



AGENDA

Lincoln City Planning Commission
Tuesday, June 16, 2020, 6:00 PM
Council Chambers,
801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

2. AGENDA CHANGES OR REVISIONS

3. MINUTES

3.1. Planning Commission - Regular Meeting - Jun 2, 2020 6:00 PM

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

5. PUBLIC HEARINGS/DELIBERATIONS

5.1. ZOA 2020-01 Procedures - an ordinance amendment organizing the various types of processes into either a Type I, II, III, or IV procedure with applicable applications. This will revise applications and processes noted throughout Title 17 and organize them into one of the four procedural types.

6. OLD BUSINESS

7. NEW BUSINESS

7.1. Tree Ordinance Work Session - a work session with Planning Commissioners to discuss the current tree ordinance and possible revisions to it

8. PLANNING COMMISSION TRAINING

9. REPORTS & COMMENTS

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

11. ADJOURN

All information for this meeting is available on the City of Lincoln City website at www.lincolncity.org, and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live

on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Cathy Steere, City Recorder, at 541-996-1203.

**LINCOLN CITY PLANNING COMMISSION
MINUTES
June 2, 2020**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

Attendee Name	Title	Status	Arrived
Marci Baker	Commissioner	Present	
Kim Blackerby	Commissioner	Present	
Joshua Brainerd	Commissioner	Present	
Patti Kroen	Chair	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

No agenda changes or revisions

3. MINUTES

3.1. Planning Commission - Regular Meeting - May 19, 2020 6:00 PM

MOTION:	Motion to adopt the minutes from the May 19, 2020 Planning Commission meeting
MOVER:	Marci Baker, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

None

5. PUBLIC HEARINGS/DELIBERATIONS

1. SUB & PUD 2020-01

The public hearing was continued to the July 7, 2020 Planning Commission meeting at the request of staff because of an error in the noticing for the original public hearing.

5.1.1.

MOTION:	Motion to continue the hearing to the July 7, 2020 meeting
MOVER:	Kim Blackerby, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
RESULT:	Passed

2. ZOA 2020-01 Procedures

The public hearing for ZOA 2020-01 was continued to the June 16, 2020 Planning Commission meeting at the request of staff.

5.2.1.

MOTION:	Motion to Continue to the June 16, 2020 meeting
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Miles Schlesinger, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
RESULT:	Passed by Voice Vote

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

None

9. REPORTS & COMMENTS

None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

In addition to the public hearing for ZOA 2020-01, which was continued from this meeting, there will be a work session on revisions to the Tree Ordinance at June 16, 2020 meeting.

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair



PLANNING COMMISSION STAFF REPORT
MEETING DATE: June 16, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

ZOA 2020-01 Procedures

PROJECT INFORMATION

Applicant/Owner	City of Lincoln City Planning & Community Development 801 SW Hwy 101 Lincoln City, OR 97367
Map & Lot No.	City-wide
Comprehensive Plan & Zoning	City-wide
Surrounding Land Uses And Zoning	City-wide
Public Notice	Notice of the public hearings was sent to all property owners of record within city limits on February 26, 2020. Notice of the public hearings was published in <i>The News Guard</i> on March 4, 2020 and March 11, 2020.
Relevant Substantive Criteria	Oregon Revised Statutes City of Lincoln City Comprehensive Plan

BACKGROUND

Currently Title 17 refers to individual land use applications in various chapters and sections throughout the title. There is not one specific place in Title 17 that provides a concise, consistent, and organized listing of the types of land use applications and the procedures for processing each. This amendment hopes to rectify that situation by compiling the land use applications into one chapter and the procedure type for each into one chapter. The intent is to provide a consistent, transparent, and organized process for land use actions that is more navigable and understandable than the current system.

AUTHORIZATION

Lincoln City Municipal Code 17.88.040 Action by the Planning Commission

ANALYSIS

See attached draft language. Note this is not in ordinance form.

STAFF RECOMMENDATION

Hold the public hearing; close the public hearing and the record. Deliberate. Motion and second to recommend approval of ZOA 2020-01 to City Council with the language proposed. Or – Motion and second to recommend approval of ZOA 2020-01 to City Council with changes to the proposed language, and state the recommended changes.

procedures (DOC)

Chapter 17.76 Procedures

17.76.010 Purpose

A. Purpose. The purpose of this chapter is to establish standard decision-making procedures for review and processing land use applications and permits, for the following reasons:

1. To make the review process clear and understandable for applicants and property owners;
2. To enable the public to effectively participate in the local decision-making process; and
3. To facilitate timely review of land use applications and permits by the city.

17.76.020 Summary of Procedure Types

A. General. All land use applications and approvals shall be decided by using Type I, II, III, or IV procedures. The procedure types govern the decision-making process for that application.

B. Description of Procedure Types. There are four types of decision-making procedures:

1. **Type I Procedure.** Type I procedures apply to “ministerial” permits and applications. Decisions on ministerial permits and applications are made by the director, based on approval criteria that do not require exercise of policy or legal judgment.
2. **Type II Procedure.** Type II procedures apply to “administrative” permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective criteria that require only limited discretion in applying approval criteria. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing.
3. **Type III Procedure.** Type III procedures apply to “quasi-judicial” applications. Decisions on quasi-judicial applications are made by an appointed or elected review authority, and require substantial exercise of discretion and judgment in applying approval criteria. Type III procedures require public notice and one or more public hearings.
4. **Type IV Procedure.** Type IV procedures apply to “legislative” matters. Legislative decisions are made by the City Council, taking into consideration a recommendation from the Planning Commission, and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a large geographic area containing many properties. Type IV procedures require public notice and one or more public hearings.

C. Determination of Proper Procedure Type. Unless already specified in Table 17.76.020-1, the director shall determine whether an application is processed as a Type I, II, III, or IV procedure based on the descriptions in subsection B, above. Questions regarding the appropriate procedure shall be resolved in favor of the procedure type providing the widest notice and

opportunity to participate.

D. Consolidated Reviews.

1. Multiple Type II or III applications for a single proposal shall be consolidated and processed concurrently under the highest numbered procedure required for any part of the application. For example, a proposal requesting both Development Review (Type II) approval and Conditional Use Permit (Type III) approval is processed concurrently as a Type III procedure.
2. When consolidated, the following processes shall be applied:
 - a. Separate responses to the applicable criteria shall be submitted for each application;
 - b. The public notice shall identify each application to be decided; and
 - c. Separate findings and decisions shall be made on each application.
3. If the consolidated proposal includes an application for a comprehensive plan map amendment, the final decision on the plan map amendment shall precede any decision on a proposed zone change and all other decisions on a proposed development. Similarly, the final decision on a zone change shall precede a decision on proposed development review or any other action.

E. Summary Table. Table 17.76.020-1 summarizes land use applications and permits by procedure.

F. Application Elevation. Notwithstanding Table 17.76.020-1 or the director’s determination, an applicant may request to elevate a Type I or II application to a higher numbered procedure type, and the request shall be granted if the director determines that the statutory timelines for reaching a final decision can be met.

G. Application of Days in Procedures. Timelines in this chapter are expressed in 24-hour calendar days, unless the deadline for an action falls on a weekend or legal holiday, in which case the deadline will be considered to be the (calendar) day after the weekend or legal holiday.

Table 17.76.020-1: Land Use Applications and Procedure Types		
Application	Procedure Type	Review Authority
Adjustment	Type II	Director
Annexation	Type IV	Planning Commission recommends City Council decides
Appeal	Type III	Planning Commission
Bed and Breakfast Accommodations	Type I	Director

Table 17.76.020-1: Land Use Applications and Procedure Types		
Application	Procedure Type	Review Authority
Comprehensive Plan Map Amendment	Type III or IV	Planning Commission recommends City Council decides
Conditional Use Permit Application	Type III	Planning Commission
Development Review Application	Type II	Director
Director's Interpretation	Type II	Director
Geologic Hazard Report and/or Beach Protective Structure Review	Type II	Director
Home Occupation Application	Type I	Director
Lot Line Adjustment	Type II	Director
Mobile Food Unit Application	Type I	Director
Natural Resource Development Review	Type II	Director
Partition	Type II	Director
Nonconforming – Determining that nonconforming use, site, or structure is lawful	Type II	Director
Nonconforming – Restoration of a Substantially Damaged Lawful, Nonconforming Structure or Use	Type II – Single-unit dwelling or duplex Type III – Multi-unit dwelling, mixed use, or commercial	Director Planning Commission
Planned Unit Development Preliminary Master Plan Final Master Plan	Type III Type I	Planning Commission Director
Subdivision Preliminary Plat Final Plat	Type III Type I	Planning Commission Director
Text Amendment	Type IV	Planning Commission recommends City Council decides

Table 17.76.020-1: Land Use Applications and Procedure Types		
Application	Procedure Type	Review Authority
Tree Permit	Type I	Director
Vacation Rental Dwelling	Type II	Director
Variance	Type III	Director
Zone Change	Type III or IV	Planning Commission recommends City Council decides
Zoning Sign Permit	Type I	Director

17.76.030 Type I Procedure

- A. General Description.** Type I procedures apply to “ministerial” permits. Decisions are made by the director, based on clear and objective approval criteria, and do not require interpretation or the exercise of policy or legal judgment.
- B. When Applicable.** Table 17.76.020-1 identifies Type I applications. Applications not listed on Table 17.76.020-1 may be identified as Type I by the director based on the general description in this section.
- C. Pre-Application Conference.** A pre-application conference is not required for Type I applications.
- D. Application Requirements.** Type I applications shall:
 1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application form.
 2. Be accompanied by the required fee adopted by City Council resolution.
 3. Be subject to the completeness review procedures set forth in subsections 17.76.110.D and E.
- E. Public Notice.** Type I applications do not require public notice.
- F. Review Authority.** The review authority for Type I applications shall be the director. The director shall approve, approve with conditions, or deny a Type I application within 15 days of being deemed complete.
- G. Notice of Decision.** The notice of decision consists of the approved permit or application signed by the director or a copy of the permit or application marked “denied” and signed by the director.
- H. Effective Date.** A Type I decision is final on the date it is signed by the director.

17.76.040 Type II Procedure

- A. General Description.** Type II procedures apply to “administrative” permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.
- B. When Applicable.** Table 17.76.020-1 identifies Type II applications. Applications not listed

on Table 17.76.020-1 may be identified as Type II by the director based on the general description in this section.

C. Pre-Application Conference. A pre-application conference is not required for Type II procedures.

D. Application Requirements. Type II applications shall:

1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.
2. Be accompanied by the required fee as adopted by City Council resolution.
3. Be subject to the completeness review procedure set forth in subsections 17.76.110.D. and E.

E. Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.

1. After a Type II application has been accepted as complete under subsection 17.76.110.E, the department shall mail a written public notice to the following:
 - a. The applicant and applicant's representative;
 - b. The owners of record of the subject property;
 - c. Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most-recently provided property tax assessment roll of the Lincoln County Assessor's Office as provided to the City to determine property owners of record; and
 - d. Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.
2. The written public notice shall include the following:
 - a. A brief description of the request;
 - b. The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);
 - e. The name of a department staff member to contact and the telephone number where additional information may be obtained; and
 - f. Statement 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.
3. An affidavit of mailing of the public notice of receipt of a complete application shall be prepared with the mailing date noted and the list of parties to whom the notice was mailed attached to the affidavit, along with the notice itself.
4. Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.

F. Review Authority. The review authority for Type II applications shall be the director.

G. Decision.

1. Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.
2. The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:
 - a. The applicant and applicant's representative;
 - b. The owners of record of the subject property;
 - c. Any person, group, agency, association, or organization who submitted written comments during the comment period; and
 - d. Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.
3. The notice of the decision shall include the following:
 - a. A brief description of the request;
 - b. A statement of the decision and the applicable approval criteria used in making the decision;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;
 - e. The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;
 - f. A statement that the complete file is available for review; and
 - g. The name of a department staff member to contact and the telephone number where additional information may be obtained.

I. Appeal.

1. The decision may be appealed by the applicant, property owner of the subject property, or any person who provided written comments during the public comment period, prior to its closure.
2. The decision shall become final unless an appeal is filed.
3. The review authority for an appeal of a Type II application is the Planning Commission.
4. The appeal shall follow the requirements and procedures of subsection 17.76.180.
5. The decision of the review authority on the appeal shall be the final decision of the city. Any further appeal shall be made to the Land Use Board of Appeals (LUBA).

17.76.050 Type III Procedure

- A. General Description.** Type III procedures apply to "quasi-judicial" permits and applications. Decisions on quasi-judicial permits and applications are made by an appointed or elected review authority, and require substantial exercise of discretion and judgment in applying approval criteria. Type III procedures require public notice and one or more public hearings.
- B. When Applicable.** Table 17.76.020-1 identifies Type III applications. Applications not listed on Table 17.76.020-1 may be identified as Type III by the director based on the general description in this section.
- C. Pre-Application Conference.** A pre-application conference is not required prior to

application submittal of a Type III application, but is strongly encouraged. Guidelines for pre-application conferences are set forth in LCMC 17.76.090.

D. Application Requirements. Type III applications shall:

1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.
2. Be accompanied by the required fee as adopted by City Council resolution.
3. Be subject to the completeness review procedure set forth in subsections 17.76.110.D. and E.

E. Notice of Public Hearing.

1. After a Type III application has been accepted as complete under subsection 17.76.110.E, the department shall mail a written notice of public hearing to the following:
 - a. The applicant and applicant's representative;
 - b. Owner of record of the subject property;
 - c. Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most-recently provided property tax assessment roll of the Lincoln County Assessor's Office as provided to the City to determine property owners of record;
 - d. Any neighborhood or community organization recognized by the governing body and whose boundaries include the site;
 - e. At the discretion of the applicant, the department also shall provide notice to the Oregon Department of Land Conservation and Development.
 2. The notice of public hearing provided shall include the following:
 - a. A brief description of the request;
 - b. A list of the applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. The date, time, and location of the hearing);
 - e. A statement that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
 - f. The name of a department staff member to contact and the telephone number where additional information may be obtained;
 - g. A statement 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;
 - h. A statement 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; **and**
 - i. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 4. Public notices for Type III applications shall be mailed a minimum of 20 days prior to the first evidentiary public hearing.
- G. Decision Authority. Table 17.76.020-1 identifies the decision authority for each Type III application.
- H. Public Hearing Procedure. The public hearing shall be conducted in accordance with the

procedures set forth in subsection 17.76.160.

I. Notice of the Decision.

1. Following a decision on the application, a written decision in the form of a Final Order shall be prepared by the department. The Final Order shall include the following information:
 - a. The decision to deny or to approve the application and if approved, any conditions of approval necessary to ensure compliance with applicable criteria;
 - b. A list of the applicable approval criteria by code section number;
 - c. A statement or summary of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy the applicable approval criteria; and to justify any conditions of approval. The decision authority may adopt or incorporate by reference a staff report or written findings prepared by any party to the proceeding into the Final Order to satisfy this requirement; and
 - d. A statement of conclusions based on the facts and findings.
2. A Notice of the Decision, including the full Final Order, shall be mailed to the applicant and to all parties of record within 7 days of the date of signing the final order. The decision is final for purposes of appeal on the date the notice of the decision is mailed. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith effort was made to mail the notice.
3. The Notice of the Decision shall include the following:
 - a. A summary of the decision and a list of any conditions of approval;
 - b. A description of the subject site reasonably sufficient to inform the reader of its location, including Assessor's Tax Map, Tax Lot number, and site address if available;
 - c. A statement that the decision is final unless appealed as provided in subsection 17.76.180;
 - d. The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed; and
 - e. A statement noting that only those persons who made an appearance of record, either in person or by written comment, are entitled to appeal the decision.
4. Final Recommendation on Comprehensive Plan Map Amendments and Zone Changes. A Final Recommendation from the review authority is issued to the decision authority for Type III comprehensive plan map or zone changes. Notice of the public hearing for Type III comprehensive plan map or zone changes before City Council is done concurrently with the notice of public hearing before the Planning Commission.

J. Appeal.

1. The decision of the Planning Commission may be appealed to the City Council. Only the applicant, property owner, persons who made an appearance of record at the public hearing before the review authority, or persons who submitted written comment for consideration of the review authority have standing to appeal.
2. The appeal shall follow the requirements and procedures of subsection 17.76.180.
3. The City Council decision shall be the final local decision. Any further appeal shall be made to LUBA.

17.76.070 Type IV (Legislative)

- A. General Description.** Type IV procedures apply to "legislative" matters. Legislative

decisions are made by an elected or appointed review authority and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.

B. When Applicable. Table 17.76.020-1 identifies Type IV applications. Applications not listed on Table 17.76.020-1 may be identified as Type IV by the director based on the general description in this section.

C. Pre-application Conference. Pre-application conferences are not required for Type IV applications.

D. Application Requirements.

1. Application forms. Legislative applications must be made on forms provided by the department.
2. Submittal Information. The application shall contain all of the following information:
 - a. The information requested on the application form;
 - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable); and
 - c. The required fee as adopted by City Council resolution, except when the City initiates request.

E. Mailed Notice of Public Hearing. The notification procedure for Type IV requests must conform to state land use laws (ORS 227.175) and as follows:

1. In accordance with procedures required by the Oregon Department of Land Conservation and Development (DLCD), the department shall notify DLCD of legislative amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.
2. At least 20 days, but not more than 40 days, before the date of the first public hearing, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one comprehensive plan land use designation to another), see ORS 227.186 for instructions;
 - b. Any affected governmental agency;
 - c. Any person who requests notice in writing; and
 - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
3. For each mailing of notice, the department shall prepare an affidavit of mailing.

F. Published Notice of Public Hearing. Notice of the public hearings for Type IV applications

shall be published two times in a newspaper of general circulation in the city, at least 10 days but not more than 21 days before the first scheduled public hearing on the proposal.

G. Public Hearing Procedure. The Planning Commission shall conduct the public hearing on Type IV applications in accordance with the procedures set forth in subsection 17.76.160. In addition to the public hearing held by the Planning Commission, the City Council shall also conduct a public hearing on Type IV applications.

H. Recommendation Authority.

1. Following receipt of testimony and deliberation at the public hearing held before the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes. The Planning Commission's recommendation shall be issued as a Final Recommendation, and shall include findings supporting the recommendation, based on public testimony and the application's success or failure to satisfy the applicable criteria.

J. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.

I. Notice of Decision.

1. Not more than seven days after the date the City Council approves a Type IV application, the director shall mail a notice of decision to persons of record who appeared orally or in writing before either the Planning Commission or the City Council.

2. The director shall also notify DLCD of the decision within the timeframe and method prescribed by DLCD.

3. The City Council's decision is final for purposes of appeal on the date the notice is mailed.

J. Appeal. The final decision of the City Council to approve or deny a Type IV application may be appealed to the Land Use Board of Appeals (LUBA) only when such appeal is authorized under applicable State law.

17.76.080 Initiation of an Application.

A. Applications may be initiated by either the property owner of record or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser. All applications shall be signed by all property owners of record as shown on the most-current recorded deed, as well as all contract purchasers if applicable, prior to submittal. Type IV applications may also be initiated by the city.

17.76.085 Withdrawal of an Application.

A. An application may be withdrawn by the applicant, applicant's representative, or property owner of record or contract purchaser at any time prior to adoption of a final city decision if the director determines that:

1. The applicant, applicant's representative, and property owners or contract purchasers have all consented in writing to withdraw the application; and
 2. The application is not intended to correct an identified code violation on the subject property which would remain unresolved were the application withdrawn.
- B. The city may withdraw a city-initiated application at any time.
- C. Fees for withdrawn applications are not refundable.

17.76.090 Pre-Application Conference.

- A. Purpose. The purposes of pre-application conferences are:
1. To acquaint property owners and applicants with the general requirements of the code, including applicable approval criteria; and
 2. To advise the property owners and applicants of previous land use applications associated with the subject property.
- B. Pre-application conferences are strongly advised for all applications, but are not required.
- C. Pre-application conferences are intended to be advisory only, and are specifically not intended to be an exhaustive review of all potential issues. Participation in a pre-application conference does not absolve the property owners or applicants of any responsibility for legal or technical due diligence investigation.
- D. Participation in a pre-application conference does not bind the City to provision of any level of service or approval, nor does it preclude the city from enforcing all applicable regulations or from applying regulations differently than may have been indicated at the pre-application conference.
- E. Pre-Application Conference Guidelines.
1. Applicants should provide any available plans for the proposed development. Any plans provided to the City before, during, or after during the pre-application conference may be considered public information, unless specifically requested in writing by the property owners or applicants to remain confidential.
 2. The director will coordinate attendance by City staff responsible for development review and infrastructure and building construction requirements as applicable.
 3. Pre-application conferences are not open to the general public and are not public meetings. Pre-application conferences are not recorded.
 4. The city may or may not provide a brief written summary of the pre-application conference. If provided, the purpose of the written summary is to provide a preliminary assessment of a proposal and shall not be construed as a recommendation by the City or by any other outside agency or service provider on the merits of the proposal.

17.76.110 Application Submittal and Completeness Review.

- A. Application Forms and Checklists.

1. Forms for the submittal of all land use applications shall be available in the department. The department shall ensure that these forms comply with applicable standards in state law and city code.
 2. Land use applications may include checklists or information sheets detailing specific information and plans to be contained in that application, including document formats.
- B. Fees. A fee schedule for land use applications and other department services provided by the city shall be adopted by resolution of the City Council. Required fees shall be paid at the time of application submittal or at the time of request for a particular service.
- C. Application Submittal. Land use applications or permits shall be submitted on the appropriate forms from the department.
- D. Application Materials. All of the following items must be submitted to initiate the 30 day completeness review of the application, and all information supplied shall be complete and correct as to the applicable facts:
1. Completed application form, including the signature of all property owners shown on the most-current recorded deed, and, if applicable, the signature of all prospective purchases shown on the purchase contract;
 2. Payment in full of the appropriate land use application or permit fee(s), based on the fee schedule in effect on the date of application submittal;
 3. A written narrative listing the criteria and development standards applicable and relevant to the application and stating the evidence demonstrating the application's compliance with each criterion and standard. If compliance with a criterion or standard is stated to be demonstrated in a plan, drawing, or technical study in the application, the citation in the narrative to the demonstration must be sufficiently specific to allow convenient reference;
 4. Required plans and drawings for the particular type of application as noted on the application checklist. Such plans generally include, but are not limited to, the following:
 - a. Existing conditions plan,
 - b. Site plan,
 - c. Building elevations,
 - d. Landscaping plan,
 - e. Exterior lighting plan,
 - f. Grading and erosion control plan, and
 - g. Public infrastructure and utilities plan.
 5. Required technical reports, analyses, assessments, etc. for the particular type of application as noted on the application checklist (e.g., traffic impact analysis, floodplain or wetland delineation, significant natural resource report, geotechnical report, tree survey, noise study, etc.) and/or as required by city code.

6. Upon written request by the applicant prior to application submittal, the director may modify application requirements based on the nature of the proposed application, development, site, or other factors. Any such waiver must be specifically approved by the director in writing prior to submittal.

E. Determination of Completeness and Commencement of Review.

1. To be deemed complete, an application must include all materials, information, and fees listed in subsection 17.76.110.D.1 through 6, unless a specific waiver has been granted by the director under subsection 17.76.110.D.6.

2. The department shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within 30 days after the department receives the submittal.

3. If the application is deemed complete, the completeness notice shall advise the applicant of the commencement of application review and the date of the public hearing if required by the particular application.

4. Determination that an application is complete indicates only that the application is ready for review on its merits, not that the city will make a favorable decision on the application.

5. If an application is deemed to be complete upon initial submittal, approval or denial of the application shall be based on the code standards and criteria that were in effect on the date of submittal. See subsection 17.76.110.F.4 for incomplete applications upon initial submittal.

6. Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 days from the date the application is determined to be or deemed complete unless the applicant agrees to extend the 120 day timeline or unless state law provides otherwise.

7. Pursuant to ORS 227.178, the 120-day timeline may be extended at the written request of the applicant. The total of all extensions may not exceed 245 days beyond the first 120 day extension, or 365 days from the date the application was deemed complete.

F. Determination of Incompleteness.

1. If an application is determined to be incomplete, that determination shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant approval criteria or development standards, or failure to supply the required signatures, information, documents listed on the application, application checklist, or in city code. A determination of incompleteness shall not be based on differences of opinion as to the quality or accuracy of the application.

2. If an application is deemed incomplete, the incompleteness notice shall list what information is missing and allow the applicant to submit the missing information. The incompleteness notice shall also include a statement to the applicant of the need to indicate to the director whether or not the applicant intends to amend or supplement the application.

3. If an application is deemed incomplete upon initial submittal, it shall be deemed complete for purposes of this section when the city receives the following:
 - a. All of the missing information listed in the completeness notice; or
 - b. Some of the missing information, together with written notice from the applicant that no other information will be provided; and a request to proceed with review of the application; or
 - c. Written notice from the applicant that none of the missing information will be provided, and a request to proceed with review of the application.
4. If the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based on the code standards and criteria that were in effect at the time the application was first submitted.
5. The application will be deemed void if it has been on file with the city for 181 days or more and the applicant has not submitted, pursuant to paragraph 3 above, some or all of the required additional information and/or a request to proceed with application review.

17.76.120 Conditions of Approval.

- A. Imposition of Conditions. Conditions may be imposed on any Type I, II or III approval, in accordance with relevant city code, to ensure that the proposal complies with the applicable approval criteria and code standards and requirements.
- B. Nexus and Proportionality of Conditions. All conditions imposed must have a clear nexus with the development's impacts. Certain conditions must also be proportional to the development's impacts if the conditions affect interests in real property.
- C. Challenge to Condition(s). If an applicant asserts that he/she cannot legally be required, as a condition of land use approval, to provide improvements or real property interests at the level required by the code, the applicant shall provide a "development impact analysis" report, prepared by a qualified civil or traffic engineer, as appropriate, showing:
 1. The estimated extent to which the improvements will be used by persons served by the building or development, whether the use is for safety or for convenience;
 2. The estimated level of improvements needed to meet the estimated extent of use by persons served by the building or development;
 3. The estimated impact of the building or development on the public infrastructure system of which the improvements will be a part; and
 4. The estimated level of improvements needed to mitigate the estimated impact on the public infrastructure system.
- E. Development Impact Analysis Consideration. The development impact analysis shall be considered by the review authority in making a determination whether the condition(s) and required improvements are reasonably related and roughly proportional to the impacts of the proposed development.
- G. Modification of Conditions. Modification of conditions of approval may be sought by any of the following methods:
 1. Upon appeal of the original application, pursuant to subsection 17.76.180.E; or

2. As a new development application.

H. Violation of Conditions of Approval. Failure to fulfill any conditions of approval within any time limits provided shall constitute a violation of the code and the subject approval will be subject to code enforcement proceedings. Enforcement proceedings may include revocation of the approval.

17.76.130 Effective Date of Decision.

A. Land use action and permit decision on Type I procedures are effective on the date of the director's decision approving or denying the application or permit, as signified by the dated signature of the director. Land use action and permit decisions on Type II and III procedures shall become effective the day after the appeal period expires if no appeal is filed. Type IV legislative actions shall become effective 30 days after the date of adoption, unless specified otherwise in the adopting ordinance.

B. If an appeal is filed on a land use action or permit decision on a Type I, II or III procedure, the decision shall become final and effective upon the date of the written decision of the final local appeal body.

C. Each land use action or permit for a Type II or III procedure shall specify the approval granted or development authorized and shall be subject to the standards and conditions set forth in this code, together with any conditions imposed by the review authority, excepting only those variances, adjustments or modifications authorized by the review authority.

