

## Memo

**To:** Prineville City Council  
**From:** Scott Edelman, Senior Planner  
**Date:** December 5, 2007  
**Re:** Procedural Code Change Proposals

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The attached document is a draft of proposed amendments to Chapter 153, Land Development, in the City of Prineville Code of Ordinances. These amendments are to procedural language and do not affect the substance of the land development provisions. The Planning Commission reviewed the original amendments proposed by staff in workshops on October 16 and November 20. After making several changes through discussion at the workshops, the Planning Commission held a public hearing on the proposed changes on December 4. There were no members of the community who spoke in favor of or against the proposed changes.

The Planning Commission voted 6-0 in favor of recommending the amendments to Chapter 153 of the Code of Ordinances as described in the attached document.

Proposed language to be added is in **bold red font**. Proposed language to delete is in underlined blue font. Each of the proposed changes is intended to address one of the following procedural issues:

1. Eliminate inconsistencies among different sections of the development code.
2. Change the procedural language to be consistent with the actual procedures and policies by which staff has been directed to follow.
3. Avoid policy that conflicts with state law.
4. Reinstate language regarding enforcement of the development code that was accidentally replaced in a past code revision.

In order to provide the appropriate context, the entire text is included in this document for any section with a change proposed. Only the section headings are included for sections in which there are no proposed changes.

Please review and be prepared to discuss the attached document at the City Council meeting on December 11. Unless the Council raises significant issues with the proposed amendments, staff will draft an ordinance to be considered at a public hearing during the January 8 City Council meeting.

1. The first part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the Corporation.

2. The second part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the Corporation.

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# CHAPTER 153: LAND DEVELOPMENT

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## **GENERAL PROVISIONS**

### **§ 153.001 TITLE.**

### **§ 153.002 PURPOSE.**

### **§ 153.003 CONSTRUCTION AND TERMINOLOGY.**

### **§ 153.004 DEFINITIONS.**

As used in this chapter, the following words and phrases, unless the context of this chapter requires or provides otherwise, shall have the meaning set forth herein. Words and phrases not defined herein shall have the meaning set forth in state statutes, state administrative rules, state planning goals, policies and other relevant local, state and/or federal regulations. Note: O.R.S.'s or O.A.R.'s set forth herein in parentheses “( )” are for reference information relative to the basis and/or source of the definition.

**ABUT.** Contiguous to; for example, two lots with a common property line, or two buildings with a common or immediately adjacent walls. For the purposes of this chapter, ABUT does not apply to buildings, uses, lots or parcels separated by a public right-of-way, river, stream channel or canal.

**ACCESS.** The right to cross between public and private property, allowing pedestrians and vehicles to enter and leave property.

**ACCESSORY USE OR STRUCTURE.** A use or structure, or a portion of a structure, the use of which is incidental and subordinate to the main use of the property or structure and located on the same premises as the main or primary use and/or structure.

**ADULT DAY CARE CENTER.** A facility where care is provided to adults for part of the 24 hours of the day in the home of the person providing the care.

**ADULT FOSTER HOME.** Any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage. “Provider” means any person operating an ADULT FOSTER HOME. “Provider” does not include the owner or lessor of the building in which the ADULT FOSTER HOME is located or the owner or lessor of the land on which the adult foster home is situated unless the owner or lessor is also the operator of the ADULT FOSTER HOME. (O.R.S. 443.705(1) & (5)).

**AIRPORT or AIRCRAFT LANDING FACILITY.** Any strip of land, landing area, runway, landing pad or other facility designed, used or intended to be used in connection with the landing or taking off of aircraft, including helicopters, and including all necessary taxiways, hangars and other necessary buildings and open spaces; also includes, but is not limited to, land used for existing commercial and recreational airport uses and activities and activities as described in O.A.R. 660-013-0100; for

example, emergency medical flight services; law enforcement and firefighting activities; search and rescue operations; flight instruction and ground training; aircraft maintenance, refueling, rental, service and sales; aeronautic skills training; aeronautic recreational and sporting activities; construction and maintenance of airport facilities; crop dusting activities; agricultural and forestry activities; and, activities, facilities and accessory structures provided and accessory to any of the foregoing uses and activities.

**ALLEY.** A street or right-of-way which affords only a secondary means of access to property, primarily to the back or side of properties otherwise abutting on a street.

**ALTERATION.** A change in construction or a change in occupancy. Where the term ALTERATION is applied to a change in construction, it is intended to apply to any change, addition or modification. Where the term is used in connection with a change in occupancy, it is intended to apply to changes in occupancy from one use to another.

**ALTERATION, STRUCTURAL.** A change or repair which would tend to prolong the life of the supporting members of a building or structure, such as alteration of bearing walls, foundation, columns, beams or girders. A change in the external dimensions of a building shall also be considered a structural alteration.

**AUTOMOBILE SERVICE STATION.** A retail place of business engaged primarily in the sale of motor fuels, but also supplying goods and services required in the operation and maintenance of automotive vehicles; this may include petroleum products, tires, batteries, automotive accessories and replacement parts and items, washing and lubrication services, the performance of minor automotive maintenance and repair and the supplying of other incidental customer services and products.

**AUTOMOBILE WRECKING YARD.** A premises used for the storage and/or sale of used automobile or truck parts, and/or for the storage, dismantling or abandonment of junk, obsolete automobiles, trailers, trucks, machinery or parts thereof.

**AUTOMOBILE AND/OR TRAILER SALES AREA.** An open area, other than a street, used for the display, sale or rental of new and/or used automobiles or trailers, and where no repair work is done except minor incidental repair of units to be displayed, sold or rented on the premises.

**BASEMENT.** A story partly underground. A basement shall be counted as a story in building height measurement when the floor level directly above is more than six feet above the average level of the adjoining ground.

**BED AND BREAKFAST FACILITY.** Any establishment located in a structure designed for a single family residence, where the owner of the establishment resides in the structure, which has more than two rooms for rent on a daily basis to the public; offers a breakfast meal as a part of the cost of the room; and serves one breakfast meal a

day to guests, staff and owners only. BREAKFAST MEAL is the meal served to guests during the a.m. or morning hours each day (O.A.R. 333-17).

**BOARDING OR ROOMING HOUSE.** A building or portion thereof, other than a motel, restaurant or hotel, where meals or lodging or both are provided for compensation for more than five but not more than ten persons.

**BUILDING OFFICIAL.** That person or official who is responsible for the enforcement of the building codes, ordinances and regulations within the city and within the unincorporated area of the city's Urban Growth Boundary (UGB) area.

**CALENDAR YEAR.** A period of twelve months from January through December.

**CARPORT.** A stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet(s) substituting for a wall, and used for sheltering motor vehicles, recreational vehicles or boats.

**CEMETERY.** Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes.

**CLINIC.** A place where professional services are provided, including but not limited to, medical, dental, chiropractics, counseling, optometry and other medical and social type services, and including single and/or multiple offices.

**CLINIC, ANIMAL.** A business establishment in which veterinary services are rendered for domestic pets and/or livestock on an outpatient basis. The facilities may be further classified as "small animal" (those limited to domestic pets), or "large animal" (those limited to domestic livestock).

**COMMUNITY WATER SYSTEM.** A domestic water supply source or distribution system which serves more than three single residences or other users for the purpose of supplying water for household uses, but is neither a municipal water supply system nor a public utility water supply system, and must have legal financial provisions for long-term operation and maintenance.

**COMMUNITY SEWAGE SYSTEM.** A sewage disposal system, which serves more than ten single residences or other users for the purpose of disposing of household liquid wastes, but is neither a municipal nor a public utility sewage disposal system, and must be approved by the appropriate government agency and must have legal financial provisions for long-term operation and maintenance.

**CONDOMINIUM.** A multiple family dwelling, duplex or single unit in which the dwelling units are individually owned, with each owner having a recordable deed enabling the unit to be sold, mortgaged or exchanged independently, under the provisions of applicable O.R.S.'s.

CONTIGUOUS or CONTIGUOUS LAND. Two or more parcels or units of land under a single ownership which are not separated by an intervening parcel of land under separate ownership, including limited access right-of-way which would deny access between the two parcels under single ownership, or parcels of land under a single ownership which are not separated by a river, public road, street or other public right-of-way.

COTTAGE INDUSTRY. A small business activity which may involve the provision of services or manufacture and sale of products, is carried on by a member of the family living on the premises with no more than one other person employed by the family member, and is not detrimental to the overall character of the neighborhood.

CUSTOM SLAUGHTERING ESTABLISHMENT or SLAUGHTER HOUSE. A mobile or stationary establishment wherein meat animals, caused to be delivered by the owners thereof, are slaughtered for compensation, payment or remuneration of any kind, and are thereafter returned to the owner thereof or to the order of the owner. (O.R.S. 603.010(2)).

DAY CARE CENTER. A facility other than the residence of the day care provider, which receives three or more children for a part of the 24 hours of the day for the purpose of providing care and board apart from the children's parents or guardians.

DENSITY, NET. The number of dwelling units per unit of land expressed as the number of square feet of land per dwelling unit. The net density for any lot is computed by dividing the net square footage of the parcel by the number of dwelling units. The net square footage is determined by subtracting from the total square footage of the parcel that which is deemed necessary for street dedication and that area used for private streets and common driveways, if any.

DEVELOPER. Any person, corporation, partnership or other legal entity that creates or proposes to create a land development, subdivision, partitioning or other development including residential, commercial or industrial developments.

DIKE. A structure designed and built to prevent inundation of a parcel of land by water.

**DWELLING COMPLEX, MULTI-FAMILY. A single lot containing five or more dwelling units.**

DWELLING, FOUR-PLEX. A detached building **on a single lot** designed for occupancy by four families or households living independently of each other.

DWELLING, MULTI FAMILY OR APARTMENT. A **detached building, or portion thereof, on a single lot** designed for occupancy by three or more families or households living independently of each other.

DWELLING, SINGLE FAMILY. A detached building containing one dwelling unit designed for occupancy by one family or one household only.

DWELLING, TOWNHOME. A dwelling that is part of a building containing at least three dwelling units, each on a separate lot, with each unit designed for occupancy by one family or one household only.

DWELLING, TRI-PLEX. A detached ~~or semi-detached~~ building containing three dwelling units **on a single lot** and designed for occupancy by three families or households living independently of each other.

DWELLING, TWO FAMILY or DUPLEX. A detached ~~or semi-detached~~ building containing two dwelling units **on a single lot** and designed for occupancy by two families or households living independently of each other.

DWELLING UNIT. A building, or portion thereof, consisting of one or more rooms including a bathroom and kitchen facilities, which are arranged, designed or used as living quarters for one family or one household.

EASEMENT. A grant of the right to use a parcel of land, or portion thereof, for specific purposes where ownership of the land or portion thereof is not transferred.

FAMILY DAY CARE CENTER. A day care facility where care is provided in the home of the provider to fewer than 13 children including children of the provider, regardless of full or part-time status.

FAMILY or HOUSEHOLD. An individual or two or more persons related by blood, marriage, legal adoption or guardianship, living together as one housekeeping unit in a dwelling unit using one kitchen, and providing meals, board and/or lodging to not more than three unrelated persons, living together as one housekeeping unit using one kitchen, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption or guardianship living in a dwelling unit.

FARMING or FARM USE. As defined by O.R.S. 215.203 (2)(a), to include the use of land for the purpose of raising, harvesting or selling crops, for the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, honeybees or dairying and the sale of dairy products, or for any other agricultural or horticultural use, animal husbandry, timber propagation or harvest, or any combination thereof, including the preparation, processing and storage of products raised on the land, but not including the construction or use of dwellings and other buildings customarily provided in conjunction therewith.

FENCE. A protective or confining barrier constructed of wood, plastic, masonry or wire mesh. FENCE does not include hedges or other plantings.

**FENCE, SIGHT-OBSCURING.** A fence constructed, arranged and maintained in a manner as to obscure vision.

**FRONTAGE.** All property fronting on one side of a street and measured along the street line, between intersecting and intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, alley, city or district boundary.

**GARAGE, PRIVATE.** An accessory building or portion of a main building used for the parking or temporary storage of vehicles owned or used by occupants of the main building.

**GARAGE, REPAIR.** A building used for the care and repair of motor vehicles, including major and minor work such as body and fender work or engine and transmission overhaul, and incidental storage or parking of vehicles.

**GRADE, GROUND LEVEL.** The average elevation of the existing ground elevation, before or after construction, along the perimeter walls of a building. In case walls are parallel to and within five feet of a sidewalk, alley or other public way, the aboveground level should be measured at the elevation of the sidewalk, alley or public way.

**GUEST HOUSE.** A structure of no more than 450 square feet of site area used in conjunction with the main building for the temporary housing of nonpaying visitors and guests and containing no cooking facilities, unless otherwise approved by the city or other planning authority.

**HABITABLE FLOOR AREA.** Any floor area usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor area used only for storage purposes is not a HABITABLE FLOOR AREA.

**HEIGHT OF BUILDING.** The vertical distance from the grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof.

**HISTORICAL, GEOLOGICAL AND ARCHAEOLOGICAL BUILDINGS AND SITES.** Land, buildings and/or other natural or manmade features which have a special historical, geological or archaeological interest, represent one or more periods of time in the history of the city and adjoining areas, and have at least local significance.

**HOME OCCUPATION.** A lawful activity or occupation carried on by a resident or resident family of a dwelling as an accessory use within the same dwelling, or in an accessory building on the same property, with limited retail sales or sales accessory to service, and with limited employees outside of the immediate family conducting the HOME OCCUPATION.



**HOSPITAL.** An establishment, publicly or privately operated, which provides sleeping and eating facilities to two or more non-related persons receiving medical, obstetrical or surgical care, and other healing, curing and/or nursing services over a period exceeding 24 hours.

**HOTEL or MOTEL (TRAVELERS' ACCOMMODATIONS).** A building, or portion thereof, designed and/or used for occupancy of transient individuals who are lodged with or without meals. (O.R.S. 446.310)

**INTEREST.** Includes a lot or parcel, and a share, undivided interest or membership which includes the right to occupy the land overnight, and lessee's interest in land for more than three years or less than three years of the interest may be renewed under the terms of the lease for a total period more than three years. Does not include any interest in a condominium or any security interest under a land sales contract, trust deed or mortgage, and does not include divisions of land created by lien foreclosure or foreclosures of recorded contracts for the sale of real property.

**JUNK.** Means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled, wrecked, scrapped or ruined motor vehicles or appliances, or motor vehicle parts, iron, steel or other old or scrap ferrous, or nonferrous material, metal or nonmetal materials.  
(O.R.S. 377.605(5))

**JUNK OR WRECKING YARD.** Any property or establishment where a person(s) is engaged in breaking up, dismantling, sorting, storing, distributing, buying or selling scrap or waste materials, or any establishment or place of business where there is accumulated on the premises eight or more motor vehicles or an equivalent volume of junk, that is maintained, operated or used for storing, keeping, buying or selling of junk, and the term includes automobile graveyards, garbage dumps and scrap metal processing facilities. (O.R.S. 377.605(6))

**KENNEL.** A lot, building or premises in or on which four or more dogs, cats or other animals at least four months of age are kept commercially for board, propagation, training or sale.

**LANDSCAPING.** The total ground area of a lot not covered by permanent structures, except areas which may be covered by projections from buildings, that include a combination of any of the following materials: living plant material such as trees, shrubs, groundcover, flowers and lawn, including native vegetation; and nonliving materials such as benches, walkways and courtyards, consisting of brick, decorative rock or other decorative materials. Does not include areas surfaced solely for the purpose of off-street parking and loading.

**LIVESTOCK.** Domestic animals of types customarily raised or kept on farms for profit or other purposes, and includes horses, mules, asses, cattle, sheep, swine, goats, llamas and poultry, including turkeys, of any age or sex. (O.R.S. 599.205) Does not include exotic animals as defined by O.R.S. 609.305; for example, any lion, tiger, leopard, cheetah, ocelot or any other cat not indigenous to Oregon, except the species *Felis catus* (domestic cat); any monkey, ape, gorilla or other nonhuman primate; any wolf or any canine not indigenous to Oregon, except the species *Canis familiaris* (domestic dog); and, any bear, except the black bear.

**LIVESTOCK FEEDING YARD.** An enclosure designed or used for the purpose of the concentrated feeding or fattening of livestock for marketing.

**LIVESTOCK AUCTION MARKET or SALES YARD.** Any place of business to which the public may consign livestock for sale by auction open to public bidding or sold on a commission basis, but, specifically does not include breed or livestock associations operating subject to and in compliance with the provisions of the Oregon Nonprofit Corporation Law (O.R.S. 61.005 to 61.215), FFA and 4H groups, auction sales conducted in conjunction with the County Fair or other fairgrounds approved events or private fairs or auctions by or for a person on the premises of the person. (O.R.S. 599.205) (6))

**LOADING SPACE.** An off-street space within a building or on the same lot with a building, for the temporary parking of a commercial vehicle or truck while loading or unloading merchandise or materials, and which space has direct access to a street or alley.

**LOT.** A unit of land (a plot, parcel or tract of land) that is created by a duly platted and approved subdivision or partitioning of land, or a parcel or tract or contiguous parcels or tracts of land under a single ownership on or before the effective date of this chapter; the lot which is or may be occupied by principal and accessory structures together with the yards or open spaces required by this chapter, and which has legal access to a public right-of-way, and exists as a unit under an ownership of record. (O.R.S. 92.010)

**LOT, CORNER.** A lot abutting on two or more streets, other than alleys, at their intersection; provided the angle of intersection of the abutting streets does not exceed 135°.

**LOT, THROUGH OR DOUBLE FRONTAGE.** A lot having frontage on two parallel or approximately parallel streets other than alleys.

**LOT AREA.** The total horizontal net area within the lot lines of a lot to mean that square footage of a lot that is free from public and private road rights-of-way or easements for access, and river or stream channels.

**LOT COVERAGE.** The percentage of the total lot area covered by buildings, including covered parking areas.

LOT DEPTH. The average horizontal distance between the front and rear lot lines.

LOT LINE. The property line bounding a lot.

LOT LINE, FRONT. The lot line separating a lot from a street other than an alley, and in the case of a corner lot, the shortest lot line along a street other than an alley.

LOT LINE, REAR. The lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular or other odd- shaped lot, a line ten feet in length within the lot, parallel to and at a maximum distance from the front lot line.

LOT LINE, SIDE. Any lot line other than a front or rear lot line bounding a lot.

LOT WIDTH. The average horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

MAINTAIN. To allow to exist. (O.R.S. 377.605(7))

MANUFACTURED DWELLING. Except as may be additionally defined for the purposes of this chapter, manufactured dwelling means the following:

(1) RESIDENTIAL TRAILER. A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

(2) MOBILE HOME. A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962 and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

(3) MANUFACTURED HOME. A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. (O.R.S. 446.003(26)(a))

(4) Does not mean any building or structure subject to structural specialty code adopted pursuant to O.R.S. 455.100 to 445.450 or any unit identified as a recreational vehicle by the manufacturer.

(5) For the purposes of this chapter, it shall be immaterial whether the units or components thereof are placed upon property for a temporary, semi-permanent or

permanent residence, or that the wheels are removed and the unit or component(s) are supported upon footings or a foundation.

(6) This definition does not include travel trailers, camping trailers, motorized homes or campers, pickup coaches or other recreational type vehicles.

