

CITY OF DUNDEE  
PLANNING COMMISSION AGENDA  
P.O. Box 220  
620 SW 5<sup>th</sup> Street  
Dundee, Oregon 97115

**MEETING WILL BE TELECONFERENCED**

Join Zoom Meeting: <https://us02web.zoom.us/j/84575814204>

Or listen by calling: 1-253-215-8782

**Meeting ID: 845 7581 4204**

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**MEETING DATE: February 17, 2021**

**Meeting Time: 6:00pm**

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- I.** Call Meeting to Order
- II.** Public Comment
- III.** Approval of the Minutes  
- January 20, 2021
- IV.** Development Code Revisions Workshop
- V.** Issues from Planning Commissioners
- VI.** Adjournment

# CITY OF DUNDEE

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**Meeting:** Planning Commission Meeting

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

**Date:** January 20, 2021

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

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## **I. Meeting called to order.**

Chairman O'Neill called the meeting to order. Commissioners present, which consisted of quorum, were Shannon O'Neill, Maria Hinoveanu, David Hinson, Doug Pugsley, Eugene Gilden, and Ed Carlisle. Commissioner James Kay was absent. City Planner Patrick Davenport and City Administrator Rob Daykin were also present.

## **II. Election of the 2021 Chairman and Vice Chairman**

Commissioner O'Neill was nominated to serve another term as Chairman. Motion was seconded. Motion carries to re-elect Commissioner O'Neill as Chairman.

Commissioner Hinoveanu was nominated to serve another term as Vice-Chairman. Motion was seconded. Motion carries unanimously to elect Commissioner Hinoveanu as Vice-Chairman.

## **III. Public Comment**

There were no members of the public present.

## **IV. Approval of Minutes from Previous Meeting(s)**

It was moved and seconded to approve the November 18, 2020 minutes. Motion carries, unanimously.

## **IV. Development Code Revisions Workshop**

CA Daykin explained that the code revisions were a continuation of work that had begun approximately 18-months beforehand. Although some work had been done, it was likely that part of it would need to be covered again due to personnel turnover.

Patrick Davenport reviewed his staff memo with the Commission and then began moving through the table of proposed development code amendments to address in "round one".

There was discussion regarding state regulations vs. Dundee regulations for notification and how the sections needed to be rewritten. Planner Davenport stated that this section would be coming to the

Commission next month with draft language for review. Conversation also took place regarding publication requirements and possible routes around the local paper's weekly publication and tight deadlines. Alternative newspapers, and whether electronic publication would work, were discussed.

Review processes for parks were discussed. Planner Davenport requested feedback from the Commission on whether review processes should differ based on the size of the park. CA Daykin gave some history of how the park review regulations came to be, and how City Council felt about the current review processes. There was also discussion regarding uses that required a certain distance from neighborhood parks. CA Daykin noted that, except for the Sander Park, most new parks would be in the Riverside District. Commissioner Pugsley noted that, with Councilor Adlong's long-time involvement with parks and Chairmanship of the Parks Advisory Committee, he would like the final review to go to Council. CA Daykin suggested that in lieu of a preapplication meeting requirement the applicant appear before the Parks Advisory Committee so that they have input into the proposal. Chairman O'Neill agreed that they should have input. Planner Davenport stated that he had worked in another city that had a Parks Advisory Committee that reviewed site plans for parks and gave a recommendation to the Planning Commission. He highly recommended their involvement. There was further discussion regarding City Council review. CA Daykin suggested that, in addition to size, the type of park/use be looked at as well in terms of what parks should go to City Council. It was requested to take the issue back to City Council to find out how strong their desire was to review parks and how they might feel about involving the Parks Advisory Committee.

Planner Davenport continued to work down the table explaining the need for specific changes or highlighting why changes were desired.

Slope standards were discussed in terms of whether the language needed to be changed, eliminated, or if overlay districts needed to be created to deal with areas of steep slopes instead. Planner Davenport talked about the statewide goal that dealt with hazardous building areas.

Planner Davenport concluded the discussion by stating that the goal would be to try and complete the updates by the end of the year. After that, the goal would be to keep updating yearly as things change. There was also discussion regarding retyping the Comprehensive Plan, as well as incorporating updates into the text.

There was a conversation about moving the work session start time up to 6:00pm. Consensus among the Planning Commission was that the earlier start time would be fine. It was decided to move the next work session (in February) to 6:00pm as an experiment.

Commissioner Hinson mentioned a House Bill that had been discussed and he wondered if there was language in those Bills that may fill in some of the "holes". He also suggested that one of the things that gets added to the list would be the elimination of Private Streets.

## **VI. Planning Issues from Commission Members.**

Excitement was expressed over the work beginning on Highway 99W. CA Daykin talked a little about some of the frustrations taking place with the water line project. He also gave an update regarding movement on the Lindquist project.

Commissioner Hinoveanu questioned at what point the buildable lands report might need to be updated. CA Daykin responded that once the City gets to the point where the supply of land is being

consumed there would need to be major policy updates, including a land inventory and comprehensive plan update. Planner Davenport agreed with CA Daykin's response, but also noted that once the zoning was set for the Riverside District things would begin to move quickly. There was some continued conversation, which included history of the last periodic review. Planner Davenport recommended that when the time came to begin revising plans and policy the process begin with a community vision exercise.

CA Daykin advised the Planning Commission that the Verizon Cell Tower plans had been received and were in review.

## **VII. Adjournment**

The meeting was adjourned.

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Shannon O'Neill, Chairman

ATTEST:

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Melody Osborne, Planning Secretary



## Memorandum

TO: Dundee Planning Commission  
FROM: Patrick Davenport, designated City Planner (Planning Manager, City of Newberg)  
CC: Rob Daykin, City Administrator  
DATE: February 17, 2021  
SUBJECT: Review of Proposed Development Code Amendments