17.76.140 Expiration of Decision.

A. Unless a different period of time is established within the decision, or under subsection D below, a land use action or permit granted pursuant to this subchapter expires and becomes void automatically as provided under Table 17.76.140-1 unless one of the following circumstances has occurred:

1. Substantial construction, which includes required infrastructure construction, has begun and is actively in progress in compliance with the land use action or permit approval; or
2. The approved land use has commenced and is in active operation in compliance with any applicable conditions of approval; or
3. An extension application has been filed pursuant to LCMC 17.76.150; or
4. A copy of the recorded final plat has been submitted to the department within one year of approval of a partition or subdivision or a copy of the recorded survey map has been submitted to the department within one year of approval of the lot line adjustment.

B. If multiple applications are processed concurrently, the review authority shall specify in the Notice of Decision a uniform expiration period for the concurrent applications.

C. If a final local decision is on appeal, the effective date of the decision and corresponding valid period before expiration shall begin when the final decision is issued on the appeal.

D. A comprehensive plan amendment, map amendment, or zone change processed under LCMC [17.77.160](#) is not subject to expiration or extension.

Table 17.76.140-1 Decision Expirations and Extensions

	Decision Expiration	Extensions Allowed	Review Authority
Type I	1 year	None	Not applicable

Type II	2 years	One extension for 2 years	Director
Type III	2 years	One extension for 2 years	Planning Commission
Type IV	None	Not applicable	Not applicable

17.76.150 Extension of Decision.

A. Written Request for Extension Required. A request for an extension of the expiration date of a decision must be submitted to the department, on the appropriate form provided by the department, prior to the expiration date of the decision.

B. Extension. One extension request may be granted for the applicable period of time as specified in Table 17.76.140-1. If granted, an extension is vested against any code changes adopted since the original decision. The extension is subject to the following approval criteria:

1. The extension is necessary because it is not practicable to begin development within the allowed time for reasons beyond the applicant’s reasonable control; and
2. The previous land use decision will not be modified in design, use, or conditions of approval.

17.76.160 Public Hearings.

A. Purposes. The purposes of this section are:

1. To describe rules of conduct, order of proceedings, and action required for legislative and quasi-judicial hearings; and
2. To provide clear and consistent rules to ensure the legal rights of individual property owners and the general public are protected.

B. Applicability. The provisions of this section shall apply to all proceedings on land use applications requiring public hearings under the procedures of this subchapter.

C. Responsibilities of the Director for Public Hearings. For all land use applications requiring public hearings, the Director shall:

1. Schedule the land use application for review and public hearing before the appropriate review authority as required by Table 17.76.020-1;
2. Provide public notice of the public hearing or appeal hearing as required by this code;
3. Prepare and make available to the public a staff report summarizing the proposal, the relevant criteria and issues, and any comments received prior to the public hearing;
4. Mail notice of the decision to those entitled to such notice as specified for the particular application procedure type;
5. Maintain a record of the proceedings; and

6. Prepare minutes of the proceedings, including the decision on the matter heard.
- D. Provision of Public Notice. Notice of public hearings shall be provided for applications or appeals as specified in the applicable section of this chapter, based on the procedure type.
 - E. Compliance with Notice Requirements. Mailed notice shall be deemed to have been provided upon the date the notice is deposited in the mail. Failure of the addressee to receive such notice shall not invalidate the proceedings if it can be demonstrated by affidavit that such notice was given.
 - F. Rules of Procedure. Public hearings shall be conducted in accordance with the rules of procedure adopted by the applicable review authority, if any, and with applicable state law.
 - G. Procedural Rights. Subject to the specific standards and limitations set forth in this code, the following procedural rights shall be provided at the public hearing:
 1. A reasonable opportunity for those persons participating in the decision to present and rebut evidence; and
 2. An impartial review authority.
 - H. Review Authority Disclosures. Prior to the beginning of a public hearing, the Review Authority members shall disclose any ex parte contacts, biases or conflicts of interest.
 1. Review Authority members shall disclose the substance of any significant pre-hearing ex-parte contacts regarding the application as early as reasonably possible during the public hearing on the application, so that persons wishing to participate in the hearing have an opportunity to respond. The member shall state whether the contact has impaired his/her impartiality or ability to vote on the matter and shall participate or abstain accordingly.
 2. A member of the Review Authority shall not participate in any proceeding or action in which member has an actual conflict of interest as defined in state law. Any actual or potential conflicts of interest shall be disclosed at the meeting of the Review Authority where the action is being taken.
 3. A review authority member may be disqualified due to actual conflicts of interest or actual bias based on a motion if a majority of the review authority members present and voting approve such a motion. The member who is the subject of the motion may not vote.
 - I. Presentations.
 1. The Review Authority may set reasonable time limits for oral presentations. The Review Authority may choose not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral testimony.

2. No testimony shall be accepted after the close of the public hearing unless the Review Authority sets a deadline for receipt of such testimony and provides an opportunity for review and rebuttal prior to making a decision.
 3. Counsel for the Review Authority may be consulted on legal or procedural issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard at the discretion of the Review Authority.
 4. Staff may confer with the Review Authority after the close of the record on technical review or procedural matters, but may not engage in argument or present additional evidence.
 5. The presiding officer shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the Review Authority. Persons who become disruptive or abusive may be removed from the hearing.
- J. Continuance of Public Hearing. Public hearings may be continued in accordance with the rules of procedure adopted by the applicable Review Authority, if any, and with applicable state law.
- K. Evidence and Argument. Evidence and argument shall be received and reviewed in accordance with the rules of procedure adopted by the applicable Review Authority and with applicable state law.
- L. Burden of Proof. The applicant shall bear the burden of proof that the proposal complies with all applicable approval criteria and development standards.
- M. Action by Review Authority Following Public Hearing.
1. An action of the Review Authority on a land use application or appeal may be to:
 - a. Approve the application as submitted or uphold the appeal;
 - b. Approve the application with conditions or uphold the appeal with conditions;
 - c. Approve the application with modified conditions or approve the appeal with modified conditions; or
 - d. Deny the application or the appeal.
 2. Findings in support of any decision shall be made in accordance with the Review Authority's adopted rules of procedure and with applicable state law.
- N. Record.
1. Absent mechanical failure or inadvertent error, a verbatim written or mechanical record of the hearing shall be made. In addition, written minutes accurately citing the statements of the participants shall be taken. Such minutes may substitute for a verbatim record in the event of mechanical failure or inadvertent error.
 2. An interested party may request a verbatim transcript of the recorded proceedings before the review authority on the matter. Requests for transcripts

shall be accompanied by a deposit separate from the appeal fee, as specified in the adopted fee schedule. The City shall maintain an accurate record of the costs of the transcript preparation, and any unexpended portion of the deposit or additional amount due shall be refunded to or payable by the interested party.

17.70.170 Public Hearings on Cases Remanded from LUBA.

- A. The procedures in this section shall be used for hearings involving cases either voluntarily or involuntarily remanded from the Land Use Board of Appeals (LUBA).
- B. Upon receipt of the remand opinion, the director shall present the opinion directly to the City Council. The director shall inform the City Council of the nature of the remand, and the City Council shall make a formal decision regarding procedures prior to any hearing to decide the matter. The Council may decide to do any of the following:
 - 1. Send the matter to a lower review authority; or
 - 2. Set a date to decide the matter without re-opening the public hearing on the case; or
 - 3. Set a hearing date and re-open the public hearing for consideration.
- C. When considering a remand, the Review Authority may consider the case in whole or in part.
- D. Procedures for public notice and order of proceedings for remands shall comply with LCMC 17.76.160. In cases where a public hearing is held, required notices shall be mailed a minimum of 20 days in advance of any public hearing on the remand.

17.76.180 Appeals.

- A. In General. Appeals of director decisions are heard by the Planning Commission. Appeals of Planning Commission decisions are heard by City Council. There is no local appeal of City Council decisions. The City Council decision is the final local decision.
- B. Notice of Appeal. Where the appeal authority is the city, Notices of Appeal shall be filed with the department within 12 days of the mailing date of the written notice of the decision. Appeals must be received in the department no later than 5:00 p.m. of the 12th day of the mailing date of the written notice of the decision. At a minimum, the Notice of Appeal shall include the following items:
 - 1. Identification of the decision being appealed, including the case file number, the Review Authority which made the decision, and the date of the Decision;
 - 2. Documentation that the appellant was a party to the initial proceedings;
 - 3. A detailed statement on the basis of the appeal, including which approval criteria, development standards, or conditions of approval were allegedly improperly evaluated or applied to the decision; and
 - 4. Payment of the appropriate fee, as adopted by City Council resolution.

- C. **Failure to File Notice of Appeal.** Failure to file a notice of appeal that fully complies with subsection B above, by 5:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect.
- D. **Request for Transcript.** Pursuant to Subsection 17.76.160.N.2, the appellant or any interested party may request a verbatim transcript of the recorded proceedings before review authority on the matter.
- E. **General Procedures Applicable to All Appeals.**
1. **Public Hearing Required for Appeals.** Appeal hearings before the appropriate review body as specified in subsection 17.76.180.A shall be conducted in accordance with the public hearing provisions in applicable state law and in LCMC 17.76.160.
 2. **Notice of Public Hearing on Appeal.** Notices of appeal hearings shall be sent in accordance with the notification requirements in subsection 17.76.050.E.
 3. **Staff Report.** At least 7 days before the date of the appeal hearing, the director shall prepare and make available to the public a copy of the staff report regarding the appeal. A copy of the staff report and recommendation shall be provided to the appeal body, the applicant, and to the appellant. Copies of the staff report shall also be provided at reasonable cost to the public upon request to the department.
 4. **Action of Appeal Body.** At the conclusion of the hearing on the appeal, the appeal body shall take one of the following actions:
 - a. Reverse or affirm the decision under appeal at the conclusion of the initial appeal hearing, with or without conditions or changes; or
 - b. Continue the appeal hearing to a date, time, and location certain, which shall be announced by the presiding officer. Notice of the date, time, and location certain of the continued hearing is not required to be mailed or published;
 - c. Continue the appeal hearing without announcing a date, time and location certain, in which case notice of the continued hearing shall be provided as was the notice for the initial hearing;
 - d. Provisions for continuing an appeal hearing or holding the record open as set forth in Subsection 17.76.160.J shall apply under this Code in a manner consistent with state law.
 5. **Written Decision of Appeal Body.** After the public record on the appeal closes, a written decision regarding the appeal shall be prepared. The written decision shall contain the following:
 - a. A statement of the facts relied upon by the appeal body, which demonstrate the reasons why the decision under appeal is reversed or affirmed based on the applicable criteria and/or standards;
 - b. A statement of conclusions based on the findings; and
 - c. An explanation of the basis for any changes in the earlier decision:
 - i. Denial reversed to approval; with or without conditions;

- ii. Approval changed to denial; or
 - iii. Additions, deletions or revisions to conditions of approval.
6. Mailing Notice of the Decision. Following the adoption of a decision by the appeal authority, the department shall mail the signed and dated decision to the appellant, the applicant, and any other persons who appeared orally or in writing in the record of the appeal.
- F. Withdrawal of an Appeal.
- 1. At any time before the close of an appeal hearing held by any Review Authority, any appellant may withdraw the appeal. Withdrawal of the appeal is subject to the following:
 - a. If requested before the hearing, the withdrawal must be submitted in writing;
 - b. Any unexpended portion of the appeal fee will be refunded only if the withdrawal is received before the public notice of the hearing has been sent; and
 - c. Where multiple people or parties sign and file a single Notice of Appeal, all the parties must consent to the withdrawal of the appeal.
 - 2. A withdrawn appeal cannot be re-filed by any party.
 - 3. If all appeals in a matter are withdrawn, no decision by the Review Authority is necessary.
 - 4. If all appeals are withdrawn, the department shall issue a Notice of Appeal Withdrawal to the applicant, the appellant, and the parties listed in Subsection 17.76.050.F. The Notice of Appeal Withdrawal shall specify the new effective date of the original decision to be the date of the withdrawal of the appeal(s).

Chapter 17.77 Applications

17.77.010 Adjustment.

A. Procedure.

- 1. Requests for adjustments are only applicable to adjustments from the standards of Chapter 17.74 LCMC and must be concurrent with the development review application submittal. Adjustments may not be requested for any other portion of the code other than the items noted in Chapter 17.74 LCMC as being able eligible for adjustment.
- 2. Adjustment requests are processed concurrently with the development review application using the same procedure type as the development review application.

- B. Submittal Requirements. In addition to the submittal requirements of the primary application, requests for adjustments shall include a narrative clearly identifying each

applicable standard from which an adjustment is requested, citing the reasons for the request, and addressing compliance with the approval criteria in subsection C below.

C. Approval Criteria. To approve an adjustment, the review authority shall make additional findings of fact, based on evidence provided by the applicant, that all of the following criteria are satisfied:

- 1.
- 2.
3. The adjustment granted is the minimum necessary to permit a reasonable use of land, buildings, and structures;
4. The adjustment is not a response to special conditions over which the applicant has no control, which would be more appropriately addressed as a variance.

D. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose conditions on the approval of the primary application to ensure compliance with the adjustment approval criteria.

E. Appeal of a Decision. Refer to LCMC 17.76.180 for the primary application.

F. Expiration of a Decision. Refer to LCMC 17.76.140 for the primary application.

G. Extension of a Decision. Refer to LCMC 17.76.150 for the primary application.

17.77.020 Annexation.

A. Purpose. The annexation application process is intended to facilitate efficient urban and economic development opportunities by transferring jurisdiction over properties within the Urban Growth Boundary from Lincoln County to the City of Lincoln City. The process is intended to comply with the requirements of ORS 222 and ORS 268.

B. Procedure. An annexation application is subject to a Type IV procedure.

C. Submittal Requirements.

1. An annexation application on the application form prescribed by the department must be completed and submitted and must contain the signatures of every current property owner of record.

D. Zone Change Process Concurrent with Annexation Application. A request for zone change from the county zone to an applicable city zone must be submitted with the annexation application on the zone change form prescribed by the department.

E. Approval Criteria. The City may or may not approve an annexation application at its discretion based upon the following:

1. The subject site must be contiguous to city limits.
2. The subject site must be within the urban growth boundary.
3. The city must be willing and able to provide services to the newly annexed area.
4. The deficit of income against expense to the city must not be unreasonable.

5. The advantages of annexing the subject site, both to the city and the subject site, must outweigh the disadvantages of annexation.
- F. Conditions of Approval. Approval of an annexation application cannot be conditioned by the city.
- G. Appeal of a Decision. The final decision on an annexation application may be appealed to the Land Use Board of Appeals.
- H. Expiration of a Decision. The final decision on an annexation application is not subject to expiration.
- I. Extension of a Decision. The final decision on an annexation is not subject to extension.

17.77.030 Appeal.

A. Purpose. In all zones, conditional uses listed in that zone may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.

B. Procedure. Conditional use permit requests are subject to the Type III procedure, as described in LCMC 17.76.050.

C. Submittal Requirements.

1. Type III application submittal requirements are set forth in LCMC 17.76.050. Specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

2. At a minimum, an application for a conditional use shall include the following:

- a. An application form signed by the applicant and every current property owner of record as shown on the most-current recorded deed;
- b. Full payment of the application fee, based on the fee schedule in effect on the date of submittal;
- c. Existing Conditions Plan;
- d. Site Plan;
- e. Landscape Plan;
- f. Building Elevations (for new construction);
- g. Phasing Plan (if phasing is proposed)
- h. Traffic Impact Study pursuant to LCMC 17.52.???
- i. Narrative addressing compliance with each approval criterion and applicable standard.

D. Approval Criteria. In order to grant any conditional use, the review authority must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The proposal is in compliance with the comprehensive plan;
2. The site for the proposed use is adequate in size and shape to accommodate the use and all required setbacks, common spaces, retaining walls, parking and loading areas, landscaping, and other features required by this title;
3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the review authority shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and mass of buildings, retaining walls, fences, landscaping, screening, exterior lighting, and signage;
5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

E. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding properties or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, setbacks, common open spaces, or screening and buffering areas;
2. Requiring fences, screening walls, landscaping, or screening/buffering where necessary to reduce noise and glare from the use, and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths and/or controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking area;
7. Limiting size, location, and number of signs;
8. Limiting the location, coverage, or height of buildings because of obstruction to view and reduction of light and air to adjacent properties;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosure of outdoor storage areas and limitation of outside displays and/or storage of merchandise;
11. Requiring maintenance of grounds;

12. Regulation of noise, vibration, odors, etc.;
13. Regulation of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. The requirement of a bond for removal of such use within a specified period of time;
16. Increase the size, type, or capacity of any or all utility services, facilities, or appurtenances;
17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the review authority and new conditions imposed;
18. Requirements for providing the city a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers, or other necessary and essential public improvements to city standards; and/or
19. Any such other conditions that will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this title and the comprehensive plan.
- F. Appeal of a Conditional Use Decision. Refer to LCMC 17.76.180.
- G. Expiration of a Decision. Refer to LCMC 17.76.140.
- H. Extension of a Decision. Refer to LCMC 17.76.150.

17.77.040 Bed and Breakfast Accommodations Application.

- A. Purpose. The purpose of a bed and breakfast accommodations application is to allow owners of dwellings to use their dwelling as a bed and breakfast accommodation, while establishing criteria and standards to ensure that bed and breakfast accommodations are subordinate to the residential use, and are in appearance and operation neither detrimental nor disruptive to neighboring properties and residents.
- B. Procedure. Bed and breakfast accommodation applications are subject to the Type I procedure as described in LCMC 17.76.030.
- C. Submittal Requirements. Type I application submittal requirements are set forth in LCMC 17.76.030 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.
- D. Approval Criteria. To approve a bed and breakfast accommodation application, the review authority shall review the submitted materials to ensure that the following criteria are satisfied:
1. The zoning of the subject property lists a bed and breakfast accommodation as an allowed use;
 2. The proposal complies with the standards for bed and breakfast accommodations in LCMC 17.80.060.
- E. Conditions of Approval. The review authority may impose conditions on approval of a bed and breakfast accommodation application to ensure compliance with the approval criteria.

- F. Appeal of a Decision. Refer to LCMC 17.76.180.
- G. Expiration of a Decision. Refer to LCMC 17.76.140.
- H. Extension of a Decision. Refer to LCMC 17.76.150.
- I. Invalidation of a Decision. Approval of a bed and breakfast accommodation application is site-specific to the property and the original applicant. If an applicant moves, the bed and breakfast accommodation application approval becomes invalid unless a new bed and breakfast accommodation application is approved for the subsequent occupant of the property.

17.77.050 Comprehensive Plan Map Amendment.

- A. Purpose. A Comprehensive Plan Map Amendment application provides a process to consider a proposed amendment to the Comprehensive Plan Map.
- B. Procedure. A Comprehensive Plan Map Amendment application is reviewed using either the Type III or Type IV procedure.
- C. Submittal Requirements. Type III application submittal requirements are set forth in LCMC 17.76.050. Type IV application submittal requirements are set forth in LCMC 17.76.060
- D. Approval Criteria. To approve a Comprehensive Plan Map Amendment, the Review Authority shall make findings of fact, based on evidence provided, that the request is consistent with the comprehensive plan and with the statewide planning goals.
- E. Conditions of Approval. Approval of a Comprehensive Plan Map Amendment application cannot be conditioned by the city.
- F. Appeal of a Decision. Refer to LCMC 17.76.180.
- G. Expiration of a Decision. An approved Comprehensive Plan Map Amendment does not expire.
- H. Extension of a Decision. An approved Comprehensive Plan Map Amendment is not subject to extension.

17.77.060 Conditional Use Permit.

- A. Purpose. In all zones, conditional uses listed in that zone may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.
- B. Procedure. Conditional use permit requests are subject to the Type III procedure, as described in LCMC 17.76.050.
- C. Submittal Requirements.

1. Type III application submittal requirements are set forth in LCMC 17.76.050. Specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

2. At a minimum, an application for a conditional use shall include the following:

- a. An application form signed by the applicant and every current property owner of record as shown on the most-current recorded deed;
- b. Full payment of the application fee, based on the fee schedule in effect on the date of submittal;
- c. Existing Conditions Plan;
- d. Site Plan;
- e. Landscape Plan;
- f. Building Elevations (for new construction);
- g. Phasing Plan (if phasing is proposed)
- h. Traffic Impact Study pursuant to LCMC 17.52.???
- i. Narrative addressing compliance with each approval criterion and applicable standard.

D. Approval Criteria. In order to grant any conditional use, the review authority must find, based upon evidence, both factual and supportive, provided by the applicant, that:

- 1. The proposal is in compliance with the comprehensive plan;
- 2. The site for the proposed use is adequate in size and shape to accommodate the use and all required setbacks, common spaces, retaining walls, parking and loading areas, landscaping, and other features required by this title;
- 3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
- 4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the review authority shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and mass of buildings, retaining walls, fences, landscaping, screening, exterior lighting, and signage;
- 5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

E. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding properties or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, setbacks, common open spaces, or screening and buffering areas;
 2. Requiring fences, screening walls, landscaping, or screening/buffering where necessary to reduce noise and glare from the use, and maintain the property in a character in keeping with the surrounding area;
 3. Requiring landscaping and maintenance thereof;
 4. Increasing street widths and/or controlling the location and number of vehicular access points to the property for ingress/egress;
 5. Requiring means of pedestrian/bicycle pathways to serve the property;
 6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking area;
 7. Limiting size, location, and number of signs;
 8. Limiting the location, coverage, or height of buildings because of obstruction to view and reduction of light and air to adjacent properties;
 9. Limiting or prohibiting openings in sides of buildings or structures;
 10. Enclosure of outdoor storage areas and limitation of outside displays and/or storage of merchandise;
 11. Requiring maintenance of grounds;
 12. Regulation of noise, vibration, odors, etc.;
 13. Regulation of time for certain activities;
 14. Establishing a time period within which the proposed use shall be developed;
 15. The requirement of a bond for removal of such use within a specified period of time;
 16. Increase the size, type, or capacity of any or all utility services, facilities, or appurtenances;
 17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the review authority and new conditions imposed;
 18. Requirements for providing the city a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers, or other necessary and essential public improvements to city standards; and/or
 19. Any such other conditions that will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this title and the comprehensive plan.
- F. Appeal of a Conditional Use Decision. Refer to LCMC 17.76.180.
- G. Expiration of a Decision. Refer to LCMC 17.76.140.
- H. Extension of a Decision. Refer to LCMC 17.76.150.
- I. Use permit to run with the land. A conditional use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a

change of ownership of the site or structure which was the subject of the use permit application.

17.77.070 Development Review.

A. Purposes. The purposes of the Development Review (DR) approval process are to:

1. Encourage site planning in advance of construction;
2. Protect lives and property from potential adverse impacts of development;
3. Consider natural or man-made hazards which may impose limitations on development;
4. Conserve the City's natural beauty and visual character and minimize adverse impacts of development on the natural environment as much as is reasonably practicable;
5. Assure that development is supported with necessary public facilities and services;
6. Ensure that structures and other improvements are properly related to their sites and to surrounding sites and structures; and
7. Implement the City's Comprehensive Plan and land use regulations with respect to development standards and policies.

B. Applicability. Approval of a Development Review application is required in all of the following circumstances:

1. New development in any zone excluding the exemptions listed in subsection C below;
2. Expansion of existing multi-family residential, commercial, or mixed-use buildings which increases existing floor area by 25% or more and is visible from a public right-of-way;
3. Expansion of existing industrial buildings which increases existing floor area by 25% or more and is visible from a public right-of-way;
4. Alteration of more than 20% or 2,000 sq. ft., whichever is less, of the façade of any multi-family, commercial, mixed-use, industrial or institutional building where the façade being altered is visible from the public right-of-way;

C. Exemptions. The activities, development and construction projects listed below are exempt from Development Review approval, but are subject to all other applicable provisions of this code:

1. Detached single-unit dwellings, attached single-unit dwellings, manufactured homes, and duplexes;
2. Routine repairs and maintenance;
3. Interior remodeling of an existing building or structure (also called tenant improvements) or building alterations required to meet ADA or Oregon

Residential Specialty Code or Oregon Structural Specialty Code requirements as applicable;

4. Temporary structures associated with temporary uses;
5. Accessory structures that don't require a structural permit;
6. Construction, alteration, or maintenance of public infrastructure including streets, traffic control devices, drainage ways, sanitary and storm sewers, stormwater quality facilities, water lines, electrical power or gas distribution lines, or telephone or television cable systems;
7. Type I applications
8. Exterior remodeling of a structure where no portion of the remodeled area is visible to public right-of-way

E. Procedure. Development Review applications are subject to the Type II procedure as described in LCMC 17.76.040, unless any of the following circumstances apply:

1. The applicant chooses to submit as a Type III procedure; or
2. The Development Review application is submitted concurrent with a Type III application.

F. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110. At a minimum, an application for Development Review shall include the following:

1. An application form signed by every current property owner as shown on the most-current recorded deed;
2. Full payment of the application fee, based on the fee schedule in effect on the date of submittal;
3. Plans and descriptions including the following:
 - a. Existing Conditions Plan,
 - b. Site Development Plan, including vehicular and pedestrian connectivity within and adjacent to the site,
 - c. Grading and Erosion Control Plan,
 - d. Landscape Plan,
 - e. Exterior Lighting Plan,
 - f. Waste and Recycling Facilities Plan,
 - g. Architectural Elevations,
 - h. Exterior color palette,
 - i. Floor plans, and
 - j. Descriptions, pictures, and cut sheets of exterior materials to be used on proposed structures;
4. Narrative. A narrative clearly describing the project and addressing compliance with all approval criteria and applicable standards;

5. Site Activity Statement. For commercial, mixed-use, or industrial developments, a written statement identifying:
 - a. The nature of the proposed use,
 - b. The planned number of shifts and the maximum number of employees per shift,
 - c. Plans for treatment and disposal of industrial wastes, and
 - d. Mitigation plans for traffic, noise, glare, air pollution, fire, or safety hazards;

6. Traffic Impact Analysis. A traffic impact analysis as required pursuant to LCMC 17.?????

G. Concurrent Applications for Adjustments or Modifications. Requests for adjustments or modifications to standards required in Chapter 17.74 LCMC shall be processed concurrently with the development review application.

H. Approval Criteria. To approve an application for Development Review, the Review Authority shall make findings of fact based on evidence provided that the following criteria are satisfied:

1. The proposal complies with requirements of the underlying zone;
2. The proposal complies with applicable provisions of Chapters 17.46, 17.47, and 17.48;
3. The proposal complies with applicable provisions of Chapter 17.52;
4. The proposal complies with applicable provisions of Chapter 17.55;
5. The proposal complies with applicable provisions of Chapter 17.56;
6. The proposal complies with applicable provisions of Chapter 17.64;
7. The proposal complies with applicable provisions of Chapter 17.74, except as modified through requested adjustments and modifications;
8. The proposal complies with applicable provisions of Chapter 17.80;
9. The proposal complies with applicable adopted public works rules, regulations, and standards and any other applicable city rules, regulations, and standards.

I. Conditions of Approval. Pursuant to LCMC 17.76.120, the Review Authority may impose conditions on the approval of a Development Review application to ensure compliance with the approval criteria.