**MANUFACTURED DWELLING OR MOBILE HOME PARK.** Any place where four or more manufactured dwellings or structures are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee to be paid for rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of the person(s). Manufactured dwelling park does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved as a subdivision permitting manufactured dwellings at the time of platting and approved by the city pursuant to provisions adopted pursuant to O.R.S. 92.010 to 91.190, or if an amendment to the approval of the subdivision for manufactured dwelling use is subsequently granted by the city.

**MANUFACTURED DWELLING SUBDIVISION.** A subdivision intended to be occupied primarily or exclusively by manufactured dwellings and so approved at the time of platting.

**MODULAR OR PREFABRICATED HOME.** A prefabricated, sectional or factory constructed dwelling unit manufactured off-site, normally constructed in two or more sections or components for assembly on a permanent foundation as a permanent residential structure, and when completed is essentially indistinguishable from a conventionally constructed home and conforms to the current edition of the State of Oregon One and Two Family Dwelling Code.

**MOTEL.** A building, or group of buildings, on the same lot or parcel containing motel rental units for rental to transients and consisting of individual sleeping quarters with or without cooking facilities which are designed, intended or used primarily for the accommodation of transients and travelers, and shall include hotels and inns.

**MUNICIPAL WATER SYSTEM.** A domestic water supply source and distribution system owned and operated by a city or a county; or owned and operated by a special district or other public corporation which has independent tax-levying powers to support the system and which supplies water to a total of 1,000 or more households.

**MUSEUM.** Includes any collection of archaeological specimens, artifacts, pioneer relics, articles, documents and other things of historical, scientific or artistic import that are assembled, displayed, preserved and protected for the benefit of the public, for educational and scientific purposes or to commemorate the occupation and development of the area or the Pacific Northwest region, and the structure or structures housing the collection(s). (O.R.S. 358.310(2))

**NATURAL AREA.** Includes land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitats for plant, animal or marine life, for the study of its natural, historical, scientific or paleontological features, or for the appreciation of its natural features, and is so designated by the Comprehensive Plan either by Plan policy or Map designation.

**NATURAL HAZARD AREA.** An area that is subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ground water, flash flooding, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to a local or regional area, and are so designated or identified by Plan policies or Map designations.

**NATURAL RESOURCES.** Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man.

**NEW CONSTRUCTION.** Any structure for which the “start of construction” commenced on or after the effective date of this chapter.

**NONCONFORMING USE OR STRUCTURE.** A lawful existing use or structure at the time this chapter or any amendments hereto become effective which does not conform to the requirements of this chapter as amended or to the zone in which it is located.

**NURSERY, DAY.** An institution, establishment or place in which are commonly received at one time three or more children not of common parentage under the age of 14 years for a period or periods not exceeding 12 hours for the purpose of being given board, care and training apart from parents or guardians for compensation or reward.

**NURSING OR CONVALESCENT HOME.** Any home, institution or other structure maintained or operating for the nursing and care of four or more ill or infirm adults not requiring hospitalization.

**OPEN SPACE.** Consists of lands used for agricultural or forest uses, and any land area that would if preserved and continued in its present use conserve and enhance natural or scenic resources; protect air or streams or water supply; promote conservation of soils, wetlands or marshes; conserve landscaped areas such as parks, open recreation areas, golf courses and similar areas that reduce pollution and enhance the value of abutting or neighboring property; enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations or other open space; enhance recreation opportunities; preserve historic, geological and archeological sites; promote orderly urban development; minimize land use conflicts; and maintain quality living conditions.

**OUTDOOR MERCHANDISING.** The sale or display for sale of merchandise outside of an enclosed building space; including sales which are transacted through an open window or door; does not include incidental, infrequent garage, patio or yard sales.

**OWNER.** The owner of the title to real property or the authorized agent thereof, or the contract purchaser of real property of record as shown on the last available complete county tax assessment roll, County Clerk's records and/or City Recorder's records.

**PARKING AREA, PRIVATE OR PUBLIC.** Privately or publicly owned property, other than streets and alleys, on which parking spaces are defined, designated or otherwise identified; in the case of a private parking area for use by the tenants, employees or owners of the property for which the parking area is required by this chapter and not open space for use by the general public; and, in the case of a public parking area, for use by the general public, either free or for remuneration, and may include parking lots which may be required by this chapter for retail customers, patrons and clients.

**PARKING SPACE.** A clear, off-street area for the temporary parking or storage of one automobile, having an all-weather surface and a width of not less than eight and one half feet when within a building or structure; with an area of not less than 190 square feet in area; deviations are allowed when in compliance with applicable provisions set forth in § 153.080 et seq. **PARKING SPACES** shall have easy access to a street or alley by a driveway having an all-weather surface.

**PERSON.** Every natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government or any group or combination acting as a unit.

**PLANNED UNIT DEVELOPMENT or PLANNED COMMUNITY.** The development of an area of land as a single entity for a number of dwelling units or a number of uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the standard regulations otherwise required by this chapter. A **PLANNED COMMUNITY** means any subdivision which results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property in which there is a homeowners association responsible for the maintenance, operation, insurance and taxes, relating to any common property of the **PLANNED COMMUNITY** and/or for the exterior maintenance of any property that is individually owned; and owners of individual lots, by virtue of their ownership, automatically are members of the homeowners association and assume liability for membership fees. (O.R.S. 94.550)

**PLAT.** A final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

**PRIMARY, PRINCIPAL OR MAIN USE.** The first use to which property is or may be devoted, and that use to which all other uses on the premises are derived as accessory or secondary uses. As used relative to dwelling units, the primary dwelling shall be the first dwelling unit to be located on a specific lot or parcel.

**PUBLIC NEED.** An identifiable and measurable public benefit which accrues to the community as a whole.

**PUBLIC OR SEMI-PUBLIC USE.** A use owned and operated by a public, governmental or nonprofit organization for the benefit of the public in general. This does not include landfill sites, solid waste disposal sites, garbage dumps, recycling facilities, quarry sites or utility facilities.

**PUBLIC UTILITY WATER SYSTEM.** A domestic water supply source and distribution system supplying water for household uses, owned and operated by a person subject to regulation by the Public Utility Commissioner of Oregon and supplying water to a total of 500 or more households.

**PUBLIC WATER SYSTEM.** A water system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves at least 25 individuals.

**RECREATION CAMP, RESORT or PARK.** An area devoted to facilities and equipment for recreational purposes, including swimming pools, tennis, basketball and volleyball courts, sports fields, playgrounds, picnicking areas and other similar uses, whether the use of the area is limited to private membership or whether open to the public upon payment of a fee, or an area designated by the landowner for picnicking or overnight camping and offered to the general public, whether or not a fee or charge is made for the accommodations.

**RECREATION VEHICLE.** A vacation trailer or other unit with or without motive power, which is designed for human occupancy and is intended to be used temporarily for recreation, vacation, seasonal or emergency purposes, but not for residential purposes, is equipped with plumbing, sink and/or toilet and has a gross floor space not exceeding 400 square feet in the set-up mode; includes camping trailers, camping vehicles, motor homes, park trailers, bus conversions, van conversions, tent trailers, travel trailers, truck campers and any other vehicle converted for use as a recreational vehicle. (O.R.S. 446.003(36))

**RECREATION VEHICLE PARK, RECREATION PARK or CAMPGROUND.** Any area designated by the person or party establishing, operating, managing or maintaining the same for picnicking or overnight camping by the general public or any segment of the public. Includes, but is not limited to, areas open to use free of charge or through payment of a tax or fee, or by virtue of rental, lease, license, membership, association or common ownership, and further includes, but is not limited to, those areas divided into two or more lots, parcels, units, spaces or other interests or designations for

purposes of the use. Includes the facilities and spaces for tents, tent vehicles, camping vehicles or recreation vehicles of any type.

**RESIDENTIAL CARE.** Services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

**RESIDENTIAL CARE FACILITY.** A facility that provides, for six or more physically disabled or socially dependent individuals, residential care in one or more buildings on contiguous properties.

**RESIDENTIAL FACILITY.** A residential care, residential training or residential treatment facility licensed or registered by or under the authority of the Department of Land Conservation and Development, as defined in O.R.S. 443.400, under O.R.S. 443.400 to 443.460 or licensed by the state Office for Services to Children and Families, under O.R.S. 418.205 to 418.327 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to 15 individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility. Does not include a residential school, state or local correctional facilities, a nursing home, a hospital, a place primarily engaged in recreational activities, a foster home, a place providing care and treatment on less than a 24-hour basis, or a child-caring agency or residential school or other organization certified or licensed by the Children's Services Division under O.R.S. 418.205 to 418.327.

**RESIDENTIAL HOME.** A residential treatment or training or an adult foster home, licensed by or under the authority of the state Mental Health and Development Disability Services Division or the Senior and Disabled Services Division or the office of Alcohol and Drug Abuse Programs, as appropriate, under O.R.S. 443.400 to 443.825, a residential facility registered under O.R.S. 443.480 to 443.500 or an adult foster home licensed under O.R.S. 443.705 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

**RESIDENTIAL TRAINING FACILITY.** A facility that provides, for six or more mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties. (O.R.S. 443.400(7))

**RESIDENTIAL TREATMENT FACILITY.** A facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties. (O.R.S. 443.400(9))



**RESIDENTIAL TREATMENT HOME.** A facility that provides, for five or fewer mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties. (O.R.S. 443-400(10))

**RESIDENTIAL USE.** A structure or use for occupancy as a human dwelling or lodging place such as single family, two family and multi family dwellings; duplexes; apartments; boarding, lodging or rooming houses; mobile homes and mobile home parks; and labor camps.

**RESOURCE CAPABILITY OR CAPACITY.** A use or activity that is consistent with the resource capabilities or capacities of the area when either the impacts of the use on wildlife species and habitats, riparian habitats, waterways, wetlands, biological productivity and water quality are not significant, or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreation and aesthetic values.

**RESTAURANT.** Any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants as defined in division (2) of this definition.

(1) **LIMITED SERVICE RESTAURANT.** A restaurant serving only pre-wrapped sandwiches or a single dish or food product and nonperishable beverages.

(2) **TEMPORARY RESTAURANT.** Any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. TEMPORARY RESTAURANT does not include the following:

(a) An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests;

(b) An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and service are under the direction of the school lunchroom supervisor; and,

(c) A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product (for the purposes of this subdivision a "sample" shall not include a meal, an individual hot dish or a whole sandwich).

**RESTORATION.** Revitalizing, returning or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, that have been diminished or lost by past alterations, activities or catastrophic events.

**RETIREMENT CENTER.** A building or group of buildings containing separate dwelling units designed for and occupied principally (at least one occupant of each dwelling unit) by persons over the age of 60 years; excluding convalescent and nursing care as a function of the center.

**RIGHT-OF-WAY.** That area between the boundary lines of a street, road or other easement.

**RIPARIAN.** Of, or pertaining to, or situated on the edge of the bank of a river, stream or other body of water (Webster). As defined by O.R.S. 308.792 (regarding lands eligible for special tax assessments.) **DESIGNATED RIPARIAN LAND** means the beds of streams, the adjacent vegetation communities and the land thereunder, which are predominantly influenced by their association with water, not to extend more than 100 feet landward of the line of nonaquatic vegetation, however, only the lands zoned as forest or agricultural lands outside of Urban Growth Boundaries (UGB's) shall qualify for special tax assessment (O.R.S. 308.795(2)(a))

**ROAD or STREET.** A public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to the land in conjunction with the use of the land for forestry, mining or agricultural purposes. (O.R.S. 92.010(13))

**ALLEY.** A narrow street through a block primarily for vehicular service access to the back or side of properties abutting on another street.

**ARTERIAL.** A street of considerable continuity which is primarily a traffic artery for intertransportation among large areas, and so designated by the Comprehensive Plan as may be amended.

**BICYCLE ROUTE.** A right-of-way for bicycle traffic.

**COLLECTOR.** A street supplementary to the arterial street system and a means of intertransportation between this system and small areas; used to some extent for through traffic and to some extent for access to abutting properties and so designated by the Comprehensive Plan as may be amended.

**CUL-DE-SAC. (DEAD END STREET).** A short street having only one end open to traffic and being terminated by a vehicle turnaround.

**HALF STREET.** A portion of the width of a street usually along the edge of a subdivision, where the remaining portion of the street could or is planned to be provided for in another subdivision adjacent thereto.

**LOCAL STREET.** A street intended primarily for access to abutting properties.

**MARGINAL ACCESS STREET.** A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

**STUBBED STREET.** A street having only one outlet for vehicular traffic and which is intended to be extended or continued to serve future subdivisions or development on adjacent lands.

**ROADWAY.** That portion of a street or road right-of-way developed for vehicular traffic.

**ROOF LINE.** The line which marks the highest point of the vertical front of a building in the case of a false front, or the line where the roof is joined to the vertical front wall of the building in other cases.

**SCALE.** The relationship in size between one building or use and another.

**SCENIC AREA OR RESOURCE.** Land or other natural features that are valued for their scenic and aesthetic values and appearance, and are designated as a scenic resource by the Comprehensive Plan.

**SCHOOL.** Includes kindergarten, primary, elementary, junior or high school and college. Includes public, private or parochial schools of all grade levels, including higher and vocational education and training, but not a nursery or day nursery school.

**SETBACK (YARD).** An open space on a lot which is unobstructed from the ground upward except as otherwise provided in this chapter.

**FRONT SETBACK.** A setback between side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a building.

**REAR SETBACK.** A yard between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of a building.

**SIDE SETBACK.** A setback between the front and rear yards measured horizontally at right angles from the side lot line to the nearest point of a building.

**STREET SIDE.** A setback adjacent to a street between the front setback and rear lot line measured horizontally and at right angles from the side lot line to the nearest point of a building.

**SIGN.** An identification, description, illustration or device which is affixed to or represented, directly or indirectly, upon a building, structure or land, and which directs attention to a product, place, activity, person, institution, business or service, excluding house numbers. Each display surface of a sign other than two surfaces parallel and back to back on the same structure shall be considered a sign.

**SIGN, ADVERTISING.** A sign which directs attention to a business, product, activity or service which is not necessarily conducted, sold or offered upon the premises where the sign is located.

**STABLE, PRIVATE.** A detached accessory building for the keeping of horses owned only by the occupants of the premises and which are not kept for remuneration or profit.

**STABLE, PRIVATE COMMERCIAL.** A private stable which is maintained by the property owner, lessee or renter, and which is available for the keeping of horses not owned solely by the occupants of the premises whether or not for remuneration or profit.

**STABLE, PUBLIC.** A stable other than a private stable that is maintained by a public, semi-public or nonprofit organization.

**START OF CONSTRUCTION.** The first placement of permanent construction of a structure (other than a manufactured dwelling) on a site, such as the pouring of slabs or footings or any work beyond the initial site preparation, such as clearing, grading and filling; also does not include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; also does not include the installation on the property of accessory buildings such as garages, sheds or similar buildings or structures not occupied as dwelling units or not a part of the main structure. For a structure (other than a manufactured dwelling) without a basement or poured footings, the **START OF CONSTRUCTION** includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured dwellings not within a manufactured dwelling subdivision or manufactured dwelling/mobile home park, the **START OF CONSTRUCTION** means the date on which construction of facilities for servicing the site on which the manufactured dwelling is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

**STORY.** That portion of a building included between a floor and the ceiling above it which is six feet or more above the grade.

**STORY, HALF.** A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls, are not more than two feet above the floor of the story.

**STRUCTURE.** That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in

some definite manner and which requires location on the ground or which is attached to something having a ground location.

**SUBDIVIDED LAND or SUBDIVISION.** Improved or unimproved land or lands divided, or created into interests or sold under an agreement to be subsequently divided or created, immediate or future, into 11 or more undivided interests or four or more lots, parcels or other interests within a calendar year when the area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of the year. Does not include the sale of a lot in a recorded subdivision or an approved partition even though the seller may have owned other contiguous lots or property prior to the sale; the lot or lots, however, must be sold as platted and recorded.

**TIMESHARE CONDOMINIUM or TIMESHARE ESTATE.** A condominium and/or other development in which units are individually owned by a family or group of persons for a variable amount of time during the year, and in which part or all of the units may be available to transients or travelers for rent or on an exchange basis. For the purposes of this chapter, a TIMESHARE CONDOMINIUM OR ESTATE unit shall be considered as a motel and/or subdivision, and shall also be subject to approval in accordance with O.R.S. 94.803.

**TRANSFER STATION.** Shall be as defined pursuant to state law.

**TRANSIENT MERCHANT, BUSINESS OR COMMERCIAL ENTERPRISE.** A person, business or other enterprise that travels from place to place, either carrying their goods with them, selling and delivering at the same time, or not carrying goods but taking orders for future delivery, or purchasing goods for resale or processing off-site. Includes those who occupy a temporary fixed location, selling and delivering from stock on hand, doing business in much the same manner as a permanent business does or might be expected to, with the principal difference being the temporary nature of the business location or type of activity.

**TRAVELERS' ACCOMMODATIONS.** Any establishment having rooms or apartments rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

**UNIQUE RESOURCE.** Land or buildings which have a special character or aesthetic interest, irrespective of age, including the type or method of construction or artistic value, and are so designated by the Comprehensive Plan.

**URBAN SERVICES.** Sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

**USE.** The purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained.

**UTILITY FACILITY.** Any major structure owned or operated by a public, private or cooperative electric, fuel, communication, sewage or water company for the generation, transmission, distribution or processing of its products or for the disposal of cooling water, waste or byproducts, and including power transmission lines, major trunk pipelines, power substations, dams, water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding sewer, water, gas, telephone and power local distribution lines and similar minor facilities allowed in any zone.

**VISIBLE.** Capable of being seen without visual aid by a person of normal visual acuity.

**VISION CLEARANCE AREA.** A triangular area on a lot at the intersection of two streets or a street and a railroad, two sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in this chapter. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

**WETLANDS.** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (O.R.S. 197.015.21)  
(Ord. 1057, passed 3-24-98)

**§ 153.005 COMPLIANCE.**

**§ 153.006 CITING.**

**§ 153.007 EXISTING AGREEMENTS AND PERMITS.**

**§ 153.008 ZONING/OTHER DEVELOPMENT PERMIT APPROVAL.**

**§ 153.009 COMPLIANCE WITH OTHER REGULATIONS.**

**§ 153.010 APPLICABILITY OF CURRENT REGULATIONS.**

**§ 153.011 INTERPRETATION.**

**§ 153.012 CONSOLIDATED PERMIT PROCEDURE.**

**§ 153.013 ADMINISTRATION.**

#### **CLASSIFICATION OF ZONES**

**§ 153.030 CLASSIFICATION OF ZONES.**

**§ 153.031 LOCATION OF ZONES.**

**§ 153.032 ZONING MAP AND AMENDMENTS.**

**§ 153.033 ZONE BOUNDARIES.**

**§ 153.034 ZONING OF ANNEXED AREAS.**

#### **USE ZONES**

**§ 153.045 LIMITED RESIDENTIAL R-1 ZONE.**

In an R-1 Zone, the following regulations shall apply.

(A) Purpose. The purpose of the R-1 Zone is to preserve the existing characteristics of certain residential areas within the city which are predominantly single family, owner occupied, conventional type housing; for example, the Ochoco Heights Area.

