entitled to notice under this Code; and
8. Maintain and preserve the file and public record for each application.

## Chapter 4.2 - Site Development Review

This is a complete update of Chapter 3.105; placeholders are provided where policy issues arise.

### Sections:

4.2.010	Purpose
4.2.020	Applicability and Exemptions
4.2.030	Review Procedure
4.2.040	Application Submission Requirements
4.2.050	Approval Criteria and Adjustments
4.2.060	Assurances
4.2.070	Compliance with Conditions; Modifications; Permit Expiration

### 4.2.010 Purpose

The purpose of this Chapter is to advance all of the following objectives in the public interest:

- A. Carry out the development pattern and plan of the City and its comprehensive plan policies through efficient and effective review of site development proposals;
- B. Promote the public health, safety and general welfare;
- C. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards; and
- D. Encourage efficient use of land resources and public services, and the provision of transportation options.

### 4.2.020 Applicability and Exemptions

**Comment [mo13]:** Requested to review for consistency.

Site Development Review approval is required for new development. Site Development Review approval is also required to expand a non-conforming use or development. Except as specified by a condition of approval on a prior City decision, or as required for uses subject to Conditional Use Permit approval, Site Development Review is not required for the following:

- A. Change in occupancy from one type of land use to a different land use resulting in no increase in vehicular traffic or demand for parking;
- B. Single-family detached dwelling (including manufactured home on its own lot);
- C. Duplex;

- D. Non-residential building addition of up to 25% of the existing square footage~~*{x square feet or y percent, whichever is less}*~~;
- E. Home occupation;
- F. Accessory structures and accessory parking;
- G. Development and land uses that are already approved as part of a Site Development Review or Conditional Use Permit application, provided modifications to such plans shall conform to Chapter 4.5;
- H. Public improvements required by City standards or as stipulated by a condition of land use approval (e.g., transportation facilities and improvements, parks, trails, utilities, and similar improvements), except where a condition of approval requires Site Development Review.
- I. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair ~~*are exempt*~~.

**4.2.030 Review Procedure**

Site Development Review shall be conducted using the Type II procedure in Section 4.1.030. ~~*Corrected to Type II. Check rest of chapter.*~~

**4.2.040 Application Submission Requirements**

All of the following information is required for Site Development Review application submittal, except where the City Planning Official determines that some information is not pertinent and therefore is not required.

**A. General Submission Requirements**

1. Information required for Type II or Type III review, as applicable. (See Chapter 4.1);
2. Public Facilities and Services Impact ~~*{Study/Summary}*~~. The impact ~~*{study/summary}*~~ shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the ~~*{study/summary}*~~, which, at a minimum, shall address the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system (for multifamily development); water system; and sewer system. For each system and type of impact, the study shall propose improvements necessary to meet City requirements; and
3. Traffic Impact Analysis, as may be required by the City or other roadway authority.

**B. Site Development Review Information.** In addition to the general submission requirements an applicant for Site Development Review shall provide the following

information, as deemed applicable by the City Planning Official. The City Planning Official may request any information that he or she needs to review the proposal and prepare a complete staff report and recommendation to the approval body:

1. Site analysis map. At a minimum the site analysis map shall contain the following information, as the City Planning Official deems applicable:
  - a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the City, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;
  - b. Topographic contour lines at 2-foot intervals for slopes, except where the ~~Public Works Director~~ City Engineer determines that larger intervals will be adequate for steeper slopes;
  - c. Identification of slopes greater than ~~fifteen-ten~~ (150) percent, with slope categories identified in 5 percent increments (e.g., 0%-5%, >5%-10%, >10%-15%, >15%-20%, and so forth);
  - d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
  - e. Potential natural hazard areas, including, as applicable, the base flood elevation identified on FEMA Flood Insurance Rate Maps or as otherwise determined through site specific survey, areas subject to high water table, and areas designated by the City, County, or State as having a potential for geologic hazards;
  - f. Areas subject to overlay zones;
  - h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
  - i. The location, size and species of trees and other vegetation (outside proposed building envelope) having a caliper (diameter) of six (6) inches greater at four (4) feet above grade;
  - j. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed;
  - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable.
2. Proposed site plan. The site plan shall contain the following information:
  - a. The proposed development site, including boundaries, dimensions, and gross area;

#### 4.2 – Site Development Review

- b. Features identified on the existing site analysis maps that are proposed to remain on the site;
  - c. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development;
  - d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
  - e. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
  - f. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;
  - g. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops);
  - h. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
  - i. Loading and service areas for waste disposal, loading and delivery;
  - j. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
  - k. Location, type, and height of outdoor lighting;
  - l. Location of mail boxes, if known;
  - m. Name and address of project designer, if applicable;
  - n. Locations of bus stops and other public or private transportation facilities;
  - o. Locations, sizes, and types of signs;
3. Architectural drawings. Architectural drawings, as applicable:
- a. Building elevations with dimensions;
  - b. Building materials, colors and type;
  - c. Name and contact information of the architect or designer.