J. Appeal of a Decision. Refer to LCMC 17.76.180.

K. Expiration of a Decision. Refer to LCMC 17.76.140.

L. Extension of a Decision. Refer to LCMC 17.76.150.

17.77.080 Director's Interpretation.

A. Purpose. The purpose of the director's interpretation application is to provide a process to clarify terms or phrases within this title which may require further interpretation. The director's interpretation application also provides a means to assign

new or noncategorized uses to permitted, accessory, or conditional uses in a zone. Interpretations of code terms, intent, or meaning are different from other land use applications in that they are an interpretation of language and policy, as opposed to an evaluation of a use or development. A DI application may be submitted in advance of, or concurrent with, an application, permit, or other action.

B. Director's Authority to Initiate an Interpretation. The director may initiate a director's interpretation on behalf of the city, either specific or not specific to a particular property or circumstance. The director may also initiate an interpretation when there is a reasonable dispute or lack of clarity regarding permitted uses on a property. If initiated by the director, the director's interpretation shall be processed as either a Type I or Type II application under the requirements of this section, and shall include the materials specified in subsection E with the exceptions of an application form and payment.

C. Director's Authority to Decline an Application.

1. The director has the authority to consider the request for an interpretation, and shall respond within 30 days following the date of the request, as to whether or not a requested interpretation will be issued.
2. The director may issue or decline to issue a requested interpretation. The director's decision to decline to issue an interpretation is final when the decision is mailed to the party requesting the interpretation. The decision to decline to issue an interpretation is not subject to local appeal.

D. Procedures. A director's interpretation not specific to a particular property or circumstance, is subject to the Type I procedure, as described under LCMC 17.76.030. A director's interpretation for a particular property is subject to the Type II procedure, as described in LCMC 17.76.040.

E. Submittal Requirements. Type I application submittal requirements are set forth in LCMC 17.76.030. Type II application submittal requirements are set forth in LCMC 17.76.040. More specific submittal requirements are provided on application forms and checklists as authorized in Section 17.76.110.

F. Standards for Assignment of a Use. The assignment of a use to a particular zone, either as permitted or conditional, by the director shall be based on findings that the proposed use:

1. Shares common characteristics with other permitted or conditional uses in the zone;
2. Has intensity, density and off-site impacts similar to other permitted or conditional uses in the zone; and
3. Has impacts on public facilities, including streets; sewer, water and stormwater systems; schools; and police and fire services similar to other permitted or conditional uses in the zone.

G. Standards for Interpretation. An interpretation of terms, intent, or meaning shall be as consistent as possible with the standards listed below. Not all of the standards need to be met for an interpretation to be issued.

1. The proposed interpretation is consistent with the common meaning of the words or phrases at issue.
2. The proposed interpretation is consistent with relevant policy direction from official city documents such as the Comprehensive Plan and its supporting documents.
3. The proposed interpretation is consistent with the interpretation of other portions of this title.
4. The proposed interpretation is consistent with regional, state, and federal laws and court rulings that affect the words or phrases at issue.

H. **Limitations on Director's Interpretation.**

1. The director may interpret provisions of this title, but shall not issue any legal opinion or interpretation of case law.
 2. A director's interpretation does not establish precedent, and does not bind any review authority in current or future decisions regarding the subject property or application or similar properties or applications.
 3. A director's interpretation does not run with the land unless the development is substantially consistent with the description in the director's interpretation.
- I. **Expiration of a Decision.** A director's interpretation does not expire unless superseded by a subsequent director's interpretation, comprehensive plan amendment, or ordinance amendment.

J. **Appeal of a Decision.** Refer to LCMC 17.76.180.

17.77.090 Geologic Hazard Report and/or Beach Protective Structure Review; Natural Resources Development Review

- A. Procedure. Geologic hazard report, beach protective structure review, and natural resources development review are subject to the Type II procedure as described in LCMC 17.76.040.
- B. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110, as well as Chapter 17.46 and Chapter 17.47 LCMC.
- C. Approval Criteria.
1. See Chapter 17.47 LCMC for approval criteria for geologic hazard report and beach protective structure review.
 2. See LCMC 17.46.050 for approval criteria for natural resources development review.
- D. Conditions of Approval. The review authority may impose conditions of approval to ensure compliance with the approval criteria.
- E. Appeal of a Decision. Refer to LCMC 17.76.180.
- F. Expiration of a Decision. Refer to LCMC 17.76.140.

G. Extension of a Decision. Refer to LCMC 17.76.150.

17.77.100 Home Occupation Application.

A. Purpose. The purpose of a home occupation application is to allow residents an opportunity to use their homes to conduct small-scale business activities, while establishing criteria and standards to ensure that home occupations are subordinate to the residential use, and are in appearance and operation neither detrimental nor disruptive to neighboring properties and residents.

B. Procedure. Home occupation applications are subject to the Type I procedure as described in LCMC 17.76.030.

C. Submittal Requirements. Type I application submittal requirements are set forth in LCMC 17.76.030 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110. At a minimum, a home occupation application shall include the following:

1. An application form signed by every current property owner as listed on the most-current recorded deed;
2. Payment in full of the appropriate application fee, based on the fee schedule in effect on the date of submittal; and
3. A floor plan of the dwelling unit to be used for the home occupation with the areas to be used for the home occupation clearly indicated.

D. Approval Criteria. To approve a home occupation application, the review authority shall review the submitted materials to ensure that the following criteria are satisfied:

1. The zoning of the subject property lists a home occupation as an allowed use;
2. The proposal complies with the standards for home occupations in LCMC 17.52.010.E and the definition for home occupations in LCMC 17.08.010.

E. Conditions of Approval. The review authority may impose conditions on approval of a home occupation application to ensure compliance with the approval criteria.

F. Appeal of a Decision. Refer to LCMC 17.76.180.

G. Expiration of a Decision. Refer to LCMC 17.76.140.

H. Extension of a Decision. Refer to LCMC 17.76.150.

I. Invalidation of a Decision. Approval of a home occupation application is site-specific to the property and the original applicant. If an applicant moves, the home occupation application approval becomes invalid unless a new home occupation application is approved for the subsequent occupant of the property.

17.77.110 Modification of Approved applications, plans, or conditions of approval.

- A. Purposes. The modification process allows approved applications, plans, or conditions of approval to be modified under an appropriate review process without initiating repetition of the original application.
- B. Applicability. The following applications, approved through the provisions of this code, may be modified pursuant to this section:
1. Development Review;
 2. Conditional Use;
 3. Planned Development.
- E. Procedure for Modifications. Modification applications are subject to the Type II procedure as described in LCMC 17.76.040 or the Type III procedure as described in LCMC 17.76.050, based upon the procedure type of the original application.
- F. Submittal Requirements. Type II and Type III application submittal requirements are set forth in LCMC 17.76.040 and 17.76.050, respectively.
- G. Scope of Review. The scope of review for a modification shall be limited to the modification request.
- H. Approval Criteria. To approve modification application, the review authority shall make findings of fact, based on evidence provided, that the following criteria are satisfied:
1. The location, size, and functional characteristics of the modified development can be made reasonably compatible with, and would have a minimal impact on, properties surrounding the subject site; and
 2. New elements are provided that functionally compensate for any negative effects caused by the requested modification(s). New elements used to compensate for a negative effect shall be of at least equal value to the elements proposed to be changed.
 3. The criteria in paragraphs 1 and 2 above shall be applied only to the area and/or lots within the development that are affected by the proposed modification.
 4. The proposed modification shall demonstrate compliance with the approval criteria of the original application.
- I. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose conditions on the approval of a modification application to ensure compliance with the original approval criteria.
- J. Appeal of a Decision. Refer to LCMC 17.76.180.
- K. Expiration of a Decision. Refer to LCMC 17.76.140.
- L. Extension of a Decision. Refer to LCMC 17.76.150.

17.77.120 Nonconforming – Determination That Nonconforming Use, Site, or Structure is Lawful.

- A. Procedure for Determination that a nonconforming situation is lawful. Determination that a nonconforming use, site, or structure is lawful is subject to the Type II procedure as described in LCMC 17.76.040.
- B. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040.
- C. Approval Criteria. To determine that a nonconforming use, site, or structure is lawful, the review authority shall make findings of fact, based on evidence provided, showing that:
1. The nonconforming situation was permitted by the standards and regulations in existence at the time established; and
 2. The nonconforming situation continued without discontinuance or abandonment as provided under Chapter 17.64 LCMC.
- D. Conditions of Approval. Determinations of nonconforming situations are not conditioned.
- E. Appeal of a Decision. Refer to LCMC 17.76.180.
- F. Expiration of the Decision. The decision for determination of a nonconforming situation does not expire.
- G. Extension of a Decision. The decision for determination of a nonconforming situation is not subject to extension.

17.77.120 Planned Development.

A. Purpose. It is the purpose of this section to allow master planned developments in any residential or commercial zone, or any combination of them, and in doing so, to allow a more flexible approach to land development than that which is normally accomplished through the subdivision and zoning ordinances of the city. The planned development approach is intended to provide more desirable environments by encouraging creative site planning and building designs; to make possible greater diversification between buildings and open spaces; and to conserve land and minimize development costs. In addition to the uses allowed in residential zones, the planned development approach may allow certain commercial uses subject to the specific limitations of this section.

B. Allowable Density. The allowable residential density in a planned development that meets only the minimum planned development standards is the “maximum base residential density” and shall be determined in the following manner:

1. Determine the gross square footage of the project site.
2. Subtract from the gross square footage the square footage of any areas proposed for nonresidential development, including commercial uses, places of worship, schools, and public buildings and their associated parking areas and grounds (including required yards and landscaping areas). The result is the “preliminary gross residential area.”
3. Subtract from the preliminary gross residential area the square footage of any areas of significant natural resources as identified in the comprehensive plan. The result is the “final gross residential area.”
4. Multiply the final gross residential area by 0.83. The result is the “final net residential area.”

5. Divide the final net residential area by the minimum lot size of the underlying zone. The result is the “maximum base residential density” expressed in dwelling units. Any number not a whole number shall be rounded down to a whole number.

E. Residential Density Bonuses.

1. Density in excess of the maximum base residential density for the underlying zone may be considered for projects that comply with the density bonus standards. The amount of density bonus shall be determined by the type of density bonus standards incorporated in the development proposal.

2. Except with respect to the “affordable housing bonus,” in no case shall the density bonus or bonuses cause the overall project density to exceed the maximum allowed residential density, which in the R-1-5 zone is 8.71 units per gross project acre, in the R-1-7.5 zone is 5.81 units per acre, and in the R-1-10 zone is 4.36 units per acre

3. If an applicant requests one or more density bonuses the review authority shall determine, based on evidence supplied by the applicant, any other person, or staff, whether the applicant has complied with the bonus density standards. If the review authority determines that the applicant has complied with one or more bonus density standards it shall assign the applicable density bonus points and multiply the maximum base residential density by the applicable density bonus points. The result is the total number of additional residential units allowed for the project above the maximum base residential density.

4. **Density Bonus Standards.** If an applicant desires to be allowed to develop a number of residential units above the maximum base residential density the applicant shall comply with one or more of the following bonus density standards. The density bonus points for each density bonus standard are in parentheses at the end of each standard.

a. Floodplain.

i. **Requirement.** For projects where part(s) of the site is located within the 100-year floodplain as defined and mapped by the Federal Emergency Management Agency, the portions in the floodplain must be developed according to the National Flood Insurance Program requirements.

ii. **Density Bonus Standard.** For projects where part(s) of the site is located within the 100-year floodplain as defined and mapped by the Federal Emergency Management Agency, develop only on portions of the site that are not in the 100-year floodplain or on portions that have been previously developed. (0.01 point.)

b. Steep Slopes.

i. **Requirement.** On portions of the project site with pre-project slopes greater than 15 percent that are not previously developed, do not disturb slopes greater than 40 percent and do not disturb portions of the project site within 50 feet of the top of such slopes, and 75 feet from the toe of such slopes.

ii. **Density Bonus Standard.** On portions of the project site with pre-project slopes greater than 15 percent that are not previously developed sites, limit development to no more than 40 percent of slopes between 25 percent and 40 percent, and to no more than 60 percent of slopes between 15 percent and 25 percent, and locate development such that the percentage of the development footprint that is on pre-project slopes less than 15 percent is greater than the project’s total percentage of buildable land that has pre-project slopes less than 15 percent. (0.01 point.)

c. Protected Species Habitat.

i. Requirement. If designated critical habitat for species that are listed or are candidates for listing under state or federal endangered species acts is found on or adjacent to the project site, do not disturb that critical habitat or portions of the site within an appropriate buffer around the critical habitat.

ii. Density Bonus Standard. If habitat for species that are listed or are candidates for listing under state or federal endangered species acts is found on the project site, do not disturb that habitat or portions of the site within an appropriate buffer around the habitat, with habitat connections or corridors (including connections to habitat on adjacent parcels) in mind. The geographic extent of the habitat and the appropriate buffer shall be identified by a qualified biologist (as determined by the planning and community development director) or the appropriate federal or state agency. Protect the habitat and its identified buffers from development in perpetuity by donating or selling the land or a conservation easement on the land to an accredited land trust or relevant public agency. (0.02 points.)

d. Public Transit.

i. Requirement. Design streets so that pullouts and public transit shelters may be added in the future without the need to acquire additional rights-of-way or relocate any sidewalks or utility lines.

ii. Density Bonus Standard. Provide covered and at least partially enclosed public transit shelters, adequate to buffer wind and rain, at appropriate locations within the project boundaries. If public transit does not serve the area of the project, provide pullouts at appropriate locations within the project boundaries so that public transit shelters may be added in the future. (0.01 point.)

e. Accessible Design.

i. Requirement. Design and build all buildings to comply with the minimum requirements of the Americans with Disabilities Act.

ii. Density Bonus Standard. For each residential unit type developed, design 20 percent (and not less than one) of each type to comply with the accessible design provisions of the Fair Housing Amendments Act (FHAA) and Section 504 of the Rehabilitation Act (Rehabilitation Act), as applicable. Separate residential unit types include: single-family, duplex, triplex, multi-unit row or townhouses, and mixed use buildings that include residential units. All paths of travel between residential units and other buildings within the project shall comply with the accessible design provisions of the FHAA and Rehabilitation Act, as applicable; and facilities and rights-of-way shall comply with the accessible design provisions of the FHAA, the Rehabilitation Act, or the Americans with Disabilities Act, as applicable. (0.01 point.)

f. Energy Efficiency.

i. Requirement. None.

ii. Density Bonus Standard. (0.02 point).

(A) For new residential structures of three stories or fewer, build and equip the structures to qualify as an Energy Star Home by either a performance path (through a HERS Index rating) or a prescriptive path (Building Option Package or BOP); and

(B) For nonresidential structures and residential structures of more than three stories, demonstrate a minimum 10 percent improvement in the proposed building performance rating compared to the baseline building performance rating per ASHRAE/IESNA Standard 90.1-2007 (without addenda) by a whole building project simulation using the Building Performance Rating Method in Appendix G of the Standard. Appendix G

requires that this energy analysis include all of the energy costs within and associated with the building project. The proposed design must comply with the mandatory provisions (Sections 5.4, 6.4, 7.4, 8.4, 9.4 and 10.4) in Standard 90.1-2007 (without addenda), must include all the energy costs within and associated with the building project, and must be compared against a baseline building that complies with Appendix G to Standard 90.1-2007 (without addenda).

The default process energy cost is 25 percent of the total energy cost for the baseline building. For buildings where the process energy cost is less than 25 percent of the baseline building energy cost, the applicant must provide supporting documentation substantiating that process energy inputs are appropriate. For the purposes of this analysis, process energy is considered to include, but is not limited to, office and general miscellaneous equipment, computers, elevators and escalators, kitchen cooking and refrigeration, laundry washing and drying, lighting exempt from the lighting power allowance (e.g., lighting integral to medical equipment) and other (e.g., waterfall pumps). Regulated (nonprocess) energy includes lighting (such as for the interior, parking garage, surface parking, facade, or building grounds, except as noted above), HVAC (such as for space heating, space cooling, fans, pumps, toilet exhaust, parking garage ventilation, kitchen hood exhaust, etc.) and service water heating for domestic or space heating purposes.

g. Outdoor Water Conservation.

i. Requirement. For irrigation, design and install all irrigation systems in the project so that they do not spray onto or otherwise directly place irrigation water onto impervious surfaces such as roads, driveways, parking lots, and sidewalks.

ii. Density Bonus Standard. For irrigation, design and install all irrigation systems in the project that use only captured rainwater, recycled wastewater, recycled graywater, or install landscaping that does not require permanent irrigation systems. Temporary irrigation systems used for plant establishment are allowed only if removed within one year of installation. (0.01 point.)

h. Indoor Water Conservation.

i. Requirement. None.

ii. Density Bonus Standard. Design and construct at least 90 percent of all buildings in the project such that they meet one of the following requirements according to the appropriate category (0.01 point):

(A) For nonresidential buildings and residential buildings over three stories, employ strategies that in aggregate use 30 percent less water than the water use baseline calculated for the building (not including irrigation) after meeting the Energy Policy Act of 1992 fixture performance requirements. Calculations are based on estimated occupant usage and shall include only the following fixtures (as applicable to the building): water closets, urinals, lavatory faucets, showers, and kitchen faucets.

(B) For residential buildings three stories or fewer, install fixtures that comply with all of the following requirements:

(1) The average flow rate for all lavatory faucets must be no more than 2.0 gpm.

(2) The average flow rate for all shower heads must be no more than 2.0 gpm.

(3) The average flow rate for all toilets, including dual-flush toilets, must be no more than 1.3 gpf.

i. Tree Preservation.

i. Requirement. Comply with the requirements of LCMC 17.52.220.

ii. Density Bonus Standard. For each two percent of canopy cover provided by trees that are preserved and incorporated into a development plan, a 0.01 point density bonus may be granted. The bonus is not applicable to trees preserved in areas that would otherwise be precluded from development, including floodplains, slopes greater than 25 percent, drainage ways, or wetlands. No more than a 0.10 point density bonus may be granted for any one development.

F. Affordable Housing Bonus. An additional density bonus of 10 percent above the maximum base residential density shall be available for projects incorporating an affordable housing element. For the purposes of this section an affordable housing element must include the following components:

1. At least five percent of the total number of dwelling units in the project must be affordable units.

2. The affordable units must be incorporated into the overall project and not be clustered into a separate area of the project. This provision is not intended to prohibit “cottage clusters” of affordable units; provided, that such clusters are themselves incorporated into the overall project and not clustered into a separate area of the project.

To be considered “affordable” a unit must meet affordability standards as adopted by the city. Alternatively the developer may transfer title to individual lots dedicated to affordable housing to the Lincoln County Land Trust or other organization approved by the planning and community development director for development by that entity as affordable housing.

G. Large-Scale, Mixed Use Planned Developments. This subsection sets forth special provisions for large-scale, mixed use planned developments that provide additional amenities for residents, visitors, and the larger Lincoln City community while ensuring that impacts can be internalized and mitigated through master planning and coordinated on-site management.

1. **Applicability.** Subsection (H) of this section may be applied only to an existing or proposed planned development that is 100 acres or larger, has direct access to an arterial street, and designates at least 35 percent of the gross planned development site area as open space.

2. **Limited Recreational Commercial Uses Permitted.**

a. **Uses Allowed.** In addition to residential uses, the following recreational commercial uses may be permitted in large-scale, mixed use planned developments located in residential or commercial zones, subject to the limitations in subsection (G)(2)(b) of this section:

i. Motels, hotels, and resorts;

ii. Cabins and yurts used for overnight accommodations;

iii. Eating or drinking establishments without drive-up service facilities;

iv. Retail sales, exclusive of drive-up service facilities;

v. Day spas;

vi. Child day care facilities;

vii. Religious institutions and houses of worship;

viii. Convention centers and meeting facilities;

ix. Time-share units;

x. Bed and breakfast accommodations;

xi. Public use or public utility;

xii. Utility substation;

xiii. Outdoor commercial amusement establishments;

- xiv. Essential emergency communications and warning facilities;
- xv. Emergency shelters;
- xvi. Mixed use incorporating one or more of the uses listed here.

b. Limitations. In addition to such conditions and restrictions as the planning commission may deem appropriate, the following limitations apply to commercial uses in large-scale, mixed use planned developments located in residential or commercial zones:

- i. The combined area of commercial uses, including associated parking areas, may not exceed 15 percent of the gross site area;
- ii. Commercial uses must be located a minimum of 100 feet from existing off-site residential buildings;
- iii. No commercial or mixed use buildings may exceed 45 feet in height (unless approved by a vote of the people pursuant to the provisions of LCMC 17.52.190); and
- iv. Recreational commercial uses are subject to the design standards of Chapter 17.74 LCMC.

3. Applications for large-scale, mixed use planned developments shall meet the requirements of OAR 660-012-0060, and be subject to the following:

a. A transportation impact analysis (TIA) shall be required at the time of application to determine if the proposed change would significantly affect an existing or planned transportation facility. The TIA shall demonstrate that the development does not significantly impact the transportation system as defined by OAR 660-012-0060(1); or the development shall be made consistent with the transportation system as allowed in OAR 660-012-0060(2). The TIA, findings of significant effect/no significant effect, and proposed mitigation measures shall be sent to the Oregon Department of Land Conservation and Development and the Oregon Department of Transportation for acknowledgment (concurrence).

b. To be consistent with OAR 660-012-0060, the analysis as indicated in subsection (G)(3)(a) of this section shall include a review process that includes adequate public notice and a public hearing, with the right to appeal.

c. Where access to US-101 is proposed as part of a large-scale, mixed use PUD, a valid ODOT highway approach road permit must be provided to Lincoln City before development permits may be issued.

H. Preliminary Master Plan Application. The preliminary master plan, which must include a drawing showing the layout of the proposed planned development, must contain the following information:

1. Proposed name of the planned development;
2. Date, north point and scale of drawing;
3. Appropriate identification clearly stating that the drawing is a preliminary planned development master plan;
4. Location of the planned development by section, township and range; a legal description sufficient to define the location and boundaries of the proposed planned development tract; and the tract designation or other description according to the real estate records of the county assessor;
5. A vicinity sketch map at a scale of one inch equals 400 feet showing adjacent property boundaries and land uses;
6. The following:

- a. Location, widths and names of all existing streets or other public ways within or abutting the planned unit development;
 - b. Contour lines having the following minimum intervals:
 - i. Two-foot contour intervals for ground slopes less than 10 percent; and
 - ii. Five-foot contour intervals for ground slopes 10 percent or greater. Contours shall be based on contour maps provided by the city or other data approved by the city engineer;
 - c. Location of at least one temporary benchmark within the planned unit development boundaries or the source of the contour line data shown. (Source and accuracy subject to city engineer's approval);
 - d. Location and direction of all water courses and natural features such as rock outcroppings, marshes and wooded areas; and the approximate locations of trees or stands of trees having a trunk cross-sectional diameter of eight inches (approximately 25 inches in circumference) or more, measured at a point 54 inches above the base of the trunk on the uphill side. The plan must identify those water courses, natural features and areas of trees meeting the described criteria which are to remain and those which may be altered or removed;
 - e. Proposed streets, including location, widths and approximate radii or curves;
 - f. Location of existing and proposed easements on the site or abutting property, showing the width and purpose of each easement;
 - g. The types of housing proposed within the planned development, the approximate location or locations proposed for each type of housing, and the approximate housing density proposed at each location;
 - h. Sites, if any, allocated for:
 - i. Places of worship;
 - ii. Public or private Parks, schools, and playgrounds;
 - iii. Public buildings;
 - iv. Open space;
 - v. Commercial uses, specifying the type of each.
 - i. Area coverage of existing and proposed structures, lots, streets or other development.
- I. Supplemental Preliminary Master Plan Information.** The applicant also shall submit the following information to supplement the preliminary master plan. This information can be submitted in separate statements accompanying the preliminary master plan:
1. Proposed restrictions to be filed in the county deed records, in outline form, such as deed restrictions, conditions, covenants and restrictions, and homeowners' association agreements. The outline restrictions shall identify the time at which the restrictions will be filed in the county deed records; generally who will have authority to enforce the restrictions; specifically which restrictions, if any, are proposed to be enforceable by the city; the time at which the restrictions will become enforceable; and which restrictions, if any, will not be subject to amendment without the consent of the city;
 2. Approximate locations and anticipated grades of all streets. Typical cross sections of the proposed streets showing widths of roadways, curbs, location and widths of sidewalks and the location and size of utility mains;
 3. Approximate plan of proposed sanitary sewers, storm drains, storm water detention and drainage pretreatment facilities and the water distribution system;
 4. A general description of property intended to be dedicated to the city or public, other than street rights-of-way, including proposed dedication restrictions;

5. A description of any residential density bonus the applicant is requesting, including evidence demonstrating compliance with applicable density bonus standards;
6. Proposed number of residential units;
7. An approximate tabulation of all dwelling units by type;
8. A narrative description of the planned development and the manner in which it meets the purpose set out in subsection (A) of this section;
9. A statement describing the present and proposed ownership;
10. A preliminary landscape plan, covering both areas to retain undisturbed their natural vegetation and areas to be relandscaped;
11. A circulation plan and traffic impact analysis identifying likely circulation patterns for and traffic impacts from traffic generated by the development including patterns and impacts within the development, in the area surrounding the development, and in other affected areas of the city;
12. A statement whether the applicant proposes to submit the final master plan for review as a single master plan or in phases; a statement of the date or dates by which the applicant proposes to submit the final master plan or final master plan phases for review; and a statement of the date or dates by which the applicant anticipates that the development and related improvements or each phase thereof will be substantially completed.
13. A tree maintenance and protection plan, which shall contain the following information:
 - a. An accurate topographical survey, subdivision map or plat map, that bears the signature of a qualified, registered surveyor or engineer, and which shows:
 - i. The shape and dimensions of the property, and the location of any existing and proposed structures or improvements;
 - ii. The location of the individual trees, with a diameter of six inches or more, on the site, and indicating species, approximate height, d.b.h., canopy spread and common name;
 - iii. The location of unique trees or stands of trees; and
 - iv. The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.
 - b. In lieu of the map or survey, an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the director, and clearly indicating the information required by this subsection.
 - d. Tree Protection. Unless specifically exempted by the director, a statement describing how trees intended to remain will be protected during tree removal and construction and how remaining trees will be maintained.
 - f. Replacement Trees. A description of the proposed tree replacement program with a detailed explanation including the number, size, species, and cost. In lieu of replacing trees, the applicant may propose to pay into the city tree fund an amount equivalent to the value of the replacement trees after installation, as provided in this subsection.
 - g. Covenants, Conditions and Restrictions (CC&Rs). Where the applicant is proposing to remove trees on common areas, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.
 - h. Waiver of Documentation. The director may waive an application document where the required information has already been made available to the city, or where the director determines the information is not necessary to review the application.