(B) Uses permitted outright. In an R-1 Zone, the following uses and their accessory uses are permitted outright.

(1) Single family dwelling, excluding modular homes and manufactured homes.

(2) Residential home as defined by O.R.S. 197.660 and § 153.004 of this chapter.

(3) Family day care center as defined in O.R.S. Ch. 418.

(4) Adult foster home as defined in O.R.S. 443.705(1).

(5) Utility lines necessary for local public service.

(6) Land partitioning whereby no new access roads or streets are created or necessary to provide access to the parcels.

(7) Maintenance or repair of an existing transportation facility, including reconstruction, surfacing, minor widening or realignment of an existing road within an existing right-of-way including the addition of turn refuges at the existing street intersections, but not including addition of through travel lanes.

(8) Replacement of bridges and other stream or canal crossing facilities.

(9) Temporary improvements in association with construction projects, such as temporary roads and detours.

(10) Bikeways, footpaths and recreation trails.

(11) Construction of new streets and roads, including the extensions of existing streets and roads that are included within locally adopted transportation systems plans (as may be amended), the State Highway Transportation Improvement Plan, or as has been identified in a specific development review and approval process.

(12) Construction, reconstruction, maintenance or repair of public water and sewer systems or components thereof.

(13) Private garages and accessory buildings commonly associated with residential uses.

(C) Conditional uses permitted. In an R-1 Zone, the following uses and their accessory uses are permitted when authorized in accordance with the provisions of this section and § 153.135 et seq.

(1) Type I conditional uses.

(a) Public use limited to a public park, playground, other open recreation use or recreation building.

(b) Guest house.

(c) Duplex or two family dwelling unit.

(d) Land partitioning involving the creation of a road or street for access to one or more parcels.

(e) The addition of through travel lanes to an existing street within the existing right-of-way and/or the extension of an existing street not previously planned.

(2) Type II conditional uses.

(a) Hospital, nursing home, convalescent home, retirement home or elderly assisted living complex.

(b) Condominium, apartment or townhouse complex not exceeding four units.

(c) Telephone exchanges, radio and television facilities and other private utility facilities necessary for public service.

(d) Church.

(e) Publicly- or privately-operated day nursery or day care center, provided the residential character of the area is maintained.

(f) Subdivision, planned unit development or other land development project of four or more units.

(g) Construction of a new street not set forth within a locally adopted transportation system plan, the State Highway Transportation Improvement Plan, or previously approved development plan.

(D) Dimensional standards. In an R-1 Zone, the following dimensional standards shall apply.

(1) Minimum lot area shall be 6,500 square feet for a single family dwelling unit, 9,000 for a two family dwelling (duplex) unit and 2,500 square feet for each unit over two. **In the case where more than one detached building occupies a single lot, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the lot.**

(2) Front yard shall be minimum of 20 feet.

(3) The sum of the width of the two side yards shall be a minimum of 12 feet, and the minimum side yard shall be three feet; except that on a corner lot, the side yard on the street side shall be a minimum of ten feet, and the sum of the width of the two side yards shall be 13 feet.

(4) Rear yard shall be a minimum of ten feet, except on corner lots the rear yard shall be five feet.

(5) Vision clearances on corner lots shall be 20 feet, and on street-alley intersections shall be seven feet.

(6) Buildings shall not occupy more than 30% of the total lot area.

(7) No building shall exceed a height of 30 feet or two and one half stories, whichever is less, except that hospitals and churches may be increased to three stories or 35 feet in height.

(E) Signs. In an R-1 Zone, signs are permitted in accordance with the provisions set forth in Ch. 152 as amended.

(F) Off-street parking. In an R-1 Zone, off-street parking facilities shall meet the requirements set forth in § 153.081 et seq. of this chapter.



(G) Site design review. All uses, except single family and two-family/duplex conventional dwellings and their accessory structures, are subject to the site design review provisions of § 153.098. Special design considerations shall be given and may be required to protect scenic views from existing dwelling units on adjoining lots.

(H) Sewer and water services required. No use permitted in this zone shall be permitted without municipal sewer and water services, regardless of the lot area, unless otherwise approved by the city.

(I) Nuisances and certain uses prohibited. In an R-1 Zone, no structure or land shall be occupied or used for any purpose which creates or causes to be created any public nuisance, including but not limited to excessive odor, dust, noise, vibration or any hazard to the general health, safety and welfare of the area. Specifically, no livestock shall be permitted except domestic dogs and cats and these animals shall be solely confined to an individual owner's property. Any animals permitted to run at large are hereby declared a nuisance and may be abated as such.

(Ord. 1057, passed 3-24-98)

#### **§ 153.046 GENERAL RESIDENTIAL R-2 ZONE.**

In an R-2 Zone, the following regulations shall apply.

(A) Purpose. It is the purpose of the R-2 Zone to provide for residential areas which permit a mixture of a variety of housing types at various densities in a more planned type of development design, including a minimum of nonresidential commercial convenience and service type uses in more accessible proximities for the purposes of providing for conveniences and services to the dominant intended residential users of the area.

(B) Uses permitted outright. In an R-2 Zone, the following uses and their accessory uses are permitted outright.

- (1) Single family dwelling, including modular homes and manufactured homes in compliance with the applicable provisions set forth in § 153.080 et seq., served by both public sewer and water systems.
- (2) Two family dwelling or duplex.
- (3) Residential home as defined by O.R.S. 197.660(2) and § 153.004 of this chapter.
- (4) Family day care center as defined in O.R.S. Ch. 418.
- (5) Adult foster home as defined in O.R.S. 443.705(1).
- (6) Utility lines necessary for local public service.
- (7) Land partitioning where no new street or road is created.
- (8) Maintenance or repair of an existing transportation facility, including reconstruction, surfacing, minor widening or realignment of an existing road within an existing right-of-way, including the addition of turn refuges at existing street intersections, but not including the addition of through travel lanes.

- (9) Replacement of bridges and other stream or canal crossing facilities.
- (10) Temporary improvements in association with construction projects such as temporary roads and detours.
- (11) Bikeways, footpaths and recreation trails.
- (12) Construction of new streets and roads, including the extensions of existing streets and roads, that are included within locally adopted transportation systems plans (as may be amended), the State Highway Transportation Improvement Plan, or as has been identified in a specific development review and approval process.
- (13) Construction, reconstruction, maintenance or repair of public water and sewer systems or components thereof.
- (14) Private garages and accessory buildings commonly associated with residential uses.

(C) Conditional uses permitted. In an R-2 Zone, the following uses and their accessory uses are permitted when authorized in accordance with the provisions of this section and § 153.135 et seq.

- (1) Type I conditional uses.
  - (a) Governmental structure or land use including, and limited to, a public park, playground, recreation building, fire station, library or museum.
  - (b) Multi family dwelling complex up to a maximum of ten units served by both public sewer and water.
  - (c) Triplex or four-plex, including townhouses or condominiums up to four units.
  - (d) Home occupation or cottage industry with no retail sales and no employees except members of the resident family.
  - (e) Bed and breakfast facility in an existing residence.
  - (f) Guest house.
  - (g) Publicly or privately operated kindergarten, day nursery or child care center.
  - (h) Land partitioning involving the creation of a new street or road for access to one or more parcels.
  - (i) The addition of through travel lanes to an existing street within the existing right-of-way, and/or the extension of an existing street not previously planned.
- (2) Type II conditional uses.
  - (a) Community building owned and operated by a public or nonprofit agency or organization.
  - (b) Hospital and other medical service facilities including, but not limited to, clinics, sanitariums, rest homes, homes for the aged, nursing or convalescent homes.
  - (c) Telephone exchanges, radio and television facilities, electrical substations and other public or private utility facilities.

- (d) Multi family dwelling complexes, including townhouses and condominiums of more than ten dwelling units.
- (e) Home occupations not complying with subsection (C)(1)(d) of this section, but in compliance with the applicable provisions set forth in § 153.135 et seq.
- (f) Subdivision, planned unit development or other land development project of four or more units.
- (g) Public or private church or school, including buildings and other uses essential to the operation thereof.
- (h) Residential facility or adult foster home as defined by O.R.S. 197.660 and § 153.004 of this chapter.
- (i) Manufactured dwelling or mobile home park.
- (j) "Pitch 'n' Putt" or miniature golf course and other open land recreational uses, but excluding driving ranges and intensive commercial amusement use such as automobile race tracks or amusement parks.
- (k) Convenience or neighborhood market or store of not more than 2,500 square feet of retail floor space.
- (l) Residentially oriented service businesses such as laundries, carpet/upholstery cleaning, home appliance repair, beauty and barber shops and similar uses of not more than 1,200 square feet each.
- (m) Any combination of uses permitted by subsections (C)(2)(k) and (l) of this section up to a total floor area of 5,000 square feet
- (n) Construction of a new street not set forth within a locally adopted transportation system plan, the State Highway Transportation Improvement Plan or previously approved development plan.
- (o) Any use permitted in subsections (B) or (C)(1) of this section served by either public sewer or water, but not both.
- (p) Professional commercial uses, such as offices for accountants, bookkeepers, attorneys, engineers, architects, doctors, dentists, real estate and insurance and medical or dental clinics subject to the conditions and limitations set forth in § 153.143(U) in this chapter.

(D) Dimensional standards. In an R-2 Zone, the following dimensional standards shall apply.

- (1) For residential uses served by both public sewer and water the minimum lot area for a single family dwelling shall be 5,000 square feet, 7,500 feet for a two family dwelling and an additional 1,500 square feet for each unit over two; for example, 9,000 sq. ft for a triplex, and 10,500 square feet for a four-PLEX.
- (2) For multi family dwellings complexes of more than 4 units, the minimum lot area shall be 10,500 square feet plus an additional 1,500 square feet for each unit over four.
- (3) For residential uses served by either public sewer or water, but not both, the minimum lot area for a single family dwelling shall be 20,000 square feet, for a two family dwelling 30,000 square feet and for a four-PLEX 40,000 square feet; for multi family dwelling complexes of more than four units, there shall be an additional 2,500 square feet for each additional dwelling unit over four.

(4) For residential uses not served by either public sewer or water, the Commission shall determine the minimum lot size, but in no case shall a minimum lot area of less than that set forth in subsection (D)(3) plus 25% be permitted.

(5) **In the case where more than one detached residential building occupies a single site, unless classified as a multi-family dwelling complex, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the site.**

(6) For all nonresidential uses, the minimum lot size shall be determined on the basis of compliance with all applicable dimensional standards and the preservation of the residential character of the neighborhood.

(7) Front yard shall be minimum of 20 feet.

(8) The total of the two side yards shall be a minimum of 12 feet with the minimum side yard being three feet; except that on corner lots the side yard adjacent to a street shall be a minimum of ten feet and the total of the two side yards shall be a minimum of 13 feet.

(9) Rear yard shall be a minimum of ten feet, except that when adjacent to an alley or on a corner lot the rear yard shall be a minimum of five feet.

(10) Buildings shall not occupy more than 35% of the total lot area.

(11) No residential building shall exceed two and one half stories or a height of 35 feet; nonresidential uses such as schools, churches, community buildings, hospitals and the like may be increased in height to 45 feet.

(12) Vision clearances shall be 20 feet on corner lots and seven feet on alley-street intersections.

(E) Signs. In an R-2 Zone, signs are permitted in accordance with the provisions set forth in Ch. 152 as amended.

(F) Off-street parking. In an R-2 Zone, off-street parking facilities shall meet the applicable requirements set forth in § 153.080 et seq. of this chapter.

(G) Site design review. All uses, except single family **and two-family/duplex** dwellings served by both public sewer and water and their accessory structures, are subject to the site design review provisions of § 153.098.

(H) Limitations on uses. Domestic livestock are permitted, but only in compliance those provisions set forth in § 153.097 of this chapter, but no animal is permitted to run at large. No structure or land shall be occupied or used in any residential zone for any purpose which creates or causes to be created any public nuisance, including but not limited to excessive odor, dust, noise, vibration or any hazard to the general health, safety and welfare of the surrounding area.

(Ord. 1057, passed 3-24-98)

**§ 153.047 SUBURBAN RESIDENTIAL R-3 ZONE.**

In an R-3 Zone, the following regulations shall apply.

(A) Purpose. It is the purpose of the R-3 Zone to provide for housing areas which are or may be of a more transitional character, and in areas for which both public water and sewer is not reasonably available primarily due to economic or physical limitations. It is also the purpose of the R-3 Zone to preserve the more rural characteristics of existing developed areas and/or to provide areas for those future residents which desire or demand a more rural type setting in close proximity to urban uses and services. It is further the intent of the R-3 Zone to provide for zoning which corresponds to the existing county Suburban-Residential S-R that is currently applicable within the subject Urban Growth Boundary (UGB) area, thereby providing for minimal impacts upon transition from county to city jurisdiction.

(B) Uses permitted outright. In an R-3 Zone, the following uses and their accessory uses are permitted outright.

- (1) Single family dwelling, including a manufactured home on an individual lot in compliance with the applicable provisions set forth in § 153.080 et seq. of this chapter.
- (2) Two family dwelling or duplex.
- (3) Land partitioning not involving the creation of a new road or street for access.
- (4) Residential home as defined by O.R.S. 197.660(2) and § 153.004 of this chapter.
- (5) Family day care center as defined in O.R.S. Ch. 418.
- (6) Adult foster home as defined in O.R.S. 443.705(1).
- (7) Utility lines necessary for public service.
- (8) Maintenance or repair of an existing transportation facility, including reconstruction, surfacing, minor widening or realignment of an existing road within an existing right-of-way, including the addition of turn refuges at existing street intersections, but not including the addition of through travel lanes.
- (9) Replacement of bridges and other stream or canal crossing facilities.
- (10) Temporary improvements in association with construction projects, such as temporary roads and detours.
- (11) Bikeways, footpaths and recreation trails.
- (12) Construction of new streets and roads, including the extensions of existing streets and roads, that are included within locally adopted transportation systems plans (as may be amended), the State Highway Transportation Improvement Plan or as has been identified in a specific development review and approval process.
- (13) Construction, reconstruction, maintenance or repair of public water and sewer systems or components thereof.
- (14) Private garages and accessory buildings commonly associated with residential uses.

(C) Conditional uses permitted. In an R-3 Zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements set forth in § 153.135 et seq.

(1) Type I conditional uses.

(a) Governmental structure or use including park, playground, recreation building, fire station, library or museum and limited thereto.

(b) Home occupations carried on by the residents as an accessory use within their dwelling as an existing garage or other accessory buildings permitted in the zone, provided there are no employees except the immediate family of the applicant and that there are no retail sales from the premises.

(c) New water supply and sewage treatment facilities.

(d) Multi family dwellings of not more than four units including triplexes and four-plexes.

(e) Crop cultivation or farm and truck gardens, including plant nurseries and on-premises sales of farm products grown on site.

(f) The addition of through travel lanes to an existing street within the existing right-of-way, and/or the extension of the existing street not previously planned.

(g) Telephone exchanges, radio and television facilities, electrical substations and other public or private utility facilities.

(h) Land partitioning involving the creation of a new road or street for access, whether private or public.

(2) Type II conditional uses.

(a) Planned unit development, subdivision or other land development of four or more units, lots or parcels.

(b) Church, including buildings and accessory uses essential to the operation thereof.

(c) Golf course and other open land recreational use, but excluding intensive commercial amusement uses such as driving ranges, automobile or motorcycle race tracks or amusement parks.

(d) Hospital, sanitarium, rest home, home for the aged, nursing home or convalescent home, and medical or dental clinic.

(e) Public or private school or college, including buildings and uses accessory and essential to the operation thereof.

(f) Manufactured home park or subdivision.

(g) Multi family dwelling complexes of more than four dwelling units.

(h) Home occupations carried on by the residents as an accessory use within their dwelling, a garage or other accessory buildings permitted in the zone, not in compliance with the limitations set forth in subsection (C)(1)(b) of this section, but in compliance with the provisions set forth in the applicable section of §153.135 et seq.

(i) Privately or publicly operated kindergarten, day nursery or preschool.

(j) Residential facility as defined by O.R.S. 197.660(1) and § 153.004 of this chapter.

(k) Construction of a new road or street not set forth within a locally adopted transportation system plan, the State Highway Transportation Improvement Plan or previously approved development plan.

(l) Convenience or neighborhood market or store of not more than 2,500 square feet of retail floor space.

(m) Residentially oriented service businesses such as laundries, carpet/upholstery cleaning, home appliance repair and similar uses of not more than 1,200 square feet each.

(n) Any combination of uses permitted by subsections (C)(2)(m) and (n) of this section up to a total floor area of 5,000 square feet

(o) Professional commercial uses such as offices for accountants, bookkeepers, attorneys, engineers, architects, doctors, dentists, real estate and insurance and medical or dental clinics subject to the conditions and limitations set forth in § 153.143(U).

(D) Dimensional standards. In an R-3 Zone, the following dimensional standards shall apply.

(1) For a single family dwelling served by both an approved community, municipal or public water system and an approved community or public sewerage system, the minimum lot area shall be 5,000 square feet.

(2) For a two family dwelling, served by both an approved community, municipal or public water system and an approved community or public sewerage system, the minimum lot area shall be 7,500 square feet.

(3) For a single family dwelling, served by either an approved community, municipal or public water system or an approved community or public sewerage system, but not both, the minimum lot area shall be 20,000 square feet.

(4) For a two family dwelling served by either an approved community or public sewerage system or an approved community, municipal or public water system, but not both, the minimum lot area shall be 30,000 square feet.

(5) For a single family dwelling not served by either an approved community, municipal or public water system or an approved community or public sewerage system, the minimum lot area shall be one acre (43,560 square feet).

(6) For a two family dwelling not served by either an approved community, municipal or public water system or an approved community or public sewerage system, the minimum lot area shall be 1.25 acres (54,450 square feet).

**(7) In the case where more than one detached residential building occupies a single site, unless classified as a multi-family dwelling complex, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the site.**

(8) For a multi family dwelling complex not served by either an approved community, municipal or public water system, or an approved community or public sewerage system, the minimum lot area shall be 1.25 acres (54,450 square feet) plus 7,500 square feet for each dwelling unit over two.

(9) For a multifamily dwelling complex served by either an approved community, municipal or public water system or an approved community or public sewerage system but not both, the minimum lot area shall be 20,000 square feet plus 5,000 square feet for each dwelling unit over two.

(10) For a multi family dwelling complex served by both an approved community, municipal or public water system and an approved community or public sewerage system, the minimum lot area shall be 7,500 square feet plus 1,500 square feet for each dwelling unit over two.

(11) Note: The foregoing minimum lot standards applying to units not served by either public sewer or water may be waived by the respective Planning Commission if there is a written assurance that both public sewer and water will be provided within an established schedule and an approved financial guarantee therefor is provided.

(12) The main building and accessory buildings located on any building site or lot shall not cover in excess of 30% of the lot area.

(13) In an R-3 Zone, the following setbacks (yards) shall apply.

(a) Front yards shall not be less than 20 feet.

(b) The sum of the width of side yards

shall be a minimum of 12 feet and each side yard shall be a minimum of three feet, except that on corner lots the side yard on the street side shall be a minimum of ten feet and the sum of the two side yards shall be 13 feet.

(c) A rear yard shall be a minimum of ten feet, except on a corner lot the rear yard shall be five feet and when adjacent to an alley five feet.