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4. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for development sites of ~~/x/~~ acre(s) or larger, or where otherwise required by the City. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with Section 3.4.040.
5. Landscape plan. Where a landscape plan is required, it shall show the following, pursuant to Chapter 3.2:
  - a. The location and height of existing and proposed fences, buffering or screening materials;
  - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
  - c. The location, size, and species of the existing and proposed plant materials (at time of planting);
  - d. Existing and proposed building and pavement outlines;
  - e. Specifications for soil at time of planting, irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule;
  - f. Other information as deemed appropriate by the City Planning Official. An arborist's report may be required for sites with mature trees that are to be retained and protected.
6. Deed restrictions. Copies of all existing and proposed restrictions or covenants, including those for roadway access control.
7. Narrative. Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 4.2.050.
8. Traffic Impact Analysis, when required, shall be prepared in accordance with the road authority's requirements.
9. Other information determined by the City Planning Official. The City may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), as necessary to determine a proposal's conformance with this Code.

**Comment [mo14]:** Requested that the City Engineer weigh in or other standards be reviewed for recommendation.

**4.2.050 Approval Criteria and Adjustments**

A. **Approval Criteria.** Except as provided by subsection (B), below, an application for Site Development Review shall be approved if the proposal meets all of the following criteria. The City decision-making body may, in approving the application, impose reasonable conditions of approval, consistent with the applicable criteria.

1. The application is complete, as determined in accordance with Chapter 4.1 and Section 4.2.040, above.
2. The application complies with all of the applicable provisions of the underlying Land Use District (Article 2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards;
3. The proposal includes required upgrades, if any, to existing development that does not comply with the applicable land use district standards, as may be required under Chapter 1.4, Non-Conforming Uses and Development;
4. The proposal complies with all of the Development and Design Standards of Article 3, as applicable, including but not limited to:
  - a. Chapter 3.1 - Access and Circulation;
  - b. Chapter 3.2 - Landscaping, Fences and Walls, Outdoor Lighting;
  - c. Chapter 3.3 - Parking and Loading;
  - d. Chapter 3.4 - Public Facilities;
  - e. Chapter 3.5 - Signs; and
  - f. Chapter 3.6 – Exterior Lighting.

~~5. All adverse impacts to adjacent properties, such as light, glare, noise, odor, vibration, smoke, dust, or visual impact, are avoided; or where impacts cannot be avoided, they are minimized.~~

**Comment [mo15]:** There was discussion about removing this, but questions about whether there would be a better way or another statement to take its place.

65. The proposal meets all existing conditions of approval for the site or use, as required by prior land use decision(s), as applicable. Note: Compliance with other City codes and requirements, though not applicable land use criteria, may be required prior to issuance of building permits.

~~B. **Adjustments.** Where Article 2 Zoning and Land Use Requirements, or Article 3 Development Design Standards, provides for adjustments to code requirements, the City decision body may approve an adjustment upon finding that the proposal equally or better meets the purpose and intent of the Code provision that is to be adjusted. In approving an Adjustment, the City shall consider the purpose and intent of all relevant Code chapters and sections. In addition, the City shall find the adjustment, as compared to the standard Code requirement, does not create incompatibilities between existing and proposed~~

**Comment [M16]:** It was requested to check this section for consistency with page 4-48.

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*development relative land use, traffic patterns, noise, light, glare, odor, emissions, vibration, building design, streetscape appearance and functionality, or similar types of impacts. Permitted uses, as provided by Article 2, shall not be adjusted.*

**4.2.060 Assurances**

Public improvement required as part of a Site Development Review approval shall be subject to the performance guarantee and warranty bond provisions of Section 3.4.090, as applicable.

**4.2.070 Compliance With Conditions; Modifications; Permit Expiration**

Development shall not commence until after the ~~applicant has received~~ effective date of all applicable land use and development approvals ~~become effective~~. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require bonding or other assurances for improvements. Site Development Review approvals are subject to all of the following standards and limitations:

A. **Approval Period.** Site Development Review approvals shall be effective for a period of one (1) year from the date of approval. The approval shall lapse if:

1. A public improvement plan or building permit application for the project has not been submitted within one year of approval; or
2. Construction on the site is in violation of the approved plan.