L. Consideration of Preliminary Master Plan. Preliminary master plans shall be processed as a Type III procedure as set forth in LCMC 17.76.050. The review authority's consideration of the preliminary master plan shall be subject to the following:

1. The review authority shall approve, or approve with conditions, the plan if it finds that the plan, either as submitted or with conditions, meets all of the following criteria. The review authority shall disapprove the plan if it finds that the plan, either as submitted or with conditions, does not meet any one or more of the following criteria.

a. The proposed planned development will be substantially compatible with existing development in the surrounding area; and undeveloped land in the surrounding area can be developed in a manner substantially compatible with the proposed planned development.

b. Construction of the planned development can be accomplished in a manner that does not create unreasonable negative impacts on the area surrounding the development or in the city. In order to assure the avoidance or mitigation of negative construction impacts on the area surrounding the development or in the city, the review authority may impose conditions including but not limited to:

i. Requirements that removal of existing landscaping during construction be limited to areas of the planned development to be constructed shortly following removal and to portions of those areas on which construction will occur;

ii. Prohibitions of open burning on the site during construction;

iii. Prohibitions or limitations on construction track-out;

iv. Restrictions on construction noise; and

v. Restrictions on construction traffic.

d. The development will not create unreasonable negative impacts on the area surrounding the development or in the city. In order to assure the avoidance or mitigation of negative impacts, the review authority may require the filing of restrictions in the county deed records including but not limited to restrictions:

i. Prohibiting the removal of specified landscaping; and

ii. Prohibiting open burning during construction.

e. Street, water, sewer, drainage and drainage pretreatment, storm water detention, and other similar facilities in the area surrounding the development and in the city are or will be adequate to provide for the health, safety and welfare for the development's population densities and the type of development proposed, taking into consideration existing and projected future demands on those facilities.

f. Street, water, sewer, drainage and drainage pretreatment, storm water detention and other similar facilities proposed to be constructed as part of the development are adequate to provide for the health, safety and welfare for the population densities and the type of development proposed.

g. The proposed number of residential units does not exceed the maximum permitted number of residential units; and at least 15 percent of the gross area is dedicated to landscaping. For purposes of computing area dedicated to landscaping, dedicated open space and protected resource areas may be treated as area dedicated to landscaping, but parking areas may not.

2. The review authority, in approving a preliminary master plan, may attach conditions it finds are necessary or appropriate to carry out the purposes of this title.

M. Procedure Following Expiration of Preliminary Master Plan. If an approved preliminary master plan expires, whether as to the entire area proposed for development or as to as-yet unbuilt portions of the development, then a complete new application must be submitted prior to development of the undeveloped portions. This complete new application shall be treated as an original application for the undeveloped portions of the site and shall be subject to all of the procedures and requirements in place at the time of submittal.

N. Submission of Tentative Subdivision Plan. If an approved preliminary planned development master plan provides for the subdivision of land within the planned development, then within such period or periods of time as required by the preliminary planned development master plan approval, an applicant shall file a tentative subdivision plan for the planned development or for phases of the development, if phasing is permitted. The submittal requirements, procedures and approval requirements for the tentative subdivision plan shall be as set out in LCMC Title 16.

O. Consideration of Final Master Plan.

1. Following preliminary master plan approval, and prior to issuance of a development permit and commencement of development, a final master plan must be submitted following the Type I procedure as set forth in LCMC 17.76.030. The final master plan may be submitted in development phases; provided, that:

a. Each phase can exist as a separate entity capable of independently meeting all requirements and standards of this section and of the underlying zones in which the planned development is located; or

b. Prior to the development of any phase that will not exist as such a separate entity capable of independently meeting the requirements and standards, restrictions enforceable by the city and in a form approved by the city have been filed in the county deed records, such as conditions, covenants and restrictions. The restrictions shall be applicable to other areas of the planned development not yet proposed for development, and shall be sufficient to assure that:

i. The area within the phase proposed for development, when combined with the area not yet proposed for development, as subject to the deed restrictions, can exist as a combined entity capable of independently meeting the requirements and standards;

ii. The phase has met any applicable reevaluation requirement imposed during the preliminary master plan approval process; and

iii. The separate development of phases will not be detrimental to the total development nor to the adjacent properties in the event the remainder of the development is not completed.

2. The final master plan must be in sufficient detail to allow the review authority to determine whether the final master plan is consistent with the preliminary master plan and whether the final master plan meets all conditions applicable to the preliminary master plan. In addition, the final master plan shall include:

a. Detailed landscaping plans showing the type and size of all plant material and its location, the irrigation system, decorative materials, recreation equipment and special effects; and the schedule for removal and replanting of vegetation;

b. Detailed water, sewer, drainage and drainage pretreatment, storm water detention and street system plans, including:

i. Central line profiles showing finished grades of all streets;

- ii. Cross sections of proposed streets showing widths of roadways, curbs, locations and widths of sidewalks and locations and sizes of utility mains;
- iii. Profiles of sanitary sewer, street drainage, drainage pretreatment, storm water detention and water distribution systems, showing pipe size and location of valves and fire hydrants, all to conform to city standards;
- iv. The estimated cost of street, sewer, drainage and drainage pretreatment, storm water detention, water, and other public infrastructure improvements within the planned development.

3. The review authority shall approve the final master plan if the final master plan meets all of the following criteria:

- a. The plan is consistent with the preliminary master plan and all conditions applicable to it; and
- b. All utility systems conform to city standards or are otherwise approved by the city engineer and landscaping conforms to city standards.

R. Requirements Following Final Master Plan Approval.

- 1. A certified print of the approved final planned development master plan shall be provided by the applicant without charge to the office of the city recorder.
- 2. Proposals to make changes in the final master plan after it has been approved shall be considered the same as a new planned development application.
- 3. Proposals to make minor changes in the final master plan after it has been approved may be approved by the city manager or the city manager's designated representative. Minor changes consist only of changes that will not have public visibility and that:
 - a. Do not increase densities;
 - b. Do not change boundaries;
 - c. Do not change any use, specific or general, described in the final master plan; and
 - d. Do not change the location or amount of land devoted to specific land uses.
- 4. A final planned development plat shall be filed with and approved by the city in accordance with the final platting requirements of LCMC Title 16 (Subdivisions) and recorded with Lincoln County, within one year of the approval of a final master plan. One extension of time for no more than one year may be granted, for good cause, through a Type III procedure. No additional extensions may be granted. If a final planned development plat is not filed, approved, and recorded as required by this section, then the planned development approval shall become void as of the date the filing requirement no longer can be met.
- 5. Prior to commencement of development, the developer shall provide to the city an improvement agreement and financial security instrument as described in LCMC 17.52.240(L) and shall obtain any required permits.

17.77.130 Text Amendment.

- A. Purpose. The text amendment process shall be used for legislative amendments to this title, Title 16, or the comprehensive plan. Such amendments are necessary to reflect changing community conditions, needs, and desires, to fulfill regional obligations, and to address changes in state law.
- B. Procedure. Text amendments are subject to the Type IV procedure, as described in LCMC 17.76.060. However, the director is authorized to make typographical,

grammatical and cross-referencing corrections as needed without initiating the text amendment process.

C. Submittal Requirements. Type IV application submittal requirements are set forth in LCMC 17.76.060.

D. Approval Criteria. In order to approve a text amendment, the review authority shall make findings of fact, based on evidence provided, that the following criteria are satisfied:

1. The text amendment is consistent with relevant goals and policies of the comprehensive plan and any applicable adopted master plans; and
2. The text amendment is consistent with relevant provisions of the Statewide Planning Goals, the Oregon Administrative Rules, and State statutes.

E. Appeal of a Decision. Refer to LCMC 17.76.180.

F. Expiration of a Decision. Text amendments are not subject to expiration.

G. Extension of a Decision. Text amendments are not subject to extension.

17.77.140 Variance.

A. Procedure. Variance applications are subject to the Type III procedure, as described in LCMC 17.76.050.

B. Submittal Requirements. Type III application submittal requirements are set forth in LCMC 17.76.050 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

C. Approval Criteria. To approve a variance, the review authority shall make findings of fact, based on evidence provided, that all of the following circumstances exist:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the property owner has no control;
2. The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess;
3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;
4. The variance requested is the minimum variance which would alleviate the hardship.

D. Appeal of a Decision. Refer to LCMC 17.76.180.

E. Expiration of a Decision. Refer to LCMC 17.76.140.

F. Extension of a Decision. Refer to LCMC 17.76.150.

17.77.150 Zone Change.

A. Purpose. Zone change applications provide a process for consideration of quasi-judicial or legislative amendments to the zoning map to implement property

designations on the comprehensive plan map or to apply new zones reflecting changing community conditions, needs, and desires.

B. Procedure. Zone change applications are reviewed through the Type III or Type IV procedure.

C. Submittal Requirements. Type III application submittal requirements are set forth in LCMC 17.76.050. Type IV application submittal requirements are set forth in LCMC 17.76.060.

D. Approval Criteria. To approve a zone change, the review authority shall make findings of fact, based on evidence provided, that the request is consistent with the comprehensive plan and statewide planning goals.

E. Conditions of approval. Approval of a zone change application cannot be conditioned by the city.

F. Appeal of a Decision. Refer to LCMC 17.76.180.

G. Expiration of a Decision. Zone changes are not subject to expiration.

H. Extension of a Decision. Zone changes are not subject to extension.

17.12.010 Classification of zones.

A. For the purpose of this title, the following zones are hereby established in the city.

Zone Description	Abbreviated Description
Residential, <u>Multiple family-unit dwelling</u>	R-M

17.12.030 Boundaries of zones.

If a zone boundary as shown on the map divides a lot between two zones, the entire lot shall be deemed to be in the zone in which the greater area of the lot ~~lies;~~ **provided, that this adjustment involves a distance not to exceed 20 feet from the mapped zone boundary.**

17.12.050 Zoning of annexed areas.

When requesting annexation of an area, a request for a city zoning designation shall be made and shall be processed concurrently with the annexation application. Areas annexed to the city will be classified with the underlying county zoning designation until rezoned by the city.

17.52.010 Accessory uses – General provisions.

Accessory uses shall comply with all requirements for the principal use except where specifically modified by this title, and shall comply with the following limitations:

C. A guest house may be maintained accessory to a dwelling, provided there are no **portable, temporary, or permanent** cooking facilities in the guest house.

~~17.52.020 Authorization of similar uses.~~

~~In response to an application in relation to a specific lot, the planning commission may rule by resolution that a use not specifically named in the allowed uses of a zoning district and not specified in any other zoning district shall be included among the allowed uses if the use is of the same general type and is similar to the allowed uses. Such ruling~~

~~by resolution of the planning commission shall thereafter be presented to the city council for legislative enactment to amend this title to include such use. In addition, the ruling shall be entered in a registry available to the public that sets out the street address or other easily understood geographic reference to the lot, the date of the ruling, and a description of the ruling.~~

17.52.050 Storage in front setback area, yard.

Boats, RVs, ~~and~~ trailers and house trailers shall not be stored in a required front setback area yard.

17.52.080 Maintenance of minimum requirements.

No lot area, minimum setback area, yards, ~~other~~ open space, or off-street parking or loading area existing on or after the effective date of the ordinance codified in this title shall be reduced below the minimum required for it by this title.

~~17.52.090 Dual use of required open space.~~

~~No lot area, yard or other open space or off-street parking or loading area which is required by this title for one use shall be utilized to satisfy requirements for lot area, yard or other open space or off-street parking or loading area for another use, except as provided in Chapter 17.56 LCMC~~

17.52.120 Utilities.

A. In the single-family residential (R-1) zone, and the multiple-unit family residential (R-M) zone, when city services are not available or when only partial services are available, the minimum parcel size shall be five acres; except however, any existing lots of record less than five acres in area which do not front on a public sewer line but which will be connected to a public water line may be developed with a single-family dwelling utilizing an approved subsurface sewerage disposal system, provided a deferred improvement agreement is executed and recorded by the owner of record consenting to the establishment of a local improvement district to participate in future public sewer system extensions and connections.

17.52.160 Required setbacks yards – Exceptions.

A. Architectural Features. Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, flues, awnings, and bay windows not more than four feet wide or high may project up to 18 inches into a required setback area, yard.

B. Accessory structures, Buildings. A required side or rear setback yard may be reduced to three feet for an accessory structure building, provided the structure building is detached from other structures buildings by five feet or more and does not exceed a height of one story nor an area of 200 square feet.

C. Fences. Fences, which may be located within required setback areas yards up to the property line, may not exceed three and one-half feet from the grade of the street centerline in the required front setback area, yard, and shall not exceed six feet in other setback areas yards nor conflict with requirements of a clear vision area as provided in LCMC 17.52.060 or the clear vision areas of adjacent private driveways.

D. Retaining Walls. Retaining walls may be constructed in required setback areas, yards, subject to the following limitations:

1. One or more retaining walls, none of which individually exceeds four feet in height, may be used, provided each successive wall is set back or stepped from the next lowest wall at least one foot for each one foot of height for that wall;
2. Within side and rear building setbacks that are not adjacent to a street or right-of-way, the height of a retaining wall exposed toward the interior of the property may be allowed that is up to eight feet in height. Those exposed toward the exterior of the property shall be limited as in subsection (D)(1) of this section;

E. ~~Handicapped Disabled~~ Access Facilities. ~~Handicapped Disabled~~ access facilities may be constructed in required setback areas yards as additions to existing buildings if exclusive of railings they do not exceed the height of the building's ground floor and do not conflict with the clear vision requirements of LCMC 17.52.060. For purposes of this section ~~handicapped disabled~~ access facilities include ramps, sidewalks, curbing and entrances constructed for the purpose of making a building accessible to a ~~physically handicapped-disabled~~ person. ~~Handicapped Disabled~~

access facilities must be constructed in accordance with any applicable requirements of the building code in effect at the time of their construction. ~~Handicapped~~ **Disabled** access facilities constructed as additions to a nonconforming structure shall not be considered an alteration or extension of the nonconforming structure.

F. Bridges. Unenclosed and uncovered pedestrian or vehicular bridges for access to a dwelling may be constructed in a required ~~setback area, yard,~~ Such bridges may not have a slope up from the adjacent roadway exceeding the maximum allowed for driveways.

G. Porches, Decks, and Stairs. Unenclosed and uncovered porches, decks, and stairs may be constructed in a required ~~setback area, yard,~~ provided no part of the porch, deck, or stairs is more than 30 inches above the ground or otherwise requires a building permit.

~~H. Administrative Adjustment.~~

~~1. The planning and community development director is authorized to make a minor adjustment to the dimensional standards of the required yard for any zone, including the dimensional standards of this section, and including any county zoning standards applied in the city.~~

~~2. An administrative adjustment permits a minor encroachment into a required yard, not to exceed six inches or seven and one half percent of the requirement, whichever is less, in addition to any other relief granted by the applicable code.~~

~~3. A property owner may not initiate a request for an administrative adjustment, and the planning and community development director may not grant an administrative adjustment, in advance of the initiation of construction of the building for which it is sought; instead, an administrative adjustment may be sought or approved only after the discovery of an unintentional situation such as a surveyor's error after the start of construction.~~

~~4. An administrative adjustment is a discretionary decision that the planning and community development director may make as a director's decision, subject to appeal under LCMC 17.76.040(A). The director shall not grant such relief unless the applicant demonstrates that: (a) the relief is minor in nature; (b) the relief will correct or avoid a noncompliance; (c) all reasonable efforts to rectify the situation have been exhausted and (d) the relief will not be materially detrimental to the purposes of the zone.~~

~~5. A property owner may initiate a request for an adjustment by filing an application with the planning department with the required application fee.~~

~~6. Denial of an administrative adjustment does not preclude an application for a variance under Chapter 17.68 LCMC.~~

~~7. The director may elect to refer a request for an adjustment to the planning commission for a public hearing.~~

17.52.190 Building height limitations.

B. No structure that exceeds 35 feet in height shall be permitted in a residential zone within 500 feet of any shoreline without prior approval ~~as a Type III procedure, of the planning commission at a public hearing.~~

C. No structures used for human occupancy shall be permitted to exceed the building height limitations of the zones in which they are located. To ensure that this standard is met the following rules apply:

b. The grade shown on a grading plan approved as a part of one of the following:

i. A final master plan for a planned unit development under LCMC 17.77.??? ~~17.52.240; or~~

ii. A partition or subdivision under Chapter 16.08 LCMC; or

iii. A ~~site plan~~ development review under LCMC 17.77.???; or 17.52.240; or

iv. A conditional use permit under LCMC 17.77.???; or Chapter 17.60 LCMC; or

v. A grading plan under Chapter 12.08 LCMC; or

vi. A building permit for a structure not subject to any of approvals in subsections (C)(3)(b)(i) through (v) of this section.

~~4. If a lawfully established single family or duplex dwelling that does not conform to the requirements of this section is destroyed by calamity to an extent exceeding 50 percent of the appraised value as determined by the records of the county assessor for the year preceding destruction it may be rebuilt within the same footprint and to the same height, subject to compliance with the flood damage prevention requirements of Chapter 15.16 LCMC. To the extent any such rebuilt residence is expanded, including a vertical expansion, the area of expansion must conform to this section.~~

17.52.230 Public infrastructure improvement requirements.

A. Infrastructure Easement and Improvement Requirements. The issuance of a structural building permit for the addition, alteration, or repair, within any 12-month period, exceeding 50 percent of the assessed value ~~or market value, whichever is greater~~, of an existing building or structure, or for a new building or structure in connection with any permitted or conditional use within any zone as described in this title, or of a site plan development review approval for development for which site plan development review is required under LCMC 17.77.??? ~~17.52.240~~, shall be subject to the following requirements:

1. The applicant shall submit, as part of a structural building permit application, a site plan drawn to scale showing the nature, size, and location of:

5. As to applications for site plan development review approval, if the site consists of more than one lot and any lot does not conform to the minimum access or lot requirements for the zone in which the lot is located, the owner shall agree that, prior to issuance of a structural building permit, or commencement of development if a ~~building~~ structural permit is not required, the owner will either:

B. Limitations on Infrastructure Requirements. If the applicant asserts that it cannot legally be required, as a condition of structural building permit or site plan development review approval, to provide easements or improvements at the level otherwise required by this section, then:

1. The structural building permit or development site plan review application shall include a rough proportionality report, prepared by a qualified civil or traffic engineer, as appropriate, showing:

2. The applicant shall, instead, be required to provide easements and improvements that are roughly proportional to what is needed for the safety or convenience of persons served by the building, structure, or development, plus those additional easements and improvements that are roughly proportional to what is needed to mitigate the impact of the building, structure, or development on the public infrastructure system of which the improvements will be a part, if the impacts are not fully mitigated by the easements and improvements needed for the safety or convenience of persons served by the building, structure, or development.

C. Easements and Improvements Deferred from Land Divisions. If a prior land division approval under LCMC Title 16 affecting the building, structure, or development site has deferred, until submission of a structural building permit or site plan development review application, the definition of the level of easements or public infrastructure improvements required to be provided in relation to the land division, based on an assertion that the level of easements or improvements required cannot be defined until actual development is proposed for the divided land, then the owner shall provide with the application a report as described in subsection (B) of this section and, as a condition of application approval, shall be required to dedicate easements and provide public infrastructure improvements required under LCMC Title 16, to the extent the easements and improvements meet the standards set out in subsection (B)(2) of this section.

D. Appeals.

1. Any person aggrieved by that person's inability to obtain a building permit pursuant to this section or by the decision of any administrative officer or agency based upon or made in the course of the administration or

enforcement of this section may appeal as a Type III procedure pursuant to LCMC 17.76.050, ~~which appeal must be in writing and filed pursuant to LCMC 17.76.040.~~

2. Notwithstanding subsection (D)(1) of this section, decisions of the city manager, public works director, city engineer, or designated representative in the enforcement of deferred improvement agreements entered into under subsection (A)(2) of this section shall not be subject to appeal. ~~under LCMC 17.76.040.~~

E. Limitations to Issuance of Certificate of Occupancy. No certificate of occupancy shall be approved for issuance by the director or by the city engineer ~~issued~~ until the applicant has fulfilled all requirements of, and has executed the agreements required by, this section, and shall not be approved for issuance by the director or city engineer ~~issued~~ if there is any variance from the approved development review. ~~site plan.~~

F. Applicability. This section, except for subsection (C) of this section and proceedings under this section related thereto, shall not apply to structural building permit applications for building on land subdivided pursuant to a final subdivision plat approved or subdivision exemption granted by the planning commission and/or city council after November 1, 1989.

17.80.170 52.270 Wireless communications facilities.

G. ~~Planning Commission~~ Review Authority Action. In addition to the findings required by LCMC 17.77.060, Chapter 17.60 LCMC, in order to grant approval, or approval with conditions, of a conditional use permit for a wireless communications facility, the ~~planning commission~~ review authority must find, based upon evidence provided by the applicant, that:

17.64.010 General Provisions

C. Determination That Nonconforming Use, Site, or Structure Is Lawful. ~~The city may make a determination of whether a nonconforming use on a particular property is lawful, if necessary for staff review of an application. Determination will be based on evidence submitted into the record that shows whether the nonconforming situation was permitted by the standards and regulations in existence at the time established and continued without any period of discontinuance or abandonment as provided under this chapter. This determination shall be an administrative process. The determination of whether a nonconforming structure or use on a particular property is lawful shall be a Type II procedure as set forth in 17.76.040 LCMC, with the application process outlined in LCMC 17.77.115.~~

E. Restoration of a Substantially Damaged Lawful, Nonconforming Structure or Use. If damaged to an extent of 50 percent or more, as determined through a Type I procedure, ~~by the city~~, a lawful nonconforming structure or use may be restored to its former height and footprint only, as approved by the city. A request to restore a lawful, nonconforming single-unit dwelling or duplex shall be processed as a Type II procedure, as outlined in LCMC 17.76.040. A request to restore a lawful, nonconforming multi-unity dwelling, mixed use structure, or commercial structure or use shall be processed as a Type III procedure, as outlined in LCMC 17.76.050. The planning and community development has authority to review an application to restore a lawful, nonconforming single-family dwelling or duplex use as an administrative decision. The planning commission has authority to review an application to restore a lawful, nonconforming multi-family dwelling, mixed use structure or commercial structure or use and shall conduct a public hearing on the application. A decision to approve an application to restore a nonconforming structure must include findings of all the following:

1. The damage was not intentionally caused by the property owner;
2. The restoration does not increase the degree of nonconformity or add new nonconformity, and except as specified above, restored structures conform to requirements of this code;
3. Restoration is according to plans approved by the fire marshal, building inspector and floodplain manager, and, if required, in conformance with a geo-technical report;
4. The restored structure or use does not encroach unlawfully on adjacent properties;

5. The restoration complies with reasonable conditions imposed by the city on a building permit in order to mitigate any new or increased adverse impact on adjacent property; and

6. In the case of a multi-unit family dwelling, mixed-use structure, or commercial structure, the reconstructed use or structure would not interfere with the intent and purpose of the zone in which it is located.

17.64.030 Nonconforming uses.

A. Lawful Nonconforming Uses Allowed to Continue. A lawful nonconforming use of land may continue as long as it remains otherwise lawful, provided the nonconforming use does not cease for any reason for a period of more than six months. For purposes of calculating the six-month period, a use is discontinued or abandoned on the occurrence of the first of any of the following events:

1. On the date when the use of land is physically vacated;
2. For commercial uses, on the date the sale of merchandise or the provision of services ceases;
3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
4. On the date a request for final reading of water and power meters is made to the applicable utility.

B. Discontinuance of a Nonconforming Use. If a conforming use has replaced a nonconforming use, or if the nonconforming use of a building, structure or site ceases for a period of six months or more, as described in subsection (A) of this section, the ~~planning and community development~~ director shall deem the nonconforming use discontinued, and the building, structure or land area shall be occupied only by uses conforming to the regulations for the zone in which it is located. If a nonconforming use has ceased, but the owner is marketing the property continually and actively for sale or lease, the ~~planning and community development~~ director may allow the lawful nonconforming status to continue for up to 18 additional months. This is a director's interpretation, processed as set forth in LCMC 17.77.080. The director's determination shall be an interpretation, subject to appeal to the planning commission. Following an evidentiary hearing, the planning commission decision will be final, unless called up by the city council under LCMC 17.76.040(B).

D. Change of Nonconforming Use. Through a Type III procedure as set forth in LCMC 17.76.050, a request for conversion to another nonconforming use may be approved if the review authority finds that, on the basis of the evidence submitted, the proposed use is suitable to the site and location and will not have greater adverse effect on the neighborhood or community than the previous use with regard to traffic, parking demand, hours of operation, noise, dust, and customer and/or residential activity. The review authority may place conditions on the new nonconforming use to ensure compatibility and maximize conformance to current regulations. ~~The planning commission may approve an application for conversion to another nonconforming use in accordance with the provisions of LCMC 17.76.010, if, on the basis of the application and the evidence submitted, it finds the proposed use is suitable to the site and location and will not have greater adverse effect on the neighborhood or community than the previous use with regard to traffic, parking demand, hours of operation, noise, dust, and customer and/or residential activity. The commission may place conditions on the new nonconforming use to ensure compatibility and maximize conformance to current regulations.~~

Chapter 17.60

CONDITIONAL USES

Sections:

17.60.010—Purpose.

17.60.020—Planning commission authority.

17.60.030—Application.

~~17.60.040—Public hearings.
 17.60.050—Action by planning commission.
 17.60.060—Burden of proof.
 17.60.070—Entry of order.
 17.60.080—Time limitation.
 17.60.090—Appeal.
 17.60.100—Effect.
 17.60.110—Violation of conditions.
 17.60.120—Limitation on new applications.
 17.60.130—Notification of action.
 17.60.140—Mapping.
 17.60.150—Use permit to run with the land.~~

Prior legislation: Ords. 89-11 and 91-18.

17.60.010—Purpose.

~~In all zones, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.~~

17.60.020—Planning commission authority.

~~The planning commission shall have the authority to approve, approve with conditions, disapprove or revoke conditional use permits subject to the provisions of this chapter. Changes in use, expansion or contraction of site area, or alteration of structures or uses classified as conditional and existing prior to the effective date of the ordinance codified in this title shall conform to all regulations pertaining to conditional uses.~~

17.60.030—Application.

~~The property owner or his authorized agent may make an application for a conditional use permit by filing an application, at least 45 days prior to the meeting date the matter is intended to be considered, with the department of planning and community development on a form prescribed by the city, which shall include the following information, in addition to that required in Chapter 17.76 LCMC:~~

~~A. Name and address of applicant;~~

~~B. Statement that the applicant is the owner of the property or is the authorized agent of the owner;~~

~~C. Address, legal description and Lincoln County assessor's map and tax lot number of the property;~~

~~D. The application shall include an accurate scale drawing of the site and improvements proposed. The drawing must be adequate to enable the planning commission to determine the conformance of the proposal with the requirements of this title and shall be prepared in a manner conforming to the requirements and procedures of site plan approval, LCMC 17.52.240;~~

~~E. A map (Lincoln County assessor's plat) showing the subject property and surrounding properties and listing of current owners within 100 feet of the property subject to the conditional use permit application, pursuant to Chapter 17.76 LCMC;~~

~~F. Statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this title together with any other data pertinent to the findings prerequisite to the granting of a conditional use permit as listed in LCMC 17.60.050(C);~~

~~G. The application shall be accompanied by a nonrefundable filing fee in the amount established by general resolution of the city council.~~

17.60.040—Public hearings.

~~Before a conditional use is permitted, the proposed conditional use shall be considered by the planning commission at a public hearing. Notice of the hearing shall be given as provided in LCMC 17.76.020.~~

17.60.050—Action by planning commission.

A. Within 60 days after the filing of the application, a public hearing shall be held and the commission shall render its decision. The decision of the planning commission shall be final unless appealed to the city council.

B. The planning commission may approve, approve with conditions or disapprove the conditional use permit application by the entry of a planning commission order, in open meeting, which order shall describe the basis for the decision and state the specific circumstances, findings of fact and evidence presented requiring the application of conditions to the approval.