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- Staff is presenting several draft proposals for Development Code Amendments to be considered for adoption in Calendar Year 2021. The proposed amendments are marked up **RED** indicating text to be deleted and **BLUE** indicating new text to be added. Some amendments are indicated as all new text and are not marked as **BLUE**. Following are staff's descriptions for the proposed amendments to each Section:
- **Chapter: 17.103 Code Interpretations**
  - **Description:** Proposed amendments to this section would now require a Type II process under **Section 17.103.030 Process for formal code interpretations**, adds 4 additional days to the process and provides a formal Notice process if a specific property is referenced in the Interpretation. Additionally, **Section 17.103.040 'Authorization of Similar Use'** is removed as a stand-alone process since it is an actual Code Interpretation. Section 17.401 Table of Process is also amended to coincide with this proposal. A Type II process for a Code Interpretation would enable the requestor or a noticed participant to appeal the decision. Adding 4 more days, increasing notice period from 10 to 14 days enables sufficient time for mailing notices and enables consistency with amendments to other Sections.
- **Chapter 17.203 Special Use Standards**
  - **Description:** Proposed amendments to this Section begin with replacing the term 'Special Use Standards' with Supplemental Standards. Section 17.203.120 Multifamily Development Standards does not currently contain and standards and two alternatives are proposed. One alternative offers a "scoring system" as required in the City of Newberg and the other alternative is a prescriptive systems with options developers can select from. The PC is requested to discuss these alternatives and offer staff feedback. Amendments to 17.203.130 Park and open space (PO) zone master plans clarifies that a quasi judicial process involving a City Council decision is required. Amendments to 17.203.160 Temporary uses changes the term "food cart" to a formal term "mobile food unit" to be consistent with State terminology. Subsection C.3 clarifies that a temporary construction trailer is allowed without additional review if included in the original land use proposal. Section 17.203.270 Accessory uses in the LI zone is proposed to add wineries, distilleries, cideries, concrete products  
17.203.280 Infill Development Options (Flag Lots and Driveway Courts) is a new section proposed to be added to provide clear and reasonable standards for infill development options.

- **Chapter: 17.401 General Review Procedure**
  - **Description:** The main focus of these amendments is to eliminate the Type V process description and condense the process types to four general categories: Ministerial, Administrative, Quasi-judicial and Legislative. The quasi-judicial process category is further defined as Type IIIA or Type IIIB according to the request type reflective of whether the Planning Commission or City Council issues the final decision. Notices are enabled to be emailed with consent and Notice periods for Type II application are revised to be consistent with a 14 day period and Type III application would retain a 20 day – notice period. Notice “buffers” to adjoining properties are expanded from 100’ to 200’.  
The category of “Vacation” is eliminated due to it being a statutory process guided by State of Oregon Revised Statutes.
  
- **Section: 17.406.030 Adjustments**
  - **Description:** Proposed amendments to 17.406.030.A Applicability would reduce the overall percentages allowed via the Adjustment process and provide details for adjustments maximums on particular standards.

Attachment 1: DRAFT proposed Development Code Amendments to:

- Chapter: 17.103 Code Interpretations
- Chapter: 17.203 Special Use Standards
- Chapter: 17.401 General Review Procedure
- Section: 17.406.030 Adjustments

## PROPOSED AMENDMENTS TO CODE INTERPRETATIONS

### Chapter 17.103

#### CODE INTERPRETATIONS

Sections:

- 17.103.010 Purpose.
- 17.103.020 General standards for interpretation.
- 17.103.030 Process for formal code interpretations.
- ~~17.103.040 Authorization of similar uses.~~

##### **17.103.010 Purpose.**

Some terms or phrases within this code may have two or more reasonable meanings. This chapter provides a process for resolving differences in the interpretation of the code text. [Ord. 521-2013 § 3 (Exh. A)].

##### **17.103.020 General standards for interpretation.**

- A. Except as otherwise provided herein or by law, the planning official shall be responsible for interpreting the provisions of this code.
- B. The provisions of this code shall be interpreted as minimum requirements. When this code imposes a greater restriction than is required by other provisions of law, or by other regulations, resolutions, easements, covenants or agreements between parties, the provisions of this code shall control.
- C. Where a certain provision of this code conflicts with another provision of this code, the more restrictive provision shall apply.
- D. Where the provisions of this code are not clear, any party may request a formal interpretation of this code in accordance with the procedures in DMC 17.103.030.
- E. The planning official may correct scrivener's errors in the text of this code. [Ord. 521-2013 § 3 (Exh. A)].

##### **17.103.030 Process for formal code interpretations.**

- A. Requests. Any party requesting a formal code interpretation shall make the request in writing to the planning official. The request shall be made on forms provided by the planning official, and shall be accompanied by a fee set by resolution of the city council.
- B. Decision to Issue Interpretation. The planning official shall have the authority to review a request for an interpretation. The planning official shall advise the requester in writing within 14 days after the request is made on whether or not the city will issue the requested interpretation.
- C. Declining Requests for Interpretations. The planning official is authorized to issue or decline to issue a requested interpretation. The basis for declining may include, but is not limited to, a finding that the subject code section affords only one reasonable interpretation and the interpretation does not support the request. The planning official's decision to issue or decline to issue an interpretation is final when the decision is mailed to the party requesting the interpretation and the decision is not subject to any further local appeal. If the planning official declines the request for interpretation, the planning official shall refund the unexpended portion of the application fee.
- D. Written Interpretation. If the planning official decides to issue an interpretation, he or she shall issue it in accordance to a Type II process per 17.401.030. If the interpretation involves a specific property, notices of application will be sent to adjoining property owners per 17.401.030 ~~writing and mail or deliver it to the person requesting the interpretation and any other person who specifically requested a copy of the interpretation. The written interpretation shall be issued within 14 days after the planning official advises the requester that an interpretation will be issued.~~ The decision shall become effective ~~10~~ 14 days later, unless an appeal is filed in accordance with subsection (E) of this section.

E. Appeals. The applicant and any party who received such notice or who participated in the proceedings through the submission of written or verbal evidence of an interpretation may appeal the interpretation to the planning commission within ~~10~~ 14 days after the interpretation was mailed or delivered to the applicant. The appeal may be initiated by filing a notice of appeal with the planning official. The appeal shall be handled in the same manner as provided under DMC 17.401.030(D).

F. Interpretations on File. The planning official shall keep on file a record of all formal code interpretations. [Ord. 521-2013 § 3 (Exh. A)].

**~~17.103.040 — Authorization of similar uses.~~**

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

~~B. The planning official, through a Type I procedure, may determine that a use not specifically listed among the allowed uses in a zone is permitted, permitted with special use standards, or allowed subject to approval of a conditional use permit based on all of the following criteria:~~

- ~~1. The use is consistent with the purpose of the underlying zoning district and is similar in character, scale and performance to permitted uses specified in the underlying district;~~
- ~~2. The use does not conflict with the standards and limitations of the underlying zoning district. The review body shall determine whether additional land use review, such as conditional use approval or a site plan review, is required;~~
- ~~3. The proposed use, by definition, is not limited to a different zone.~~

~~C. The applicant and any party who received such notice or who participated in the proceedings through the submission of written or verbal evidence of a similar use may appeal the interpretation to the planning commission within 10 days after the interpretation was mailed or delivered to the applicant. The appeal may be initiated by filing a notice of appeal with the planning official. The appeal shall be handled in the same manner as provided under DMC 17.401.030(D).~~