B. **Extension.** The City Planning Official, upon written request by the applicant, ~~may shall~~ grant a one written extension of the approval period not to exceed one year; provided that the applicant demonstrates:

1. No changes are made on the original approved plan;
2. The applicant can show intent of initiating construction on the site within the one-year extension period;

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3. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the subject plan does not comply with those changes, then the extension shall not be granted; in this case, a new Site Development Review shall be required; and

4. ~~The applicant demonstrates that if~~ failure to obtain building permits and substantially begin construction within the standard timeframe was beyond the applicant's control.

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5. Payment of applicable fees.

C. **Modifications to Approved Plans and Developments.** Modifications to approved plans are subject to City review and approval under Chapter 4.5.

Comment [M17]: Planning Commission adjourned the meeting here and determined to continue the remaining sections of Article IV at their May 16 meeting.

## Chapter 4.3 - Land Divisions and Property Line Adjustments

### Sections:

4.3.010	Purpose
4.3.020	General Requirements
4.3.030	Approval Process
4.3.040	Preliminary Plat Submission Requirements
4.3.050	Preliminary Plat Approval Criteria
4.3.060	Land Division-Related Variances
4.3.070	Final Plat Submission Requirements and Approval Criteria
4.3.080	Filing and Recording
4.3.090	Re-platting and Vacation of Plats
4.3.100	Property Line Adjustments

### 4.3.010 Purpose

The purpose of this chapter is to implement the objectives in subsections (A) through (E):

A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments as follows:

1. Subdivisions are the creation of four (4) or more lots from one parent lot, parcel or tract, within one (1) calendar year.
2. Partitions are the creation of three (3) or fewer lots within one (1) calendar year from one parent lot, parcel, or tract.
3. Property line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots).

B. Carry out the City's development pattern, as envisioned by the City's comprehensive plan.

C. Encourage efficient use of land resources and public services, and to provide transportation options.

D. Promote the public health, safety and general welfare through orderly and efficient urbanization.

E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards.

**4.3.020 General Requirements**

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

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

Note: Property line adjustments and lot consolidation requests (i.e., no new lot is created) are subject to Section 4.3.100; they are not subject to 4.3.020 through 4.3.090.

**B. Compliance With Oregon Revised Statutes (ORS) Chapter 92.** All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.

**C. Future Re-division Plan.** When subdividing or partitioning tracts into large lots (i.e., greater than [x] percent the minimum lot size allowed by the underlying land use district), the lots shall be of such size, shape, and orientation as to facilitate future re-division and extension of streets and utilities. *[The applicant may be required to submit a future re-division plan, or shadow plan, indicating how re-division of large lots, including extension of required public facilities to adjacent parcels in conformance with this Code, can occur in the future.]*

**D. Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as streets, water, sewer, gas, and electrical systems, pursuant to Chapter 3.4. These systems shall be located and constructed underground where feasible.

**E. Adequate Drainage.** All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required, pursuant to Chapter 3.4.

**F. Adequate Access.** All lots created or reconfigured shall have adequate vehicle access and parking, as may be required, pursuant to Chapter 3.1.

**4.3.030 Preliminary Plat Approval Process**

**A. Review of Preliminary Plat.** Preliminary plats shall be processed using the Type III procedure under Section 4.1.040. All preliminary plats, including partitions and subdivisions, are subject to the approval criteria in Section 4.3.050.

**B. Preliminary Plat Approval Period.** Preliminary plat approval shall be effective for a period of one and one-half (1 1/2 ) years from the date of approval. The preliminary plat

shall lapse if a final plat has not been submitted or other assurance provided, pursuant to Section 4.3.070, within the maximum ~~[x-]~~ year period. The Planning Commission may approve phased subdivisions, pursuant with subsection 4.3.030(D), with an overall time frame of more than two (2) years between preliminary plat and final plat approvals.