(14) No building or structure shall be hereafter erected to exceed two and one-half stories or more than 35 feet in height, except hospitals, public schools or churches, which may be increased in height to three stories or 45 feet.

(15) Vision clearances shall be 20 feet on corner lots and seven and one-half feet on alley-street intersections.

(E) Signs. In an R-3 Zone, signs are permitted in accordance with the provisions set forth in Ch. 152 as amended.

(F) Off-street parking. In an R-3 Zone, off-street parking facilities shall meet the applicable requirements set forth in § 153.080 et seq.

(G) Site design review. All uses, except single family **and two-family/duplex** dwellings served by both public sewer and water and their accessory structures, are subject to the site design review provisions of § 153.098.

(H) Limitations on uses. Domestic livestock are permitted, but only in compliance with those provisions set forth in § 153.097, but no animal is permitted to run at large. No structure or land shall be occupied or used in any residential zone for any purpose which creates or causes to be created any public nuisance, including, but not limited to, excessive odor, dust, noise, vibration or any hazard to the general health, safety and welfare of the surrounding area.

(Ord. 1057, passed 3-24-98)



**§ 153.048 RESIDENTIAL REDEVELOPMENT R-4 ZONE.**

In an R-4 Zone, the following regulations shall apply.

(A) Purpose. The purpose of the R-4 Zone is to encourage redevelopment and rehabilitation of existing housing in areas in which the existing housing stock is characterized by older, deteriorating housing needing replacement by permitting higher densities, increased lot coverages, decreased setbacks, more streamlined permit processes and other incentives for redevelopment efforts.

(B) Uses permitted outright. In an R-4 Zone, the following uses and their accessory uses are permitted outright.

(1) Single family dwelling, including modular and manufactured homes in compliance with the applicable provisions set forth in § 153.080 et seq., served by both public sewer and water.

(2) Two family dwelling or duplex, triplex or four-PLEX served by both public sewer and water.

(3) Residential home as defined by O.R.S. 197.660 (2) and § 153.004 of this chapter.

(4) Family day care center as defined in O.R.S. Ch. 418.

(5) Adult foster home as defined in O.R.S. 443.705.

(6) Utility lines necessary for public service.

(7) Land partitioning where no new road or street is created.

(8) Maintenance or repair of an existing transportation facility, including reconstruction, surfacing, minor widening or realignment of an existing road within an existing right-of-way, including the addition of turn refuges at existing street intersections, but not including the addition of through travel lanes.

(9) Replacement of bridges and other stream or canal crossing facilities.

(10) Temporary improvements in association with construction projects such as temporary roads and detours.

(11) Bikeways, footpaths and recreation trails.

(12) Construction of new streets and roads, including the extensions of existing streets and roads that are included within locally adopted transportation systems plans (as may be amended), the State Highway Transportation Improvement Plan or as has been identified in a specific development review and approval process.

(13) Private garages and accessory buildings commonly associated with residential uses.

(C) Conditional uses permitted. In an R-4 Zone, the following uses and their accessory uses are permitted when authorized in accordance with the provisions of this section and § 153.135 et seq.

(1) Type I conditional uses.

(a) Multi family dwelling complex up to a maximum of ten units served by both public sewer and water.

- (b) Home occupation or cottage industry with no employees except members of the resident family.
- (c) Boarding, lodging or rooming house.
- (d) Bed and breakfast facility in an existing dwelling.
- (e) Guest house.
- (f) Land partitioning involving the creation of a new road or street for access to one or more parcels.
- (g) Community building owned and operated by a governmental agency or a nonprofit, social or fraternal organization.
- (h) Publicly or privately operated kindergarten, day nursery or child care center.
- (i) The addition of through travel lanes to an existing street within the existing right-of-way, and/or the extension of an existing street not previously planned.
- (j) Governmental structure or land use limited to a public park, playground, recreation building, fire station, library or museum.
- (k) Any use permitted by division (A) of this section that is only served by either public sewer or water, but not both.

(2) Type II conditional uses.

- (a) Governmental structure or land use not limited to a public park, playground, recreation building, fire station, library or museum.
- (b) Hospital, and other medical service facilities such as clinics, sanitarium, rest home, home for the aged, nursing, convalescent or retirement home.
- (c) Telephone exchanges, radio and television facilities, electrical substations and other public or private utility facilities.
- (d) Residential facility as defined by O.R.S. 197.660.(1) and § 153.004 of this chapter.
- (e) Planned unit development, subdivision or other land development of four or more units, lots or parcels.
- (f) Manufactured dwelling park.
- (g) Multi family dwelling complex of more than 10 dwelling units.
- (h) Public or private school or church, including accessory buildings and uses essential to the operation thereof.
- (i) "Pitch 'n' Putt" golf course and other open land recreational use, but excluding driving ranges and intensive commercial amusement use such as automobile race tracks or amusement parks..
- (j) Construction of a new street not set forth within a locally adopted transportation system plan, the State Highway Transportation Improvement Plan or previously approved development plan.
- (k) Convenience or neighborhood market or store of not more than 2,500 square feet of retail floor space.
- (l) Residentially oriented service

businesses such as laundries, carpet/upholstery cleaning, home appliance repair and similar uses of not more than 1,200 square feet each.

(m) Any combination of uses permitted by subsections (C)(2)(k) and (l) of this section up to a total floor area of 5,000 square feet

(n) Any use permitted by divisions (B) and (C)(1) of this section that does not have either public sewer or water services.

(o) Professional commercial uses such as offices for accountants, bookkeepers, attorneys, engineers, architects, doctors, dentists, real estate and insurance and medical or dental clinics subject to the conditions and limitations set forth in § 153.143(U).

(D) Dimensional standards. In an R-4 Zone, the following dimensional standards shall apply.

(1) For residential uses served by both public sewer and water, the minimum lot area for a single family dwelling shall be 5,000 square feet, for a two family dwelling 6,500 square feet, for a triplex 8,000 sq. ft, and for a four-PLEX 9,500 square feet

(2) For multi family dwelling complexes of more than four units, the minimum lot size shall be 9,500 square feet plus an additional 1,250 square feet for each unit over four.

(3) For residential uses served by either public sewer or water, but not both, the minimum lot area for a single family dwelling shall be 10,000 square feet, for a two family dwelling 15,000 square feet, for a triplex 20,000 square feet and for a four-PLEX 25,000 square feet; for multi family dwelling complexes of more than four, there shall be an additional 2,500 square feet for each additional dwelling unit over four; however, these standards may be increased as necessary, for compliance with applicable sewage disposal system standards.

**(4) In the case where more than one detached building occupies a single site, unless classified as a multi-family dwelling complex, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the site.**

(5) For residential uses not served by either public sewer or water, the Commission shall determine the minimum lot size, but in no case shall a minimum less than that set forth in division (D)(3) above plus 25% be permitted.

(6) For all nonresidential uses, the minimum lot size shall be determined on the basis of compliance with all applicable dimensional standards and the preservation of the residential character of the neighborhood.

(7) Front yard shall be a minimum of 15 feet on all local streets and 20 feet on a collector or arterial street.

(8) The sum of the side yards shall be a minimum of ten feet with the minimum side yard being three feet; except that on corner lots the side yard adjacent to a street shall be a minimum of ten feet and sum of the side yards shall be 13 feet.

(9) Rear yard shall be a minimum of five feet.

(10) Buildings shall not occupy more than 35% of the total lot area, except that in the case of the replacement of a dilapidated and/or deteriorating structure the lot coverage maximum may be increased to 40%.

(11) No residential building shall exceed two and one-half stories or a height of 35 feet, whichever is greater, and nonresidential uses such as schools, churches, community buildings, hospitals and the like may be increased in height to 45 feet.

(E) Signs. In an R-4 Zone, signs are permitted in accordance with the provisions set forth in Ch. 152 as amended.

(F) Off-street parking. In an R-4 Zone, off-street parking facilities shall meet the applicable requirements set forth in § 153.080 et seq.

(G) Site design review. All uses, except single family **and two-family/duplex** dwellings served by both public sewer and water and their accessory structures, are subject to the site design review provisions of § 153.098.

(H) Limitations on uses. Domestic livestock are permitted, but only in compliance with those provisions set forth in § 153.097, but no animal is permitted to run at large. No structure or land shall be occupied or used in any residential zone for any purpose which creates or causes to be created any public nuisance, including but not limited to, excessive odor, dust, noise, vibration or any hazard to the general health, safety and welfare of the surrounding area.  
(Ord. 1057, passed 3-24-98)

**§ 153.049 CENTRAL COMMERCIAL ZONE C-1 ZONE.**

**§ 153.050 GENERAL COMMERCIAL C-2 ZONE.**

**§ 153.051 PROFESSIONAL COMMERCIAL C-3 ZONE.**

**§ 153.052 NEIGHBORHOOD COMMERCIAL C-4 ZONE.**

**§ 153.053 RECREATION COMMERCIAL C-5 ZONE.**

**§ 153.054 LIMITED INDUSTRIAL M-1 ZONE.**

**§ 153.055 GENERAL INDUSTRIAL M-2 ZONE.**

**§ 153.056 INDUSTRIAL PARK M-3 ZONE.**

**§ 153.057 AIRPORT APPROACH OVERLAY (AA) ZONE.**

**§ 153.058 AIRPORT OPERATIONS A-O ZONE.**

**§ 153.059 AIRPORT DEVELOPMENT A-D ZONE.**

**§ 153.060 AIRPORT COMMERCIAL A-C ZONE.**

**§ 153.061 AIRPORT BUSINESS-INDUSTRIAL A-M ZONE.**

**§ 153.062 AIR RESIDENTIAL A-R ZONE.**

**§ 153.063 OPEN SPACE-PARK RESERVE P-R ZONE.**

**§ 153.064 SIGNIFICANT RESOURCE COMBINING (SR) ZONE.**

#### **SUPPLEMENTARY PROVISIONS**

**§ 153.080 ACCESS-MINIMUM LOT FRONTAGE.**

**§ 153.081 CLEAR VISION AREAS.**

**§ 153.082 PROJECTIONS FROM BUILDINGS.**

**§ 153.083 AUTHORIZATION OF SIMILAR USES.**

**§ 153.084 PROVISIONS REGARDING ACCESSORY USES.**

- § 153.085 OFF-STREET PARKING AND LOADING: PROVISIONS AND REQUIREMENTS.
- § 153.086 OFF-STREET PARKING AND LOADING: DESIGN/IMPROVEMENT STANDARDS.
- § 153.087 LANDSCAPING REQUIREMENTS.
- § 153.088 RIPARIAN HABITAT.
- § 153.089 CUTTING AND FILLING.
- § 153.090 FENCES.
- § 153.091 DECKS.
- § 153.092 AMUSEMENT DEVICES.
- § 153.093 STORAGE-UNUSED VEHICLES/JUNK/DEBRIS.
- § 153.094 OUTDOOR MERCHANDISING.
- § 153.096 MANUFACTURED HOMES; MOBILE HOMES; RV'S.
- § 153.097 LIVESTOCK.
- § 153.098 SITE PLAN AND DESIGN REVIEW PROVISIONS.
- § 153.099 COMPLIANCE WITH STATE/FEDERAL RULES.
- § 153.100 ENGINEERING/SPECIAL SERVICES FOR REVIEW.

#### **EXCEPTIONS AND NONCONFORMING USES**

##### **§ 153.115 NONCONFORMING USES.**

##### **§ 153.116 EXCEPTIONS TO LOT SIZE REQUIREMENTS.**

The following exceptions to minimum lot size requirements shall apply.

(A) (1) If, at the time of enactment of this chapter, a lot or aggregate of contiguous lots or parcels held in a single ownership has an area or dimensions which do not meet the lot size or dimensional requirements of the applicable zone, the lot or aggregate holdings may be occupied by a use permitted in the zone subject to the other requirements of the zone; providing however, if there is an area deficiency, residential use shall be limited to single family dwelling unit or to the number of dwelling units consistent with the equivalent densities of the zone.

(2) Any parcel of land or portion thereof which is to be dedicated to a public, semi-public or public utility for a park, school, road, canal, railroad, utility or other public use shall be exempt from the minimum lot size requirements of this chapter and the applicable zone.

~~————(B)————In any zone, the stated minimum lot area for residential purposes may be abolished by ruling of the Planning Commission, provided that it is replaced by a maximum gross density of equal restrictiveness. For example, given an undeveloped five acre parcel in a residential zone, whether or not subdivided or under one ownership, the Planning Commission may rule on a request that, instead of five houses on one-acre lots, there may be a cluster of five houses and the remainder of the five acres shall be kept undeveloped and shall not be redivided for sale or building development.~~

~~(Ord. 1057, passed 3-24-98)~~

(B) In any zone, the Planning Commission may grant an exception to the stated minimum lot area for residential purposes in accordance with section §153.095 DENSITY FACTOR/LIEU OF MINIMUM LOT SIZE.

- § 153.117 NONCONFORMING LOTS OF RECORD.**
- § 153.118 EXCEPTIONS TO YARD-SETBACK REQUIREMENTS.**
- § 153.119 EXCEPTIONS TO BUILDING HEIGHTS.**
- § 153.120 ZONE BOUNDARIES.**
- § 153.121 EXCEPTION, MINOR REPAIR/REHABILITATION.**
- § 153.122 EXCEPTION, PUBLIC STREET/HIGHWAY IMPROVEMENT.**
- § 153.123 EXCEPTION, PUBLIC FACILITIES IMPROVEMENT.**

#### **CONDITIONAL USES**

- § 153.135 AUTHORIZATION TO GRANT OR DENY.**
- § 153.136 GENERAL CRITERIA.**

#### **§ 153.137 GENERAL CONDITIONS.**

In addition to the standards and conditions set forth in a specific zone, this subchapter, this chapter and other applicable local, county, state and/or federal regulations, additional conditions may be imposed which are found to be necessary to avoid a detrimental impact on adjoining properties, the general area or the city as a whole, and to otherwise protect the general welfare and interests of the surrounding area, the city as a whole and the general public. **No condition may be imposed which violates federal or state law with regard to needed housing.** The conditions may include, but are not limited to, the following.

- (A) Limiting the manner in which the use is conducted, including restricting the time an activity may take place, and restrictions to minimize environmental impacts such as noise, vibration, air or water pollution, glare and odor.
- (B) Establishing a special setback or other open space requirements, and increasing the required lot size or other dimensional standards.
- (C) Limiting the height, size or location of a building or other structure or use.
- (D) Increasing street width and/or requiring improvements to public streets and other public facilities serving the proposed use, even including those off-site but necessary to serve the subject proposal.
- (E) Designating the size, number, improvements, location and nature of vehicle access points and routes, and requiring pedestrian and/or bicycle ways.
- (F) Limiting or otherwise designating the number, size, location, height and lighting of signs and outdoor or security lighting, and the intensity and/or direction thereof.
- (G) Requiring diking, screening, fencing or other improvements or facilities deemed necessary to protect adjacent or nearby properties, and establishing requirements or standards for the installation and maintenance thereof.
- (H) Protecting and preserving existing trees, other vegetation and water, scenic, historic, archaeological, unique, landmark or other natural or manmade significant resources.

(Ord. 1057, passed 3-24-98)

- § 153.138 PERMIT AND IMPROVEMENTS ASSURANCE.**
- § 153.139 APPLICATION FOR CONDITIONAL USE.**
- § 153.140 PERMIT PROCESSING: TYPE I AND II.**

#### **§ 153.141 PUBLIC HEARING REQUIREMENTS.**

~~Before the Planning Commission may act on any request for a conditional use subject to review thereby, the Commission shall conduct a public hearing in the matter thereof. The hearing shall be held within 45 days after an application for a type II use has been received and deemed complete, or within 60 days after an application for a type I use has been received and deemed complete. Notice of the hearings shall be given in the following manner:~~

~~——— (A) ——— Notice of the hearing shall be published in a newspaper of general circulation in the city not less than 10 days prior to the date of the hearing.~~

~~——— (B) ——— Not less than 21 days prior to the date of the hearing, individual notices shall be mailed or otherwise delivered to all property owners within a minimum of 100 feet of the exterior boundaries of the subject property, excluding public streets and ways, to other identifiable affected persons or parties, and to the persons or parties specifically requesting the notice. Failure of any person or party to receive the notice shall not invalidate the proceedings in connection with an application.~~

~~(Ord. 1057, passed 3-24-98)~~

**If required, a public hearing on a conditional use shall follow the land use action hearings procedures set forth in section § 153.255**

#### **§ 153.142 NOTIFICATION OF ACTION.**

~~Within ten days after a decision has been rendered on an application for a conditional use, the City Planning Official, and/or Secretary of the Planning Commission, shall provide the applicant, the property owner if different than the applicant, persons or parties participating in the proceedings leading up to the decision and those specifically requesting the information, with written notice of the decision, and those specifically requesting the information with written notice of the decision taken on the subject request. The notice shall clearly set forth the procedures and conditions for appeal of the decision.~~

~~(Ord. 1057, passed 3-24-98)~~

~~Statutory reference:~~

~~——— Statement of reasons for approval or denial, see~~

~~——— O.R.S. 227.173~~

**Notification of action on an application for a conditional use shall follow the procedures set forth for land use action decisions in section § 153.256.**

#### **§ 153.143 STANDARDS, SPECIFIC CONDITIONAL USES.**

#### **§ 153.144 TIME LIMIT ON A CONDITIONAL USE PERMIT.**

### **SUBDIVISIONS AND PARTITIONINGS**

#### **§ 153.155 PURPOSE.**

#### **§ 153.156 APPLICABILITY.**

### § 153.157 SUBDIVISIONS-APPLICATIONS.

(A) Application. Any person proposing a subdivision, or the authorized agent or representative thereof, shall submit an application for a subdivision to the City Planning Department. The application shall be accompanied with ten copies of either an outline development plan as provided for in division (B) of this section, or a tentative plan as set forth in division (C) of this section, together with improvement plans and other supplementary material as may be required, and the appropriate filing fee as established by the City Council. The ~~time~~ **date** of filing shall be construed to be the ~~time~~ **when date in which** all of the foregoing materials are received **and accepted** by the appropriate city official ~~and are thereby certified as being complete.~~

(B) Outline development plan. The submittal of an outline development plan in the subdivision application process is at the option of the applicant and/or developer. If an outline development plan is prepared and submitted with the application for a subdivision, it shall include both maps and written statements as set forth in this division (B).

(1) The maps which are part of an outline development plan may be in schematic form, but shall be to scale and shall contain the following information.

- (a) The existing topographic character of the land.
- (b) Existing and proposed land uses, and the approximate location of buildings and other structures on the project site and adjoining lands, existing and proposed.
- (c) The character and approximate density of the proposed development.
- (d) Public uses including schools, parks, playgrounds and other public spaces or facilities proposed.
- (e) Common open spaces and recreation facilities and a description of the proposed uses thereof.
- (f) Landscaping, irrigation and drainage plans.
- (g) Road, street and other transportation facility schematic plans and proposals.

(2) Written statements which shall be part of the outline development plan submittal shall contain the following information.