~~D. The determination by the planning official that a proposed similar use cannot be accommodated in a given zone does not preclude an application by the appropriate party for an amendment to the text of the comprehensive plan and/or development code. [Ord. 521-2013 § 3 (Exh. A)].~~

## Chapter 17.203

### ~~SPECIAL USE~~ SUPPLEMENTAL STANDARDS

Sections (proposed for amendment or discussion):

- 17.203.010 Purpose.
- 17.203.020 Applicability.
- 17.203.030 Review process.
- 17.203.120 Multifamily development standards.
- 17.203.130 Park and open space (PO) zone master plans.
- 17.203.160 Temporary uses.
- 17.203.240 Vacation rentals. (proceeding under separate track)
- 17.203.270 Accessory uses in the LI zone.
- 17.203.280 Infill Development Options (Flag Lots and Driveway Courts)

#### **17.203.010 Purpose.**

~~Special uses~~ Supplemental standards included in this chapter are uses which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These special use standards may differ from the development standards established for other uses in the same zoning district. [Ord. 521-2013 § 3 (Exh. A)].

#### **17.203.020 Applicability.**

All uses designated as special (“S”) uses in Table 17.202.020, and other uses designated herein, and uses the city determines to be similar to such uses, are subject to the special use standards of this chapter. The ~~special uses~~ supplemental standards ~~supplement the other~~ are additional requirements ~~of in~~ this code. When supplemental standards ~~a standard for a special use differs from that of the underlying district~~, the supplemental standards ~~standard for the special use~~ shall apply. [Ord. 521-2013 § 3 (Exh. A)].

#### **17.203.030 Review process.**

The status of a supplemental standards ~~special use~~ as a permitted or conditional use is set forth in the underlying zone (Table 17.202.020), except as otherwise designated in the special use section. The process for review of a supplemental standards ~~special use~~ is the same as for a permitted or conditional use, as applicable, and pursuant to Chapter 17.401 DMC, General Review Procedures. [Ord. 521-2013 § 3 (Exh. A)].

#### **17.203.120 Multifamily development standards. ALL NEW TEXT**

The purpose of this section is to ensure that residential projects containing three or more units meet minimum standards for good design, provide a healthy and attractive environment for those who live there, and are compatible with surrounding development. As part of the site design review process, an applicant for a new multifamily residential project must demonstrate that some of the following site and building design elements, each of which has a point value, have been incorporated into the design of the project. At least 14 points are required for multifamily projects with six or fewer units and at least 20 points are required for multifamily projects with seven or more units.

##### A. Site Design Elements.

1. Consolidate green space to increase visual impact and functional utility. This applies to larger projects which collectively have a significant amount of open space areas which can be consolidated into children’s play areas, gardens, and/or dog-walking areas (three points).
2. Preserve existing natural features, including topography, water features, and/or native vegetation (three points).

3. Use the front setback to build a street edge by orienting building(s) toward the street with a relatively shallow front yard (12 to 15 feet for two-story buildings) to create a more “pedestrian-friendly” environment (three points).
4. Place parking lots to the sides and/or back of projects so that front yard areas can be used for landscaping and other “pedestrian-friendly” amenities (three points).
5. Create “outdoor” rooms in larger projects by grouping buildings to create well-defined outdoor spaces (two points).
6. Provide good-quality landscaping. Provide coordinated site landscaping sufficient to give the site its own distinctive character, including the preservation of existing landscaping and use of native species (two points).
7. Landscape at the edges of parking lots to minimize visual impacts upon the street and surrounding properties (two points).
8. Use street trees and vegetative screens at the front property line to soften visual impacts from the street and provide shade (one point).
9. Use site furnishings to enhance open space. Provide communal amenities such as benches, playground equipment, and fountains to enhance the outdoor environment (one point).
10. Keep fences neighborly by keeping them low, placing them back from the sidewalk, and using compatible building materials (one point).
11. Use entry accents such as distinctive building or paving materials to mark major entries to multifamily buildings or to individual units (one point).
12. Use appropriate outdoor lighting which enhances the nighttime safety and security of pedestrians without causing glare in nearby buildings (one point).

#### B. Building Design Elements.

1. Orient buildings toward the street. For attached single-family and smaller multifamily projects, this means orienting individual entries and porches to the street. In larger projects with internal circulation and grounds, this means that at least 10 percent of the units should have main entries which face the street rather than be oriented toward the interior (three points).
2. Respect the scale and patterns of nearby buildings by reflecting the architectural styles, building details, materials, and scale of existing buildings (three points).
3. Break up large buildings into bays by varying planes at least every 50 feet (three points).
4. Provide variation in repeated units in both single-family attached and large multifamily projects so that these projects have recognizable identities. Elements such as color; porches, balconies, and windows; railings; and building materials and form, either alone or in combination, can be used to create this variety (three points).
5. Building Materials. Use some or all of the following materials in new buildings: wood or wood-like siding applied horizontally or vertically as board and batten; shingles, as roofing, or on upper portions of exterior walls and gable ends; brick at the base of walls and chimneys; wood or wood-like sash windows; and wood or wood-like trim (one point for each material described above).
6. Incorporate architectural elements of one of the city’s historical styles (Queen Anne, Dutch colonial revival, colonial revival, or bungalow style) into the design to reinforce the city’s cultural identity. Typical design elements which should be considered include, but are not limited to, “crippled hip” roofs, Palladian-style windows, roof eave brackets, dormer windows, and decorative trim boards (two points).

7. Keep car shelters secondary to the building by placing them to the side or back of units and/or using architectural designs, materials, and landscaping to buffer visual impacts from the street (two points).
8. Provide a front porch at every main entry as this is both compatible with the city's historic building pattern and helps to create an attractive, "pedestrian-friendly" streetscape (two points).
9. Use sloped roofs at a pitch of 3:12 or steeper. Gable and hip roof forms are preferable (two points).

### **ALTERNATIVE OPTION FOR CONSIDERATION**

**Additional Design Standards for Multi-Family Housing.** In addition to the design standards set forth in Section x above, development of multi-family housing (5 or more units) shall also comply with the following additional standards.