- C. **Modifications and Extensions.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.5. The original approval body may, upon written request by the applicant and payment of the required fee, grant written extensions of the approval period not to exceed one (1) year per extension, provided that all of the following criteria are met:
1. Any changes to the preliminary plat follow the procedures in Chapter 4.5;
  2. The applicant has submitted written intent to file a final plat within the one-year extension period;
  3. An extension of time will not prevent the lawful development of abutting properties;
  4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and
  5. The extension request is made before expiration of the original approved plan.
- D. **Phased Subdivision.** The City decision body may approve a phased subdivision, provided the applicant proposes a reasonable phasing schedule that meets all of the following criteria:
1. In no case shall the construction time period (i.e., for required public improvements, utilities, streets) for the first subdivision phase be more than one (1) year;
  2. Public facilities shall be constructed in conjunction with or prior to each phase;
  3. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that are required as part of the approved development proposal;
  4. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary subdivision plat application; and

**4.3.040 Preliminary Plat Submission Requirements**

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

**A. General Submission Requirements.**

1. Information required for a Type III review. (See Section 4.1.040);
2. Public Facilities and Services Impact *[Study / Summary]*. The impact *[study / summary]* shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the *[study / summary]*, which, at a minimum, shall address the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system (for subdivisions and planned unit developments); water system; and sewer system. For each system and type of impact, the study shall propose improvements necessary to meet City requirements; and
3. Traffic Impact Analysis, as may be required by the City or other roadway authority.

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

1. General information:

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

#### 4.3 – Land Divisions and Property Line Adjustments

2. Existing Conditions. Except where the City Planning Official deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on existing conditions of the site:
  - a. Streets: Location, name, and present width of all streets, alleys and rights-of-way on and abutting the site;
  - b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
  - c. Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
  - d. Ground elevations shown by contour lines at 2-foot vertical interval. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor; the City Engineer may waive this standard for partitions when grades, on average, are less than six (6) percent;
  - e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
  - f. The Base Flood Elevation, per FEMA Flood Insurance Rate Maps, as applicable;
  - g. North arrow and scale; and
  - h. Other information, as deemed necessary by the City Planning Official for review of the application. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
3. Proposed Development. Except where the City Planning Official deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on the proposed development:
  - a. Proposed lots, streets, tracts, open space and park land (if any); location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
  - b. Easements: location, width and purpose of all proposed easements;
  - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;

#### 4.3 – Land Divisions and Property Line Adjustments

- d. Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose of surface water management, recreation, or other use;
- e. Proposed public street improvements, pursuant to Chapter 3.4;
- f. Information demonstrating that all proposed lots can reasonably be accessed and developed without the need for a variance and in conformance with applicable Engineering Design Standards. On slopes exceeding *[an average existing grade of x%]*, as determined by the *[City Engineer]*, the preliminary plat shall show the buildable portion of each proposed lot based on required setbacks and allowable lot coverage (e.g., building envelopes);
- g. Preliminary design for extending City water and sewer service to each lot, per Chapter 3.4;
- h. Proposed method of storm water drainage and treatment, if required, pursuant to Chapter 3.4;
- i. The approximate location and identity of other utilities, including the locations of street lighting fixtures, as applicable;
- j. Evidence of compliance with applicable overlay zones, including but not limited to City of Dundee Flood Plain Overlay; and
- k. Evidence of contact with the applicable road authority for proposed new street connections.

##### 4.3.050 Preliminary Plat Approval Criteria

- A. **Approval Criteria.** By means of a *[Type II / Type III]* process, *[City Planning Official / Planning Commission]* shall approve, approve with conditions or deny an application for a preliminary plat. The decision shall be based on findings of compliance with all of the following approval criteria:
- 1. The land division application shall conform to the requirements of Chapter 4.3;
  - 2. All proposed lots, blocks, and proposed land uses shall conform to the applicable provisions of Article 2 Zoning and Land Use Requirements;
  - 3. Access to individual lots, and public improvements necessary to serve the development, including but not limited to water, sewer and streets, shall conform to Article 3 Development and Design Standards;

#### 4.3 – Land Divisions and Property Line Adjustments

4. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
5. The proposed streets, utilities, and surface water drainage facilities conform to City of Dundee adopted master plans and applicable engineering standards, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications;
6. All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas is assured through appropriate legal instrument;
7. Evidence that any required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development; and
8. Evidence that improvements or conditions required by the City, road authority, Yamhill County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met.

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

#### 4.3.060 Land Division-Related Variances

Variances shall be processed in accordance with Chapter 4.7. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted; when practical the applications shall be reviewed concurrently.

#### 4.3.070 Final Plat Submission Requirements and Approval Criteria

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

**Comment [mo18]:** Inconsistent with the list of application types.

A. **Submission Requirements.** The applicant shall submit the final plat within [x] years of the approval of the preliminary plat as provided by Section 4.3.050. The format of the plat shall conform to ORS 92.