C. Findings of Fact. In order to grant any conditional use, the planning commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The proposal is in compliance with the comprehensive plan;
2. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this title;
3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

D. Conditions of Approval. In permitting a conditional use, the planning commission may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, yard dimensions, open spaces or buffer areas;
2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle access pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas;
7. Limiting size, location and number of signs;
8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosure of storage areas and limitation of outside display and/or storage of merchandise;

11. Requiring maintenance of grounds;
12. Regulation of noise, vibration, odors, etc.;
13. Regulation of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. The requirement of a bond for removal of such use within a specified period of time;
16. Increase the size, type or capacity of any or all utility services, facilities or appurtenances;
17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the planning commission and new conditions imposed;
18. The planning commission may require that an applicant furnish the city a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to city standards;
19. The planning commission may also require that site plan committee review and approval is necessary in any particular situation to accomplish the purposes and objectives of this title;
20. And such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this chapter.

17.60.060 — Burden of proof.

The specific findings made by the planning commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in LCMC 17.60.050(C), the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any conditional use permit application.

17.60.070 — Entry of order.

Where the planning commission is of the opinion that the conditional use permit shall be granted, it shall, in open public meeting, by a majority of its members in attendance, enter a planning commission order granting the conditional use permit, which order shall include specific findings of fact, conclusions and supportive evidence pertaining to LCMC 17.60.050(C), and any conditions of approval as authorized by LCMC 17.60.050(D). The chairman of or, in his absence, the officer presiding over the planning commission meeting in which the above described order is enacted shall forthwith sign the order and cause the same to be filed with the city recorder. Upon the filing of the order with the city recorder, the order shall be in full force and effect. An order denying a conditional use permit shall be entered and filed in a like manner, with the necessary findings of fact, where the planning commission, based on the standards specified herein, determines that the conditional use permit should not be granted.

17.60.080 — Time limitation.

A conditional use permit shall become void one year after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The planning commission may extend a use permit for an additional period of one year, subject to the requirements of this title. No more than one such extension may be granted.

17.60.090 — Appeal.

The applicant or any party to the proceeding may, within the time period specified in LCMC 17.76.040, after the decision of the planning commission is filed with the city recorder, appeal the same to the city council in the form prescribed by the city. The appeal procedure shall be as set forth in LCMC 17.76.040.

17.60.100—Effect.

~~No building or other permit shall be issued in any case where a conditional use permit is required by the terms of this title until after the appeal period after the decision of the planning commission is filed with the city recorder. An appeal from an action of the planning commission shall automatically stay the issuance of a building or other permit until such appeal has been completed. In the event the council acts to grant the conditional use permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on the permit.~~

17.60.110—Violation of conditions.

~~The planning commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of the permit after first holding a public hearing and giving notice of such hearing as provided in LCMC 17.76.030. The foregoing shall not be the exclusive remedy, and it is unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.~~

17.60.120—Limitation on new applications.

~~In a case where an application is denied by the planning commission, or denied by the city council on appeal from the planning commission, unless specifically stated to be without prejudice, it shall not be eligible for resubmittal for a period of one year from the date of said denial unless, in the opinion of the planning commission, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.~~

17.60.130—Notification of action.

~~The city manager or his designee shall notify the applicant for a conditional use permit of the planning commission's action within the time period specified in LCMC 17.76.030 after entry of the final order. A copy of the order shall be provided to the applicant.~~

17.60.140—Mapping.

~~Within 30 days after the entry of the final order of a conditional use permit, the permit application file number shall be indicated on the official zoning map on the lot or lots affected by such permit.~~

17.60.150—Use permit to run with the land.

~~A conditional use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this chapter.~~

Chapter 17.68

VARIANCES

Sections:

~~17.68.010—Authorization to grant or deny variances.~~

~~17.68.020—Circumstances for granting a variance.~~

~~17.68.030—Variance procedure.~~

~~17.68.040—Time limit on variance.~~

17.68.010—Authorization to grant or deny variances.

~~The planning commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variances shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the planning commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.~~

17.68.020—Circumstances for granting a variance.

~~A variance may be granted only in the event that all the following circumstances exist:~~

~~A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;~~

~~B. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess;~~

~~C. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;~~

~~D. The variance requested is the minimum variance which would alleviate the hardship.~~

17.68.030—Variance procedure.

~~A. A property owner may initiate a request for a variance by filing an application with the city manager or his designated representative, using forms prescribed pursuant to LCMC 17.80.030. The application shall be accompanied by a site plan, drawn to scale, showing the condition to be varied and the dimensions and arrangements of the proposed development. The planning commission may request other drawings or material essential to an understanding of the variance request.~~

~~B. The planning commission shall hold a public hearing before it may act on a request for a variance.~~

~~C. Within five days after a decision has been rendered with reference to a request for a variance, and the order documenting said decision has been approved by the planning commission, the city manager or his designated representative shall provide the applicant with written notice of the decision of the planning commission.~~

17.68.040—Time limit on variance.

~~Authorization of a variance shall be void after one year unless substantial construction pursuant thereto has taken place. However, the planning commission may in its discretion extend authorization for an additional six months on request.~~

Chapter 17.76

ADMINISTRATIVE PROVISIONS

Sections:

- ~~17.76.010—Application information and procedures.~~
- ~~17.76.020—Public notice.~~
- ~~17.76.030—Quasi-judicial public hearing procedure and requirements.~~
- ~~17.76.040—Appeals.~~
- ~~17.76.050—Final action on application for permit or zone change request.~~
- ~~17.76.060—Filing fees.~~

~~17.76.010—Application information and procedures.~~

~~A. An application for a land use action or permit shall consist of:~~

- ~~1. A complete application form and all supporting documents and evidence;~~
- ~~2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all parties in ownership of the affected property;~~
- ~~3. A description of the property affected by the application and, in the case of a quasi-judicial map amendment, a legal description.~~

~~B. All documents or evidence relied on by the applicant shall be made available to the public.~~

~~C. If an application for a permit or zone change is incomplete, the city shall notify the applicant of exactly what information is missing within 30 days of the receipt of the application. The notification shall give the applicant a deadline by which to submit missing information, after which the city will deem the application complete and proceed with its consideration. The application shall be deemed complete upon expiration of the 30-day period, if no notification of missing information is given, or, if notification of missing information is given, upon receipt of the missing information or expiration of the deadline for submitting the missing information, whichever occurs first. If the application was complete when first submitted or the applicant submits the missing information within 180 days of the date the application was first submitted, approval or denial of the application shall be based on the standards and criteria of the comprehensive plan and this title that were applicable at the time the application was first submitted. In all other cases, approval or denial shall be based on the standards and criteria applicable at the time of final action on the application.~~

~~D. Where a proposed development requires more than one development permit or zone change request from the city, the applicant may request that the city consider all necessary permit and zone change requests in a consolidated manner. If the applicant requests that the city consolidate its review of the development proposal, all necessary public hearings before the planning commission shall be held on the same date. If the applicant's request includes a request for a comprehensive plan amendment, the applicant shall be required to waive in writing the 120-day requirement set out in LCMC 17.76.050(A) as a condition to consolidated treatment.~~

~~E. In the case of an application for a planning commission resolution, under LCMC 17.52.050, that a use is included among the allowed uses in a zoning district, if the application so requests, the department shall provide notice of the decision on the application in accord with the provisions of LCMC 17.76.020(A) and (B)(1) governing notice of administrative actions, which decision thereafter shall be directly appealable to the land use board of appeals in accordance with ORS 197.830 and 227.175(12).~~

~~F. If an application for a land use action or permit is denied, the applicant thereafter may submit a single supplemental application for any or all other uses allowed under the comprehensive plan and this title in the zone in which the site that is the subject of the application is, or on rezoning would be, located. The supplemental application shall include a request for any rezoning or variance that may be required in order to obtain approval of a permit under the comprehensive plan and this title. The supplemental application shall be subject to the same~~

~~procedures as any other application for a land use action or permit, except that the time within which the city must take final action shall be 240 days rather than the 120 days set out in LCMC 17.76.050(A).~~

G. ~~Except as otherwise provided in this section:~~

- ~~1. If the land use board of appeals issues a final order remanding to the city a city decision on an application for a land use action or permit, and if no petition for judicial review of the LUBA final order is timely filed, then the city shall take final action on the remanded application within 111 days after LUBA delivered or mailed its final order; and~~
- ~~2. If LUBA issues a final order remanding to the city a city decision on an application for a land use action or permit, if a petition for judicial review is timely filed, and if the final resolution of the judicial review affirms LUBA remand, then the city shall take final action on the remanded application within 90 days after the resolution of the judicial review becomes final.~~

~~The commencement of the 111 and 90 day periods set out in this subsection shall be automatically deferred until the applicant delivers to the department a written request that the city proceed with the application on remand. The 111 and 90 day periods set out in this subsection may be extended by the director, at the director's discretion, for a reasonable period of time on receipt of a written request from the applicant. The 111 and 90 day requirements set out in this subsection shall not apply to remand proceedings concerning amendments to the city's comprehensive plan or land use regulations or the adoption of new land use regulations that were forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610.~~

H. Any staff report used at the hearing shall be available at least seven days prior to the hearing.

17.76.020 — Public notice.

A. ~~Content of Mailed and Published Notice.~~ A notice of a public hearing or an administrative action shall contain the following information:

- ~~1. The name of the applicant;~~
- ~~2. In the case of a public hearing, the date, time and place of hearing, and who is holding the public hearing;~~
- ~~3. The street address or other easily understood geographical reference to the subject property;~~
- ~~4. The nature of the application and, in the case of a public hearing, the proposed use or uses which could be authorized and, in the case of an administrative action, the proposed use or uses which have been authorized;~~
- ~~5. A list of the applicable criteria from this title and the comprehensive plan that apply to the application at issue;~~
- ~~6. In the case of a public hearing, a statement that a failure to raise an issue in person or by letter not later than the close of the record following the evidentiary hearing, or failing to provide accompanying statements of evidence sufficient to afford the decision making body an adequate opportunity to respond to the issue will preclude an appeal to the land use board of appeals on that issue;~~
- ~~7. The name of the city representative to contact and the telephone number where additional information may be obtained;~~
- ~~8. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria and, in the case of an administrative action, a copy of the administrative action are available for inspection at no cost and will be provided at reasonable cost;~~
- ~~9. In the case of a public hearing, a statement 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;~~

~~10. In the case of a public hearing, a general explanation of the requirements for submission of testimony and the procedure for conducting hearings;~~

~~11. In the case of an administrative action, statements that:~~

~~a. Any person who is adversely affected or aggrieved or who is entitled to written notice under subsection (B) of this section may appeal the decision by filing a written appeal to the planning commission in the manner and within the time period provided in LCMC 17.76.040(A);~~

~~b. The administrative action will not become final until the period for filing an appeal to the planning commission has expired; and~~

~~c. A person who is mailed written notice of the administrative action cannot appeal the action directly to the land use board of appeals under ORS 197.830.~~

~~B. Mailed Notice.~~

~~1. The city shall mail notice of hearings or actions requiring notice pursuant to the provisions of this title to the applicant and to owners of record of property located within 250 feet from the exterior boundary of the subject property, and also to any neighborhood or community organization recognized as such by the city council, whose boundaries include the subject property. The city shall mail notice at least 20 days before the hearing for applications for conditional uses, variances and discretionary land use decisions made by staff and the appeals therefrom, and at least 10 days before the hearing for applications for quasi-judicial text or map amendments to this title, and quasi-judicial comprehensive plan map amendments. In addition, if so requested in the application, the city also shall mail notice to the Oregon Department of Land Conservation and Development. For the purpose of this section, the "owners of record" is defined as property owners at mailing addresses verified in writing by the Lincoln County assessor's office, and includes changes in ownership and mailing address that are readily available since the most recent property tax assessment.~~

~~2. If an application would change the zone of property which includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the city shall give written notice by first class mail to each existing mailing address for tenants of the park at least 20 but not more than 40 days before the date of the first evidentiary hearing on the application. Failure of a tenant to receive a notice shall not invalidate the zone change.~~

~~3. The city shall mail notice of an appeal from a planning commission decision to all persons who gave testimony before the planning commission orally or in writing.~~

~~4. Failure of a property owner, neighborhood or community association, or DLCD to receive required notice shall not invalidate such proceedings, if the city can demonstrate by affidavit that such notice was given.~~

~~C. Published Notice. Notice shall be given for text or map amendments to this title and comprehensive plan by publication in a newspaper of general circulation in the city at least 10 days before the date of the public hearing.~~

~~D. Change in Nature of Decision. In a proceeding for which notice is provided under this section, the city shall not make a final decision that is different from the proposal described in the notice to such a degree that the notice did not reasonably describe the city's final action.~~

~~E. Notice of Zone Change or Limitation or Prohibition of Use. Except as to cases described in subsection (F) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof or this title in a manner that would change, or require a change in, the base zone of property or limit or prohibit, or require a limitation or prohibition of, land uses previously allowed in the affected zone, a written individual notice of the land use change shall be mailed by first class or bulk mail to the owner of each lot that the ordinance proposes to so affect, as shown on the most recent property tax assessment roll. The notice shall contain substantially the following statement in bold-faced type, extending from the left hand margin to the right hand margin across the top of the face page of the notice:~~

This is to notify you that Lincoln City is considering a land use regulation that will affect the permissible uses of your land.

The notice also shall contain substantially the following statement in the body of the notice:

On _____, Lincoln City will hold a hearing on the adoption of a proposed ordinance. The City has determined that adoption of the ordinance will affect the permissible uses of your property and may reduce the value of your property. The ordinance is available for inspection at the Department of Planning and Community Development at Lincoln City's City Hall, located at 801 SW Highway 101, Lincoln City, Oregon 97367. A copy of the ordinance also is available for purchase at a cost of \$ _____. For additional information concerning the ordinance, you may call the Department at _____.

The notice also shall describe in detail how the proposed ordinance would affect the use of the property.

F. At least 30 days prior to the amendment of the comprehensive plan or this title pursuant to a requirement of periodic review of the comprehensive plan, in a manner that would change the base zone of property or limit or prohibit land uses previously allowed in the affected zone, a written individual notice of the land use change shall be mailed by first class or bulk mail to the owner of each lot that the ordinance proposes to so affect, as shown on the most recent property tax assessment roll. The notice shall contain substantially the following statement in bold faced type, extending from the left hand margin to the right hand margin across the top of the face page of the notice:

This is to notify you that Lincoln City is considering a land use regulation that will affect the permissible uses of your land.

The notice also shall contain substantially the following statement in the body of the notice:

As a result of an order of the Oregon Land Conservation and Development Commission, Lincoln City is considering a proposed ordinance. Lincoln City has determined that the adoption of the ordinance will affect the permissible uses of your property and may reduce the value of your property. The ordinance, if adopted, will become effective on or about _____. The ordinance is available for inspection at the Department of Planning and Community Development at Lincoln City's City Hall, located at 801 SW Highway 101, Lincoln City, Oregon 97367. A copy of the ordinance also is available for purchase at a cost of \$ _____. For additional information concerning the ordinance, you may call the Department at _____.

The notice also shall describe in detail how the proposed ordinance would affect the use of the property.

G. Notice to ODOT and Other Public Agencies. The city shall provide written notice to ODOT and other public agencies in accordance with LCMC 12.28.200(D).

17.76.030 — Quasi-judicial public hearing procedure and requirements.

A. The following procedural entitlements shall be provided at the public hearing:

1. An impartial review as free from potential conflicts of interest and ex parte contact as is reasonably possible;
2. No member of a hearing body (planning commission or city council) shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

a. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father in law, mother in law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment, or any business with which the member is in direct competition, where the number of similar businesses is five or less;

b. The member has a direct private interest in the proposal;

e. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner;

3. Body members shall reveal any ex parte contacts with regard to any matter and shall state the parties' right to rebut the substance of the communication at the commencement of the first public hearing following the prehearing or ex parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations;

4. A party to a hearing, or a member of a hearing body, may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion;

5. No officer or employee of the city who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest;

6. A reasonable opportunity for those persons potentially affected by the proposal to present evidence;

7. A reasonable opportunity for rebuttal or new material.

B. Rights of Disqualified Member of the Hearing Body.

1. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents his or her own personal interests at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

2. Except for hearings on legislative actions conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the record and evidence received at the prior hearing(s).

C. Burden and Nature of Proof. The burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this title, especially the specific criteria set forth for the particular type of decision under consideration.

D. Nature of Proceedings. An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

1. Before receiving testimony on the issue, the following shall be addressed:

a. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.

b. Any abstentions or disqualification based on conflict of interest, personal bias, or ex parte contacts shall be determined. If ex parte contacts are reported by any commission member, the member shall state the content of the communication. Thereafter, the chairperson of the commission shall state that the parties have the right to rebut the substance of the ex parte communication. Communications with city staff are not to be considered as ex parte communications.

c. A statement by the chairperson presiding that:

i. States that testimony, arguments, and evidence must be directed toward the applicable criteria or other criteria in the comprehensive plan or this title which the person believes apply to the decision;

- ii. ~~States that failure to raise an issue accompanied by statements or evidence sufficient to afford the hearing body an opportunity to respond to the issue will preclude an appeal to the land use board of appeals based on that issue;~~
 - iii. ~~States that failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issues will preclude an action for damages in the circuit court.~~
2. ~~Presentations and Evidence.~~
- a. ~~The presiding officer shall preserve order at the public hearing and shall decide questions of order.~~
 - b. ~~Members of the hearing body may take official notice of judicially cognizable facts of a general, technical or scientific nature. Such notice shall be stated and may be rebutted.~~
 - c. ~~After presentation of the staff report, the proponent and all persons in favor of proponent's proposal shall be heard. Following the presentation of proponent's case, the opponents shall be heard. After presentation of the evidence by the opponents, neutral parties who do not necessarily support or oppose the petition shall have an opportunity to be heard, and then representatives of public agencies. Following all presentations of evidence, brief rebuttal shall be permitted in the same general order, but the presiding officer shall have broad discretion to limit rebuttal to avoid repetition and redundancy.~~
3. ~~The hearing body may continue a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. The time and date when the hearing is to resume may be announced.~~
4. ~~Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The hearing body shall grant such request by either continuing the hearing or leaving the record open for additional written evidence, arguments, or testimony.~~
- a. ~~If the hearing body grants a continuance, the hearing shall be continued to a date, time, and place at least seven days from the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, or testimony. 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 submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence. The hearing body may grant or deny such a request, at its discretion.~~
 - b. ~~If the hearing body leaves the record open for additional written evidence, arguments, or testimony, the record shall be left open for at least seven days. If new evidence is submitted during the period the record is left open, any participant, within two working days after the period terminates, may file a written request with the department for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the record shall be reopened for an additional five days to allow the participant to raise new issues in response to the new evidence.~~
5. ~~When the hearing body reopens a record to admit new evidence, arguments or testimony, any person may raise new issues related to the new evidence, arguments, testimony, or criteria for decision making that apply to the matter at issue.~~
6. ~~Unless waived by the applicant, the hearing body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be part of the record. The applicant's final submittal shall not include any new evidence and, if it does include new evidence, the new evidence shall be considered not part of the record and shall be disregarded.~~

7. Notwithstanding the provisions of subsections (D)(3), (4) and (5) of this section, the hearing body shall not continue a hearing, leave a record open for the submittal of additional written evidence, arguments, or testimony, or reopen a record, if the continuance, leaving open, or reopening will result in the city's not taking final action on an application within the time period set out in LCMC 17.76.050(A).

E. Decision. Following the procedure described in this section, the hearing body shall approve, approve with conditions, or deny the application. If the hearing is before the planning commission on a zoning map or text amendment, the planning commission shall make a recommendation to council to adopt or deny the change. Such recommendation will be reflected in the minutes of the planning commission. If the hearing is in the nature of an appeal, the body may affirm, affirm with modifications or additional conditions, reverse, or remand the decision that is on appeal. The hearing body shall not impose conditions of approval that have not been stated, either prior to the close of the hearing or prior to the close of a reopened hearing, with sufficient specificity to allow the applicant to respond to the conditions.

1. The decision of the hearing body, which has the authority to approve the application or decide the appeal, shall be by a written order signed by the presiding officer.

2. The order shall incorporate findings of fact and conclusions that include:

- a. A statement of the applicable criteria and standards against which the proposal was tested;
- b. A statement of the facts upon which the hearing body relied in establishing compliance or noncompliance with each applicable criteria or standards, briefly stating how those facts support the decision.

3. The written order is the final decision in the matter.

F. Record of Proceedings. The proceedings shall be recorded stenographically or electronically.

1. The hearing body shall, where practicable, retain as part of the hearing records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file.

2. The findings shall be included in the record.

3. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled copies of the record at the person's own expense.

G. Notice of Decision. Notice of decision by a hearing body shall be provided to all persons who appeared before the hearing body orally or in writing, or requested in writing that they be given notice of such decisions. The act of signing a petition shall not be deemed a written appearance before the hearing body and shall not confer party status on the signator. Only the representative submitting the petition or chief petitioner shall be given notice of the decision. The notice of the decision shall include:

1. A brief description of the decisions reached and date of decision;

2. A description of the requirements for an appeal, including the type of appeal that may be requested, and the applicable timelines;

3. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing;

4. A statement that the complete case, including the final order, is available for review at the city. (Ord. 2000-06 A §§ 14—18; Ord. 91 18 § 6; Ord. 84 2 § 9.030)

17.76.040—Appeals.

~~A. Decision of Planning Director. A decision of the planning director on the issuance of an administrative permit or discretionary action concerning a land use matter may be appealed to the planning commission by an affected party entitled to notice of decision by filing an appeal with the planning and community development director within 12 days of the mailing of the decision. The notice of appeal that is filed with the city shall indicate the decision that is being appealed and the basis for the appeal. The notice shall indicate in what respects the decision being appealed is a discretionary decision involving a land use matter. The matter at issue will be a determination of the appropriateness of the director's interpretation of the requirements of this title. Notice of the hearing shall be mailed as provided in LCMC 17.76.020(B)(1).~~

~~B. Decision of Planning Commission. A decision of the planning commission concerning a quasi-judicial land use matter may be appealed to the city council by a party to the hearing by filing an appeal within 10 calendar days of the mailing of the order. The notice of appeal filed with the city shall contain the information outlined in subsection (C) of this section. For purposes of this section, "party" refers to the applicant and any person who appeared orally or in writing at the hearing.~~

~~The city council may by motion call up a decision of the planning commission on a quasi-judicial land use application, review of which shall be in the form of an appeal reviewed de novo or on the record as the council determines appropriate. The motion shall set the date, time, and place of hearing.~~

~~C. Information Required. A request for appeal of a planning commission decision shall contain:~~

- ~~1. An identification of the decision sought to be reviewed, including the date of the decision;~~
- ~~2. A statement of interest of the person seeking review including that the person was a party to the initial proceedings and appeared orally or in writing before the planning commission;~~
- ~~3. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the planning commission hearing.~~

~~D. Review.~~

~~1. Except as provided in subsections (D)(6) and (7) of this section, city council review is limited to the evidence in the record before the hearing body. If an appeal is confined to the record of the proceeding, the record shall include:~~

- ~~a. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by a party and received or considered in reaching the decision under review;~~
- ~~b. The final order and findings of fact adopted in support of the decision being appealed;~~
- ~~c. The request for an appeal filed by the appellant;~~
- ~~d. The minutes of the public hearing;~~
- ~~e. The transcript of the hearing below if provided. A verbatim transcript of the hearing body proceedings is not required. Any person who appeared before the hearing body on the application may prepare a certified verbatim transcript of all or part of the hearing body proceedings at that person's own expense. The city manager may prepare a certified verbatim transcript of all or part of the hearing body's proceedings at the city's expense if the city manager deems a transcript necessary or advisable. A certified transcript prepared under this subsection shall be considered part of the record and if offered shall be accepted into evidence and considered by the city council.~~

~~2. After receipt of all required fees the director shall set a hearing and provide public notice indicating the date, time and place of the review and the issues that are the subject of the review pursuant to LCMC 17.76.020(B)(1).~~

3. ~~The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.~~

4. ~~In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant.~~

5. ~~The appellant shall bear the burden of proof.~~

6. ~~Submission of New Evidence. The city council may reopen the record and consider new evidence if such a request is made prior to or at the city council hearing by the appellant or any person who testified before the hearing body, and the requesting party demonstrates:~~

~~a. The hearing body committed a procedural error that prejudiced the requesting party's substantial rights and that reopening the record is the only alternative to remanding the application to the hearing body to correct the error; or~~

~~b. That new evidence material to the decision on appeal exists and could not have been presented earlier to the hearing body. A requesting party may only qualify for this exception if the person demonstrates that the new evidence concerns an unanticipated event which occurred after the close of the hearing before the hearing body. This exception shall be strictly construed by the city council to ensure that all relevant evidence and testimony is submitted to the hearing body.~~

7. ~~De Novo Hearing. In deciding whether to conduct de novo proceedings on an appeal, the city council shall consider the following: the matter involves an interpretation of city ordinance; there is new information that was not available at the time the hearing was conducted as demonstrated in subsection (D)(6)(b) of this section; or for any other reason the city council determines it would be appropriate to conduct a de novo hearing.~~

~~E. Review Body Decision.~~

1. ~~Upon review, the reviewing body may affirm, reverse or modify the decision of the lower body or staff. The hearing body may also remand the decision of the lower body or staff, with instructions.~~

2. ~~Notice of the reviewing body decision shall be provided to all parties to the hearing, within five working days of the date of the final decision. The notice of the decision shall include:~~

~~a. A brief description of the decision reached, and a copy of the final order;~~

~~b. If the reviewing body is the planning commission, a statement that the decision may be appealed to the city council on the record, by filing an appeal within 10 calendar days of the date that the final order was mailed;~~

~~c. If the reviewing body is the city council, a statement that the decision may be appealed to the land use board of appeals by filing a notice of intent to appeal within 21 days of the date that the final order was mailed;~~

~~d. A statement that the complete case is available for review at the city~~

17.76.050 — Final action on application for permit or zone change request.

A. The city shall take final action on an application for a permit or zone change, including the resolution of all appeals, within 120 days after the application is deemed complete. The 120 day period does not apply to an amendment to the comprehensive plan or zoning ordinance, or the adoption of a new land use regulation, notice of which was forwarded to the director of the Department of Land Conservation and Development under LCMC 17.88.065. At the request of the applicant, the 120 day period may be extended for a reasonable period of time by the director, at the director's discretion. In addition, the 120 day period shall be extended by an amount of time equal to the length of any continuance or extension of the time for closing the hearing record or of any period during which the hearing record has been reopened, requested or agreed to by the applicant, and by an additional seven days unless the applicant waives in writing the applicant's right to submit final written arguments in support of the application following closing of the record.

~~B. If the planning commission fails to take action on a quasi-judicial land use matter within 30 days of the close of the public hearing, any party who appeared before the planning commission either orally or in writing may seek review of the matter by the city council on the record. Such review shall be as if on appeal, and all provisions of this title applicable to appeals of planning commission decisions to city council shall apply.~~

~~C. If the city has insufficient time to conduct a hearing before the planning commission and allow for appeal of the decision, if required, to city council, the city council on its own motion may call up the matter for hearing prior to hearing by the planning commission. In such a case, the city council shall conduct an evidentiary hearing on the application and make a final decision within the time allowed by law.~~

~~D. If the city fails to take final action on an application for a permit or zone change within the time period set out in subsection (A) of this section, and the applicant files a petition for a writ of mandamus under ORS 227.160 through 227.185, then the city thereafter shall take no further action on the application under the provisions of this chapter.~~

17.76.060 — Filing fees.