1. Usable open space shall be exclusive of dedicated street right-of-ways, land dedicated to other public uses like parks and schools, and vehicular circulation and parking areas. Sensitive lands and historic buildings or landmarks open to the public and designated by the Comprehensive Plan may be counted toward meeting the usable open space requirements.
2. Private open space. Private open space shall be required for all multi-family units based on the following standards:
  - a. Ground floor housing units shall have front or rear patios or decks measuring at least 48 square feet.
  - b. To the extent possible, private open space areas shall be oriented toward common open space areas and away from adjacent single family residences, parking areas and driveways and trash enclosures.
3. Trash receptacles. A common trash enclosure shall be required and is subject to the following standards.
  - a. Trash enclosures shall be oriented away from adjacent residences and shall be screened.
  - b. Trash enclosures shall be accessible to collection vehicles.
  - c. Trash enclosures, a minimum of six-feet in height, shall be constructed of solid, durable and attractive walls with solid screen doors and shall be visually consistent with project architecture.
4. A minimum two (2) foot irrigated and landscaped perimeter shall be provided around the enclosure (excepting door entries).
5. Enclosure areas shall contain sufficient space to accommodate both waste disposal and recycling containers.
6. Building form. All buildings shall incorporate design features such as offsets, balconies, projections, window trim, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the facade of the structure, such features shall occur at a minimum of every 30 lineal feet, and each floor shall contain at least two of the following features:
  - a. Recess (e.g., deck, patio, courtyard, entrance or similar feature) that has a minimum depth of 4 feet;
  - b. Extension (e.g., floor area, deck, patio, entrance or similar feature) that projects a minimum of 2 feet and runs horizontally for a minimum length of 4 feet; and/or
  - c. Offsets or breaks in roof elevation of 2 feet or greater in height.

**17.203.130 Park and open space (PO) zone master plans.**

A. Purpose. All uses and development in the park and open space (PO) zone, plus development of any park greater than one-half acre, are subject to prior approval of a master plan, pursuant to the site development review procedures of Chapter [17.402](#) DMC. The intent of the park and open space master plan process is to establish a long-term plan for development sites and to coordinate site development with the local government, citizens, and developer. Furthermore, the master plan is intended to ensure that proposed site improvements, architecture, signs, landscaping, location and orientation of improvements, paths, and other site design elements meet the needs of the community.

B. Review Process. Review of parks and open space master plans follows the procedures for Type III [B](#) applications in DMC [17.401.040](#). A community meeting conducted by the sponsoring park agency is required prior to commencing the public hearing process on a parks and open space master plan.

C. Community Meeting. Prior to the initial hearing, the applicant shall hold one meeting {...}

**17.203.160 Temporary uses.**

A. Purpose. The purpose of these regulations is to provide standards for the establishment of temporary businesses and similar uses within the city.

B. Review Procedure.

1. Temporary uses are permitted through a Type I review, pursuant to DMC 17.401.020 [unless a Type II process is specified otherwise](#).

2. An applicant requesting a temporary use permit shall submit the following information:

a. A signed statement from the property owner or lessee of the primary use on said property:

- i. Granting permission for the property to be used by the permit applicant;
- ii. Including a copy of a property deed, ground lease or similar evidence of ownership for subject property;
- iii. Specifying the day(s) for which permission is granted;
- iv. Containing the name, mailing address and telephone number of the owner or lessee; and
- v. Acknowledging responsibility to ensure all litter, trash and materials on the property associated with the temporary use are removed within two days after the temporary use ceases.

b. A signed statement from the permit applicant:

- i. Specifying the permit applicant's name, permanent home or business address (not P.O. box), home or business telephone number;
- ii. Specifying the type of use proposed by the applicant;
- iii. Attaching proof that any applicable state or federal license or other requirements to engage in the temporary use proposed by the applicant have been granted by the appropriate governmental agencies;
- iv. Acknowledging responsibility to ensure that all litter, trash and materials on the property associated with the temporary use are removed within two days after temporary use ceases.

3. Each application shall be accompanied by a site plan to demonstrate compliance with these provisions. The site plan shall be to an approximate scale, preferably on an eight-and-one-half-inch by 11-inch sheet of paper. The site plan shall include the following:

- i. Locations of all existing structures;

- ii. Proposed location of temporary use;
- iii. Parking spaces and aisles within the parking lot;
- iv. Driveways; and
- v. Streets.

4. Long-term ~~food-cart~~ mobile food unit vendors will be evaluated via a Type II process and must also submit the following information in addition to the above requirements, in accordance with (17.203.160(C)6).

- i. Description of the ~~food-cart~~ mobile food unit, including size and dimensions, paint colors, location and size of any proposed signs.
- ii. Site plan that identifies the location of the required parking space for the ~~food-cart~~ mobile food unit business, and location of the trash receptacle for customer use.

C. Permitted Uses. Where allowed, the following temporary uses shall be permitted subject to the following limitations and requirements:

1. Trees and Fireworks. Christmas tree or fireworks sales are permitted subject to all of the conditions in subsections (C)(1)(a) and (b) of this section:

- a. The sales shall be limited to commercial zones, except that sales may occur on those properties containing public or semi-public uses, such as schools or churches, regardless of the underlying zone.
- b. Unless otherwise exempted by provisions in this section, the sales activity shall be subject to provisions in DMC 17.203.070, Drive-through service and walk-up service windows.

2. Commercial Activities. Temporary amusement and recreational services and retail sales and services are permitted in all commercial zones ~~and in the light industrial (LI) zone~~, subject to all of the conditions in subsections (C)(2)(a) through (j) of this section:

- a. The business may be operated from a vehicle, or temporary structure, ~~or a vacant building~~, subject to licensing and other applicable regulations.
- b. Unless otherwise exempted by provisions in this section, the sales activity shall be subject to provisions in DMC 17.203.070, Drive-through service and walk-up service windows.
- c. The activity is located on the same lot during only one period, not to exceed 90 consecutive days, in any calendar year.
- d. The required parking for the primary uses on the same lot is not reduced below the minimum requirements of Chapter 17.304 DMC, Parking and Loading.
- e. The use does not block driveways, driveway entrances, or parking aisles.
- f. All signs conform to the requirements of Chapter 17.306 DMC.
- g. The activity conforms to all setback requirements applicable to the lot and zone.
- h. The operator of a temporary use shall provide the required information, pay the applicable fee, and obtain and display the required temporary business permit.
- i. The operator of a temporary use shall obtain all permits required by other agencies including those required for food handling and sales, and the sale of fireworks.
- j. All temporary commercial activities require a permit issued in accordance with subsection (B) of this section.

3. Temporary Construction Facilities. Mobile offices, temporary power equipment and temporary structures used by personnel and to store equipment during construction, provided the structures are located on the construction site and not used as dwellings. ~~There is no restriction as to the zoning.~~ A separate review is not required if the placement of the temporary construction facilities is reviewed during the original development application.

4. Sales and Auctions. Sales or auctions in any zone, provided there are not more than four sales in a calendar year, with each sale not to exceed three consecutive days. Merchandise and signs shall remain on private property. Sales and auctions located within residential zones shall not operate beyond 9:00 p.m. This section does not limit the number of times, or duration, that public agencies may conduct sales or auctions regarding agency land, equipment, supplies or other materials.