B. **Approval Process and Criteria.** By means of a Type [I+H] process, the [City Planning Official/Planning Commission] shall review and approve, or deny, the final plat application based on findings of compliance or noncompliance with the all of the following criteria:

**Comment [mo19]:** Suggested "assigned conditions of approval". Requested to get rid of the list.

#### 4.3 – Land Divisions and Property Line Adjustments

1. ~~The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;~~
2. ~~All public improvements required by the preliminary plat have been installed and approved by the City or applicable service provider if different than the City of Dundee (e.g., road authority), or otherwise bonded in conformance with Section 3.4.090;~~
3. ~~The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;~~
4. ~~All required streets, access ways, roads, easements, and other dedications or reservations are shown on the plat;~~
5. ~~The plat and deed contain a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, and water and sewer facilities, as applicable;~~
6. ~~As applicable, the applicant has furnished acceptable copies of Covenants, Conditions and Restrictions (CC&R's), easements, maintenance agreements (e.g., for access, common areas, parking, etc.), and other recorded documents pertaining to common improvements recorded and referenced on the plat;~~
7. ~~Verification by the City that water and sanitary sewer service is available to every lot depicted on the plat; and~~
8. ~~The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner approved by the Yamhill County Surveyor for purposes of identifying its location.~~

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#### 4.3.080 Filing and Recording

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

- A. **Filing Plat with County.** Within sixty (60) days of the City approval of the final plat, the applicant shall submit the final plat to Yamhill County for signatures of County officials as required by ORS Chapter 92.

#### 4.3 – Land Divisions and Property Line Adjustments

B. **Proof of Recording.** Upon final recording with the County, the applicant shall submit to the City a mylar copy and three (3) paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots.

C. **Prerequisites to Recording the Plat.**

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;
2. No plat shall be recorded until the County Surveyor approves it in the manner provided by ORS Chapter 92.

#### 4.3.090 Re-platting and Vacation of Plats

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

#### 4.3.100 Property Line Adjustments

A Property Line Adjustment is the modification of lot boundaries when no lot is created. The City Planning Official reviews applications for Property Line Adjustments pursuant to the Type I review under Section 4.1.020. The application submission and approval process for Property Line Adjustments is as follows:

A. **Submission Requirements.** All applications for Property Line Adjustment shall be made on forms provided by the City and shall include information required for a Type I review, pursuant to Section 4.1.020. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of lands subject to the City of Dundee Flood Plain Overlay; existing fences and walls; and any other information deemed necessary by the City Planning Official for ensuring compliance with City codes. The application shall be signed by all of the owners as appearing on the deeds of the subject lots.

B. **Approval Criteria.** The City Planning Official shall approve or deny a request for a property line adjustment in writing based on all of the following criteria:

#### 4.3 – Land Divisions and Property Line Adjustments

1. Parcel Creation. No additional parcel or lot is created by the lot line adjustment;
2. Lot standards. All lots and parcels conform to the applicable lot standards of the zoning district (Article 2) including lot area, dimensions, setbacks, and coverage. As applicable, all lots and parcels shall conform the City of Dundee Flood Plain Overlay; and
3. Access and Road authority Standards. All lots and parcels conform to the standards or requirements of Chapter 3.1 - Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made less conforming by the property line adjustment.

#### C. Recording Property Line Adjustments

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

## Chapter 4.4 - Conditional Use Permits

### Sections:

- 4.4.010 Purpose
- 4.4.020 Application Submission Requirements
- 4.4.030 Criteria, Standards and Conditions of Approval

#### 4.4.010 Purpose

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as conditional uses in Chapter 2.2 Allowed Uses. The purpose of this chapter is to provide procedures and standards for permitting conditional uses.

#### 4.4.020 Application Submission Requirements

In addition to the submission requirements for a Type III review under Section 4.1.040, applications for conditional use permits shall include a narrative report or letter responding to the applicable approval criteria in Section 4.4.040, description of existing conditions, a site plan, and information on any existing and any proposed restrictions or covenants. (For a more detailed description of each item, please refer to Section 4.2.040 Site Development Review Application Submission Requirements.) Where Site Development Review is also required for a proposed development, only one site plan submittal is required; conformance with the site plan submittal requirements under Chapter 4.2 shall satisfy the site plan submittal requirements for a Conditional Use Permit application.

#### 4.4.030 Criteria, Standards and Conditions of Approval

By means of a *[Type II / Type III]* process, *[City Planning Official / Planning Commission]* shall approve, approve with conditions or deny an application, including requests to enlarge or alter a conditional use, based on findings of fact with respect to all of the criteria and standards in A-C.

##### A. Use Criteria

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.