~~A. Permit Fees. A schedule of permit fees shall be established by resolution of the city council and paid to the city upon the filing of an application. Such fees shall not be refundable. The failure to submit a required fee with an application, including return of checks unpaid, or other failure of consideration, shall be a jurisdictional defect and the permit application shall not be processed.~~

~~B. Appeal Filing Fees. A filing fee shall be required for the processing of an appeal and shall be in an amount set by resolution of the city council. The failure to submit a required fee with a notice of appeal, including return of checks unpaid or other failure of consideration, shall be a jurisdictional defect and the city shall deem the appeal abandoned.~~

~~C. Additional Costs. Where the planning and community development director, with the concurrence of the city manager, deems it necessary and in the public's interest to incur additional costs, such as the hiring of an independent geotechnical or engineering expert, or other technical expertise during the course of land use proceedings, such costs shall be borne by the applicant.~~

Chapter 17.88

AMENDMENTS

Sections:

- 17.88.010—Procedure.
- 17.88.020—Initiation of amendments.
- 17.88.030—Application.
- 17.88.040—Action by the planning commission.
- 17.88.050—Action by the city council.
- 17.88.060—Burden of proof.
- 17.88.065—Notice.
- 17.88.070—Limitation on new applications.

17.88.010—Procedure.

This title and/or the comprehensive plan map or text may be amended by changing the boundaries of districts or designations or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment, by following the procedure of this chapter.

17.88.020—Initiation of amendments.

An amendment to the text of this title or to the zoning map and/or to the comprehensive plan map or text may be initiated by:

- A. Motion of the planning commission;
- B. Motion of the city council;
- C. Application filed by an owner of record, a purchaser under a recorded land sale contract, or the holder of an option to purchase property which is the subject of the application for rezoning or comprehensive plan map redesignation;
- D. A Lincoln City resident requesting a change to the text of the comprehensive plan or this title;
- E. The planning and community development director.

17.88.030—Application.

The property owner or his authorized agent or for textual changes a resident of Lincoln City may make application for an amendment by filing an application, at least 45 days prior to the meeting date the matter is intended to be considered, with the planning director or his designee on a form and in a manner prescribed by the city, pursuant to LCMC 17.76.010, which shall include the following additional information:

- A. Name and address of the applicant;
- B. For map amendments, the applicant shall provide title report and/or other documentation to provide evidence that the applicant is the owner of record, a purchaser under a recorded land sale contract, or the holder of an option to purchase property which is the subject of the application;
- C. Address, legal description and Lincoln County assessor's tax lot and map number of the property subject to a map amendment;
- D. A map (Lincoln County assessor's plat) showing the subject property and surrounding properties and a listing of current property owners within 100 feet of the property subject to this application for a map amendment;
- E. Statement and supportive evidence indicating the precise manner in which the proposed amendment is in conformance with the comprehensive plan for the city of Lincoln City and each of the applicable provisions of this title together with any other data pertinent to the findings prerequisite to the granting of an amendment to this title, zoning map or comprehensive plan map and/or text as listed in LCMC 17.88.050(D);

F. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council. No part of the filing fee is refundable.

17.88.040—Action by the planning commission.

A. Upon filing of the application for an amendment as described in LCMC 17.88.030, or upon motion of the city council or planning commission for the initiation of an amendment, the matter shall automatically be referred to the planning commission. The planning commission shall study the matter to the extent that it considers such study to be necessary, including the holding of a public hearing if it so desires, and shall, in open meeting, recommend the approval or disapproval of the amendment. The recommendation shall be reported to the city council by filing the recommendation with the city manager. The city manager shall, upon filing the recommendation, report the same to the city council at a subsequent regular city council meeting after the filing of the recommendations, by setting the matter for public hearing pursuant to LCMC 17.88.050.

B. The report and recommendations of the planning commission shall be made within 60 days after the filing of a complete application; provided, that such time limit may be extended upon the mutual agreement of the parties having an interest in the proceedings. Failure of the commission to so report within 60 days without the aforesaid agreement shall be deemed to be a recommendation of approval of the proposed amendment of the planning commission. If the commission deems it advisable, it may recommend that the area under consideration for change in classification or designation be enlarged or diminished, or reclassified to a district or category other than the district or category originally initiated.

17.88.050—Action by the city council.

A. Hearing Before City Council. Upon receipt of the report from the planning commission or upon the expiration of such 60 days as aforesaid, a public hearing is automatically set for the next regular city council meeting following the receipt of the report; provided, however, that the council may, by motion, set the date of such public hearing at such other time or at such other place it desires. Notice of the public hearing shall be given as provided in Chapter 17.76 LCMC, and in the case of an amendment to property containing a mobile home park, notice shall also be provided to tenants of such mobile home park.

B. At the conclusion of the public hearing, the council may enact an ordinance granting the comprehensive plan and zoning map or textual amendment, or may by motion deny the granting of the amendment. The council shall in any event render its decision on any application within 60 days after the receipt of the report and recommendation of the planning commission or after the expiration of such 60 days as aforesaid; provided, however, that nothing shall prohibit the city council from, by motion, postponing disposition of the application to a definite time past the 60 day period, provided mutual agreement is made for such postponement by the parties having an interest in the proceedings. If the council fails to take action on an application for a zoning or comprehensive plan map amendment within 60 days as provided above, the application shall be deemed denied.

C. If the council proposes to adopt an amendment that is substantially altered from the recommendation of the commission, the council may refer the proposed amendment back to the commission for report and recommendation, which may include the holding of a joint meeting, before adoption. The commission shall consider the amendment within 15 days of the referral and report thereon at the next regular meeting of the city council. Failure to so report will be deemed to constitute approval by the planning commission.

D. Findings of Fact. In order for the city council to adopt an ordinance for an amendment to this title, comprehensive plan document and/or map, it must make and adopt findings as a part of said ordinance that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. The amendment must comply with and conform to the comprehensive plan goals, policies and land use map. For plan and land use regulation amendments, proposals must be consistent with provisions in the Oregon Transportation Planning Rule, OAR 660 012 0060. If statewide goals provide a more specific direction than is provided by the goals in the comprehensive plan, the findings must provide evidence that the proposed amendment is in conformance with statewide land use planning goals and policies.

17.88.060—Burden of proof.

The specific findings made by the city council, upon the recommendation of the planning commission, to adopt an ordinance for an amendment to this title, comprehensive plan text and/or map must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the amendment. If

~~no evidence is produced concerning the requisite findings listed in LCMC 17.88.050(D), the application may be denied based upon improper or inadequate findings. The evidence produced must be referenced in the final order and findings of fact adopted as a part of the ordinance adopting the amendment proposal.~~

17.88.065 — Notice.

~~A. Initial Notice to DLCD. At least 35 days before the first evidentiary hearing on a proposal to amend the comprehensive plan or this title, the department shall mail to the Director of the Oregon Department of Land Conservation and Development a notice that includes the text of the proposed amendment and any supplemental information that the department believes is necessary to inform~~

~~DLCD of the effect of the proposal. The notice shall include the date set for the first evidentiary hearing.~~

~~B. Initial Notice to Others. Notice of a hearing on a proposal to amend the comprehensive plan or this title shall be given to others in accord with LCMC 17.76.020.~~

~~C. Notice to DLCD Following Adoption. Not later than 20 days after adoption by the city council of an ordinance amending the comprehensive plan or this title, the department shall mail a notice that includes a copy of the ordinance, accompanied by materials to comply with ORS 197.615(2), to the Director of DLCD. If the adopted amendment is substantially different than the proposed amendment mailed to DLCD under subsection (A) of this section, the notice shall specify the substantial differences. The notice shall include a signed statement by the person mailing it, indicating the date of deposit in the mail.~~

~~D. Notice to Others Following Adoption. On the same date as the department's mailing under subsection (C) of this section, notice of adoption by the city council of an ordinance amending the comprehensive plan or this title shall be given to others in accord with LCMC 17.76.030(G). In addition to the information set out in LCMC 17.76.030(G), the notice also shall:~~

- ~~1. Identify the place where and the hours during which a person may review the amendment; and~~
- ~~2. Include a signed statement by the person mailing the notice indicating the date of deposit in the mail.~~

17.88.070 — Limitation on new applications.

~~In a case where an application for an amendment is denied by the city council, the application shall not be eligible for resubmittal for one year from the date of the denial, unless the denial was specifically stated to be without prejudice. A new application affecting the same property must be, in the opinion of the planning commission and the city council, substantially different from the application denied to be eligible for consideration within one year from the date of denial, unless the first denial was denied without prejudice, or the planning commission finds that conditions have changed to an extent that further consideration is warranted.~~

17.52.210 — Planned unit development (PUD).

~~A. Purpose. It is the purpose of this section to allow master planned developments in any residential or commercial zone, or any combination of them, and in doing so, to allow a more flexible approach to land development than that which is normally accomplished through the subdivision and zoning ordinances of the city. The planned unit development approach is intended to provide more desirable environments by encouraging creative site planning and building designs; to make possible greater diversification between buildings and open spaces; and to conserve land and minimize development costs. In addition to the uses allowed in residential zones, the planned unit development approach may allow certain commercial uses subject to the specific limitations of this section.~~

~~B. Planning Commission Authority. The planning commission shall have the authority to approve, approve with conditions, or disapprove planned unit developments in any residential or commercial zone, or any combination of them, subject to the provisions of this section.~~

~~C. Pre Application Conference. Prior to filing an application for a planned unit development, the applicant shall review the applicant's preliminary master plan with the city manager or the city manager's designated representative at a pre application conference. The purpose of the pre application conference is to inform the city of the nature of a likely PUD application at an early date and to provide the potential applicant with information on what will be needed to make an application complete.~~

~~D. Allowable Density. The allowable residential density in a PUD that meets only the minimum PUD standards is the “maximum base residential density” and shall be determined in the following manner:~~

- ~~1. Determine the gross square footage of the project site.~~
- ~~2. Subtract from the gross square footage the square footage of any areas proposed for nonresidential development, including commercial uses, places of worship, schools, and public buildings and their associated parking areas and grounds (including required yards and landscaping areas). The result is the “preliminary gross residential area.”~~
- ~~3. Subtract from the preliminary gross residential area the square footage of any areas of significant natural resources as identified in the comprehensive plan. The result is the “final gross residential area.”~~
- ~~4. Multiply the final gross residential area by 0.83. The result is the “final net residential area.”~~
- ~~5. Divide the final net residential area by the minimum lot size of the underlying zone. The result is the “maximum base residential density” expressed in dwelling units. Any number not a whole number shall be rounded down to a whole number.~~

~~E. Residential Density Bonuses:~~

- ~~1. Density in excess of the maximum base residential density for the underlying zone may be considered for projects that comply with the density bonus standards. The amount of density bonus shall be determined by the type of density bonus standards incorporated in the development proposal.~~
- ~~2. Except with respect to the “affordable housing bonus,” in no case shall the density bonus or bonuses cause the overall project density to exceed the maximum allowed residential density, which in the R-1-5 zone is 8.71 units per gross project acre, in the R-1-7.5 zone is 5.81 units per acre, in the R-1-10 zone is 4.36 units per acre, and in the R-M zone is the “low density” density as calculated in LCMC 17.20.050(A).~~
- ~~3. If an applicant requests one or more density bonuses the planning commission shall determine, based on evidence supplied by the applicant, any other person, or staff, whether the applicant has complied with the bonus density standards. If the planning commission determines that the applicant has complied with one or more bonus density standards it shall assign the applicable density bonus points and multiply the maximum base residential density by the applicable density bonus points. The result is the total number of additional residential units allowed for the project above the maximum base residential density.~~
- ~~4. Density Bonus Standards. If an applicant desires to be allowed to develop a number of residential units above the maximum base residential density the applicant shall comply with one or more of the following bonus density standards. The density bonus points for each density bonus standard are in parentheses at the end of each standard.~~
 - ~~a. Floodplain.~~
 - ~~i. Requirement. For projects where part(s) of the site is located within the 100 year floodplain as defined and mapped by the Federal Emergency Management Agency, the portions in the floodplain must be developed according to the National Flood Insurance Program requirements.~~
 - ~~ii. Density Bonus Standard. For projects where part(s) of the site is located within the 100 year floodplain as defined and mapped by the Federal Emergency Management Agency, develop only on portions of the site that are not in the 100 year floodplain or on portions that have been previously developed. (0.01 point.)~~
 - ~~b. Steep Slopes.~~
 - ~~i. Requirement. On portions of the project site with pre-project slopes greater than 15 percent that are not previously developed, do not disturb slopes greater than 40 percent and do not disturb portions of the project site within 50 feet of the top of such slopes, and 75 feet from the toe of such slopes.~~

ii. ~~Density Bonus Standard. On portions of the project site with pre-project slopes greater than 15 percent that are not previously developed sites, limit development to no more than 40 percent of slopes between 25 percent and 40 percent, and to no more than 60 percent of slopes between 15 percent and 25 percent, and locate development such that the percentage of the development footprint that is on pre-project slopes less than 15 percent is greater than the project's total percentage of buildable land that has pre-project slopes less than 15 percent. (0.01 point.)~~

~~e. Protected Species Habitat.~~

~~i. Requirement. If designated critical habitat for species that are listed or are candidates for listing under state or federal endangered species acts is found on or adjacent to the project site, do not disturb that critical habitat or portions of the site within an appropriate buffer around the critical habitat.~~

~~ii. Density Bonus Standard. If habitat for species that are listed or are candidates for listing under state or federal endangered species acts is found on the project site, do not disturb that habitat or portions of the site within an appropriate buffer around the habitat, with habitat connections or corridors (including connections to habitat on adjacent parcels) in mind. The geographic extent of the habitat and the appropriate buffer shall be identified by a qualified biologist (as determined by the planning and community development director) or the appropriate federal or state agency. Protect the habitat and its identified buffers from development in perpetuity by donating or selling the land or a conservation easement on the land to an accredited land trust or relevant public agency. (0.02 points.)~~

~~d. Public Transit.~~

~~i. Requirement. Design streets so that pullouts and public transit shelters may be added in the future without the need to acquire additional rights of way or relocate any sidewalks or utility lines.~~

~~ii. Density Bonus Standard. Provide covered and at least partially enclosed public transit shelters, adequate to buffer wind and rain, at appropriate locations within the project boundaries. If public transit does not serve the area of the project, provide pullouts at appropriate locations within the project boundaries so that public transit shelters may be added in the future. (0.01 point.)~~

~~e. Accessible Design.~~

~~i. Requirement. Design and build all buildings to comply with the minimum requirements of the Americans with Disabilities Act.~~

~~ii. Density Bonus Standard. For each residential unit type developed, design 20 percent (and not less than one) of each type to comply with the accessible design provisions of the Fair Housing Amendments Act (FHAA) and Section 504 of the Rehabilitation Act (Rehabilitation Act), as applicable. Separate residential unit types include: single family, duplex, triplex, multi unit row or townhouses, and mixed use buildings that include residential units. All paths of travel between residential units and other buildings within the project shall comply with the accessible design provisions of the FHAA and Rehabilitation Act, as applicable; and facilities and rights of way shall comply with the accessible design provisions of the FHAA, the Rehabilitation Act, or the Americans with Disabilities Act, as applicable. (0.01 point.)~~

~~f. Energy Efficiency.~~

~~i. Requirement. None.~~

~~ii. Density Bonus Standard. (0.02 point).~~

~~(A) For new residential structures of three stories or fewer, build and equip the structures to qualify as an Energy Star Home by either a performance path (through a HERS Index rating) or a prescriptive path (Building Option Package or BOP); and~~

(B) For nonresidential structures and residential structures of more than three stories, demonstrate a minimum 10 percent improvement in the proposed building performance rating compared to the baseline building performance rating per ASHRAE/IESNA Standard 90.1-2007 (without addenda) by a whole building project simulation using the Building Performance Rating Method in Appendix G of the Standard. Appendix G requires that this energy analysis include all of the energy costs within and associated with the building project. The proposed design must comply with the mandatory provisions (Sections 5.4, 6.4, 7.4, 8.4, 9.4 and 10.4) in Standard 90.1-2007 (without addenda), must include all the energy costs within and associated with the building project, and must be compared against a baseline building that complies with Appendix G to Standard 90.1-2007 (without addenda).

The default process energy cost is 25 percent of the total energy cost for the baseline building. For buildings where the process energy cost is less than 25 percent of the baseline building energy cost, the applicant must provide supporting documentation substantiating that process energy inputs are appropriate. For the purposes of this analysis, process energy is considered to include, but is not limited to, office and general miscellaneous equipment, computers, elevators and escalators, kitchen cooking and refrigeration, laundry washing and drying, lighting exempt from the lighting power allowance (e.g., lighting integral to medical equipment) and other (e.g., waterfall pumps). Regulated (nonprocess) energy includes lighting (such as for the interior, parking garage, surface parking, facade, or building grounds, except as noted above), HVAC (such as for space heating, space cooling, fans, pumps, toilet exhaust, parking garage ventilation, kitchen hood exhaust, etc.) and service water heating for domestic or space heating purposes.

g. Outdoor Water Conservation.

i. Requirement. For irrigation, design and install all irrigation systems in the project so that they do not spray onto or otherwise directly place irrigation water onto impervious surfaces such as roads, driveways, parking lots, and sidewalks.

ii. Density Bonus Standard. For irrigation, design and install all irrigation systems in the project that use only captured rainwater, recycled wastewater, recycled graywater, or install landscaping that does not require permanent irrigation systems. Temporary irrigation systems used for plant establishment are allowed only if removed within one year of installation. (0.01 point.)

h. Indoor Water Conservation.

i. Requirement. None.

ii. Density Bonus Standard. Design and construct at least 90 percent of all buildings in the project such that they meet one of the following requirements according to the appropriate category (0.01 point):

(A) For nonresidential buildings and residential buildings over three stories, employ strategies that in aggregate use 30 percent less water than the water use baseline calculated for the building (not including irrigation) after meeting the Energy Policy Act of 1992 fixture performance requirements. Calculations are based on estimated occupant usage and shall include only the following fixtures (as applicable to the building): water closets, urinals, lavatory faucets, showers, and kitchen faucets.

(B) For residential buildings three stories or fewer, install fixtures that comply with all of the following requirements:

(1) The average flow rate for all lavatory faucets must be no more than 2.0 gpm.

(2) The average flow rate for all shower heads must be no more than 2.0 gpm.

(3) The average flow rate for all toilets, including dual flush toilets, must be no more than 1.3 gpf.

i. Tree Preservation.

~~i. Requirement. Comply with the requirements of LCMC 17.52.220.~~

~~ii. Density Bonus Standard. For each two percent of canopy cover provided by trees that are preserved and incorporated into a development plan, a 0.01 point density bonus may be granted. The bonus is not applicable to trees preserved in areas that would otherwise be precluded from development, including floodplains, slopes greater than 25 percent, drainage ways, or wetlands. No more than a 0.10 point density bonus may be granted for any one development.~~

~~F. Affordable Housing Bonus. An additional density bonus of 10 percent above the maximum base residential density shall be available for projects incorporating an affordable housing element. For the purposes of this section an affordable housing element must include the following components:~~

~~1. At least five percent of the total number of dwelling units in the project must be affordable units.~~

~~2. The affordable units must be incorporated into the overall project and not be clustered into a separate area of the project. This provision is not intended to prohibit "cottage clusters" of affordable units; provided, that such clusters are themselves incorporated into the overall project and not clustered into a separate area of the project.~~

~~To be considered "affordable" a unit must meet affordability standards as adopted by the city. Alternatively the developer may transfer title to individual lots dedicated to affordable housing to the Lincoln County Land Trust or other organization approved by the planning and community development director for development by that entity as affordable housing.~~

~~G. Large Scale, Mixed Use PUDs. This subsection sets forth special provisions for large scale, mixed use PUDs that provide additional amenities for residents, visitors, and the larger Lincoln City community while ensuring that impacts can be internalized and mitigated through master planning and coordinated on site management.~~

~~1. Applicability. Subsection (H) of this section may be applied only to an existing or proposed PUD that is 100 acres or larger, has direct access to an arterial street, and designates at least 35 percent of the gross PUD site area as open space.~~

~~2. Limited Recreational Commercial Uses Permitted:~~

~~a. Uses Allowed. In addition to residential uses, the following recreational commercial uses may be permitted in large scale, mixed use PUDs located in residential or commercial zones, subject to the limitations in subsection (G)(2)(b) of this section:~~

~~i. Motels, hotels, and resorts;~~

~~ii. Cabins and yurts used for overnight accommodations;~~

~~iii. Eating or drinking establishments without drive up service facilities;~~

~~iv. Retail sales, exclusive of drive up service facilities;~~

~~v. Day spas;~~

~~vi. Child day care facilities;~~

~~vii. Religious institutions and houses of worship;~~

~~viii. Convention centers and meeting facilities;~~

~~ix. Time share units;~~

~~x. Bed and breakfast accommodations;~~

~~xi. Public use or public utility;~~

- xii. Utility substation;
- xiii. Outdoor commercial amusement establishments;
- xiv. Essential emergency communications and warning facilities;
- xv. Emergency shelters;
- xvi. Mixed use incorporating one or more of the uses listed here.

b. ~~Limitations. In addition to such conditions and restrictions as the planning commission may deem appropriate, the following limitations apply to commercial uses in large-scale, mixed-use PUDs located in residential or commercial zones:~~

- i. ~~The combined area of commercial uses, including associated parking areas, may not exceed 15 percent of the gross site area;~~
- ii. ~~Commercial uses must be located a minimum of 100 feet from existing off-site residential buildings;~~
- iii. ~~No commercial or mixed-use buildings may exceed 45 feet in height (unless approved by a vote of the people pursuant to the provisions of LCMC 17.52.190); and~~
- iv. ~~Recreational commercial uses are subject to the “pearl” Lincoln City commercial design standards.~~

3. ~~Applications for large-scale, mixed-use PUDs shall meet the requirements of OAR 660-012-0060, and be subject to the following:~~

- a. ~~A transportation impact analysis (TIA) shall be required at the time of application to determine if the proposed change would significantly affect an existing or planned transportation facility. The TIA shall demonstrate that the development does not significantly impact the transportation system as defined by OAR 660-012-0060(1); or the development shall be made consistent with the transportation system as allowed in OAR 660-012-0060(2). The TIA, findings of significant effect/no significant effect, and proposed mitigation measures shall be sent to the Oregon Department of Land Conservation and Development and the Oregon Department of Transportation for acknowledgment (concurrence).~~
- b. ~~To be consistent with OAR 660-012-0060, the analysis as indicated in subsection (G)(3)(a) of this section shall include a review process that includes adequate public notice and a public hearing, with the right to appeal.~~
- e. ~~Where access to US 101 is proposed as part of a large-scale, mixed-use PUD, a valid ODOT highway approach road permit must be provided to Lincoln City before development permits may be issued.~~

H. ~~Preliminary Master Plan Application. Following a pre-application conference, an applicant may submit a preliminary master plan to the site plan committee established under LCMC 17.52.240 for review. The preliminary master plan, which must include a drawing showing the layout of the proposed planned unit development, must contain the following information:~~

1. ~~Proposed name of the planned unit development;~~
2. ~~Date, north point and scale of drawing;~~
3. ~~Appropriate identification clearly stating that the drawing is a preliminary planned unit development master plan;~~
4. ~~Location of the planned unit development by section, township and range; a legal description sufficient to define the location and boundaries of the proposed planned unit development tract; and the tract designation or other description according to the real estate records of the county assessor;~~
5. ~~A vicinity sketch map at a scale of one inch equals 400 feet showing adjacent property boundaries and land uses;~~

6. The following:

- a. Location, widths and names of all existing streets or other public ways within or abutting the planned unit development;
- b. Contour lines having the following minimum intervals:
 - i. Two foot contour intervals for ground slopes less than 10 percent; and
 - ii. Five foot contour intervals for ground slopes 10 percent or greater. Contours shall be based on contour maps provided by the city or other data approved by the city engineer;
- c. Location of at least one temporary benchmark within the planned unit development boundaries or the source of the contour line data shown. (Source and accuracy subject to city engineer's approval);
- d. Location and direction of all water courses and natural features such as rock outcroppings, marshes and wooded areas; and the approximate locations of trees or stands of trees having a trunk cross sectional diameter of eight inches (approximately 25 inches in circumference) or more, measured at a point 54 inches above the base of the trunk on the uphill side. The plan must identify those water courses, natural features and areas of trees meeting the described criteria which are to remain and those which may be altered or removed;
- e. Proposed streets, including location, widths and approximate radii or curves;
- f. Location of existing and proposed easements on the site or abutting property, showing the width and purpose of each easement;
- g. The types of housing proposed within the PUD, the approximate location or locations proposed for each type of housing, and the approximate housing density proposed at each location;
- h. Sites, if any, allocated for:
 - i. Churches;
 - ii. Parks, schools, playgrounds;
 - iii. Public buildings;
 - iv. Open space;
 - v. Commercial uses, specifying the type of each.
- i. Area coverage of existing and proposed structures, lots, streets or other development.

I. Supplemental Preliminary Master Plan Information. The applicant also shall submit the following information to supplement the preliminary master plan. This information can be submitted in separate statements accompanying the preliminary master plan:

1. Proposed restrictions to be filed in the county deed records, in outline form, such as deed restrictions, conditions, covenants and restrictions, and homeowners' association agreements. The outline restrictions shall identify the time at which the restrictions will be filed in the county deed records; generally who will have authority to enforce the restrictions; specifically which restrictions, if any, are proposed to be enforceable by the city; the time at which the restrictions will become enforceable; and which restrictions, if any, will not be subject to amendment without the consent of the city;
2. Approximate locations and anticipated grades of all streets. Typical cross sections of the proposed streets showing widths of roadways, curbs, location and widths of sidewalks and the location and size of utility mains;

3. ~~Approximate plan of proposed sanitary sewers, storm drains, storm water detention and drainage pretreatment facilities and the water distribution system;~~
4. ~~A general description of property intended to be dedicated to the city or public, other than street rights of way, including proposed dedication restrictions;~~
5. ~~A description of any residential density bonus the applicant is requesting, including evidence demonstrating compliance with applicable density bonus standards;~~
6. ~~Proposed number of residential units;~~
7. ~~An approximate tabulation of all dwelling units by type;~~
8. ~~A narrative description of the planned unit development and the manner in which it meets the purpose set out in subsection (A) of this section;~~
9. ~~A statement describing the present and proposed ownership;~~
10. ~~A preliminary landscape plan, covering both areas to retain undisturbed their natural vegetation and areas to be relandscaped;~~
11. ~~A circulation plan and traffic impact analysis identifying likely circulation patterns for and traffic impacts from traffic generated by the development including patterns and impacts within the development, in the area surrounding the development, and in other affected areas of the city;~~
12. ~~A statement whether the applicant proposes to submit the final master plan for review as a single master plan or in phases; a statement of the date or dates by which the applicant proposes to submit the final master plan or final master plan phases for review; and a statement of the date or dates by which the applicant anticipates that the development and related improvements or each phase thereof will be substantially completed.~~
13. ~~A tree maintenance and protection plan, which shall contain the following information:~~
 - a. ~~An accurate topographical survey, subdivision map or plat map, that bears the signature of a qualified, registered surveyor or engineer, and which shows:~~
 - i. ~~The shape and dimensions of the property, and the location of any existing and proposed structures or improvements;~~
 - ii. ~~The location of the individual trees, with a diameter of eight inches or more, on the site, and indicating species, approximate height, d.b.h., canopy spread and common name;~~
 - iii. ~~The location of unique trees or stands of trees as set out in the arborist report described below; and~~
 - iv. ~~The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.~~
 - b. ~~In lieu of the map or survey, an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the planning director, and clearly indicating the information required by this subsection.~~
 - e. ~~Arborist Report. The report shall identify any unique or unusual trees or stands of trees and describe the health and condition of all trees subject to removal or transplanting, and shall include information on species, common name, d.b.h., and approximate height and age.~~
 - d. ~~Tree Protection. Unless specifically exempted by the planning director, a statement describing how trees intended to remain will be protected during tree removal and how remaining trees will be maintained.~~

e. **Tree Identification.** Unless specifically exempted by the planning director, a statement that any trees proposed for removal will be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction documents.

f. **Replacement Trees.** A description of the proposed tree replacement program with a detailed explanation including the number, size, species, and cost. In lieu of replacing trees, the applicant may propose to pay into the city tree fund an amount equivalent to the value of the replacement trees after installation, as provided in this subsection.

g. **Covenants, Conditions and Restrictions (CC&Rs).** Where the applicant is proposing to remove trees on common areas, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.

h. **Waiver of Documentation.** The planning director may waive an application document where the required information has already been made available to the city, or where the director determines the information is not necessary to review the application.