5. Farmers Market. Farmers markets are permitted in all commercial zones, the P zone, and the LI zone subject to the conditions in subsections (C)(5)(a) through (i) of this section:

- a. The farmers market is operated from a gathering of tables and/or stalls in an outdoor environment.
- b. The farmers market will feature agricultural products produced within Oregon and Washington. The balance of the market may be used for nonlocal agricultural products, the sale of arts and crafts, and for food prepared for consumption on the premises. The farmers market may include live music, provided all noise regulations are met.
- c. The farmers market permit shall be valid for no more than 180 consecutive days in any calendar year and the market may not be operated not more than two days each week.
- d. The farmers market cannot interfere with the required parking or access of any operating business.
- e. Signs are subject to Chapter 17.306 DMC.
- f. The activity conforms to all setback requirements applicable to the lot and zone.
- g. The operator of a farmers market shall provide the required information, pay the applicable fee, and obtain and display the required temporary business permit.
- h. The operator of a farmers market, and each vendor, shall obtain all permits required by other agencies including those required for food handling and sales.
- i. Farmers markets require a permit issued in accordance with subsection (B) of this section.

6. Long-Term ~~Food Cart~~ Mobile Food Unit Vendors. Long-term (over 90 days) ~~food cart~~ mobile food unit vendors are permitted in all commercial zones subject to the following:

- a. The ~~food cart~~ mobile food unit business must be operated using a mobile vending cart that has wheels and an axle.
- b. Each ~~food cart~~ mobile food unit business must have at least one off-street parking space available for their customers. The required parking for the primary uses on the same lot may not be reduced below code requirements.
- c. The ~~food cart~~ mobile food unit may not block driveways, driveway entrances, or parking aisles, and must meet all applicable setbacks.
- d. The ~~food cart~~ mobile food unit business must provide at least one trash receptacle for customer use, to be emptied on a regular basis.
- e. The business must keep the site surrounding the ~~food cart~~ mobile food unit neat and clean of trash and litter.

f. Each ~~food-cart~~ [mobile food unit](#) may have up to 12 outdoor seats for customer use. Any use of awnings or tent covers may require building permits and must meet any applicable setback requirements for the zone. Any tents or awnings may not block driveways, driveway entrances, or parking aisles.

g. ~~Food-carts~~ [Mobile food units](#) shall comply with the following design standards:

i. ~~Carts~~ [Mobile food units](#) shall be painted with at least two different paint colors. Business owners are encouraged to paint their business name and logo on their ~~cart~~ [mobile food unit](#). The business name and logo will not count toward limits on permitted sign size.

ii. Signs for ~~food-carts~~ [mobile food units](#) shall comply with signage requirements in Chapter 17.306 DMC.

iii. Flashing or rotating lights on the exterior of the ~~cart~~ [mobile food units](#) are not permitted.

iv. Each business may have one temporary and portable sandwich board style sign not to exceed six square feet in size. The portable sign may not be located in the public right-of-way.

h. The operator of a ~~food-cart~~ [mobile food unit](#) shall obtain all permits required by other agencies, including those required for food handling and sales. A plumbing permit is required if water service or sanitary sewer service is installed. An electrical permit may be required for any electric work or connections on the site.

i. All long-term ~~food-cart~~ [mobile food unit](#) vendors require a permit issued in accordance with subsection (B) of this section. ~~Food-cart~~ [Mobile food unit](#) permits are valid for no more than one year, but may be renewed annually.

7. Additional Permitted Temporary Uses. The city council may, by resolution, authorize additional permitted temporary uses during a specific event or festival and set forth reasonable types of uses, appropriate zones for such uses, and any time restrictions the council finds necessary to protect the health, safety and welfare of the public. [Ord. 521-2013 § 3 (Exh. A)].

#### **17.203.270 Accessory uses in the LI zone.**

Retail sales of goods produced on site, including sale of items incidental and related to such goods, are allowed for the following uses in the LI zone, provided all of the standards below are met: [wineries, distilleries, cideries, concrete products, cement](#), glass, clay, and stone products manufacture; dairy products manufacture, e.g., butter, milk, cheese, ice cream; finished textile and leather products manufacture; food processing, including canning, freezing, drying and similar food processing and preserving; welding shop and blacksmith, conducted wholly within a building; and welding shop and blacksmith, conducted all or partially outdoors.

A. The floor area devoted to retail sales is small (less than 15 percent of the floor area, up to 1,500 square feet).

B. Outdoor uses shall be screened from adjoining residentially zoned properties in accordance with the provisions of DMC 17.302.060, Screening and buffering.

C. Additional parking is provided for the retail sales area per Table 17.304.040(C) for retail store use. [Ord. 565-2018 § 1 (Exh. A)].

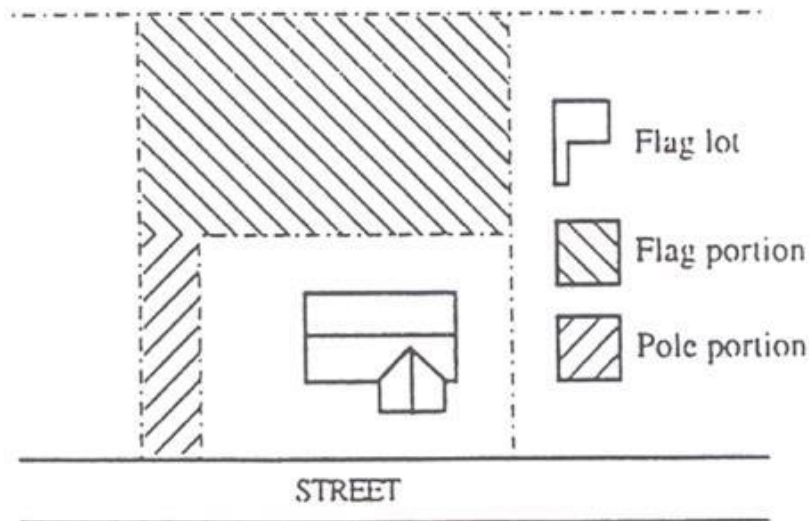
**NEW SECTION: ALL NEW TEXT**

**17.203.280 Infill Development Options (Flag Lots and Driveway Courts)**

Some lots in existing neighborhood may have standard widths but may be unusually deep compared to other lots in the area. Infill candidate areas generally consist of unused space at the back of a lot that may provide room for one or more lots for infill housing. Infill lots may be developed as “flag lots” or “driveway courts” as defined herein.