#### 4.4 – Conditional Use Permits

2. The negative impacts of the proposed use, if any, on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval.
  3. All required public facilities, including water, sanitary sewer, and streets, have adequate capacity or are to be improved to serve the proposal, consistent with City standards.
  4. A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.
- B. Conditions of Approval.** The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, one or more of the following:
1. Limiting the hours, days, place and/or manner of operation;
  2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
  3. Requiring larger setback areas, lot area, and/or lot depth or width;
  4. Limiting the building or structure height, size, lot coverage, and/or location on the site;
  5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;
  6. Requiring street right-of-way to be dedicated and street improvements made, or the installation of pathways or sidewalks, as applicable;
  7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
  8. Limiting the number, size, location, height and/or lighting of signs;
  9. Limiting or setting standards for the location, type, design, and/or intensity of outdoor lighting;
  10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;

#### 4.4 – Conditional Use Permits

11. Requiring and designating the size, height, location and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands;
13. Requiring improvements to water, sanitary sewer, or storm drainage systems, in conformance with City standards; and
14. The Planning Commission may require renewal of conditional use permits annually or in accordance with another timetable as approved pursuant to this Chapter. Where applicable, the timetable shall provide for periodic review and renewal, or expiration, of the conditional use permit to ensure compliance with conditions of approval; such period review may occur through a Administrative or Quasi-Judicial Land Use review process.

C. **Conditional Use Permit Supplemental Requirements.** The requirements for compliance with permit conditions, modification procedures, and permit expiration are the same as for Site Development Review under Section 4.2.070.

## Chapter 4.5 - Modifications to Approved Plans and Conditions

**Comment [mo20]:** The City Planner will review other jurisdictions for suggestions regarding percentages and wording. It will be brought back for further discussion.

### Sections:

- 4.5.010 Purpose
- 4.5.020 Applicability
- 4.5.030 Major Modifications
- 4.5.040 Minor Modifications

#### 4.5.010 Purpose

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

#### 4.5.020 Applicability

This Chapter applies when an applicant proposes to modify an approved application or condition of approval.

#### 4.5.030 Major Modifications

A. **Major Modification.** Any one of the following changes constitutes a major modification to an approved plan:

1. A change in land use, from a less intensive use to a more intensive use, an increase in automobile or truck trips (peak and/or average daily trips), an increase in hours of operation, an increased demand for parking, additional paved area, or similar factor(s), where the increase is more than [x] percent, provided the standards of Article 2 and Article 3 are met; or
2. An increase in floor area to a commercial or industrial development, or an increase in the number of dwelling units in a multifamily development, by [x] percent or [y] square feet, whichever is more, provided the standards of Article 2 and Article 3 are met; or
3. A reduction in required setbacks, or an increase in lot coverage, by more than [x] percent, provided the standards of Article 2 and Article 3 are met; or
4. A change in the type and/or location of vehicle access points or approaches, driveways, or parking areas affecting off-site traffic when roadway authority determines the

#### 4.5 – Modifications to Approved Plans and Conditions of Approval

change could cause a significant adverse impact on traffic operations or safety (i.e., requiring mitigation); or

5. A reduction to screening, or a reduction to the area reserved for common open space or landscaping by more than 15 percent; or
6. Change to a condition of approval that could have a detrimental impact on adjoining properties. The City Planning Official shall have discretion in determining detrimental impacts triggering a major modification; or
7. Other changes similar to those in subsections (1) through (6), above, in scale, magnitude, or impact to adjacent properties, as determined by the City Planning Official.

**B. Major Modification Applications.** A request for a major modification requires an application form, filing fee, a letter describing the modification, and a site plan using the same plan format as in the original approval. The City Planning Official may require other relevant information, as necessary, in evaluating the request.

**C. Major Modification Approval Criteria.** The Planning Commission through a Type III procedure reviews applications for major modifications. The Planning Commission shall approve, approve with conditions, or deny a request for a major modification based on the criteria and procedures in (1) through (3):

1. The application shall be subject to the same approval criteria used for the initial project approval; except that a modification adding a conditional use to a project approved without a conditional use shall require findings in conformance with Chapter 4.4;
3. The scope of review shall be limited to the modification request. For example, a request to modify a commercial development's parking lot shall require Site Development Review only for the proposed parking lot and any changes to associated access, circulation, etc.; and
4. The City decision-making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the applicable Code criteria (e.g., subdivision, Site Development Review, conditional use, etc.); the Code criteria are the same as those used for the original decision, except that the scope of the review is limited to the proposed modification(s), as described above.