- (a) A statement and description of all proposed on-site and off-site improvements.
- (b) A general schedule of development and improvements.
- (c) A statement setting forth proposed types of housing and other uses to be accommodated, and a projection of traffic generation and population.
- (d) A statement relative to the impact on the carrying capacities of public facilities and services, including water and sewer systems, schools, serving utilities, streets and the like.
- (e) A statement relative to compatibility with adjoining land uses, present and future, environmental protection and/or preservation measures and impacts on natural resource carrying capacities of the site and surrounding/adjacent areas.

(3) Commission approval of an outline development plan for a subdivision shall constitute only a conceptual approval of the proposed development for



general compliance with the city's Urban Area Comprehensive Plan, applicable zoning and this chapter.

(4) Commission review and action on an outline development plan shall be completed within 45 days from the date of submittal and certification of a complete application follow the requirements for review of land use action procedures, hearings and decisions in sections §153.254, §153.255 and §153.256.

(C) Tentative plan required. Following submittal and approval of an outline development plan and subdivision application, or as an initial subdivision application, any person proposing a subdivision shall submit a tentative plan together with the required application form, accompanying information and supplemental data and required filing fee, prepared and submitted in accordance with the provisions of this division (C). (O.R.S. 92.040) Note: Applicants should review the design standards set forth in §§ 153.190 et seq. of this chapter prior to preparing a tentative plan for a development.

(1) Scale of tentative plan. The tentative plan of a proposed subdivision shall be drawn on a sheet 18 by 24 inches in size or multiples thereof at a scale of one inch equals 100 feet or multiples thereof as approved by the City Planning Official. (O.R.S. 92.080). In addition, at least one copy of the plan on a sheet of paper measuring 8 ½ inches by 11 inches or 11 inches by 17 inches shall be provided for public notice requirements.

(2) Information requirements. The following information shall be shown on the tentative plan or provided in accompanying materials. No tentative plan submittal shall be considered complete, unless all such information is provided unless approved otherwise by the Planning Official.

(a) General information required.

1. Proposed name of the subdivision.
2. Names, addresses and phone numbers of the owner of record and subdivider, authorized agents or representatives, and surveyor and any assumed business names filed or to be filed by the owner or subdivider in connection with the development.
3. Date of preparation, north point, scale and gross area of the development.
4. Identification of the drawing as a tentative plan for a subdivision.
5. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets.

(b) Information concerning existing conditions.

1. Location, names and widths of existing improved and unimproved streets and roads within and adjacent to the proposed development.
2. Location of any existing features such as section lines, section corners, city and special district boundaries and survey monuments.

3. Location of existing structures, fences, irrigation canals and ditches, pipelines, waterways, railroads and natural features, such as rock outcroppings, marshes, wetlands, geological features and natural hazards.

4. Location and direction of water courses, and the location of areas subject to erosion, high watertables, storm water runoff and flooding.

5. Location, width and use or purpose of any existing easements or right-of-ways within and adjacent to the proposed development.

6. Existing and proposed sewer lines, water mains, culverts and underground or overhead utilities within and adjacent to the proposed development, together with pipe sizes, grades and locations.

7. Contour lines related to some established bench mark or other acceptable datum and having minimum intervals of not more than 20 feet.

(c) Information concerning proposed subdivision.

1. Location, names, width, typical improvements, cross-sections, approximate grades, curve radii and length of all proposed streets, and the relationship to all existing and projected streets.

2. Location, width and purpose of all proposed easements or right-of-ways, and the relationship to all existing easements or rights-of-way.

3. Location of at least one temporary bench mark within the proposed subdivision boundary.

4. Location, approximate area and dimensions of each lot and proposed lot and block numbers.

5. Location, approximate area and dimensions of any lot or area proposed for public, community or common use, including park or other recreation areas, and the use proposed and plans for improvements or development thereof.

6. Proposed use, location, area and dimensions of any lot which is intended for nonresidential use and the use designated thereof.

7. An outline of the area proposed for partial recording on a final plat if phased development and recording is contemplated or proposed.

8. Source, method and preliminary plans for domestic water supply, sewage disposal, solid waste collection and disposal and all utilities.

9. Storm water and other drainage plans.

(D) Master development plan required. An overall master development plan shall be submitted for all developments planning to utilize phase or unit development. The plan shall include, but not be limited to, the following elements.

(1) Overall development plan, including phase or unit sequences and the planned development schedule thereof.

(2) Schedule of improvements initiation and completion.

(3) Sales program timetable projection.

(4) Development plans of any common elements or facilities.

(5) Financing plan for all improvements.

(E) Supplemental information required. The following supplemental information shall be submitted with the tentative plan for a subdivision.

(1) Proposed deed restrictions or protective covenants, if such is proposed to be utilized for the proposed development.

(2) Reasons and justifications for any variances or exceptions proposed or requested to the provisions of this subchapter, the applicable zoning regulations or any other applicable local, state or federal ordinance, rule or regulation.

(F) Tentative plan review procedures.

(1) Tentative plan review shall follow the requirements for review of land use action procedures, hearings and decisions in sections §153.254 through §153.256 et seq.

~~(a) Within ten days of the receipt of a completed tentative plan filing, the City Planning Official shall schedule a review of the plan with the Development Review Committee as provided for in § 153.159 of this chapter.~~

~~(b) The City Planning Official shall provide a copy of the Development Review Committee's review to the applicant within five working days of the review.~~

~~(c) Within 20 days of a completed filing, or not less than seven days prior to the scheduled Commission hearing on the subject tentative plan, the City Planning Official shall provide each Planning Commission member with a copy of the subject tentative plan, together with the City Planning Staff Report applicable thereto.~~

~~(d) Within 30 days of receipt of notification of such filing by the Planning Official, the Planning Commission shall conduct a public hearing on the proposed development plan, and within 15 days of the hearing the Commission shall either approve, approve with modifications, conditionally approve or disapprove the subject development plan, and set forth the findings, conclusions and reasoning for the decision. The Commission may recess or continue the hearing for good cause for a period not to exceed 30 days.~~

~~(e) If no action is taken by the Commission within 120 days from the date of the certification of the Planning Official of the receipt of a completed application, the tentative plan as filed shall be deemed to be approved, and it shall be the duty of the Planning Official to certify the approval.~~

~~Upon agreement of the applicant and/or developer, however, the 120-day limitation may be extended. (O.R.S. 227.178 and 92.105)~~

~~(f) Following Commission approval of a tentative plan, the plan, together with the Commission's written decision and all accompanying information, shall be forwarded to the City Council for informational review.~~

~~(g) The decision of the Commission shall be final unless appealed pursuant to the applicable provisions of this chapter, or unless the Council, on its own motion, calls the decision up for formal review and action.~~

~~(h)~~ (2) The Commission's decision on a tentative plat shall be set forth in a written decision, and in the case of approval shall be noted on not less than two copies of the tentative plan, including references to any attached documents setting forth specific conditions.

(G) Tentative approval relative to final plat. Approval of the tentative plan shall not constitute final acceptance of the final plat of the proposed subdivision for recording. However, approval of the tentative plan shall be binding upon the city for preparation of the final plat and the city may require only such changes as are deemed necessary for compliance with the terms of its approval of the tentative plan. (O.R.S. 92.040)

(H) Resubmission of denied tentative plan. If the tentative plan for a subdivision is denied, resubmittal of an application for a subdivision of the subject property thereof shall not be accepted by the city for a period of six months after the date of the final action denying the plan. Resubmittal shall be considered a new filing, but shall require the applicant to consider all items for which the prior denial was based, in addition to the other filing requirements set forth by this chapter.

(I) Requirements for approval. The Commission shall not approve an outline development plan or a tentative plan for a subdivision unless the Commission finds, in addition to other requirements and standards set forth by this chapter and other applicable city ordinances, standards and regulation, the following.

(1) The proposed development is consistent with applicable goals, objectives and policies set forth by the city's Comprehensive Plan. (O.R.S. 197.175(2)(b) and 227.175 (4))

(2) The proposal is in compliance with the applicable zoning regulations applicable thereto. (O.R.S. 92.090(2)(C))

(3) The proposal is in compliance with the design and improvement standards and requirements set forth in § 153.190 et seq. or as otherwise approved by the city, or that such compliance can be assured by conditions of approval.

(4) The subdivision will not create an excessive demand on public facilities and services required to serve the proposed development, or that the developer has proposed adequate and equitable improvements and expansions to the facilities with corresponding approved financing therefor to bring the facilities and services up to an acceptable capacity level (Goal 11).

(5) The development provides for the preservation of significant scenic, archaeological, natural, historic and unique resources in accordance with applicable provisions of this chapter and the Comprehensive Plan (Goal 5).

(6) The proposed name of the subdivision is not the same as, similar to or pronounced the same as the name of any other subdivision in the city or within a six mile radius thereof, unless the land platted is contiguous to and platted as an extension of an existing subdivision. (O.R.S. 92.090)

(7) The streets and roads are laid out so as to conform to an adopted transportation system plan for the area, and to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern. (O.R.S. 92.090(2)(a))

(8) Streets and roads for public use are to be dedicated to the public without any reservation or restriction; and streets and roads for private use are approved by the city as a variance to public access requirements. (O.R.S. 92.090(2)(b))

(9) Adequate mitigation measures are provided for any identified and measurable adverse impacts on or by neighboring properties or the uses thereof or on the natural environment.

(10) Provisions are made for access to abutting properties that will likely need such access in the future, including access for vehicular and pedestrian traffic, public facilities and services and utilities.

(11) Provisions of the proposed development to provide for a range of housing needs, particularly those types identified as needed or being in demand. (Goal 10 and O.R.S. 197.303-307)

(J) Final plat for a subdivision.

(1) Submission of final plat.

(a) Time requirement. Except as otherwise approved in accordance with the approval of a master plan for a subdivision planned for unit or phase development, the subdivider shall, within one year after the date of approval of the tentative plan for a subdivision, prepare and submit the final plat for a subdivision that is in conformance with the tentative plan as approved and with all conditions applicable thereto.

1. The subdivider shall submit not less than ten prints of the original drawing and any supplemental information or material required by this chapter and by the tentative plan approval.

2. The filing shall be to the City Planning Official. If the subdivider fails to file the final plat before the expiration of the one-year period, the tentative plan approval shall be declared null and void and a new submittal required if the subdivider wishes to proceed with the development.

(b) Master development plan. In the case of a subdivision for which a master development plan has been approved, the tentative plans for each unit or phase thereof shall be submitted in accordance with the schedule approved as a part of the master plan.

(c) Extension. An extension of one year to the filing time for a final plat may be approved by the Commission upon evidence being submitted by the developer that the extension is necessary due to factors beyond the control of the developer; for example, appeals, weather and the like.

(d) Form of final plat. The final plat shall be prepared in conformance with the applicable standards of O.R.S. Ch. 92 and the requirements of the Crook County Surveyor and Crook County Clerk. A copy of the final plat shall also be provided on a sheet of paper measuring, 8½ inches by 11 inches or 11 inches by 17 inches for public review requirements. The final plat data shall also be provided on a 3.5-inch computer disk in a format adaptive to the city's computer mapping system.

(2) Requirements of survey and plat of subdivision. (O.R.S. 92.050)

- (a) The survey for the plat of a subdivision shall be of such accuracy and with reference to such guidelines as required by O.R.S. Ch. 921.
- (b) The survey and plat shall be made by a registered professional land surveyor.
- (c) The plat shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon.
- (d) The locations and descriptions of all monuments shall be recorded upon all plats and the proper courses and distances of all boundary lines shown.

(3) Monumentation requirements. Monumentation of all subdivisions and plats therefor shall be in compliance with the provisions of O.R.S. Chs. 92.060 and 92.065.

(4) Information required on final plat. In addition to that required by the tentative plan approval or otherwise required by law, the following information shall be shown on the final plat.

- (a) All survey reference information.
- (b) Tract and lot boundary lines, and street right-of-way and centerlines, with dimensions, bearings or deflection angles. Tract boundaries and street bearings shall be to the nearest second; distances to the nearest 0.01 feet. No ditto marks are permitted.
- (c) Width of streets being dedicated. Curve data based on centerlines for streets on curvature; the radius, central angle, arc length, chord length and chord bearing shall be shown.
- (d) Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference.
- (e) Lot numbers beginning with the number "1" and numbered consecutively and without omission.
- (f) The initial point shall be marked with an aluminum pipe or galvanized iron pipe not less than two inches inside diameter 30 inches long before flaring with a 2½ inch minimum diameter aluminum or galvanized cap as appropriately securely attached marked with steel ties with the following information for that subdivision: initial point, subdivision name, year and land surveyor registration number.

(5) Certificates required on final plat. The following certificates are required on the final plat. (O.R.S. 92.070 to 92.120)

- (a) Certificate signed and acknowledged by all parties having record title interest in the land, consenting to the preparation and recording of the plat.
- (b) Certificate signed and acknowledged as above dedicating all land intended for public use.
- (c) Certificate with the seal of and signed by the land surveyor responsible for the survey and the final plat preparation.
- (d) Certificate for the County Surveyor.
- (e) Certificate for the Chairman of the City Planning Commission.
- (f) Certificate for the County Tax Collector.

- (g) Certificate for the County Assessor.
- (h) Certificates for the City Street Superintendent, City Superintendent of Sewer and Water, City Fire Chief and City Planning Director.
- (i) Other certificates required by state law or by the city.
- (j) Certificate for approval or execution by the City Council.

(6) Supplemental information with final plat. The following data, in addition to any other data required as a part of the tentative plan approval, shall be submitted with the final plat.

(a) A preliminary title report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary, and evidence of a clear and marketable title.

(b) A copy of any deed restrictions or protective covenants applicable to the subdivision.

(c) A copy of any dedication requiring separate documents such as for parks, playgrounds and the like.

(d) A copy of any homeowner's association agreements proposed or required for the development.

(e) For any and all improvements such as streets, sewer, water, utilities and the like that are required or proposed as a part of the tentative plan approval, the following shall be required to be submitted with the final plat, and such shall be prepared by a licensed surveyor or engineer.

1. Cross-sections of proposed streets, widths of roadways, types of surfacing, curb locations and specifications, width and location of sidewalks, other pedestrian ways and/or bikeways.

2. Plans and profiles of proposed sanitary sewers, location of manholes and proposed drainage facilities.

3. Plans and profiles of proposed water distribution systems showing pipe sizes, location of valves and fire hydrants as applicable.

4. Specifications for the construction of all proposed utilities.

5. Proof of guaranteed access to the primary serving public street or highway.

**6. Digital data of construction plans and as-built specifications for all improvements in a format approved by the City Engineer, Public Works Director and the Crook County GIS department.**

(7) Technical review of final plat. Within five working days of receipt of the final plat submittal, the City Planning Official shall initiate a technical review of the submittal as herein provided.

(a) Notification of the receipt of and opportunity for review thereof shall be given to the Superintendents of Streets and Public Works, the City Fire Chief, City Engineer, City Attorney, representatives of any serving special districts, utility companies and any other affected agencies.

(b) The parties shall complete the technical plat review and shall submit findings to the City Planning Official within ten days of the notice.

(c) Based on the reviews, should the Planning Official determine that full conformity has not been made, the subdivider shall be advised thereof of the needed changes or additions and shall be afforded a reasonable opportunity (not to exceed 30 days) to make the changes or additions.

(d) Other required procedures for processing a final plat are set forth in § 153.162.

(8) Commission review and approval of final plat. **Within 30 days following the receipt of the final plat for any land division reviewed by the Planning Commission, the Chair of the Commission, or another member of the Commission designated by the Chair, shall review the final plat to verify that the plat is submitted in accordance with** ~~Within 30 days following the receipt of the final plat with the results of the technical plat review, the Commission shall determine whether or not the submittal complies with this chapter, other applicable standards and regulations and the tentative plan approval.~~

(a) If the Commission **Chair or designee** does not approve the final plat, **the Community Development Department** shall advise the subdivider of the reasons therefore, and shall provide an opportunity to make corrections.

(b) If the Commission **Chair or designee** approves the final plat, approval shall be indicated by the signature of the Chairman of the Commission **or designee** on the plat.

(9) Council approval of final plat. Within ten working days of Commission approval of the plat, **the Mayor or designee shall review the final plat to verify that the plat is submitted in accordance with the decision of the Planning Commission and complies with this chapter and other applicable standards and regulations.** ~~it shall be submitted to the Council for final action. The Council shall take action on the subject plat at its first regular meeting following receipt thereof.~~

(a) If the Mayor or designee does not approve the final plat, **it the Community Development Department** shall advise the subdivider of the reasons therefor, and shall provide an opportunity to make corrections.

(b) If the Mayor or designee approves the final plat, approval shall be indicated by the signature of the Mayor or designee on the plat.

(10) Final plat approval requirements. No final plat for a proposed subdivision shall be approved unless it is found to comply with the following minimum standards. (O.R.S. 92.090 (3))

(a) The final plat is found to be in strict compliance with the tentative plan approval and all conditions set forth thereby.

(b) Streets and roads for public use are dedicated without any reservations or restrictions.

(c) Streets and roads held for private use are clearly indicated.

(d) The plat contains a donation to the public of all common improvements and public uses proposed or required as a condition of approval of the tentative plan.



(e) All proposed or required improvements have either been completed and approved by the city or that a bond, contract or other assurance therefor has been provided for and approved by the City Council.

(11) Recording of final plat. The subdivider shall, without delay, submit the final plat for the approval and signatures of other public officials required by law. Approval of the final plat shall be null and void if the plat is not recorded within 45 days after the date of approval of the City Council.

(a) After obtaining all required approvals and signatures, the subdivider shall file the plat and an exact copy thereof in the County Clerk's office.

(b) No plat shall be recorded unless all ad valorem taxes and special assessments, fees or other charges required by law to be placed upon the tax rolls which have become a lien or which will become a lien during the calendar year on the subdivision have been paid.

(c) Not less than 12 copies of the recorded plat shall be provided to the City Recorder, Planning Official or County Surveyor at the developer's expense. The County Surveyor may request an additional number of copies required at time of final plat review if deemed appropriate. A computer file of the plat on a 3.5-inch computer disk in a computer format adaptable to the city's computer mapping system shall also be provided to the city.