- A. **Flag Lots.** Flag lots shall comply with the following development standards;
1. To determine if an existing lot is eligible for Flag lot development, the following criteria shall be met:
    - a. Minimum lot area: twice that required by the underlying zone.
    - b. Minimum lot width: 20 feet wider than the width required by the underlying zone.
  2. **Development Standards.**
    - a. The minimum lot frontage for a flag lot shall be 20 feet. A 20-foot wide flag lot driveway pole may serve no more than two (2) parcels or lots (the front parent parcel and the flag lot) and no more than four (4) dwelling units, including accessory dwellings. A shared drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots.
    - b. A flag lot driveway shall not exceed 150 feet in length, unless Oregon Fire Code (OFC) standards are met.
    - c. The pole shall not be less than 20 feet wide and shall have a uniform width to the greatest extent possible. The pole shall be improved with a minimum 12 foot wide paved driveway.
    - d. No fence, structure or other obstacle shall be placed within the shared drive alignment.
    - e. Residential lots created as flag lots shall be subject to Floor Area Ratio (FAR) standards. For the purpose of calculating FAR the Flag Pole area of the lot shall not be counted.
    - f. Flag lot development shall not be permitted on collector or arterial streets.
    - g. The access strip shall not be included in the calculation of lot area for purposes of determining compliance with any minimum lot size provision of this Code.
    - h. If the flag portion is adjacent to a street, the dwelling unit shall have its primary entrance oriented to the street. If the flag portion is not adjacent to a street, the structures located on the flag portion are exempt from orientation standards.

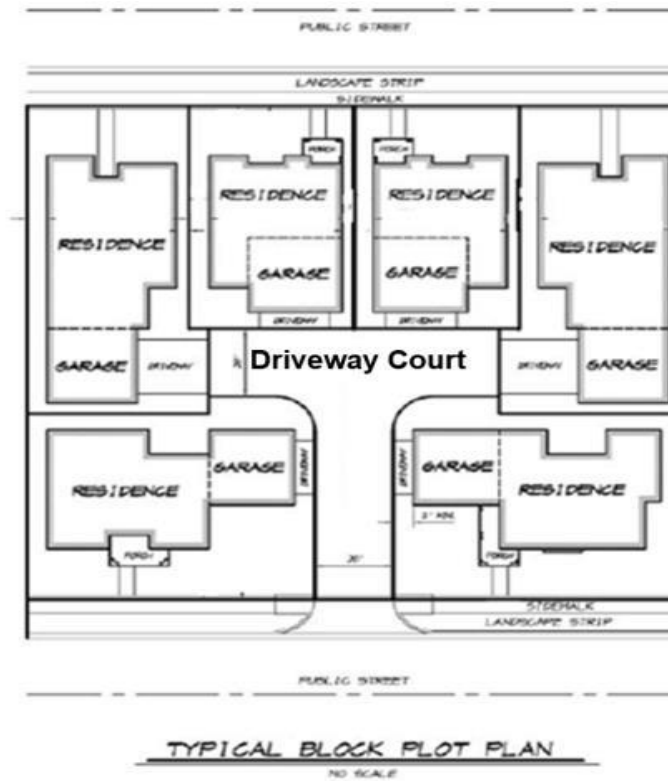
**Figure X – Flag Lot (Typical)**



B. **Driveway courts.** Driveway provide access to public or private streets. Driveway courts are intended to facilitate residential infill and redevelopment of properties when no other development alternative exists. Driveway court development shall comply with the following development standards.

1. Minimum private drive aisle pavement width shall be 20 feet.
2. Pavement width shall be recorded as an easement or a tract and shall include private utility easements as needed and shall be maintained by property owners association or other legal entity.
3. Maximum length of the driveway court shall be 150 feet from the centerline of the intersecting street to the centerline of the driveway court.
4. No parking is allowed within the driveway court. “No Parking” signs shall be required and maintained.
5. A pedestrian pathway shall be provided at the “T” to connect to adjoining development.
6. Design shall be in compliance with the provisions of the Oregon Fire Code.
7. All buildings shall have their primary entrance oriented to a street where feasible.

**Figure Y – Driveway Court**



## PROPOSED AMENDMENTS TO 17.401 GENERAL REVIEW PROCEDURE

### Sections:

- 17.401.010 Purpose and applicability.
- 17.401.020 Type I procedure (staff review).
- 17.401.030 Type II procedure (administrative review).
- 17.401.040 Type III [A and Type IIIB procedures](#) (quasi-judicial reviews – Planning Commission [and City Council](#) decisions).
- 17.401.050 Type-IV procedure (~~quasi-judicial~~ [legislative](#) review – [Planning Commission recommendation and City Council decision](#)).
- ~~17.401.060 Type V (legislative review – City Council decision).~~
- 17.401.070 General provisions applicable to all reviews.

### **17.401.010 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 review applications and participate in the local decision-making process in a timely and effective way. Table 17.401.010 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 five types of permit/approval procedures as described in subsections (B)(1) through (5) of this section. Table 17.401.010 lists the city’s land use and development approvals and corresponding review procedure(s).

1. Type I Procedure (Staff Review). 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.
3. Types [IIIA and IIIB Procedures](#) (Quasi-Judicial Reviews – ~~Planning Commission Hearing~~). Type [IIIA](#) decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. [Type IIIB decisions require at least one public hearing by the Planning Commission and a recommendation forwarded to City Council for a decision in a public hearing format. Type IIIB decisions involve Quasi-Judicial zone changes or special circumstance \(e.g., a change in zoning on one property to comply with the Comprehensive Plan, a Parks and Open Space Master Plan or a park larger than 5 acres\).](#) [Quasi-Judicial decisions involve discretion but implement established policy.](#)
4. Type IV Procedure (~~Quasi-Judicial~~ [Legislative](#) Review – ~~Planning Commission and City Council Hearings~~). ~~The Type IV procedure applies to certain small-scale quasi-judicial decisions (i.e., small zone changes, right-of-way vacations, and annexations) that are considered by the Planning Commission for a recommendation to City Council, and then by the City Council for a final decision.~~

[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, which makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance](#)

~~5. Type V Procedure (Legislative Review – Planning Commission and City Council Hearings). The Type V procedure applies to the creation or revision, or large-scale implementation, of public policy (i.e., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Type V reviews are considered by the Planning Commission for a recommendation to City Council. City Council makes the final decision on legislative proposals.~~