**4.5.040 Minor Modifications**

- A. **Minor Modification.** Minor modifications include technical corrections to comply with codes and regulations, and changes that fall below the thresholds in 4.5.030, as determined by the City Planning Official. A minor modification is a change to an approved plan or condition of approval that does not meet any of the thresholds for a major modification listed in Section 4.5.030(A).
- B. **Minor Modification Applications.** An application for minor modification shall include an application form, filing fee, a letter describing the modification, and a site plan using the same plan format as in the original approval. The City Planning Official may require other relevant information, as necessary, in evaluating the request.
- C. **Minor Modification Approval Criteria.** The City Planning Official through a Type I or Type II procedure, depending on whether the decision requires discretion, shall approve, deny, or approve with conditions an application for minor modification based on findings of compliance or noncompliance with the applicable requirements of the Development Code and the conditions of approval on the original decision. The scope of the review, including any new conditions of approval, is limited to the requested modification and any impacts that change might have.

## Chapter 4.6 – Amendments to Zoning Map or Code

### Sections:

4.6.010	Purpose
4.6.020	Procedure
4.6.030	Criteria
4.6.040	Record of Amendments
4.6.050	Transportation Planning Rule Compliance

#### 4.6.010 Purpose

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and Zoning Map. Amendments may be necessary from time to time to reflect changing community conditions, to correct mistakes, or to address changes in the law.

#### 4.6.020 Procedure

- A. Except for corrections, amendments to Development Code text are Legislative actions.
- B. Amendments to the Zoning Map that affect more than one parcel, or more than one-half (1/2) acre, whichever is greater, are Legislative actions.
- C. Amendments to the Zoning Map that require an amendment to the Comprehensive Plan are Legislative actions.
- D. Amendments that do not meet the criteria under subsection 4.6.020(A), 4.6.020(B), or 4.6.020(C) may be processed as Quasi-Judicial amendments.

#### 4.6.030 Criteria

Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Development Code or Comprehensive Plan shall be based on all of the following criteria:

- A. If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- B. The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);

- C. The City Council must find the proposal to be in the public interest with regard to community conditions; the proposal either corrects a mistake or inconsistency in the Comprehensive Plan, Development Code, or Zoning Map; or it responds to changes in the community; and
- D. The amendment must conform to the Transportation Planning Rule provisions under Section 4.6.050.

**4.6.040 Record of Amendments**

The City Planning Official shall maintain a record of amendments to the text of this Code and the Zoning Map in a format convenient for public use. In the case of a map amendment, the map shall be made part of the ordinance.

**4.6.050 Transportation Planning Rule Compliance**

- A. **Review of Applications for Effect on Transportation Facilities.** Proposals to amend the Comprehensive Plan or Zoning Map shall be reviewed to determine whether they significantly affect a transportation facility pursuant to Oregon Administrative Rule (OAR) 660-012-0060 (Transportation Planning Rule - TPR). Where the City Council, in consultation with the applicable roadway authority, finds that a proposed amendment would have a significant affect on a transportation facility, the City shall work with the roadway authority and applicant to modify the request or mitigate the impacts in accordance with the TPR and applicable law.

## Chapter 4.7 – Adjustments and Variances

**Comment [mo21]:** There was discussion regarding what types of circumstances may require an adjustment and whether the criteria was discretionary.

### Sections:

- 4.7.010 Purpose
- 4.7.020 General Provisions
- 4.7.030 Adjustments
- 4.7.040 Variances
- 4.7.050 Expiration

### 4.7.010 Purpose

Chapter 4.7 provides standards and procedures for variances, which are modifications to development standards that are not otherwise permitted elsewhere in this Code as exceptions or adjustments to code standards. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures provide flexibility while ensuring that the resulting development is consistent with Code’s intent.

### 4.7.020 General Provisions

- A. **Adjustments versus Variances.** A code standard or approval criterion (“code section”) may be modified without approval of a variance if the applicable Code expressly allows the City to grant exceptions or adjustments. Where the Code does not expressly provide for an exception or adjustment, then the City may grant a variance may pursuant to Chapter 4.7.
- B. **Application Requirements.** Variance applications shall be filed pursuant to the requirements for Administrative or Quasi-Judicial reviews, under Section 4.1.030 or Section 4.2.040, as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for the variance request, alternatives considered, how the variance criteria in Section 4.7.040 are satisfied, and why the subject Code standard(s) cannot be met without the variance.
- C. **Combining Variances With Other Approvals; Permit Approvals by Other Agencies.** Variance requests may be combined with other land use and development applications; however, some variances may be subject to approval by other permitting agencies, such as ODOT or Yamhill County in the case of variances to highway or street access standards. Variances to City of Dundee Engineering Standards are reviewed by the Planning Commission and are not subject to this Code.
- D. **Types of Variances and Limitations.** As provided in Section 4.7.030, there are two types of variances: Minor and Major. Minor involve variances involve limited

discretion and therefore are reviewed through an Administrative Land Use procedure (Section 4.1.030). Variances require a public hearing under the Quasi-Judicial Land Use procedure (Section 4.1.040) because they involve more discretion. Uses allowed in a particular zoning district (Table 2.2.020) shall not be modified through a variance.