J. **Determination That Preliminary Master Plan Is Complete.** Following submission or resubmission of a preliminary master plan, the site plan committee established by LCMC 17.52.240 shall determine whether the plan is complete pursuant to the submittal requirements of subsections (H) and (I) of this section. The determination of the committee shall be in writing and, if the application is determined to be incomplete, shall be provided to the applicant with a description of the additional material required to make the application complete.

K. **Site Plan Committee Review of Complete Preliminary Master Plan.** Following submission of a complete preliminary master plan, the site plan committee shall review the preliminary master plan, shall seek comments on the plan from potentially affected governmental units and agencies, and shall report to the planning commission the comments of the committee members and of those governmental units and agencies that submit comments.

L. **Planning Commission Consideration of Preliminary Master Plan.** Following receipt of comments on the preliminary master plan from the site plan committee, the planning commission shall review the plan and comments in public hearings and shall give approval, approval with conditions, or disapproval to the preliminary master plan. The planning commission shall state its decision and its reasons in writing. The applicant may appeal the decision to the city council in accordance with the provisions of LCMC 17.76.040. The planning commission shall issue its written decision in a timely manner so that the city's final decision, inclusive of all appeals, can be made within 120 days after submission of a complete preliminary master plan. The planning commission's consideration of the preliminary master plan shall be subject to the following:

1. The commission shall approve, or approve with conditions, the plan if it finds that the plan, either as submitted or with conditions, meets all of the following criteria. The commission shall disapprove the plan if it finds that the plan, either as submitted or with conditions, does not meet any one or more of the following criteria.

a. The proposed planned unit development will be substantially compatible with existing development in the surrounding area; and undeveloped land in the surrounding area can be developed in a manner substantially compatible with the proposed planned unit development.

b. The number of years proposed for completion of the development or each phase of the development is reasonable, taking into consideration the possibility of changing land use patterns in or requirements of the city over time. In order to ensure that the development will be compatible with land use patterns in and requirements of the city at the time of approval of a final master plan, the planning commission shall establish an expiration date for the preliminary master plan approval, not sooner than two years after approval of the preliminary master plan; may impose conditions requiring that a final master plan or phases thereof be submitted for commission review within a specified period or periods of time, not sooner than one year after approval of the preliminary master plan; or may impose conditions requiring commission reevaluation of as yet unbuilt portions of the development, for conformity with then existing city zoning ordinance requirements in relation to then existing conditions, not sooner than five years after approval of the preliminary master plan, and at such periodic intervals of not less than five years thereafter as the commission deems appropriate to ensure conformity.

~~e. Construction of the development can be accomplished in a manner that does not create unreasonable negative impacts on the area surrounding the development or in the city. In order to assure the avoidance or mitigation of negative construction impacts on the area surrounding the development or in the city, the planning commission may impose conditions including but not limited to:~~

- ~~i. Requirements that removal of existing landscaping during construction be limited to areas of the planned unit development to be constructed shortly following removal and to portions of those areas on which construction will occur;~~
- ~~ii. Prohibitions of open burning on the site during construction;~~
- ~~iii. Prohibitions or limitations on construction track out;~~
- ~~iv. Restrictions on construction noise; and~~
- ~~v. Restrictions on construction traffic.~~

~~d. The development will not create unreasonable negative impacts on the area surrounding the development or in the city. In order to assure the avoidance or mitigation of negative impacts, the planning commission may require the filing of restrictions in the county deed records including but not limited to restrictions:~~

- ~~i. Prohibiting the removal of specified landscaping; and~~
- ~~ii. Prohibiting open burning during construction.~~

~~e. Street, water, sewer, drainage and drainage pretreatment, storm water detention, and other similar facilities in the area surrounding the development and in the city are or will be adequate to provide for the health, safety and welfare for the development's population densities and the type of development proposed, taking into consideration existing and projected future demands on those facilities.~~

~~f. Street, water, sewer, drainage and drainage pretreatment, storm water detention and other similar facilities proposed to be constructed as part of the development are adequate to provide for the health, safety and welfare for the population densities and the type of development proposed.~~

~~g. The proposed number of residential units does not exceed the maximum permitted number of residential units; and at least 15 percent of the gross area is dedicated to landscaping. For purposes of computing area dedicated to landscaping, dedicated open space and protected resource areas may be treated as area dedicated to landscaping, but parking areas may not.~~

~~2. The planning commission, in approving a preliminary master plan, may attach conditions it finds are necessary or appropriate to carry out the purposes of this title.~~

~~M. Extension of Approved Preliminary Master Plan. Prior to expiration of an approved preliminary master plan, the planning commission may, on receipt of an application applying to the as yet unbuilt portions of the development, extend the expiration date; provided, that the extension will be consistent with then existing city zoning ordinance requirements, in relation to then existing conditions. An application for an extension shall be subject to all of the procedures set out in subsections (C) through (H) of this section, including but not limited to the requirement of a hearing before the planning commission, except that the application materials required to be submitted shall be only such materials supplementing the original application as are needed to demonstrate that an extension will meet the criteria for an extension established by this subsection.~~

~~N. Modification of Approved Preliminary Master Plan. The planning commission may, on receipt of an application applying to the as yet unbuilt portions of the development, modify an approved preliminary master plan; provided, that the modifications will be consistent with the then existing city zoning ordinance requirements, in relation to then existing conditions. An application for modifications shall be subject to all of the procedures set out in subsections (C) through (L) of this section, including but not limited to the requirement of a hearing before the planning commission, except that the~~

~~application materials required to be submitted shall be only such materials supplementing the original application as are needed to identify the proposed modifications and to demonstrate that the modifications will meet the criteria for modifications established by this subsection.~~

~~O. Procedure Following Expiration of Preliminary Master Plan. If an approved preliminary master plan expires, whether as to the entire area proposed for development or as to as yet unbuilt portions of the development, then a complete new application must be submitted prior to reconsideration. An application for reconsideration shall be treated as an original application and shall be subject to all of the procedures set out in subsections (C) through (H) of this section, including but not limited to the requirement of a hearing before the planning commission.~~

~~P. Submission of Tentative Subdivision Plan. If an approved preliminary planned unit development master plan provides for the subdivision of land within the planned unit development, then within such period or periods of time as required by the preliminary planned unit development master plan approval, an applicant shall file a tentative subdivision plan for the planned unit development or for phases of the development, if phasing is permitted. The submittal requirements, procedures and approval requirements for the tentative subdivision plan shall be as set out in LCMC Title 16.~~

~~Q. Planning Commission Consideration of Final Master Plan.~~

~~1. Following preliminary master plan approval, and prior to issuance of a development permit and commencement of development, a final master plan must be submitted to and approved by the planning commission. The final master plan may be submitted in development phases; provided, that:~~

~~a. Each phase can exist as a separate entity capable of independently meeting all requirements and standards of this section and of the underlying zones in which the PUD is located; or~~

~~b. Prior to the development of any phase that will not exist as such a separate entity capable of independently meeting the requirements and standards, restrictions enforceable by the city and in a form approved by the city have been filed in the county deed records, such as conditions, covenants and restrictions. The restrictions shall be applicable to other areas of the planned unit development not yet proposed for development, and shall be sufficient to assure that:~~

~~i. The area within the phase proposed for development, when combined with the area not yet proposed for development, as subject to the deed restrictions, can exist as a combined entity capable of independently meeting the requirements and standards;~~

~~ii. The phase has met any applicable reevaluation requirement imposed during the preliminary master plan approval process; and~~

~~iii. The separate development of phases will not be detrimental to the total development nor to the adjacent properties in the event the remainder of the development is not completed.~~

~~2. The final master plan must be in sufficient detail to allow the planning commission to determine whether the final master plan is consistent with the preliminary master plan and whether the final master plan meets all conditions applicable to the preliminary master plan. In addition, the final master plan shall include:~~

~~a. Detailed landscaping plans showing the type and size of all plant material and its location, the irrigation system, decorative materials, recreation equipment and special effects; and the schedule for removal and replanting of vegetation;~~

~~b. Detailed water, sewer, drainage and drainage pretreatment, storm water detention and street system plans, including:~~

~~i. Central line profiles showing finished grades of all streets;~~

~~ii. Cross sections of proposed streets showing widths of roadways, curbs, locations and widths of sidewalks and locations and sizes of utility mains;~~

iii. Profiles of sanitary sewer, street drainage, drainage pretreatment, storm water detention and water distribution systems, showing pipe size and location of valves and fire hydrants, all to conform to city standards;

iv. The estimated cost of street, sewer, drainage and drainage pretreatment, storm water detention, water, and other public infrastructure improvements within the planned unit development.

3. The planning commission shall approve, or approve with conditions, the final master plan if the planning commission determines that the plan meets all of the following criteria. The commission shall disapprove the final master plan if it finds that the plan, either as submitted or with conditions, does not meet one or more of the following criteria:

- a. The plan is consistent with the preliminary master plan and all conditions applicable to it;
- b. All utility systems and landscaping conform to city standards or are approved by the city engineer; and
- c. If the final master plan is for a phase of the total planned unit development, the criteria for phasing stated in subsection (Q)(1) of this section will be met.

R. Requirements Following Final Master Plan Approval.

1. A certified print of the approved final planned unit development master plan shall be provided by the applicant without charge to the office of the city recorder.

2. Except as provided in subsection (R)(3) of this section, proposals to make changes in the final master plan after it has been approved shall be considered the same as a new PUD application and shall be permitted only in accordance with all of the procedures set out in this section, including but not limited to the requirement of a hearing before the planning commission, except that the application materials required to be submitted shall be only such materials supplementing the original application as are needed to identify the proposed changes and to demonstrate that the changed planned unit development will meet the criteria established by this section.

3. Proposals to make minor changes in the final master plan after it has been approved may be approved by the city manager or the city manager's designated representative. Minor changes consist only of changes that will not have public visibility and that:

- a. Do not increase densities;
- b. Do not change boundaries;
- c. Do not change any use, specific or general, described in the final master plan; and
- d. Do not change the location or amount of land devoted to specific land uses.

4. A final PUD plat shall be filed with and approved by the city in accordance with the final platting requirements of LCMC Title 16 (Subdivisions) and recorded with Lincoln County, within one year of the approval of a final master plan. One extension of time may be granted, for good cause, by the planning commission if such extension is authorized by the commission prior to the expiration of the one year period, and provided such extension not exceed one additional year. No additional extensions may be granted. If a final PUD plat is not filed, approved and recorded as required by this section, then the planned unit development approval shall become void as of the date the filing requirement no longer can be met.

5. Prior to commencement of development, the developer shall provide to the city an improvement agreement and financial security instrument as described in LCMC 17.52.240(L) and shall obtain a development permit.

17.52.240 — Site plan review.

A. Purpose. The purpose of site plan review is to establish a coordinated permit process to ensure that new development is in compliance with the requirements of this title. The result of approval of a site plan is the issuance of a permit to the applicant

~~to develop the site in accord with the site plan and any conditions of site plan approval without further review of the site plan for compliance with the provisions of this title. The issuance of a site plan review permit under this section, however, does not excuse a developer or owner from obtaining any other permits or approvals required by this title, by the Lincoln City Municipal Code, or by any other local, state, or federal law or authority applicable to the proposed development, including but not limited to city sign, tree cutting, grading, sedimentation prevention, erosion control, conditional use, planned unit development, and land division permits.~~

~~B. Site Plan Review Criteria. A site plan review application shall demonstrate that:~~

- ~~1. The proposed development will comply with all of the applicable requirements of this title; and~~
- ~~2. The arrangement of all buildings and structures, access points, parking and loading facilities, landscaping, lighting, walls and fences, and stormwater detention, treatment, and drainage features and facilities will avoid traffic congestion and will provide for pedestrian and vehicular safety and welfare.~~

~~C. Site Plan Review Officials. Site plan review officials shall include, but need not be limited to, the director, fire marshal, public works director, police chief, and parks and recreation director, or their designates. These officials shall have the opportunity to review, for compliance with the requirements of this title, the site plans for all proposed nonexempt new buildings, outdoor storage areas, and parking lots, and for the expansion of existing nonexempt buildings, outdoor storage areas, and parking lots, in those zones where site plan review is required.~~

~~D. Site Plan Review Required.~~

~~1. Except as provided in subsection (D)(2) of this section, site plan review is required before any building permit is issued authorizing development and before any outdoor storage area or parking lot development commences, in the R-M, PC, RC, GC, PI, M-W, P, OS, TVC, NPD and OPD zones, and before any nonresidential building permit is issued authorizing development and before any nonresidential storage area or parking lot development commences in any other zone.~~

~~2. The following development is exempt from site plan review:~~

~~a. Single family and duplex dwellings.~~

~~b. Development involving only modifications to the interior of a structure.~~

~~c. Development meeting all of the following criteria:~~

~~i. The development involves either no expansion of an existing building or expansion of an existing building by 800 square feet or less; and~~

~~ii. The development does not affect on-site traffic circulation patterns; and~~

~~iii. The development adds less than three additional parking spaces.~~

~~E. Application. An application for site plan review shall include:~~

~~1. The application form established by the department in order to have the information needed to demonstrate compliance with the requirements of this title provided in a manner that will allow the site plan review officials to review the site plan in an organized and efficient manner;~~

~~2. The filing fee established by resolution of the city council;~~

~~3. A site plan covering all lots on which development will occur or whose area is needed within the development in order to meet requirements of this title. The site plan shall be drawn to scale and shall indicate the following, where applicable:~~

~~a. Dimensions and orientation of the site, and lot lines of, and within, the site.~~

~~b. Locations of buildings and structures, both existing and proposed, and an identification of buildings and structures proposed to be removed.~~

~~c. Location and layout of off-street parking and loading facilities.~~

~~d. Location and points of entry and exit for motor vehicles, and the internal circulation pattern.~~

~~e. Location of walls and fences and an indication of their height and materials of construction.~~

~~f. Location and type of exterior lighting standards and devices.~~

~~g. Location of areas of required landscaping and areas of existing vegetation proposed to be retained.~~

~~h. Grading (excavations and fills), by plotting existing and proposed contours and existing and proposed stormwater detention, treatment, and drainage features and facilities.~~

~~i. The height of buildings and structures.~~

~~j. The proposed use of buildings and structures.~~

~~k. Location and dimensions of existing and required utility, drainage and sidewalk easements.~~

~~l. Location of required sidewalk, curb, gutter, and pavement improvements.~~

~~m. Location of existing and proposed water and sewer lines and facilities.~~

~~n. General location of proposed private utility lines.~~

~~o. If environmental assessments or reports are required by Chapters 17.46, 17.47 and 17.48 LCMC, the location of any riparian vegetation, significant wildlife habitat and major marshes, exceptional aesthetic resources and related natural vegetation cover, historic and archaeological sites, natural hazards, and beaches and dunes that are subject to those sections;~~

~~4. Any environmental assessments or reports required by Chapters 17.46, 17.47 and 17.48 LCMC. If an application does not include the required environmental assessments or reports, the application shall be deemed not complete, but, on the request of the applicant, site plan review officials may review and comment on the site plan on a preliminary basis;~~

~~5. A traffic impact study at the request of the city engineer, if indicated by LCMC 17.52.300;~~

~~6. Any other architectural, civil or traffic engineering, or other information required to permit findings that the development will comply with the provisions of this title;~~

~~7. For a proposed expansion of an existing building, outdoor storage area, or parking lot, the site plan shall indicate the relationship of the proposed expansion to the existing development but need not include other data required in subsection (D) of this section, except as necessary to permit findings that the expanded development will comply with the provisions of this title; and~~

~~8. If an applicant intends to assert that it cannot legally be required, as a condition of site plan approval, to provide easements and improvements at the level otherwise required by LCMC 17.52.230, the application shall include the report described in LCMC 17.52.230(B).~~

~~F. Notice of Receipt of Application.~~

~~1. After receipt of a site plan application, the department shall provide written notice of the application to:~~

~~a. Owners of property within 250 feet of the site for which the application is submitted. The list of property owners shall be compiled from the most recent property tax assessment roll.~~

~~b. Any neighborhood association recognized by the city whose boundaries include the site.~~

~~2. The written notices of the application shall include the following information:~~

~~a. The date, time, and place where comments are due, if a person wishes to have the comments considered during the site plan review process. The due date shall be at least 14 days after the date of the notice.~~

~~b. A statement that the criteria governing the site plan review decision are those requirements of this section that are applicable to the particular development being proposed.~~

~~c. The street address or another easily understood geographical reference to the site.~~

~~d. A statement that the site plan review application and any other file materials are available for review at the department and that copies can be obtained at cost.~~

~~e. The name and phone number of a department contact person.~~

~~3. The written notice shall state that if tenants or lessees reside at the property, the city requests that the owner provide a copy of the notice to each tenant or lessee. The failure of an owner to honor this request shall not constitute a violation of this subsection.~~

~~G. Determination of Completeness. Not later than 30 days after the initial filing of the application, the site plan review officials shall have an initial opportunity to review the site plan review application. If the director determines following the initial review:~~

~~1. That the application is complete, then, not sooner than the due date for comments set out in the written notice of the application, the site plan review officials may proceed immediately to complete their review of the application.~~

~~2. That the application is not complete, then, not later than 30 days after the initial filing of the application, the department shall give written notice to the applicant that the application is not complete. The notice shall specify what information is missing, shall give the applicant the opportunity to submit the missing information, and shall indicate a date on and after which the city may proceed to complete its review of the application, with or without the missing information.~~

~~H. Review and Decision:~~

~~1. After the director has determined that the initial application is complete under subsection (G)(1) of this section, or on or after the date indicated to the applicant under subsection (G)(2) of this section, whichever is applicable, the director shall request that the site plan review officials review the application and any written comments received during the comment period, and that the officials provide their written comments and recommendations on the application to the director not later than the time set by the director for further consideration of the application.~~

~~2. Site plan review officials wishing to provide comments and recommendations on the application shall provide written comments and recommendations to the director not later than the time set by the director for further consideration of the application.~~

~~3. In reviewing the application and comments received during the comment period, and in making comments and recommendations on the application, site plan review officials shall base their review, and any resulting formal comments and recommendations, on whether the development will comply with the requirements of this title. Site plan review officials also may submit additional informal comments and recommendations that they wish to be provided to the applicant for informational purposes only.~~

~~4. On or after the time set by the director for further consideration of the application, after considering the application, comments received during the comment period, and comments and recommendations received from site plan review officials, the director shall prepare a written decision taking one of the following actions:~~

- a. ~~If the director finds that the development, as described in the application, will comply with all of the requirements of this title, the director shall approve the application.~~
- b. ~~If the director does not find that the development, as described in the application, will comply with all of the requirements of this title, the director, in the director's discretion, shall either:~~
- i. ~~Disapprove the application; or~~
 - ii. ~~Approve the application, subject to such conditions as are necessary so that the development, as conditioned, will comply with all of the requirements of this title.~~

~~The director's decision shall identify each requirement of this title that is applicable to the site plan under review; shall include any findings that are necessary to a determination of whether the site plan complies with the requirement; shall state a conclusion, based on the findings, as to whether the site plan complies with the requirement and, if not self evident, the basis for the conclusion; and, if the decision is to approve the site plan subject to conditions, shall state any findings, conclusions, and basis for conclusions, to demonstrate that compliance with the conditions is necessary in order for the site plan to comply with the requirements of this title.~~

~~5. During review of a site plan application, an applicant may revise the site plan under consideration; provided, that the applicant, if required by the director as a condition to revision, signs a written statement in a form approved by the director agreeing that the 120 day period provided for in ORS 227.178 shall commence from the date the revision is filed with the department.~~

~~6. If a condition of approval of a site plan requires a future submittal to be filed for deferred or refined site plan review in relation to the development, then review of the future submittal shall be made pursuant to the procedures set out in this section for approval of the site plan itself, except that the review shall be limited to determining only whether the submittal complies with the requirements of this title applicable to the submittal.~~

~~7. A decision of the director under subsection (H)(4) of this section may include, but is not required to include, informal advice to the applicant about other permits or requirements of this title, of the Lincoln City Municipal Code, or of any other local, state, or federal law or authority that are or may be applicable to the proposed development but that are outside the scope of site plan review.~~

~~I. Notice of Decision. On approval, approval with conditions, or disapproval of a site plan review application under subsection (H)(4) of this section, the director shall publish, at the applicant's expense, notice of the action in a newspaper of general circulation in the city. In addition, the director shall provide written notice of the decision to:~~

- ~~1. The applicant;~~
- ~~2. Owners of property within 250 feet of the site for which the application is submitted. The list of property owners shall be compiled from the most recent property tax assessment roll;~~
- ~~3. Any neighborhood association recognized by the city whose boundaries include the site; and~~
- ~~4. Any person who submitted written comments during the comment period.~~

~~The notices provided shall include an explanation of the means for appealing the action taken. In addition, the notices shall state that if tenants or lessees reside at the property, the city requests that the owner provide a copy of the notice to each tenant or lessee. The failure of an owner to honor this request shall not constitute a violation of this subsection.~~

~~J. Appeals. The applicant or any interested person may appeal a decision of the director under subsection (H)(4) of this section. The appeal shall be filed within 10 days of the mailing of the decision and must be filed in the manner set out in LCMC 17.76.040. The filing of an appeal of a site plan approval shall suspend any building permit issued based on the approval until the city appeal body, whether the commission or the city council, has decided the appeal.~~

~~K. Revisions to Approved Site Plans.~~

~~1. Major revisions proposed by the applicant to an approved site plan shall be made only pursuant to the procedures set out in this section for approval of the site plan itself. A major revision is a revision which:~~

- ~~a. Increases the density of development;~~
- ~~b. Enlarges any structure on the site by more than 800 square feet, or enlarges the area of the site;~~
- ~~c. Changes vehicular or pedestrian access to, or circulation patterns on, the site; or~~
- ~~d. Changes the location of, or amount of land devoted to, a specific use on the site.~~

~~2. Where a required site plan approval for a development has been granted, it shall be unlawful for any person to cause or permit the construction, alteration, improvement, or use of the development in any manner except in compliance with the approved site plan, subject to any lawfully made non-major revisions.~~

~~L. Public Infrastructure Improvements Agreements.~~

~~1. If all the public infrastructure improvements required to be provided as part of a site plan approval have not been satisfactorily completed prior to application for issuance of a certificate of occupancy or prior to a proposed commencement of use, and if the city manager or a designated representative determines that a delay in completion of the improvements is appropriate, then the city manager or delegate may require, as a condition of such issuance or use, an improvement agreement signed by the owner, in a form satisfactory to the public works director. An improvement agreement shall:~~

- ~~a. Identify all public infrastructure improvements remaining to be completed and establish a time period within which the owner shall complete the improvements;~~
- ~~b. Provide that if the owner does not complete the identified improvements within the established time period, then the city may complete the improvements and recover the full cost and expense of completion from the owner;~~
- ~~c. Require the owner to reimburse the city for all costs of inspection by the city engineer of the public infrastructure improvements;~~
- ~~d. Require the owner to hold harmless, defend, and indemnify the city and its mayor and council members, officers, boards, commissioners, and employees from claims of any nature arising or resulting from the performance of any acts required to be done by the owner under the agreement;~~
- ~~e. Require the city to tentatively accept the public infrastructure improvements and the easements in which they are located at such time as the city engineer determines that the owner has fully complied with all terms and conditions of the improvement agreement related to the improvements and easements; and to finally accept the improvements and easements on satisfactory completion, as determined by the city engineer, of the one year warranty period required under subsection (L)(3) of this section.~~

~~2. An owner entering into an improvement agreement under subsection (L)(1) of this section shall file with the city, as a condition to city acceptance of the agreement, financial security to assure the full and faithful performance of the agreement by the owner. The financial security shall be in an amount equal to 110 percent of the applicant's estimated cost to complete the public infrastructure improvements, as approved by the city engineer, which amount shall be subject to reduction from time to time in the sole discretion of the city engineer as satisfactory construction of the public infrastructure improvements is completed.~~

~~3. At the time the owner completes construction of public infrastructure improvements required as part of a site plan approval, whether constructed prior to occupancy or use of the site or pursuant to an improvement agreement, as a condition of tentative acceptance of the improvements by the city, the owner shall warrant the materials and workmanship of the improvements for a period of one year from the date of tentative acceptance and shall provide financial security for the warranty in the amount of 20 percent of the applicant's estimated cost to construct the public infrastructure improvements, as approved by the city engineer.~~

~~4. The financial security required under subsections (L)(2) and (3) of this section shall be in a form approved by the public works director and may be one or more of the following:~~

~~a. A surety bond executed by a surety company authorized to transact business in the state of Oregon;~~

~~b. Cash; or~~

~~c. An irrevocable standby letter of credit or similar financial security instrument.~~

~~5. Decisions of the city manager, city engineer, or designated representatives in the enforcement of agreements entered into under this subsection shall not be subject to appeal under LCMC 17.76.040.~~

~~M. Time Limitations:~~

~~1. A site plan approval shall become void on the thirty-first day after approval unless the applicant and owner, within 30 days after approval, sign and file with the department an acceptance of the approval in the standard form provided by the director. The director may extend the time for signing the acceptance for good cause, whether before or after expiration of the 30-day period. The signing of an acceptance shall not waive any appeal rights of the applicant or owner, but merely shall acknowledge that, unless the approval is revised on appeal, the development must conform to all of the terms and conditions of the approval.~~

~~2. A site plan approval shall become void two years after approval unless within that time construction of the approved development has been commenced and thereafter diligently pursued toward completion. The director may extend a site plan approval for an additional period of one year and, if an extension is applied for, shall extend the approval, unless there have been changes in the applicable criteria or in circumstances relevant to the site that would justify re-review of the site plan in relation to the applicable criteria. No more than one extension may be granted.~~

~~3. Decisions of the director on whether to approve extensions under this subsection shall not be subject to appeal under LCMC 17.76.040.~~



PLANNING COMMISSION STAFF REPORT
MEETING DATE: June 16, 2020

**Report prepared by AnneMarie Skinner, Planning & Community Development
Director**

Tree Ordinance Work Session

Urban_Tree_Ord_Development (PDF)
Current Lincoln City Tree Ordinance (RTF)
Portland Tree Preservation (PDF)

The Urban Tree Ordinance Development Workbook

A preliminary guide book designed for communities developing new, or revising older, existing ordinances governing urban tree resources.

The Urban Tree Ordinance Development Workbook

This workbook is designed for communities who are confronted with the task of developing effective urban tree ordinance for the first time. This information can also be very helpful for communities revising or expanding existing tree ordinances or looking for ways to more effectively impact the management of the community's forest canopy.