(Ord. 1057, passed 3-24-98)

#### **§ 153.158 PLANNED UNIT DEVELOPMENT (PUD).**

#### **§ 153.159 SUBDIVISION AND PUD REVIEW.**

~~———— (A) ——— In addition to those to whom notice is otherwise required by this chapter or by law, those persons, parties or agencies set forth below and identified as affected parties shall be given individual notice and the opportunity to review and comment to the Planning Commission on a proposed subdivision or PUD. The notice shall be mailed within ten days of the submittal of the plan, and the response time shall be at least ten days from the receipt of the notice. These same persons, parties or agencies shall constitute the membership of the City Development Review Committee.~~

- ~~———— (1) ——— City Superintendent of Public Works.~~
- ~~———— (2) ——— City Superintendent of Streets.~~
- ~~———— (3) ——— County Roadmaster as applicable.~~
- ~~———— (4) ——— Police: city and county if affected.~~
- ~~———— (5) ——— City Fire Chief and Rural Fire District if affected.~~
- ~~———— (6) ——— Public utility representatives.~~
- ~~———— (7) ——— Ochoco Irrigation District as applicable.~~
- ~~———— (8) ——— School district representatives.~~
- ~~———— (9) ——— City Engineer as applicable.~~
- ~~———— (10) ——— Parks and Recreation District Director.~~

~~———— (B) ——— Development review conference. The City Planning Director shall schedule a meeting with the City Development Review Committee and the developer(s) or authorized agent, engineer and/or surveyor. The City Development Review~~

~~Committee, at a minimum, shall include all of those parties listed in division (A) of this section.~~

~~\_\_\_\_\_ (C) \_\_\_\_\_ Committee review factors. In review of a proposed development, the Committee shall, at a minimum, consider the following factors.~~

~~\_\_\_\_\_ (1) \_\_\_\_\_ Tentative plat requirements.~~

~~\_\_\_\_\_ (2) \_\_\_\_\_ Possible adverse effects on the development by natural hazards, or adverse effects on any natural or other Goal 5 resources by the development.~~

~~\_\_\_\_\_ (3) \_\_\_\_\_ Quantity and quality of existing or proposed water supply, and the adequacy of the existing or proposed sewage disposal system.~~

~~\_\_\_\_\_ (4) \_\_\_\_\_ Adequacy of public services to serve the increase in population to be created by the development; including streets, schools, police, fire, public utilities and health or medical facilities.~~

~~\_\_\_\_\_ (5) \_\_\_\_\_ Conformance with the design and improvement standards and requirements set forth in § 153.190 et seq. and in any other applicable city ordinance, regulations or standards.~~

~~\_\_\_\_\_ (6) \_\_\_\_\_ Conformance with applicable state regulations.~~

~~\_\_\_\_\_ (7) \_\_\_\_\_ Provisions for the continuity of public services and access to adjoining lands.~~

**Review of a subdivision or planned unit development shall follow the procedures and policies for land use applications, hearings and decisions set forth in sections §153.254 through § 153.256 et seq.**

(D) Public hearing and notice required. Neither an outline development plan or a tentative plan for a proposed subdivision or PUD may be approved unless the Planning Commission first advertises and holds a public hearing thereon. Notice of the hearing shall, at a minimum, be provided as required by this chapter for a conditional use type II.

(Ord. 1057, passed 3-24-98)

#### **§ 153.160 LAND PARTITIONINGS.**

(A) Applicability of regulations. As defined in this section and this chapter, all land partitionings within the city, except as set forth in division (B) of this section, must be approved by the city as provided for in this section.

(B) Definitions. For the purposes of this section and this chapter, the words and phrases shall have the meaning set forth herein.

PARTITIONING. To divide a lot, parcel or tract of land into two or three lots or parcels ~~within a calendar year~~, but does not include the following.

(a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of a cemetery lot.

(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created, and where the existing unit of land reduced in size by the adjustment complies with the applicable zoning.

(c) The division of land resulting from the recording of a subdivision or condominium plat.

(d) The sale of a lot in a recorded subdivision or town plat, even though the developer, owner or seller of the lot may have owned other contiguous lots or property prior to the sale; the lot, however, must be sold as platted and recorded.

MINOR PARTITIONING. A partitioning where each lot or parcel created has access to an existing public road, street, highway or way; that is, a partitioning that does not include the creation of a new road or street for access to one or more of the lots or parcels being created. For the purposes of this definition and this definition only, an easement for access of more than 100 feet in length shall be considered a street or road.

MAJOR PARTITIONING. A partitioning where a new street or road is created for access to one or more of the parcels created by the partitioning.

SERIES PARTITIONING. A series of partitions, major or minor, of a tract of land resulting in the creation of four or more parcels ~~over~~ within a period of more than one calendar year.

(C) Exemptions. In addition to those exclusions set forth in division (B) of this section, the following land divisions shall be exempt from the land partitioning requirements set forth by this section and this chapter.

(1) The partitioning of a tract of land in which not more than one parcel is created and the parcel is being transferred to a public or semi-public agency for the purpose of a public road, street, canal or utility right-of-way, or for public park, school, recreation facility, trail, bikeway, natural area or other similar public purpose.

(2) The transfer of one parcel between two adjoining ownerships where an additional parcel is not created and where no new or additional dwellings or other structures are involved, and where the existing ownership reduced in size by the transfer is not reduced below the minimum lot size of the applicable zone. A final map of a boundary adjustment is still required however, and the requirements of the map are set forth in § 153.161.

(D) Filing procedures and requirements. Any person proposing a land partitioning, or the authorized agent or representative thereof, shall prepare and submit ten copies of the tentative plan for the proposed partitioning, together with the prescribed application form and required filing fee, to the City Planning Official.

(1) Proposed partitioning shall be drawn. The tentative plan of a proposed partitioning shall be drawn on a sheet 18 by 24 inches in size or multiples thereof at a scale of one inch equals 50 feet or multiples thereof. A copy of the proposed partitioning shall also be provided on a sheet measuring 8½ inches by 11 inches or 11 inches by 17 inches for public review and notice requirements.

(2) Requirements for the plan. The plan shall include the following.

(a) A vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways, properties and land use patterns.

(b) A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel and the names, right-of-way widths and improvement standards of existing roads.

(c) Names and addresses of the land owner, the partitioner, the mortgagee if applicable, and the land surveyor employed (or to be employed) to make necessary surveys and prepare the final partitioning map.

(d) A statement regarding provisions for water supply, sewage disposal, solid waste disposal, fire protection, access, utilities and the like.

(e) North point, scale and date of map and the property identification by tax lot, map number, section, township and range, subdivision lot and block or other legal description.

(f) Statement regarding past, present and proposed use of the parcel(s) to be created, or the use for which the parcel(s) is to be created.

(3) Minor partitioning. Within ten days of the ~~receipt~~ **certification of completeness** for an application and tentative plan for a minor partitioning, the Planning Official shall take action to either approve the application as submitted, approve with modifications or conditions, or deny the application; or, the Planning Official may refer the subject application to the Planning Commission for review and action thereon. **Review of a minor partition shall follow the procedures and policies for land use applications, hearings and decisions set forth in sections §153.254 through § 153.256 et seq.**

(4) Major partitioning. **Within 30 days of the certification of completeness for an** ~~An~~ application and tentative plan for a major partitioning, **the application** shall be referred to the Planning Commission for ~~review and action within 30 days of the receipt thereof by the Planning Official~~ **the initial hearing for review and action**. The Planning Commission may approve the application as submitted, approve with modifications or conditions or deny the application.

(5) Series partitioning. Any division of land resulting in a series partitioning shall be ~~approved~~ **subject to review and approval** by the Planning Commission. Applications for any **series** partitionings shall be made and processed in the same manner as a major partitioning. Approval requirements shall be the same as for any partitioning, however, the Commission shall deny any such **series** partitioning when it is determined that the partitionings are done for the purpose of circumventing applicable subdivision regulations.

(6) Final partitioning map procedures. In addition to the procedures required for city approval of a final map for a partitioning, other required processing procedures are set forth in § 153.162.

(E) Requirements for approval - partitionings. No partitioning shall be approved unless the following requirements are met. (O.R.S. 92.090)

(1) The proposal is in compliance with the city's Comprehensive Plan and the applicable zoning regulations.

(2) Each parcel is suited for the use intended or to be offered, including but not limited to sewage disposal, water supply, guaranteed access and utilities.

(3) All public services deemed necessary are reasonably available or are proposed to be provided by the partitioner.

(4) Proposal will not have identifiable adverse impacts on adjoining or area land uses, public services and facilities, resource carrying capacities or on any significant resources.

(F) Survey and improvement requirements. In the approval of any land partitioning, the need for a survey, and the need for street and other public facility improvements shall be considered and such may be required as a condition of approval. Any survey and/or improvement requirements that may be required for a subdivision or other land development may be required for a partitioning, including bonding or other assurance of compliance.

(G) Final map requirements. Within 180 days of the approval of a partitioning, the partitioner shall have prepared and submitted to the City Planning Official a final partitioning map prepared by a licensed surveyor and any other materials or documents required by the approval.

(1) The final map shall provide a certificate for approval of the subject partitioning by the Planning Official. The final map shall also contain a certificate for execution by the County Tax Collector and a certificate for execution by the County Assessor. The final map shall first be submitted to and approved by the County Surveyor prior to obtaining the required signatures.

(2) Upon approval, the petitioner shall file the original map with the County Clerk, the true and exact copy with the County Surveyor and not less than six copies of the recorded plat and a computer file of the plat with the City Recorder, City Planning Official or County Surveyor. The County Surveyor may request an additional number of copies required at the time of final plat review if deemed appropriate.

(3) A final partitioning map prepared for this purpose shall comply with the recording requirements applicable to a final plat for a subdivision.

(H) Partitioning for financial purposes.

(1) Upon application to the City Planning Director, the person may grant a special permit authorizing creation of a security interest or leasehold in a parcel of land. A filing fee as may be established by the City Council shall be required.

(2) Permits issued under the authority of this division (H) shall be subject to the following limitations and restrictions.

(a) A parcel possessed by a person under the terms of a lease or a security interest, and the remaining parcels, must remain in the legal use(s) that the parcels were at the time the interest become possessory; except as may be the basis of the security interest, no additional structure or improvement may be added to any parcel by the authority of the permit authorized pursuant to this division (H).

(b) A permit authorized by this division (H) shall only be valid for the time of the lease or the life of the security interest; except when there is a default and foreclosure upon a security interest.

(c) At the end of the life of the security interest, if there is no default or foreclosure, or in the case of leaseholds at the end of the lease, the parcels shall be rejoined into a contiguous unit of land under one ownership and, if possible, shall be reunited or combined into a single tax lot. The owner of the property shall be in violation of this chapter if he has not, within 30 days of the permit becoming void, made written application to the County Assessor for the combination of the parcels into a single tax lot.

(3) A permit issued pursuant to the provisions of this division (H) shall be immediately void if the owner of the property attempts any transfer of the subject parcels, except as provided by the terms of the permit.  
(Ord. 1057, passed 3-24-98)

#### **§ 153.161 FINAL MAP RECORDATION-BOUNDARY LINE ADJUSTMENT.**

(A) The final map for a boundary line adjustment survey shall comply with the requirements of O.R.S. Chs. 92 and 209, and the original plat shall be prepared on double matte four mil minimum thickness mylar. An exact copy of the original plat shall be prepared and submitted along with the original plat and shall be made with permanent black india type ink or silver halide permanent photocopy on 4 mil minimum mylar. The surveyor shall certify that the photocopy or tracing is an exact copy of the original plat.

(B) The original plat and an exact copy shall be submitted to and approved by the City Planning Director. The approval shall be evidenced by signature on both the original and exact copy.

(C) The original plat and exact copy shall be submitted along with the appropriate recording fee to the County Surveyor for recording into the county survey records.

(D) The original plat and exact copy shall then be submitted along with the appropriate recording fee to the County Clerk for recording into the County Clerk's records.

(E) After recording information is placed on the exact copy by the County Clerk, the exact copy and the required number of points, a minimum of six copies, unless otherwise specified by the County Surveyor at the time of survey recording, shall then be submitted to the County Surveyor to complete the recording process.

(F) After recording information is placed on the exact copy, a minimum of three copies shall then be submitted to the City Planning Director, together with ~~a copy of the computer file of the final map on a 3.5 inch computer disk in a format compatible with the city's computer mapping system.~~ **an electronic copy in a format approved by the Community Development Department and the Crook County GIS Department.**  
(Ord. 1057, passed 3-24-98)

**§ 153.162 PROCESSING AND RECORDING PROCEDURES; SUBDIVISION AND PARTITIONING MAPS.**

(A) Submit one reproducible paper, vellum or mylar map copy to the County Surveyor.

(B) Submit closure sheets for the surveyor's certificate and a closure sheet for each lot or parcel created, and a closure sheet for dedicated areas such as roadways or public facility lots.

(C) Submit the required County Surveyor review fee as appropriate for the subdivision or partition.

(D) Submit a title report for the subdivision.

(E) Submit a post-monumentation certificate stating the intent and completion date and a bonding estimate for all subdivision plats proposed for post-monumentation. The bonding estimate is to be 120% of the estimated actual costs, office and field.

(F) After preliminary initial review of the plat, resubmit the final plat prepared on double matte four mil minimum thickness mylar, with corrections made, to the County Surveyor for final approval and signature.

(G) Remaining approval signatures shall then be executed and the final maps and an exact copy thereof submitted to the County Surveyor for recording into the survey records prior to submittal to the County Clerk for recording. The exact copy shall comply with the requirements of O.R.S. Ch. 92 and other applicable statutes and be submitted on four mil thickness mylar.

(H) The County Surveyor recording fee shall be submitted with the final plat along with any required post-monumentation bond or letter executed by the City Attorney that the bonding requirements are met.

(I) The plat shall then be submitted to the County Clerk along with the required recording fee. After recording information is placed on the exact copy by the County Clerk, the exact copy and the required number of prints showing the recording information shall be submitted to the County Surveyor to complete the process. The number of prints required shall be twelve for a subdivision plat and six prints for a partition unless a greater number is requested by the County Surveyor at initial review.

(J) A minimum of six copies of the exact copy of the final plat showing the recording information shall also be submitted to the City Planning Director, together with ~~a computer file of the plat on a 3.5 inch computer disk in a format compatible with the city's computer mapping system~~ **an electronic copy in a format approved by the Community Development Department and the Crook County GIS Department..**  
(Ord. 1057, passed 3-24-98)

**DEDICATION OF STREETS NOT PART OF DEVELOPMENT**

**§ 153.175 APPLICATION.**

**§ 153.176 MINIMUM DESIGN STANDARDS.**

**§ 153.177 PROCEDURES.**

**DESIGN AND IMPROVEMENT STANDARDS/REQUIREMENTS**

**§ 153.190 COMPLIANCE REQUIRED.**

**§ 153.191 LOTS AND BLOCKS.**

- § 153.192 EASEMENTS.
- § 153.193 LAND FOR PUBLIC PURPOSES.
- § 153.194 STREETS AND OTHER PUBLIC FACILITIES.
- § 153.195 ACCESS MANAGEMENT.
- § 153.196 IMPROVEMENT PROCEDURES.
- § 153.197 COMPLETION OR ASSURANCE OF IMPROVEMENTS.
- § 153.198 BUILDING AND OCCUPANCY PERMITS.
- § 153.199 MAINTENANCE SURETY BOND.
- § 153.200 ENGINEERING/SPECIAL SERVICES FOR REVIEW.

## **VARIANCES**

- § 153.210 AUTHORIZATION TO GRANT OR DENY.
- § 153.211 CIRCUMSTANCES FOR GRANTING VARIANCES.
- § 153.212 MINOR VARIANCES.

### **§ 153.213 APPLICATION FOR A VARIANCE.**

An application for a variance/~~compensation~~ under this subchapter shall be filed with the City's Planning Department on a completed application form established by the Department. An application shall include at least the following information, to the extent such information may be required as a condition of acceptance of filing of an application under Oregon Constitution Article 1, Section 18, subsections (a) through (f):

(A) A legal description of the private real property as to which the owner is applying for a variance/~~compensation~~, including the common address and either a legal metes and bounds description or a Crook County Assessor's description of the property;

(B) The name, address and telephone number of each owner of and security interest holder in the private real property, together with the signature of the owner making the application;

(C) A copy of the recorded deed transferring the ownership of the private real property to the owner.

(D) A title report, current within 30 days prior to the application date, verifying the owner's or owners' ownership of the private real property and documenting the date on which the owner or owners acquired ownership;

~~—————(E) Each parcel of land owned by the owner or owners of the private real property, as to which the owner is applying for compensation, that is either directly contiguous to the private real property or is indirectly contiguous through contiguity with another parcel under the same ownership that itself is directly or indirectly contiguous, together with the following:~~

~~—————(1) The date of acquisition of each such directly or indirectly contiguous parcel;~~

~~—————(2) Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the~~



directly or indirectly contiguous parcels as a single, economic unit for example in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land; and

~~————— (3) ——— Information showing the extent to which application of the subject regulation to the private real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land.~~

(FE) A copy of the specific regulation as to which the owner is applying for a variance/compensation, including the date the regulation was adopted, first enforced, or applied.

(GF) A copy of the regulation in existence, and applicable to the private real property, immediately before the regulation that was imposed and allegedly restricts the use of the private real property and caused a reduction in fair market value.

(HG) The manner in which, and the extent to which, the regulation restricts the use of the private real property as to which the owner is applying for a variance/compensation;

~~————— (I) ——— Two appraisals of the private real property as to which the owner is applying for a variance/compensation, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property before application of the regulation and the evidence on which the appraiser's opinion is based; and an appraisal of the same private real property stating the appraiser's opinion of the fair market value of the private real property after application of the regulation and the evidence on which the appraiser's opinion is based.~~

~~————— (J) ——— The amount the owner claims as compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) in the event a variance from the regulation is not granted. An application also shall include an application fee, in the amount established by resolution of the City Council, to at least partially cover the city's cost of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application under Oregon Constitution Article 1, Section 18, subsections (a) through (f). The City shall refund the application fee if it is determined by the city or by a court that the applicant is entitled to compensation under Oregon Constitution Article 1, Section 18, subsections (a) through (f). (Ord. 1057, passed 3-24-98; Am. Ord. 1087, passed 11-28-00)~~

#### **§ 153.214 APPLICATION COMPLETENESS AND ACCEPTANCE FOR FILING.**

~~————— An application shall not be deemed filed with the city until it is complete in accord with the provisions of § 153.213 of this subchapter. Within 15 days following tender of an application under § 153.213 of this subchapter, the Planning Director shall~~

~~review the application to determine whether it is complete and ready for filing. Thereafter:~~

~~——— (A) ——— If the Department determines the application is not complete, it shall, within that 15-day period, inform the applying owner in writing of the additional information necessary to make the application complete and ready for filing. The application shall be deemed complete and filed as of the date of receipt of the additional information. If the Department believes there is doubt, under Oregon Constitution Article I, Section 18, subsections (a) through (f), as to whether the additional information can be required as a condition of acceptance of filing of the application, the Department also may inform the applying owner in writing that although the Department considers the application not complete and ready for filing, the Department nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Department.~~

~~——— (B) ——— If the Department determines the application is complete as initially filed, or if it fails to notify the applying owner of the application's incompleteness within the required 15-day period, then the application shall be deemed complete and filed as of the date of its tender to the Department.~~

~~(Ord. 1087, passed 11-28-00)~~

**Submittal, acceptance and completeness of an application for a variance shall be in accordance with the policies and procedures set forth in section § 153.251 et seq.**

#### **§ 153.215 DEPARTMENT REVIEW OF APPLICATION AND REPORT TO CITY COUNCIL.**

~~——— The Department of Planning and Community Development following filing of a complete application for a variance/compensation under this subchapter and consideration of the information included in the application and any other evidence obtained or received by the Department, shall determine whether a variance is necessary to avoid the owner's being entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f), and if so the extent of the variance needed to avoid the owner's being entitled to such compensation and the amount of compensation to which the owner would be entitled without a variance. If the Department determines that a variance is needed to avoid the owner's being entitled to compensation, the Department shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the city for the payment of such claims. Based on this comparison, the Department shall prepare a written report to the City Council stating its determinations and the evidence on which they are based; and, if the Department has determined that a variance is needed to avoid the owner's being entitled to compensation, making a recommendation either to grant a variance that will avoid the owner's being entitled to compensation, grant a variance that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a variance and pay the compensation to which the owner is entitled. The Department shall provide the written report to the City Council. For purposes of Article 9 of the City's Zoning Ordinance, the Department's preparation and provision of the written report shall not be considered an administrative action.~~

~~(Ord. 1087, passed 11-28-00)~~

Review of an application for a variance shall be in accordance with the policies and procedures set forth in section § 153.254 et seq.