#### 4.7.030 **Adjustments**

The following is adapted from Newberg's Development Code. It is intended to provide a reasonable amount of flexibility in a few select areas of the code.

**Comment [mo22]:** Discussion on this section was postponed until further research is done on similar standards in other jurisdictions.

**A. Type II Adjustments.** *The City Planning Official through a Type I or Type II review, depending on whether the review requires the exercise of discretion, may authorize adjustments from the standards in subsections (1) through (8), below, pursuant to the approval criteria in subsection 4.7.030(B).*

1. *Setbacks/Street Trees – Maximum adjustment of twenty-five (25) percent of the dimensional standards for front yard setback requirements and the spacing of street trees.*
2. *Lot Area – Maximum adjustment of five (5) percent of the minimum lot area standard, provided a lot area adjustment shall not be granted thereby allowing a greater number of dwelling units than that permitted without the adjustment*
3. *Percentage of Lot Coverage – Maximum adjustment of two (2) percent additional lot coverage.*
4. *Lot Dimensions – Maximum of ten (10) percent reduction to standard lot dimensions.*
5. *Interior Yard Setback Standards in Residential Zones – Except for lots designated as “zero lot line lots,” the interior yard may be reduced, provided a setback of not less than three (3) feet is maintained.*
6. *Dimensions for Access, Circulation, and Off-Street Parking – The standard dimensions for access, circulation, and off-street parking spaces may be reduced by ten (10) percent, provided clear vision area requirements and requirements for traffic operations and safety are met.*
7. *Landscaping, Screening, and Buffering Standards – The dimensional and surface area standards for landscaping, screening, and buffering may be reduced by ten (10) percent.*
8. *Vision clearance requirements on corner lots – Vision clearance requirements on corner lots may be waived, provided the waiver does not adversely affect traffic operations or safety, including pedestrian safety.*

*B. Approval criteria. An adjustment shall be granted if the applicant demonstrates compliance with all of the following criteria, as applicable:*

- 1. The adjustment is consistent with the purpose and intent of the code standard that is to be adjusted;*
- 2. The adjustment allows for a building plan that is more compatible with adjacent land uses, or it does not create a conflict with adjacent uses;*
- 3. Approval of the adjustment does not create a violation(s) of any other adopted ordinance or code standard;*
- 4. An application for an adjustment is limited to one (1) lot per application. Each code standard to be adjusted shall require a separate application;*
- 5. Not more than [x] adjustments may be approved for one lot or parcel in a continuous 12-month period;*
- 6. All applicable building code requirements shall be met; and*
- 7. The City Planning Officials, finds that the adjustment provides for:*
  - a. More efficient use of the site than would be possible under the standard;*
  - b. Facilitates preservation of natural features, where applicable;*
  - c. Allows adequate light, air and privacy to adjoining properties.*
  - d. Provides for public safety, including required emergency access and egress; and*
  - e. Is generally consistent with the setbacks, lot area, and/or lot coverage of buildings or structures existing in the immediate vicinity.*

**4.7.040 Variances**

**A. Applicability.** Except where this Code specifically authorizes exceptions, or where the City approves an adjustment pursuant to Section 4.7.030, a variance is required to deviate from a standard of this Code.

**B. Approval Criteria.** The Planning Commission may approve an application for a variance through a Type III review upon finding that the application meets all of the criteria in subsections (1) through (6):

#### 4.7 – Variances

1. The variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses;
2. The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;
3. The need for the variance is not self-imposed by the applicant or property owner. (For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant);
4. The variance does not conflict with other applicable City policies or other applicable regulations;
5. The variance will result in no foreseeable harm to adjacent property owners or the public; and
6. All applicable building code requirements shall be met.

#### 4.7.050 Expiration

A variance or adjustment approval, as applicable, shall expire if not acted upon by the property owner within one (1) year of the City approval. Where the owner has applied for a building permit or final plat, or has made site improvements consistent with an approved development plan (e.g., Site Development Review or preliminary subdivision plan), the City Planning Official may extend the approval without a separate land use action.