Table 17.401.010

Summary of Approvals by Type of Review Procedure

Approvals*	Review Procedures	Applicable Regulations
Adjustment	Type II	Chapter 17.406 DMC
Annexation	Type <del>III</del> <u>III B or IV</u> <del>or V</del>	Chapter 17.408 DMC
Code Interpretation	Type II or III	Chapter 17.103 DMC
Code Text Amendment	Type <u>IV</u>	Chapter 17.405 DMC
Comprehensive Plan <u>Map or Text</u> Amendment	Type IV <del>or V</del>	Chapter 17.405 DMC
Conditional Use Permit	Type III	Chapter 17.404 DMC
Home Occupation	Type I <u>or Type II</u>	Chapter 17.203 DMC
Legal Lot Determination	Type I	ORS 92.010 to 92.190
Nonconforming Use or Structure, Expansion of	Type III	Chapter 17.104 DMC
Partition or Replat of 2 – 3 Lots		
Preliminary Plat	Type II	Chapter 17.403 DMC
Final Plat	Type I	Chapter 17.403 DMC
Property Line Adjustments, including Lot Consolidations	Type I	Chapter 17.403 DMC
Sign Permit	Type I	Chapter 17.306 DMC
<del>Similar Use Authorization</del>	<del>Type I</del>	<del>Chapter 17.103 DMC</del>
Site Development Review	Type I or II	Chapter 17.402 DMC
Park and Open Space Master Plan	Type <del>III</del> <u>III B</u> <del>**</del>	Chapter 17.203 DMC
Planned Unit Development	Type III	Chapter 17.407 DMC
Subdivision or Replat of > 3 Lots		
Preliminary Plat	Type III	Chapter 17.403 DMC
Final Plat	Type I	Chapter 17.403 DMC
Temporary Use	Type <del>I</del> <u>II</u>	Chapter 17.203 DMC (Special Uses – DMC 17.203.160)
<del>Vacation</del>	<del>Type V</del>	<del>See ORS Chapter 274</del>
Variance	Type III	Chapter 17.406 DMC
Zoning Map Change	Type <del>III</del> <u>III B or IV</u> <del>or V</del>	Chapter 17.405 DMC

\*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.~~

C. Determination of Procedure Type. If there is a question of which procedure type a particular application should follow, the planning official shall determine the procedure to use. [Ord. 521-2013 § 3 (Exh. A)].

**17.401.020 Type I procedure (staff review).**

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).

A. Application Requirements.

1. Application Forms. Approvals requiring Type I review shall be made on forms provided by the city.
2. Application Requirements.
  - 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. A building permit shall not be issued until the city planning official has approved a Type I application for the proposed project.

C. Criteria and Decision. The city planning official's review 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 Type I decision is final on the date it is signed by the city planning official. It is not a land use decision or limited land use decision as defined by ORS 197.015. Decisions may only be appealed to the Planning Commission where specifically noted. [Ord. 521-2013 § 3 (Exh. A)].

**17.401.030 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.

A. Application Requirements.

1. Applications for projects requiring administrative review shall be made on forms provided by the city.
2. The city planning official shall advise the applicant 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 (for example, requirements for property line adjustments are in Chapter 17.403 DMC);
  - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail;
  - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable;
  - e. Draft public notice and public mailing list; and
  - f. The required fee.

B. Procedure.

1. The city planning official shall mail or email if an individual requests or consents to such form, the public notice of applications subject to administrative review not less than 14 days prior to decision. The city planning official shall prepare an affidavit of notice stating the date the notice was mailed, which shall be made a part of the file.

2. The purpose of the administrative review 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:

- a. All owners of record of real property within a minimum of ~~100~~ 200 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 shall contain all of the following information:

- a. The deadline for submitting written comments;
- 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;
- 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 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. 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.

5. The city planning official shall 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 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);
- 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 the Planning Commission pursuant to subsection (D) of this section.

C. Effective Date of Decision. Unless the conditions of approval specify otherwise, an administrative decision becomes effective ~~10~~ 14 days after the city mails the decision notice unless the decision is appealed pursuant to subsection (D) of this section.

D. Appeal of Type II (Administrative) Decision. A Type II administrative decision made by the city planning official may be appealed to the Dundee Planning Commission, 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 administrative review;
- 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 (D)(1) of this section, 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 time frame specified on the notice of decision; this will be within ~~10~~ 14 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:
  - i. An identification of the decision being appealed, including the date of the decision;
  - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal;
  - iii. A statement explaining the specific issues being raised on appeal; and
  - iv. 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 before the Planning Commission, where the contested decision was made by the city planning official. 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 DMC 17.401.040. DMC 17.401.040 contains requirements for public hearing notices, conduct of hearings, and decision-making procedures. [Ord. 521-2013 § 3 (Exh. A)].

**17.401.040 Types IIIA and IIIB Procedures** (Quasi-Judicial Reviews—~~Planning Commission Public Hearing~~). Type IIIA decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Type IIIB decisions require a public hearing by the Planning Commission and a decision forwarded to City Council for a decision in a public hearing format. Type IIIB decisions involve Quasi-Judicial zone changes or special circumstance (e.g., a change in zoning on one property to comply with the Comprehensive Plan, a Parks and Open Space Master Plan or a park larger than 5 acres). Quasi-Judicial decisions involve discretion but implement established policy.

A. Application Requirements.

1. Application Forms. Applications requiring a quasi-judicial public hearing 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;
  - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable;
  - e. Draft public notice and public mailing list; and
  - f. The required fee.

B. Procedure.

1. Mailed and Published Notice. The city planning official shall mail or email if an individual requests or consents to such form, the public notice of a public hearing on a quasi-judicial application not less than 20 days prior to the first hearing date on the application to the individuals and organizations listed below. The city planning official shall prepare an affidavit of notice stating the date the notice was mailed, which shall be made a part of the file. Notice shall be mailed to:
  - a. All owners of record of real property located within a minimum of ~~100~~ 200 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.
2. Posted Notice. The city planning official shall post public notice(s) of the public hearing on the subject site not less than 20 days prior to the first hearing date on the application. Notice posters shall be posted in conspicuous locations, with at least one poster on each street frontage adjacent to the subject site. Notices shall be posted at least once every 600 feet of street frontage along the perimeter of the property. The city planning official shall prepare a signed affidavit of posting, which shall be made a part of the file. The affidavit shall state the date and location(s) where the notice was posted.
3. Content of Notices. Notice of a quasi-judicial hearing to be mailed and published 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 hearing body shall be available for review at no cost at least seven 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 Planning Commission 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 (F) of this section, 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 subsection (C)(5) of this section, or leave the record open for additional written evidence or testimony as provided in subsection (C)(6) of this section.

2. **Impartial Tribunal Hearing.** The public is entitled to an impartial hearing body as free from potential conflicts of interest and prehearing 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 excuse themselves 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;
- 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 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 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 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 DMC 17.401.070 (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 days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly 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 (E) of this section, or may appeal the City Council's decision to the State Land Use Board of Appeals, as applicable.