**§ 153.216 PROCEDURES FOR ACTION ON VARIANCES.**

The procedure for taking action on an application for a variance shall be in accordance with the policies and procedures set forth in sections §153.254 through §153.256 et seq., as follows as well as the following:

(A) Minor variance. An application for a minor variance may be approved by the City Planning Official in accordance with the following provisions:

~~\_\_\_\_\_ (1) Upon receipt of an application for a minor variance, the Planning Official shall mail a notice of the subject application to all property owners within 100 feet of the subject property within five working days of the receipt thereof.~~

~~\_\_\_\_\_ (2) The notice shall provide an opportunity for objections and comments relative thereto, and shall provide a minimum period of not less than seven days for the response. A copy of the notice shall also be sent to the applicant, each member of the City Planning Commission, the City Superintendents of Public Works and Streets and any other identified affected parties.~~

(1) Notice shall be sent to persons entitled to notice under section 153.255.030 in accordance with section 153.254.030.

(32) Following conclusion of the response period, if no objections to the subject application have been received, the Planning Official may approve, approve with modifications and/or conditions, deny either process the variance as an administrative decision or refer the application to the Planning Commission for public hearing.

(43) If one or more objections are received, the subject application shall be referred to the Commission for public hearing.

~~\_\_\_\_\_ (5) Whatever action is rendered by the Planning Official shall be made within five working days following the end of the response period, and a copy of the action shall be mailed or otherwise delivered to the applicant and all participating parties.~~

(64) The Planning Official or Planning Commission shall only grant the variance request if the applicant provides clear and substantial evidence of a practical difficulty or unnecessary hardship.

(B) Major variances and minor V-variances not processed administratively shall be referred for Planning Commission action. Before the Planning Commission may act on any variance request, the Commission shall conduct a public hearing in the

matter thereof in accordance with the following requirements policies and procedures set forth in section § 153.255 et seq. .

~~————— (1) — Upon receipt of an application for a variance, including a minor variance referred by the Planning Official, notice of a public hearing shall be sent to the applicant and all property owners within 100 feet of the subject property as the names and addresses thereof are shown on the last available County Assessor's assessment roll. Failure of a person to receive the notice shall not invalidate any proceedings in connection with the subject application. The notice shall be mailed or otherwise delivered not less than 21 days prior to the hearing date.~~

~~————— (2) — In addition to the individual mailed notices, a notice of the hearing shall be published one time in a newspaper of general circulation in the city not less than ten days prior to the date of the hearing.~~

~~————— (3) — Following the hearing on the subject application, the Commission may approve, approve with modifications and/or conditions or deny the application. The Planning Official shall provide written notice of the Commission's decision to the applicant, all participating affected parties and any persons specifically requesting the notice within five working days of the Commission's decision thereon.  
(Ord. 1057, passed 3-24-98)~~

#### **§ 153.217 TIME LIMIT FOR VARIANCES.**

#### **~~§ 153.218 SCHEDULING AND NOTICE OF CITY COUNCIL HEARING.~~**

~~————— At or about the time of the Department's providing the written report prepared under § 153.215 to the City Council, the City Manager shall schedule a City Council public hearing on the application for variance/compensation. In addition, the Department of Planning and Community Development shall give notice of the public hearing and in its discretion may give additional notice of the public hearing as follows:~~

~~————— (A) — The Department shall mail written notice of the public hearing, at least ten days in advance of the initial hearing date, to the applying owner and any other owners of the private real property as to which the owner is applying for a variance/compensation; to the owners of record of property within 100 feet from the exterior boundary of the private real property as to which the owner is applying for compensation as reflected on the most recent property tax assessment roll; and to any neighborhood or community organization recognized by the City Council and whose boundaries include the private real property as to which the owner is applying for compensation.~~

~~————— (B) — The notice mailed under division (A) of this section shall contain the following information:~~

~~————— (1) — The City Council will be holding a public hearing to determine whether an owner of private real property is entitled under Oregon Constitution Article 1, Section 18, subsections (a) through (f) to receive either compensation or a variance from a city regulation and, if so, to determine whether to pay compensation or grant a variance;~~

~~————— (2) — The date, time, and place of the City Council public hearing;~~

~~————— (3) — The name of the applying owner;~~

- ~~\_\_\_\_\_ (4) \_\_\_\_\_ The common address or other easily understood geographical reference to the private real property as to which the owner is applying for a variance/compensation and a map showing its location;~~
- ~~\_\_\_\_\_ (5) \_\_\_\_\_ The regulation in relation to which the owner is applying for a variance/compensation;~~
- ~~\_\_\_\_\_ (6) \_\_\_\_\_ The amount of compensation claimed by the owner if a variance is not granted;~~
- ~~\_\_\_\_\_ (7) \_\_\_\_\_ The possibility that the City Council, following the public hearing, will grant the owner a variance from the regulation in relation to which the owner is applying for a variance/compensation, rather than paying the amount of claimed compensation. The City Council's decision will be based on: (1) a determination whether the applying owner is or will be entitled to compensation under Oregon Constitution Article 1, Section 18, subsections (a) through (f) unless the city grants a variance from the regulation; and, if so, (2) a comparison of the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the city for the payment of such claims;~~
- ~~\_\_\_\_\_ (8) \_\_\_\_\_ The name of the city representative to contact and the telephone number where additional information may be obtained;~~
- ~~\_\_\_\_\_ (9) \_\_\_\_\_ A copy of the application, all documents and evidence relied on by the applying owner, and the Planning Department's report to the City Council are available for inspection at no cost and will be provided at a reasonable cost;~~
- ~~\_\_\_\_\_ (10) \_\_\_\_\_ Written testimony may be submitted to the Planning Department at any time prior to the hearing for inclusion in the hearing record and also may be submitted at the hearing, and oral testimony may be given at the hearing.~~
- ~~\_\_\_\_\_ (11) \_\_\_\_\_ It is not certain whether an action of the City Council under this subchapter is subject to appeal to the Land Use Board of Appeals or to any other appeal tribunal. However, if any person has the right to appeal an action of the City Council under this subchapter, the failure of an issue to be raised in the hearing before the City Council, through written or oral testimony, in a manner sufficient to afford the City Council the opportunity to respond to the issue, will preclude an appeal to the Land Use Board of Appeals or another appropriate appeal tribunal based on that issue.~~
- ~~\_\_\_\_\_ (C) \_\_\_\_\_ In addition, the Department, in its discretion, may publish the notice described in division (B) of this section in a newspaper of general circulation in the city and may give notice by such other means as the Department deems appropriate. The failure of the Department to give notice as provided in this section, or the failure of any person to receive notice given under this section, shall not invalidate any action of the City Council under this chapter.~~
- ~~(Ord. 1087, passed 11-28-00)~~

#### **~~§ 153.219 CITY COUNCIL HEARING AND ACTION.~~**

- ~~\_\_\_\_\_ (A) \_\_\_\_\_ Hearings. The City Council shall hold a public hearing on the application for a variance/compensation. The hearing shall be legislative in nature. At the close of the hearing, the City Council: (1) shall determine whether the applying owner is or will be entitled to compensation under Oregon Constitution Article 1, Section 18, subsections (a) through (f) unless the city grants a variance from the regulation and if so; (2) shall~~

~~compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the city for the payment of such claims. If the City Council has determined that either compensation or a variance is required, then based on this comparison:~~

~~\_\_\_\_\_ (1) If the City Council finds that the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of such claims, is sufficient to justify sacrificing the public benefits from application of the regulation to the owner's private real property, the City Council shall grant a variance from the specified regulation to the extent necessary to avoid the owner's being entitled to compensation;~~

~~\_\_\_\_\_ (2) If the City Council finds that the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of such claims, the City Council shall deny a variance from the specified regulation and the city shall pay the required compensation;~~

~~\_\_\_\_\_ (3) If the City Council finds that some of the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration the city's financial resources for the payment of such claims, but that other of the public benefits are not sufficient to justify the public burden of paying the balance of the required compensation, taking into consideration the city's financial resources for the payment of such claims, the City Council shall grant a variance to the limited extent necessary to avoid the owner's being entitled to compensation as to that part of the specified regulation providing public benefits not sufficient to justify the public burden of paying compensation and the city shall pay the required compensation as to that part of the specified regulation as to which a variance is not granted. The City Council's decision shall be by a written order that shall include the findings and conclusions based on which the City Council has made its decision and, if the City Council has determined that a variance should be granted or compensation should be paid, or both, the extent of the variance granted or of the amount of the compensation to be paid, or both.~~

~~\_\_\_\_\_ (B) Attorney fees. If an owner commences suit or action to collect compensation under Article I, Section 18 of the Oregon Constitution and the city is the prevailing party in such action, then city shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.~~  
(Ord. 1087, passed 11-28-00)

#### **~~§ 153.220 CONDITIONS BASED ON FUTURE COURT DECISIONS.~~**

~~\_\_\_\_\_ If the City Council grants a variance or limited variance as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Oregon Constitution Article I, Section 18, subsections (a) through (h), and if, based on an appellate court interpretation or invalidation of Oregon Constitution Article I, Section 18, subsections (a) through (h), in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the variance was granted, then the variance or limited variance shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the variance or~~

~~limited variance. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the city being required to compensate the owner under Oregon Constitution Article I, Section 18, subsections (a) through (f). Any city payment of compensation to an owner under this subchapter shall be conditional on the owner's signing an agreement that if an appellate court interprets or invalidates Oregon Constitution Article 1, Section 18, subsections (a) through (h), in the same or another case, in a manner such that the applying owner was not entitled to compensation in relation to the subject regulation, then the owner will repay the compensation received by the owner to the city.~~  
(Ord. 1087, passed 11-28-00)

**~~§ 153.221 NOTICE OF CITY COUNCIL DECISION.~~**

~~————The Department of Planning and Community Development shall mail a copy of the City Council's written order to the applying owner and to all other persons who submitted written or oral testimony at the City Council hearing. The failure of the Department to give notice as provided in this subchapter, or the failure of any person to receive notice given under this subchapter, shall not invalidate any action of the City Council under this chapter.~~

~~(Ord. 1087, passed 11-28-00)~~

**~~§ 153.222 EXTENT OF VARIANCE IN CASE OF COURT REVIEW.~~**

~~————If the City Council has taken an action under § 153.219 and the owner nevertheless files a court action seeking compensation in the case of § 153.219(A), or additional compensation in the case of § 153.219(B) or (C), from the city in relation to the specified regulation as it affects the owner's private real property, and if a final court decision determines that the extent of the variance specified as being granted by the City Council was not sufficient to avoid the owner's being entitled to compensation or additional compensation, then the extent of variance granted by the city shall be deemed to be the extent of variance necessary to avoid the owner's being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.~~

~~(Ord. 1087, passed 11-28-00)~~

**~~§ 153.223 TERMINATION OF VARIANCE.~~**

~~————Any variance granted under this subchapter automatically shall terminate on the occurrence of an event following which any owner or future of the private real property that is the subject of the variance will not be entitled to compensation under Oregon Constitution Article 1, Section 18, subsections (a) through (h) in relation to the regulation from which the variance was granted.~~

~~(Ord. 1087, passed 11-28-00)~~

**AMENDMENTS**

**§ 153.230 AUTHORIZATION TO INITIATE AMENDMENTS.**

**§ 153.231 APPLICATION FOR AMENDMENTS.**

**§ 153.232 PUBLIC HEARINGS ON AMENDMENTS.**

**§ 153.233 PUBLIC NOTICE REQUIREMENTS.**

**§ 153.234 RECORDS OF AMENDMENTS.**

**§ 153.235 LIMITATIONS ON REAPPLICATIONS.**

**§ 153.236 ADOPTION OF AN AMENDMENT.**



## **ADMINISTRATION AND ENFORCEMENT**

### **§ 153.250 INTRODUCTION AND DEFINITIONS**

#### **153.250.010. Introduction and application.**

A. Section 153.250 is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the Planning Department of the City of Prineville, under the applicable Comprehensive plan, land use regulations and other ordinances which by their terms incorporate by reference the procedures in this title.

B. The provisions of Section 153.250 do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, building, electrical or plumbing permits except as they relate to Planning Department consideration of permitted uses.

#### **153.250.020. Definitions.**

The following definitions apply to Section 153.250.

"Argument" means assertions and analysis by a party regarding the satisfaction or violation of legal standards. "Argument" does not include assertion of facts not already in the record. "De novo review" means a hearing by the review body as if the action had not previously been heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration will be considered a part of the record on review.

"Development action" means the review of any permit, authorization or determination that the City of Prineville Planning Department is requested to issue, give or make that either:

A. Involves the application of a City zoning ordinance and is not a land use action as defined below; or

B. Involves the application of standards in other portion of the Land Usage Ordinance (Section 150 -152). For illustrative purposes, the term "development action" includes review of any lot line adjustment, permit extension, sign permit, setback determination, and lot coverage determination.

"Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed to be relevant to the decision.

"Land use action" includes any consideration for approval of a quasi-judicial plan amendment or zone change, any consideration for approval of a land use permit, and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions). For illustrative purposes,

the term "land use action" includes review of conditional use permit, variance, partition, subdivision, site plan review and other applications which require the exercise of discretion or policy judgment in applying and/or interpreting applicable criteria.

"Land use permit" includes any approval of a proposed development of land under the standards in the City zoning ordinances involving the exercise of significant discretion in applying those standards. By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, site plan, site plan change of use, modification of approval subdivision, and subdivision variance and variance.

"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or changes in zoning maps not directed at a small number of property owners.

"Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.)

(Ord. 1057, passed 3-24-98; Am. Ord. 1104, passed 5-13-03, Am. Ord. 1137, passed 11-26-2006)

## **§153.251 GENERAL PROVISIONS**

### **153.251.005 Pre-application conference**

A pre-application conference is encouraged for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance and to identify issues likely to arise in

processing an application. The applicable zoning ordinance may require that a pre-application conference be held for particular types of applications.

**153.251.010 Application requirements**

A. Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications for development or land use actions shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the City;
3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria (burden of proof); and
4. Be accompanied by the appropriate filing fee, unless such fees are waived by the City Council.

**153.251.015 Development Review Committee**

A. Within ten days of the submittal of a land use application, notice shall be sent to the following persons, parties and agencies which shall constitute the membership of the City Development Review Committee.

- (1) City Superintendent of Public Works.
- (2) City Engineer.
- (3) City Superintendent of Streets.
- (4) City Police and County Sherrif as applicable
- (5) City Fire Chief and Rural Fire District as applicable
- (6) Public utility representatives.
- (7) Ochoco Irrigation District as applicable.
- (8) School district representatives.
- (9) County Roadmaster as applicable.
- (10) County Planning representative.
- (11) Parks and Recreation District Director.
- (12) Any other person, party or agency deemed by City staff to be affected by the land use proposal or to have specific knowledge or expertise in regard to the specific proposal.

B. Development review conference. Within 30 days of submittal of a land use application, the Community Development Department shall schedule a meeting with the City Development Review Committee to discuss issues

relevant to the proposal. At the request of the applicant, or as initiated by staff, the Development Review Committee may conduct a follow-up meeting with the applicant and applicant's representatives to discuss any issues identified in the development review conference.

**C. Committee review factors.** In review of a proposed development, the Committee shall, at a minimum, consider the following factors.

- (1) Tentative plan, site plan or other relevant requirements.
- (2) Possible adverse effects on the development by natural hazards, or adverse effects on any natural or other Goal 5 resources by the development.
- (3) Quantity and quality of existing or proposed water supply, and the adequacy of the existing or proposed sewage disposal system.
- (4) Adequacy of public services to serve the development; including streets, schools, police, fire, public utilities and health or medical facilities.
- (5) Conformance with the design and improvement standards and requirements set forth in § 153.190 et seq. and in any other applicable city ordinance, regulations or standards.
- (6) Conformance with applicable state regulations.
- (7) Provisions for the continuity of public services and access to adjoining lands.

#### **153.251.020 Acceptance of application**

- A. Development action and land use action applications shall not be accepted until the Planning Director has determined that (1) the requirements of 153.251.10 have been met and (2) the application is complete or the application is deemed to be complete under state law.
- B. An application is complete when in the judgment of the Planning Director all applicable issues have been adequately addressed in the application.
- C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

#### **153.251.030 Incomplete applications**

- A. If an application is incomplete, the planning director shall, within 30 days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend his application or submit a new application supplying the missing information.
- B. The applicant shall have 30 days from the date of notice from the planning director to supply the missing information.
- C. If an applicant does not submit the missing information within the 30-day period specified in 153.251.030(B), the application may be processed in accordance with 153.254.040.

#### **153.251.040 Withdrawal of application**

An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the landowner is not the applicant, no consent to withdraw the application is needed from the landowner.

Refunds for withdrawn applications shall be determined from the following schedule;

- A. Refund request after file is made prior to acceptance of an application as complete and/or prior to the mailing of transmittals or public notice. 75%
- B. Refund after public notice or transmittals have been sent. 50%
- C. No refund shall be allowed after the preparation of a Decision or Staff Report.

#### **153.251.050 Time computation**

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a county ordinance, in which case it shall also be excluded.

#### **153.251.060 Submission of documents**

A document is "submitted" when it is received. Submittal shall be made either at a noticed hearing or at the offices of the Planning Division, unless specified otherwise by the Hearings Body or notice.

### **§153.252 LEGISLATIVE PROCEDURES**

#### **153.252.010 Hearing required.**

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

#### **153.252.020 Notice**

1. Notice of a legislative change shall be published in a newspaper of general circulation public hearing.
2. The notice shall state the time and place of the hearing and contain a statement ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where

necessary to comply with ORS 203.045.

- C. Individual Notice. Individual notice to property owners, as defined in 153.251.010(A), Planning Director, except as required by ORS 215.503

**153.252.030 Initiation of legislative changes**

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the City Council or the Planning Commission.

**153.252.040 Hearings body**

- A. The following shall serve as hearing or review body for legislative changes in this order:
  - 1. The Planning Commission.
  - 2. City Council.
- B. Any legislative change initiated by the City Council shall be reviewed by the Planning Commission prior to action being taken by the City Council.

**153.252.050 Final decision**

All legislative changes shall be adopted by ordinance.

**§153.253 DEVELOPMENT ACTION PROCEDURES**

**152.253.010 Review of development action applications.**

- A. A development action application may be handled administratively by the Planning Director without public notice or hearing.
- B. The Planning Director has the discretion to determine that for the purposes of the land usage ordinance whether a development action application should be treated as if it were a land use action application.

**152.254.020 Decision.**

- A. Development action applications acted upon without notice or hearing shall be approved or denied by the Planning Director or his designee within 30 days of the application's acceptance by the Planning Director.
- B. Notice of a decision shall be provided to the applicant or the applicant's representative.
- C. The decision may be appealed under 153.258.

**§153.254 REVIEW OF LAND USE ACTION APPLICATIONS**

**153.254.010. Effect of determinations made outside of established processes.**

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process (City of Prineville Land Development Ordinance, Section 153.260) or outside the

process for approval or denial of a land use permit (153.254 – 153.256) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final County action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

**153.254.020. Action on land use action applications.**

- A. Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provisions, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under 153.254.030 or without prior notice, as prescribed under 153.254.040 or he/she may refer the application to the Planning Commission for hearing. The Planning Director shall take such action within 30 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.
- B. The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.
- C. Zone change and plan amendment applications shall be referred to a hearing before the Planning Commission.