D. Effective Date of Decision. Unless the conditions of approval specify otherwise, a quasi-judicial decision becomes effective ~~10~~ 14 days after the city mails the decision notice unless the decision is appealed pursuant to subsection (E) of this section.

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

1. Who May Appeal. Only persons who "appear" during a quasi-judicial proceeding, by testifying orally or in writing, prior to the close of the public record, may appeal the Planning Commission decision.

2. Appeal Filing Procedure.

a. Notice of Appeal. Any person with standing to appeal, as provided in subsection (E)(1) of this section, may appeal a Type III quasi-judicial 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 time frame specified on the notice of decision; typically, this will be~~ within 14 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:

i. An identification of the decision being appealed, including the date of the decision;

ii. A statement demonstrating the person filing the notice of appeal has standing to appeal;

iii. A statement explaining the specific issues being raised on appeal; and

iv. 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 before the City Council, which may allow additional evidence, testimony or argument concerning any issue raised at the Planning Commission.

F. 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 hearing body;

b. All materials submitted by the city planning official to the hearing body regarding the application;

c. The minutes of the hearing;

d. The final written decision; and

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 hard copy 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.

G. 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 to 197.860, except where state law requires review by a different court. [Ord. 521-2013 § 3 (Exh. A)].

**17.401.050 Type IV procedure (~~quasi-judicial~~ administrative review – City Council decision).**

Type IV ~~quasi-judicial~~ administrative decisions are heard first by the Planning Commission for a recommendation to the City Council, and then by the City Council for a final decision. The Type IV review procedure involves two public hearings. Initiations for Development Code amendments are authorized only by City Council with a recommendation from the Planning Commission. The City Council may establish a schedule for when it will accept all legislative code amendment or plan amendment requests, or the City Council may initiate its own legislative proposals at any time. Legislative requests are not subject to the 120-day review period under ORS 227.178

**A. Application Requirements.**

1. Application Forms. Applications requiring a quasi-judicial public hearing 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;
- d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable;
- e. Draft public notice and public mailing list; and
- f. The required fee.

**B. Procedure.**

1. Mailed and Published Notice. The city planning official shall mail public notice of a public hearing on a quasi-judicial application not less than 20 days prior to the first hearing date on the application to the individuals and organizations listed below. The city planning official shall prepare an affidavit of notice stating the date the notice was mailed, which shall be made a part of the file. Notice shall be mailed to:

- a. All owners of record of real property located 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.

d. The Oregon Department of Land Conservation and Development (DLCD) shall be provided notice of all legislative amendments (zone change, rezoning with annexation, or comprehensive plan amendment) before the first public hearing at which public testimony or new evidence will be received. The notice shall include a DLCD Certificate of Mailing and other requirements pursuant to OAR 660-018-0020

2. Posted Notice. The city planning official shall post public notice(s) of the public hearing on the subject site not less than 20 days prior to the first hearing date on the application. Notice posters shall be posted in conspicuous locations, with at least one poster on each street frontage adjacent to the subject site. Notices shall be posted at least once every 600 feet of street frontage along the perimeter of the property. The city planning official shall prepare a signed affidavit of posting, which shall be made a part of the file. The affidavit shall state the date and location(s) where the notice was posted.

3. Content of Notices. Notice of a quasi-judicial hearing to be mailed and published 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 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 hearing body shall be available for review at no cost at least seven 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) of this section, 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 subsection (C)(5) of this section, or leave the record open for additional written evidence or testimony as provided in subsection (C)(6) of this section.

2. **Impartial Tribunal Hearing.** The public is entitled to an impartial hearing body as free from potential conflicts of interest and prehearing 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 excuse themselves 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;

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 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 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 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 DMC 17.401.070 (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 days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly 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 City Council’s decision to the State Land Use Board of Appeals, as applicable.

D. Effective Date of Decision. ~~Unless the conditions of approval specify otherwise, a quasi-judicial decision becomes effective 10 days after the city mails the decision notice unless the decision is appealed pursuant to DMC 17.401.040(E).~~ The Type IV decision 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 20 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.

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 hearing body;

b. All materials submitted by the city planning official to the hearing body regarding the application;

c. The minutes of the hearing;

d. The final written decision; and

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 hard copy 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.

F. 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 to 197.860, except where state law requires review by a different court. [Ord. 521-2013 § 3 (Exh. A)].

~~17.401.060 – Type V (legislative review – City Council decision).~~

~~A legislative action for the purposes of this code is a land use decision requiring City Council enactment of an ordinance. Legislative actions include amendments to the city of Dundee comprehensive plan, amendments to the city of Dundee transportation system plan and other facility plans which are ancillary to the comprehensive plan, and amendments to the city's zoning map and development code that are not otherwise reviewable as quasi-judicial actions under DMC 17.401.040.~~

~~A. Initiation of Requests. The City Council or Planning Commission may initiate a legislative action at any time by a majority vote. Legislative requests are not subject to the 120-day review period under ORS 227.178.~~

~~B. Application Requirements.~~

- ~~1. Application Forms. Applications for legislative action shall be made on forms provided by the city.~~
- ~~2. Submittal Information. Applications for legislative action 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.~~

~~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 (DLCD) of proposed legislative amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received. The notice shall include a DLCD certificate of mailing.~~
- ~~2. At least 20 days, but not more than 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;~~
  - ~~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 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 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. [Ord. 521-2013 § 3 (Exh. A)].~~

**17.401.070 General provisions applicable to all reviews.**

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 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 lots, the proceedings shall be consolidated for review and decision at the applicant's request or at the city's discretion. The consolidated application shall be considered using the highest procedure type of any of the applications. 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.

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 the provisions of this code and applicable state law;
2. Review required notices, and process applications;
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.

E. Fees. Fees for land use applications are established by City Council resolution. [Ord. 521-2013 § 3 (Exh. A)].

## PROPOSED AMENDMENTS TO 17.406.030

### 17.406.030 Adjustments.

A. Applicability. The planning official or appropriate decision making body may authorize an adjustment when the request would result in ~~a 20 percent change or less to a quantifiable standard, and where the criteria in subsection (B) of this section are met. Any request to change a quantifiable standard by more than 20 percent would require a variance application.~~ a maximum modification to the following standards:

1. Maximum percentage of adjustment permitted

a. Lot Area: 5%

b. Setbacks: 10%

c. Structure height: no adjustment allowed

d. Lot width/frontage: 10%

e. Lot depth: 10%

B. Approval Criteria. An adjustment request shall be granted if an applicant demonstrates compliance with the following criteria:

1. The adjustment is consistent with the purpose and intent of the code standard(s) to be adjusted;
2. The adjustment would not create a conflict with or unreasonably impact adjacent uses; and
3. Approval of the adjustment does not create a violation of any other code standard or previous land use action.