**153.254.030. Administrative land use decisions with prior notice.**

- A. Notice of the application shall be sent within 10 days of submittal of the application to persons entitled to notice under 153.255.030. Such notice shall include all the information specified under 153.255.040(A) except for the information specified in 153.255.040(A)(7) and (10).
- B. Any person may comment in writing on the application within 10 days from the date notice was mailed or a longer period as specified in the notice.
- C. The Planning Director's decision to approve, deny or send to a hearing shall be made within 30 days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.
- D. Notice of the Planning Director's decision and the appeal period shall be sent to all persons entitled to notice under 153.255.030 and to all persons who commented. The notice shall contain the applicable information required under 153.255.040.
- E. The applicant, all persons entitled to notice under 153.255.030 and all other persons commenting as provided in 153.254.020 constitute parties to the administrative decision. Any party can appeal the decision in accordance with 153.258 (Appeals).

**153.254.040. Administrative decision without prior notice.**

The procedures for administrative decisions without prior notice shall be the same as those set forth in 153.254.030, except that no prior notice shall be given.

**153.254.050. Final action in land use actions.**

A. Except as otherwise provided, the City shall take final action, including consideration of appeals to the City Council, in land use actions within 120 days after the application is deemed complete.

B. If the applicant refuses or fails to submit missing information within the 30 days specified in 153.251.030, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided..

C. The periods set forth in 153.254.050 during which a final decision on an application must be made may be extended for a reasonable period of time at the written request of the applicant.

**153.254.060. Supplementation of application within first 30 days of submittal.**

An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under DCC 153.251.030. Any evidence submitted by an applicant in violation of 153.254.060 will not be considered in determining whether the application is complete and will be returned to the applicant.

**153.254.070. Modification of application.**

A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of 153.254.060 and this section.

B. The Planning Director or Planning Commission shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in 153.250) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day time clock as of the date the modification is submitted. The 120-day time clock for an application, as modified, may be restarted as many times as there are modifications.

C. The Planning Director or Planning Commission may require that the application be re-noticed and additional hearings be held.

D. Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Planning Commission shall make such determinations. The Planning Director or Planning Commission determination on whether a submittal



constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the County on an application.

## **§153.255 LAND USE ACTION HEARINGS**

### **153.255.010. Filing of staff report for hearing.**

- A. At the time an application that in the judgment of the Planning Director requires a hearing is deemed complete, a hearing date shall be set.
- B. A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete.
- C. A copy of the staff report shall be mailed to the applicant, shall be made available to such other persons who request a copy and shall be filed with the Planning Commission.
- D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

### **153.255.020. Hearings Body.**

- A. The following shall serve as the hearings body:
  - 1. Planning Commission.
  - 2. City Council
- B. The Hearing's Body order shall be as set forth in 153.255.020(A), except that the Council may call up an administrative decision for review without the necessity of an application going before the Planning Commission.

### **153.255.030. Notice of hearing or administrative action.**

- A. Individual Mailed Notice.
  - 1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:
    - a. The applicant.
    - b. Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the

subject of the notice where any part of the subject property is within an urban growth boundary;

- c. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.
- d. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
- e. The Planning Commission.
- f. Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site.

- 2. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

B. Published Notice. In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 10 days prior to the hearing.

**153.255.040. Contents of notice.**

- A. All mailed notices of a land use action hearing shall:
  - 1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
  - 2. List the criteria from the zoning ordinance and the plan applicable to the application at issue.
  - 3. Set forth the street address or easily understood geographical reference to the subject property.
  - 4. State the date, time and location of any hearing or date by which written comments must be received.
  - 5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.
  - 6. If a hearing is to be held, state that any interested person may appear.

7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
  8. State the name of a county representative to contact and the telephone number where additional information may be obtained.
  9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
  10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
- B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.
- C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

#### **153.255.050 Burden of proof**

Throughout all local land use proceedings, the burden of proof rests on the applicant.

#### **153.255.060. Standing**

- A. Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record, a person must have participated in a previous hearing on the subject application.
- B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

#### **153.255.070 Disclosure of ex parte contacts**

Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

- A. Publicly announce for the record the substance of such communication; and
- B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.  
Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

**153.255.080. Disclosure of personal knowledge.**

- A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.
- B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

**153.255.090 Challenge for bias, prejudgment or personal interest.**

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudgment or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear

**153.255.100. Hearings procedure.**

A hearing shall be conducted as follows:

- A. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.
- B. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
- C. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
- D. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
- E. The Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue.

- F. Order of presentation:
  - 1. Open the hearing.
  - 2. Staff report.
  - 3. Proponents' presentation.
  - 4. Opponents' presentation.
  - 5. Proponents' rebuttal.
  - 6. Opponents' rebuttal may be allowed at the Hearings Body's discretion.
  - 7. Staff comment.
  - 8. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.
  - 9. Close the hearing.
- G. The record shall be available for public review at the hearing.

**153.255.110 Setting the hearing.**

- A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the City staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with 153.255.130.
- B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in DCC 153.254.050.

**153.255.120 Close of the record.**

- A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.
- B. If the hearing is continued or the record is held open under 153.255.130, further evidence or testimony shall be taken only in accordance with the provisions of 153.255.130.
- C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under 153.255.140.
- D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 120-day clock.

**153.255.130. Continuances or record extensions.**

- A. Grounds.

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding suspension of the 120 day clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
  - a. Where additional documents or evidence are submitted by any party; or
  - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of 153.255.130(2)(a), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.
3. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.

B. Continuances.

1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.
2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.
3. If new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

C. Leaving record open.

If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

- D. A continuance or record extension granted under 153.255.130 shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

**153.255.140. Reopening the record.**

- A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to a suspension of the 120-day time limit.
- B. Procedures.
1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.
  2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

**§153.256 LAND USE ACTION DECISIONS**

**153.256.010. Decision.**

- A. Approval or denial of a land use action shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.
- B. Any portion of an application not addressed in a Hearings Body's decision shall be deemed to have been denied.
- C. A decision on a land use action is not final until the Planning Director or Hearings Body issues a written decision, the decision has been mailed and the appeal period to the next higher Hearings Body within the City has run.
- D. No building permit shall issue until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits.

**153.256.020. Notice of decision.**

A Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

**153.256.030. Decision on plan amendments and zone changes.**

A. Except as set forth herein, the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the City Council.

B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Planning Commission has authority to make a decision, the City Council shall, in the absence of an appeal or review initiated by the Council, adopt the Planning Commission decision. No argument or further testimony will be taken by the Council.

**153.256.040. Reapplication limited.**

A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.

B. Notwithstanding 153.256.040(A), a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated.

**153.256.050. Review by Council.**

A. Review of an administrative action or a Planning Commission decision may be initiated by the City Council. The Council shall consider calling up for review any administrative decision that a majority of the Planning Commission recommends be reviewed.

B. Review by the Council shall be initiated by Council order within 12 days of the date of the mailing of the final written decision of the Planning Director or Planning Commission.

C. Review shall be conducted in the same manner provided for in appeals, except that an appeal fee and transcript shall not be required. Any Council order calling up for review a decision shall specify whether the Council will review the decision called up on the record or de novo and whether it intends to limit the issues on review to certain specified issues.

**153.256.060 Correction of clerical errors**

Upon its own motion or the motion of a party, the Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Planning Commission. Such changes shall be entered only if the Council is able to make a finding that



the decision of the Planning Commission, including appendices, is not accurately reflected in the implementing ordinances.

## **§153.257. RECONSIDERATION**

### **153.257.010. Reconsideration.**

- A. An applicant may request that the Planning Commission decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day time clock will not run during the period of the reconsideration.
- B. Grounds for reconsideration are limited to the following instances where an alleged error substantially affects the rights of the applicant:
  - 1. Correction of an error in a condition established by the Planning Commission where the condition is not supported by the record or is not supported by law;
  - 2. Correction of errors that are technical or clerical in nature.

### **153.257.020. Procedure.**

- A. A request for reconsideration shall be filed with the Planning Director within 10 days of the date the decision was mailed. The request shall identify the alleged error in the Planning Commission decision and shall specify how the applicant would be adversely affected if the alleged error were to remain uncorrected.
- B. Upon receipt of a request for reconsideration, the Planning Director shall forward the request for reconsideration to the Planning Commission and notify the other parties to the proceeding of the request and allow for a 10-day comment period on the request. At the end of the comment period, the Planning Commission shall determine whether the request for reconsideration has merit.
- C. The Planning Commission shall modify the decision upon a determination that the request has merit and the alleged error substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Planning Commission determines that no modification is warranted, a determination shall issue a decision to that effect.
- D. Filing a request for a reconsideration shall not be a precondition for appealing a decision.
- E. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Planning Commission decision. The appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in 153.258. If the decision is modified, the appellant must within 12 days of

the mailing of the modified decision file in writing a statement requesting that its appeal be activated.

**153.257.030 Limitation on reconsideration**

No decision shall be reconsidered more than once by the Planning Commission.

**§153.258 APPEALS**

**153.258.010 Who may appeal**

The following may file an appeal:

1. A party;
2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and
3. A person entitled to notice and to whom no notice was mailed.
4. A person to whom notice is mailed is deemed notified even if notice is not received.
5. **All persons who testified at the public hearing or submitted written testimony.**

**153.258.020 Filing appeals**

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Department and an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the City of Prineville Planning Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.

C. If the City Council is the Hearings Body and the City declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the City in reviewing the appeal.

D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.

**153.258.030 Notice of appeal**

The Notice of Appeal shall include:

A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.

B. If the City Council is the Hearings Body, a request for review by the Council stating the reasons why the Council should review the lower Hearings Body's decision.

C. If the City Council is the Hearings Body and de novo review is desired, a request for de novo review by the Council stating the reasons why the Council should provide de novo review as provided in DCC 153.258.060.

#### **153.258.040 Transcript requirement**

A. Except as otherwise provided in 153.258.040, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Department.

B. Appellants shall submit the transcript to the Planning Department no later than the close of the 5<sup>th</sup> day prior to the date set for a de novo appeal hearing, in on-the-record appeals, the date for receipt of written arguments. Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings body's decision to become final.

C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Department to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.

#### **153.258.050 Consolidation of multiple appeals**

If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

#### **153.258.060 Scope of review**

A. Before Planning Commission. The review on appeal before the Planning Commission shall be de novo.

B. Before the Council.

1. Review before the City Council, if accepted, shall be on the record except as otherwise provided for in this section.

2. The Council may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:

- a. Whether hearing the application de novo could cause the 120-day time limit to be exceeded; and

b. If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or

c. Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or

d. Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

For the purposes of this section, if an applicant is an appellant, factor 153.258.060(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the City to restart the 120-day time clock as of the date of the acceptance of applicant's appeal.

3. Notwithstanding 152.258.060(B)(2), the Council may decide on its own to hear a timely filed appeal de novo.
4. The Council may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal.

#### **153.258.070. Hearing on appeal.**

A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least ~~10~~ 20 days prior to any de novo hearing or deadline for submission of written arguments.

B. Except as otherwise provided in 153.258, the appeal shall be heard as provided in 153.255. The applicant shall proceed first in all de novo appeals.

C. The order of Hearings Body shall be as provided in 153.255.020.

D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

E. The record for a review on the record shall consist of the following:

1. A written transcript of any prior hearing;
2. All written and graphic materials that were part of the record below;
3. The Hearings Body decision appealed from;
4. Written arguments, based upon the record developed below, submitted by any party to the decision;
5. Written comments submitted by the Planning Commission or individual planning commissioners, based upon the record developed below; and

6. A staff report and staff comment based on the record. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The Board shall not consider any new factual information.

#### **153.258.080 Declining Review**

Except as set forth in 153.256.030, when there is an appeal of a land use action and the City Council is the Hearings Body:

- A. The Council may on a case-by-case basis, at a public meeting, determine that the decision of the lower Hearings Body of an individual land use action or a class of land use action decisions, shall be the final decision of the City.
- B. If the City Council decides that the lower Hearings Body decision shall be the final decision of the City, then the Council shall not hear the appeal and the party appealing may continue the appeal as provided by law. In such a case, the City shall provide written notice of its decision to all parties. The decision on the land use application becomes final upon mailing of the Council's decision to decline review.
- C. The decision of the City Council not to hear a land use action appeal is entirely discretionary.
- D. In determining whether to hear an appeal, the City Council may consider only:
  1. The record developed before the lower Hearings Body;
  2. The notice of appeal; and
  3. Recommendations of staff.

#### **153.258.090 Development Action appeals**

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

#### **153.258.100 Withdrawal of an appeal**

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received.

### **§153.259 LIMITATIONS ON APPROVALS**

#### **153.259.010. Expiration of approval.**

- A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all approvals of land use permits provided for under the City of Prineville Land Development Ordinance and the various zoning ordinances administered by City of Prineville.

2. 153.259.010 does not apply to:

a. Those determinations made by declaratory ruling or expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.

b. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under this section or under applicable zoning ordinance provisions, a land use permit is void one year after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.

2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after one year from the date of preliminary approval, unless the final plat has been submitted to the Planning Department for final approval within that time period, or an extension is sought under 153.259.010(C), or the preliminary plat or master plan approval has been initiated as defined herein.

3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within one year of completion of the prior phase, if no timetable is specified.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, regardless of whether the applicable criteria have changed, if:

a. An applicant makes a written request for an extension of the development approval period;

b. The request, along with the appropriate fee, is submitted to the City prior to the expiration of the approval period;

c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and

d. The City determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

2. Up to two additional one-year extensions, may be granted under the above criteria by the Planning Director or his/her designees where applicable criteria for the decision have not changed.

**D. Procedures.**

1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.

2. Approval of an extension granted under DCC 153.259.010(c) is an administrative decision, is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision and shall be processed under 153.250 as a development action, except to the extent it is necessary to determine whether the use has been initiated.

E. Effect of Appeals. The time period set forth in 153.259.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

**153.259.020 Initiation of use**

A. For the purposes of this section, development action undertaken under a land use approval described in 153.259.010, has been "initiated" if it is determined that:

1. The proposed use has lawfully occurred;
2. Substantial construction toward completion of the land use approval has taken place; or
3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

B. For the purposes of this section, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

#### **153.259.030 Modification of approval**

- A. An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.
- B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.
- C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.
- D. An application for a modification shall be handled as a land use action.

#### **153.259.040 Transfer of permit**

- A. A land use action permit shall be deemed to run with the land and be transferable to applicant's successors in interest.
- B. The Planning Department may require that an applicant record a notice of land use permit and conditions of approval agreement in the Crook County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval.
- C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.

#### **153.259.050 Revocation of approvals**

- A. Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances.
- B. Revocations shall be processed as a declaratory ruling under City of Prineville Land Development Ordinance. 153.259.010 notwithstanding, a public hearing shall be held in all revocation proceedings.

### **§153.260 DECLARATORY RULING**

#### **153.260.010. Availability of declaratory ruling.**



A. Subject to the other provisions of this section, there shall be available for the City's comprehensive plans, zoning ordinances and City of Prineville Land Development Ordinance process for:

1. Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
2. Interpreting a provision or limitation in a land use permit issued by the City or quasi-judicial plan amendment or zone change in which there is doubt or a dispute as to its meaning or application;
3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;
4. Determining the validity and scope of a nonconforming use; and
5. Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this section. In all cases, as part of making a determination or interpretation the Planning Director shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.

D. The Planning Director may refuse to accept an application for a declaratory ruling if:

1. The Planning Director determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director judgment the requested determination should be made as part of a decision on an application for a

quasi-judicial plan amendment or zone change or a land use permit not yet filed; or

2. The Planning Director determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

The Planning Director determination to not accept or deny an application under this section shall be the City's final decision.

**153.260.020. Persons who may apply.**

A. 153.251.010(B) notwithstanding, the following persons may initiate a declaratory ruling under 153.260:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
2. In cases where the request is to interpret a previously issued quasi-judicial plan amendment, zone change or land use permit, the holder of the permit; or
3. In all cases arising under 153.260.010, the Planning Director.

No other person shall be entitled to initiate a declaratory ruling.

B. A request for a declaratory ruling shall be initiated by filing an application with the planning department and, except for applications initiated by the Planning Director, shall be accompanied by such fees as have been set by the Planning Department. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Department.

**153.260.030 Procedures**

Except as set forth in this section or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in 153.250 for land use actions. Where the Planning Department is the applicant, the Planning Department shall bear the same burden that applicants generally bear in pursuing a land use action.

**153.260.040. Effect of declaratory ruling.**

A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

B. 153.256.040 notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

### **153.260.050 Interpretation**

Interpretations made under 153.260 shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance as applied to the particular section in question.

## **§153.261 ENFORCEMENT AND REMEDIES**

### **153.261.010 Enforcement**

**A. The City Manager or Recorder, City Planning Official, the City Council and/or other city official duly appointed and/or designated by the City Council shall have the powers and the duties to enforce the provisions of this chapter and all amendments thereto.**

**B. In addition, the Planning Commission and/or City Council may initiate action to enforce any provision of this chapter, including any violation of any restriction or condition established under the provisions of this chapter in the granting of any application authorized or required pursuant to the provisions of this chapter.**

**C. Failure to comply with any order or decision as above provided will subject the violator to any legal remedy provided under law, including but not limited to the following.**

**(1) A complaint filed with the Circuit Court, or other court of competent jurisdiction whereupon conviction the court may fine the violator up to the maximum allowed by law, or imprison the violator in jail for up to the maximum time allowed by law, or both. Each day a violation occurs may be considered a separate offense.**

**(2) The City Planning Official and/or a certified Building Official may order the stoppage of work of any type which is in violation of any of the provisions of this chapter or a permit granted pursuant hereto.**

**(3) A copy of the stop work order shall be posted at the site of construction or use and a copy thereof shall be mailed to the last known address of the property owner and/or the permittee.**

**(4) Upon the posting of the order, all work shall cease forthwith, and the property owner, permittee or permittee's agents or employees who thereafter continue to work shall be in violation of this chapter.**

- (5) The stop work order shall not be removed until satisfactory evidence that the violation has or will be corrected has been provided.  
(Ord. 1057, passed 3-24-98)

**153.261.020 Remedies**

A person violating a provision of this chapter shall be subject to the following provisions.

(A) Unlawful construction or use declared a nuisance. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure, or the subdivision, partitioning, other land development or use of land in violation of this chapter shall be deemed a nuisance.

(B) Penalty. Except as otherwise provided for by law or by a court of competent jurisdiction, a person violating a provision of this chapter shall, upon conviction, be punished by fine of not more than \$500. A violation of this chapter shall be considered a separate offense for each day the violation continues.

(C) Alternative remedy. In case a building or structure is, or is proposed to be, located, constructed, maintained, repaired, altered or used, or land is, or is proposed to be, used in violation of this chapter, the building or land thereby in violation shall constitute a nuisance, and the city may, as an alternative to other remedies that are legally available for enforcing this chapter, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful location, construction, maintenance, repair, alteration or use.  
(Ord. 1057, passed 3-24-98; Am. Ord. 1104, passed 5-13-03)