While this workbook contains some guidelines and tools that can enable communities to assess their particular situation and help identify areas of opportunity, it is not intended to be an all inclusive approach. Each community has their own character and conservation needs. Unfortunately many communities begin to develop ordinances when the perception of their need becomes immediate. The natural tendency is to quickly adopt another communities ordinance as a model with the idea of "fixing" it later. A note of caution: attempting to "jump start" tree ordinance development by "cloning" an existing ordinance might be an attractive route to success but, such efforts are seldom reflective of the communities true needs, and indeed in some situations, have even lengthened the process. Given most situations encountered, there is no substitute for a patient, thorough approach, through community interaction, to ordinance development.

The Georgia Forestry Commission's sponsorship of this document is intended to give local communities a "starting point" from which to go forward and begin assessing and conserving natural resources in a way local citizens feel appropriate.

The Urban Tree Ordinance Development Workbook

Preliminary Outline

1. How to Start
2. Developing a Working Group
3. Issues and Focus
4. Needs Assessment & Issue Identification
5. The Vision
6. Ordinance Structure
7. Using Sample Ordinances
8. Developing a Draft
9. The Final Product

The Urban Tree Ordinance Development Workbook

How to start

Many groups reviewing this workbook may be beyond the point of assembling a body of individuals from the community to begin ordinance formulation. However, because there are a number of communities trying to determine the best way to start, we shall begin at that point with some main ideas to keep in mind.

The catalyst to formulate a tree protection or conservation ordinance can come from many different quarters, but usually some event within the community has forced a cause for concern. Increased development activity, the loss of specimen trees, or a natural disaster, can generate “green activity” or a interest in conserving canopy cover as a natural resource. Once the need to “do something” has been realized the question becomes “Who do we talk to?”

The following is a partial list of groups you may find helpful:

- Community Government Leaders - City Council representatives and County Commissioners are usually the initial contact. These bodies, if they feel the need or interest is sufficient, will often appoint a group to study the problem. Regardless of your expertise, try to be a part of that group or at the very least attend the public meetings and participate.
- Local Government Administration - Parks & Recreation, Planning & Zoning, Development & Transportation Departments, Code Enforcement, and City and County Administration all need to know of your interests and intention, preferably in writing. Please remember that these folks may not be able to do much to help you because of political situations within the community but it is helpful to let everyone know your wishes and intentions.
- Non-government Community Leaders - Volunteer and Community Service organizations, Local Clean & Beautiful/Clean City groups, Garden Clubs, Civic Organizations, and Homeowner Association groups. These are the citizens who have the “connections” and perhaps a shared interest pursuing ordinance development..
- Environmental Organizations - These pro resource conservation groups can be a valuable resource of information and may have a vested interest in tree ordinance development.

Sometimes simply contacting the above groups and indicating your wish for a tree ordinance may not avail you of much in the way of results. This may be because the perceived need is not as great as you thought. Should this be the case, you, or a group of like minded folks you assemble, may have to conduct an education campaign to target decision makers within the community. Remember you educational effort needs to be

The Urban Tree Ordinance Development Workbook

How to start (cont.)

factual with visual and graphic information detailing the issues and the “bottom line”. Impassioned pleas with little factual backup usually have limited impact upon government officials. You may find the need to call in outside speakers and experts to plead your case relating their experience dealing with tree ordinances. Be positive, persistent, comprehensive, and business like in your approach and the likelihood of success will increase greatly.

Should all of your efforts fail you may have to form your own group and, at least preliminarily, begin the ordinance generation process without the benefit of as much organizational support as you had anticipated. Be persistent and open in your efforts.

The Urban Tree Ordinance Development Workbook

Developing a working group

Selection of the group that will guide the development of the ordinance is probably the most crucial factor leading to success or failure. Group dynamics notwithstanding, the idea is to gather no fewer than the number of individuals it takes to represent the needs of the community - and - no more than the maximum number individuals that can work together without being dysfunctional. Some groups may include only four or five individuals while other groups have exceeded well over thirty citizens. Perhaps a more efficient way to fill the group, other than simply trying to pick a workable number, is to identify “slots” or community perspectives to fill. A sample list of slots or professional perspectives might include:

- Realtor
- developer
- garden club officer
- local arborist
- planner
- environmental group representative
- landscape architect
- Commission or Council appointees (1 per member)
- Homeowners Association officers
- private individuals
- public forester

This is only a partial list but it may be inclusive of all the perspectives your group might need to cover. Be prepared to have left someone, or some organization with a particular perspective, out of your group - it is inevitable.

One way to limit the size of your group and still be effective and inclusive of many different interest is to compose your group of a minimum number of private individuals, perhaps appointed by the City Council or County Commission, and identify a list of professional individuals who would act as technical experts/consultants. These experts, could come from the list above, and while not being members of the “board” could provide answers to technical questions that will arise from time to time. This will limit the possibility of a group becoming overloaded with a particular interest group of individuals i.e. environmentalist, developers, etc.

Finally, it is important to select individuals that will work hard, expend the time available, stick with the process in a very public environment, and, if possible, be willing to subjugate their personalities to the process. High profile, well known, individuals can sometimes upset the groups dynamics simply because of their personality or need to be heard. It is wise to try to estimate the impact this type of individual may have on the group.

Remember, this group needs to be born out of cooperative effort and partnership toward a focused goal.

The Urban Tree Ordinance Development Workbook

Issues and Focus

The attempt to generate an urban tree ordinance is a difficult, sometimes contentious process that may take many months or even years to accomplish. Existing ordinances also need to go through a process of periodic revision and renewal so that they might better address the issues of the day.

One key practice that will long serve those generating their first ordinance or revising existing documents is to focus on the issues *most* relevant to the task at hand. You will find that while there a large number of issues brought to the table by those “helping” or “assigned” to develop a workable ordinance there are many topics that may not be central to the task at hand. By way of example, the need for community park land or ball fields, greenspace planning and zoning, restrictions on speculative grading, or landscaping for parking lots may all be issues related to trees and community canopy cover. While it may be politically correct to address these issues, they may or may not be issues which should be part of a tree ordinance. Tree ordinances need to be about trees. Side issues, while attracting a lot of attention within the community, can be very distracting to the ordinance construction process. Further, issues easily become politicized, particularly when discussions relate to restrictions or burdens to be placed upon future development.

The problems associated with maintaining an issue focus are obviously many. Because the identified topics are particular to the community itself there is no “one size fits all” magic key to help you toward your task. The most productive efforts seem to whittle away at long lists in an attempt to arrive at a consensus of focus from those involved. Sometimes this consensus forms early, sometimes not, but the effort is always beneficial to the long term process. Should it occur that consensus is not achievable you may find your list of issues need to expand.

Developing a tree ordinance is a long process and, even with exhaustive efforts to identify all the issues, players, and constituents, it is inevitable that something, or someone, will be overlooked and some earlier work will need to be revisited. For these, and many other reason you will discover, it is important to remain focused - and persistent.

The Urban Tree Ordinance Development Workbook

Needs Assessment & Issue Identification

Now that you have your group together, lets refer to them as an Ordinance Board.

Current accomplishments should be:

- a reasonable perspective as to parameters of your task,
- a general consensus about the requirement to identify needs and issues,
- and an agreement to strive for focus.

You should be ready to begin the Community Assessment and Issue Identification process.

The effectiveness of a tree ordinance hinges upon how well it satisfies the short and long term needs of the community. For that reason, it is important to be clear about the parameters of that need and the breadth of community constituents that it impacts. Therefore the needs assessment must consider:

- current state of the community forest canopy cover on public and private property,
- impacts that have brought the canopy cover to its current state,
- how those growth, development, land use and demographic changes altered the community from the past to the present,
- and how those effects are going to change the quality of life of the community in the future.

Even though your group be well advised of the pulse of changes within the community, it is still advisable to do some research concerning the various perspectives of local players/partners with regard to the future canopy cover. This step is critical in helping insure that the community plays a role in the development of this ordinance. There are a number of tools available to the Board for collecting this information:

- public forums, perhaps a number of them, where citizens speak briefly about their perspectives, about the needs list you have developed, and offer needs of their own,
- a simple public opinion survey which could be distributed to as many constituents as possible querying them about their perspectives on the needs of the community with respect to trees,
- survey the Board individually concerning their perspectives of the needs list, related issues, and what options they feel are open to them to effect change.

These tools, and others you may find other communities employing, will help the group better key on the issues they should be addressing.

The Urban Tree Ordinance Development Workbook

Needs Assessment & Issue Identification (cont.)

Once the accepted list of needs have been consolidated they should reflect, if not specifically point to, central issues upon which the group can focus. While the needs list may be long, it can usually be consolidated along the lines of two or three main topics which the tree ordinance can address and probably a list of topics the tree ordinance cannot or should not address.

Remember, it is up to the Board to keep the public apprised of its progress whether by newsprint, radio or public meetings. This is a great opportunity to develop public interest and to educate folks as to the value of community trees.

The Urban Tree Ordinance Development Workbook

Vision, Objectives, & Mechanisms

With the community's needs and issues well in hand it is time to develop the *Vision*. There are probably as many ideas about vision statements from your Board as there are members of your Board and many of those individuals may have had the opportunity to participate in the process of generating a vision statement for work or some civic organization they belong.

The vision statement associated with a tree ordinance should reflect a view of how citizens believe their community trees to affect their quality of life, the citizens perspectives about what that forest canopy will be in the future, and how the forest canopy will be conserved, preserved, or otherwise impacted. This is, without a doubt, the most important part of any ordinance dealing with a natural resource such as trees, water, soil or air because:

- it states in no uncertain terms what that resource means (value) to the **community**,
- why that resource is valued by the citizens,
- the intention to protect or conserve the resource,
- and how (i.e. limiting impacts, tree planting, etc.)

The vision sets the tone for the remainder of the ordinance. It should be firm, clear, succinct, and emphatic in its description of how things "ought to be". The reason for this requirement is that the descriptions and mechanisms to follow within the body of the ordinance all have their foundation in the vision. By way of example - it would be implausible to draft an ordinance requiring tree planting within the public right-of-way with out discussing the value of public roadside trees, or, perhaps not so similarly, to restrict the removal of trees from private property without discussing the larger value of "community trees". Obviously it is very difficult to "backup"* and/or enforce a prescription for reducing impacts to forest canopy cover *without* a public statement of the value of forest canopy to the quality of life of the community. Indeed many challenges to the specifications of tree ordinances are grounded in the fact that the vision and it's intent are unclear.

Another point to remember is that the vision is the communities vision, which may or may not be the Boards, Commission, or Councils. The theory is through the Board the citizens can voice their perspectives about trees and community and the Board manifests those perspectives in an ordinance.

Ordinance objectives are, simply stated, how the vision is quantified and standards for accomplishment defined. Should the vision be "increased forest canopy cover" then "tree lined streets" might be an objective. The establishment of a public tree planting program would be a mechanism to accomplish that objective and achieve the vision. Here again with out a strong vision the basis for the objective could be lost.

The Urban Tree Ordinance Development Workbook

Sample and Model Ordinances

The general tendency for a board developing a tree ordinance is to look toward other communities for ordinances already in place to see what can be learned regarding structure, procedure, and effectiveness. This is an excellent way to get a general feel for the way things can work. Unfortunately, there are also some pitfalls associated with relying too heavily upon these documents:

- substituting someone else’s community vision for your own,
- assuming the sample ordinance is compatible with other organizational structures within your community government or that it can be made to be compatible,
- perpetuating the perspective that the way someone else does “it” is the way we ought to do it (i.e. “if its good enough for them, then.. ..”),
- assuming that the ordinances selected as samples are effective and efficient in their application,
- utilizing a selection of ordinances that do not reflect communities the size or rate of growth of your own or that represent cultural or regional perspectives that are significantly different from your community’s perspectives,
- model ordinances may restrict the addition of new ideas about how to impact or conserve community forest canopy cover,
- model ordinances may reinforce the false impression that generation of an effective ordinance can be a short term/short cut process.
- _____

The use of sample or model ordinances can be a valuable tool in arriving at a document that supports your vision. Many of the documents you receive will have components that speak to the issues you are confronting and may seem like solutions to your problems - on paper. Caution is advised here. When attempting to collect relevant ordinances try to contact the administrator of existing ordinances to see how they actually function in practice, what problems they have identified, and what suggestions they might have regarding your efforts. Ideally, finding someone who played a role in development of the ordinance, perhaps a tree board member, could be one of the most valuable source of information you will find. Should you indeed locate some of these individuals, be sure to ask them the following questions about the ordinance development process:

- how long did the ordinance development process take,
- was the document adopted the document sought,
- how large a role did compromise play in the development process,
- are they happy with the document,
- and are any revisions planned.

These questions will help model or sample ordinances find their proper place within your communities ordinance development process.

The Urban Tree Ordinance Development Workbook

Structure

There are a variety of different ordinance structures which seem to serve communities needs. The key is to be as simple as possible and yet still accomplish the vision. Many ordinances are thick documents with multiple sections and sub-sections dealing with many different aspects of tree preservation. Whatever the format, there is a general list of points to consider which many ordinances include. It is important to remember that the “parts” listed below are no more than just that - “parts”. Continuity within the ordinance, compatibility with other ordinances, consistency with the community vision, and political will for enforcement are the earmarks of a successful ordinance.

1. **Community Vision** - community’s perspective of itself with respect to the natural resource of trees and those resources associated with canopy cover. Contains a view of the future and verbiage related to the community’s willingness to develop a structure to preserve, conserve, and/or move toward that view.
2. **Value of trees** and canopy cover to the community. This section also notes the value of other resources in association with trees and their role in providing the communities quality of life.
3. **Purpose and intent** of the ordinance - next to the vision this is the most important section as it details reasons for existence of the ordinance. Should the purpose and intent of the ordinance be weak it will likely be unenforceable.
4. **Definitions** - a list and description of terms used in this ordinance and of those terms referenced in other ordinances such as Planning and Zoning ordinances.
5. **Administrator identification** - who will be responsible for enforcing the ordinance, reviewing tree protection plans, etc. This individual is usually the city or community arborist. This section also details the qualifications of the arborist and assigns the arborist the duty of developing arboricultural standards relative to tree care, protection, construction impacts, and administrative guidelines for ordinance compliance.
6. **Tree Board establishment** - this group of private citizens, usually appointed by the Council or Commission, to review and propose revisions to the Tree Ordinance, provide community education related to tree conservation, plan the Arbor Day activities, and provide public forums for citizens concerned about community trees.
7. **Requirements for community departments** to follow the ordinance requirements for actions taken on public property including plan review.

The Urban Tree Ordinance Development Workbook

Structure (cont.)

- 8. **Requirements for private land owners** with respect to development activities. Included in this section would be language describing any restrictions, permits, or requirement upon the various types of development activities, requirements for protection and limits of construction activity, tree removal, replanting, mitigation, etc. This may include the requirement for those conducting land disturbing activities to file tree location and assessment plans, tree protection plans, landscape plans, replanting plans, or other plans deemed necessary by the ordinance or arborist.
- 9. **Requirements for public land** for private individuals conducting tree impacting activities, tree planting, and maintenance.
- 10. **Provide for specimen tree** protection and specimen stand protection and permits and penalties as required.
- 11. **Develop specifications for species** and quality of tree to be planted within the community on properties governed by the tree ordinance.
- 12. **Define buffer requirements** for protection of root systems and for provisions for sound and visual buffers in association with land use changes.
- 13. **Establish penalties for violations**, variance procedures, administrative and economic penalties and mechanisms for administrative appeals.
- 14. **Repeal conflicting provisions** of previously established tree ordinance. Provide for the inspection and removal of nuisance trees as per the arborist determination,
- 15. _____
- 16. _____

There are many different types of tree ordinances from simple types dealing with impacts to public land to very involved ones impacting private property. Many groups working to develop ordinances particular to their community have sections that may address very specific issues within the community while others choose to use more generalized perspectives. No one approach is typical - no one approach most effective. Again, the perspective that appears to meet with the most success is: Continuity within the ordinance, compatibility with other ordinances, agreement with the community vision, and political will for enforcement. These are the earmarks of a successful ordinance

The Urban Tree Ordinance Development Workbook

Developing a Draft

The initial draft of your community's ordinance may not look like much more than a hodgepodge of notes and folders. The key to developing a draft that can be a workable document is the ordinance outline. This will be a listing of the components the board would like the ordinance to contain (an assembly of the parts we discussed earlier under structure). Attached to these components should be thoughts and perspectives about how that component mission should be accomplished. That in hand, you may now need technical expertise to put the boards thoughts into language that is commensurate with that which appears in other ordinances within your community. This could be someone on the board, someone with ordinance writing experience, the community's attorney, an urban arborist, or perhaps a consultant.

Once the first draft is in some form to be reviewed, the board should do so, preferably individually, first and then as a group. Try not to get caught up in word-smithing the document to early. Proper presentation of general perspectives, consistency across the document, and compatibility with the vision are preliminary points to review. Have the community's attorney review the early document for consistency - don't worry about the finer detail of legal issues yet.

After about the third review the document will begin to look like a tree ordinance. Forward copies of the draft to the planning, zoning, and development departments to make sure the mechanisms the board has developed to accomplish it's vision are compatible with mechanisms within other departments. Again, try to be consistent with other departments verbiage, standards, and procedures. Once these needed changes have been incorporated send it back to the legal department for review.

The board should now have in it's hands a document that is still rough but relatively complete. This is a good time to take an opportunity to solicit public comments and forward copies to the community council or commissioner and administrators. Be prepared for anything. Should you offer the document for review in a public forum try not to answer to many questions immediately. This will bog down the process and may not give you time to hear as many of the public comments as needed. Having recorded the public comments, forward the list to the board members and public officials and begin the review process again.

The continual comment-revise-review process will seem tedious at times and may not always seem rewarding or look like progress. There are cases in which it has taken many years to develop a workable document. There are also other cases in which the development and adoption of an ordinance was very quick but efforts to "fix" the existing ineffective document have taken years.

The Urban Tree Ordinance Development Workbook

The Final Document

There really is no final document as far as tree ordinances go. Once the adoption process begins that much will become obvious. They will be altered, challenged, and revised many times before they are finally adopted. Further, they are constantly being modified to better suit the needs of the community. That is why it is so important that the community become involved and that politicians and administrators understand the wishes of the citizenry. Active promotion of the tree ordinance by groups within the community will not only help adoption of the ordinance and educate the public about the value of their community's forest canopy cover but also help them address the future of their community's character.

Tree Board/Tree Ordinance questionnaire

This questionnaire is designed so that individuals completing the survey might better understand the relevant issues and questions that need to be answered when undertaking the process of tree ordinance generation. Please remember that this questionnaire is not intended to predispose individuals to a particular point of view but rather to help them start thinking about their community's current situation and future needs.

Tree Board/Tree Ordinance questionnaire (cont.)

Question

Yes	No	Unsure	Issue Unclear
-----	----	--------	------------------

Current Tree Ordinance

I would like to grricrntc it entirely new tree ordinance.

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I would like the current tree ordinance provisions affecting public property to remain intact,

<hr/>	<hr/>	<hr/>	<hr/>
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I would like the current tree ordinance provisions affecting public property to remain with modification.

<hr/>	<hr/>	<hr/>	<hr/>
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Large Tree Removal(Specimen Trees)

I would like to preserve large trees within the city.

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to limit the removal of large trees on new commercial development (redevelopment) sites.

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to limit the removal of large trees on new single family residential development sites.

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to limit the removal of large trees on new multi-family development sites.

<hr/>	<hr/>	<hr/>	<hr/>
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Large Tree Replacement(Specimen Trees)

I would like to require the replacement of large trees within the city when removed for any reason.

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to require the replacement of large trees within the city when removed for new commercial ilcvplopmnt (redevelopment).

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to require the replacement of large trees within the city when removed for single family residential development.

<hr/>	<hr/>	<hr/>	<hr/>
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I would like to require the replacement of large trees within the city when removed for multi-family residential ilcvplopmnt.

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Comments:

Tree Board/Tree Ordinance questionnaire (cont.)

Question

Tree Planting

I would like trees to be planted on new commercial development sites as a matter of requirement.

Yes	No	Unsure	Issue Unclear
-	-	_____	_____

I would like trees to be planted on new single family residential development sites as a matter of requirement.

_____	_____	_____	_____
-------	-------	-------	-------

I would like trees to be planted on new multi-family residential development sites as a matter of requirement.

-	-	_____	_____
---	---	-------	-------

Tree Planting Regimes

I would like tree planting regimes to be uniform across all types of developments.

_____	_____	_____	_____
-------	-------	-------	-------

I would like the tree planting regimes to be different for different types of development sites (i.e. commercial different from single family residential different from multi-family residential).

_____	_____	_____	_____
-------	-------	-------	-------

I would like to require a minimum amount of planting space per site or per acre for commercial development sites.

-	-	_____	_____
---	---	-------	-------

I would like to require a minimum amount of planting space per site or per acre for multi-family residential development sites.

-	-	_____	_____
---	---	-------	-------

I would like to require a minimum amount of planting space per site or per acre for single family residential development sites.

-	-	_____	_____
---	---	-------	-------

I would like number of trees to be planted on new development sites to be based upon the number or size of trees required.

-	-	_____	_____
---	---	-------	-------

I would like the number of trees to be planted on new development sites to be based upon a specific minimum number of trees per acre of site area.

_____	_____	_____	_____
-------	-------	-------	-------

I would like number of trees to be planted on new development sites to be based upon the amount of available planting space after the building and hardscape is installed.

_____	_____	_____	_____
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Comments:

Tree Board/Tree Ordinance questionnaire (cont.)

Question	Yes	No	Unsure	Issue Unclear
<u>Arboricultural Specifications</u>				
I would like to require a minimum amount of planting area (space) per tree planted depending upon the mature size of the tree (overstory vs. understory).	-	-	_____	_____
I would like to require that trees planted in the city to satisfy the tree ordinance specifications conform to some arboricultural standards for size, quality and health.	_____	_____	_____	_____
I would like to require that trees planted in the city to satisfy the tree ordinance specifications be selected from a predetermined species list.	-	-	_____	_____
I would like to require that tree companies performing tree work within the city have a specific license, bonding or certification.	-	-	_____	_____
I would like the tree ordinance to reference technical specifications and standards for development near trees.	-	-	_____	_____
I would like the tree ordinance technical specifications and standards to be regularly updated by a qualified party responsible for maintaining, altering and updating them.	_____	_____	_____	_____

Comments:

Tree Board/Tree Ordinance questionnaire (cont.)

Question	Yes	No	Unsure	Issue Unclear
<u>Enforcement</u>				
I would like the tree ordinance to be enforced in house with existing personnel.	_____	_____	_____	_____
I would like the tree ordinance to be enforced by a "qualified" person.	_____	_____	_____	_____
I would like the tree ordinance to be enforced by the department that reviews development plans.	_____	_____	_____	_____
I would like the tree ordinance to be enforced by the department that conducts on site inspections.	_____	_____	_____	_____
I would like the tree ordinance to require a existing tree assessment plan be submitted to the city prior to clearing and grading permits being issued.	_____	_____	_____	_____
I would like the tree ordinance to require all development sites to provide a tree save and replanting plan according to the ordinance standards of practice.	_____	_____	_____	_____
I would like the tree ordinance to provide for a tree bank so that trees can not be planted as the tree ordinance requires could be planted on public property.	_____	_____	_____	_____
I would like the tree ordinance to provide for the issuance of stop work orders to be issued for tree ordinance violalions.	_____	_____	_____	_____
I would like the tree ordinance to provide for variance procedures.	_____	_____	_____	_____
I would like the departments within the city to be responsible for complying with the tree ordinance.	_____	_____	_____	_____
I would like the tree ordinance to give the Tree Board responsibility for reviewing and providing suggestions for amending the tree ordinance.	_____	_____	_____	_____
<u>Penalties</u>				
I would like the tree ortlinncc to specify administrative penalties for non-compliance with the tree ordinncc.	_____	_____	_____	_____
I would like penalties associated with the non-compliance with tree ordinance to be monetary.	_____	_____	_____	_____
I would like penalties associated with the non-compliance with tree ordinance to be criminal.	_____	_____	_____	_____

Comments:

Tree Board/Tree Ordinance questionnaire (cont.)

Question	Yes	No	Unsure	Issue Unclear
<u>Tree Protection</u>				
I would like the tree ordinance to provide for protection for existing trees during construction on commercial sites.	_____	_____	_____	_____
I would like the tree ordinance to set construction activity limits around trees on development and construction sites.	-	-	_____	_____
I would like the tree ordinance to provide for protection for existing trees during construction on single family residential sites.	-	-	_____	_____
I would like the tree ordinance to provide for protection for existing trees during construction on multi-family residential sites.	_____	_____	_____	_____
I would like the tree ordinance to require private owners to be responsible for public right-of-way maintenance of their trees.	-	-	_____	_____
I would like the tree ordinance to provide a mechanism for identification of public nuisance and hazard trees.	-	-	_____	_____
I would like the tree ordinance to provide specifications for buffer zones and screening requirements.	-	-	_____	_____
<u>Specimen Trees</u>				
I believe that the tree ordinance should provide protection for specimen trees based on size.	-	-	_____	_____
I believe that the tree ordinance should provide protection for specimen trees based on character or historic significance.	-	-	_____	_____
I would like the tree ordinance to require that a written permit be issued by the city to allow for the removal of a specimen tree.	-	-	_____	_____

Comments:

Tree Board/Tree Ordinance questionnaire (cont.)

Question	Yes	NO	Unsure	Issue Unclear
<u>Purpose and Intent</u>				
I would like the tree ordinance Purpose and Intent to discuss:				
- environmental values of trees,				
- economic values of trees,				
- quality of life provided by trees,				
- character of community provided by trees,				
- health welfare public good,				
- the need for balance in our community,				
- the need to conserve our tree canopy as a matter of practice,				
- other _____				
<u>Zoning & Planning Issues:</u>				
My community has a formalized zoning program in place.				
My community has a formal zoning and/or planning department that reviews plans and conducts site inspections.				
My community has the following zoning categories:				
- commercial				
- heavy industrial				
- light industrial				
- office				
- multi-family residential (apartments)				
- single family residential				
- agricultural				
- recreation				
- other _____				
<u>Comments:</u>				

17.52.220 Tree protection and removal.

A. Scope. This section applies to all trees within the city wherever located.

B. Purpose. This purpose statement provides a general philosophy to guide the specific enforcement and implementation of provisions and criteria in this section.

1. Value of Trees. The city benefits from trees. Trees of varied types add to the aesthetic beauty of the community and provide important environmental benefits including: help clean the air, help control erosion, maintain water quality and provide noise barriers.

2. Intent. The intent of this section is to protect trees where appropriate, including taking reasonable measures in development to avoid tree removal, and to prohibit damage, mutilation, and destruction of valuable trees. Protection of trees is preferred over replacement. This section aims to:

- a. Establish regulations to protect trees;
- b. Encourage the preservation of trees in the city;
- c. Require the preservation of trees on property subject to development approval;
- d. Set standards for removal of trees;
- e. Control problems of soil erosion, destruction of scenic values and wildlife habitats;
- f. Improve air quality;
- g. Protect water quality; and
- h. Protect land from erosion.

3. Need for Exceptions. The city recognizes that, at the time of development, removing certain trees may be necessary to accommodate structures, streets, utilities, and other needed or required improvements within the development. The burden of proof is on the applicant to show removal is necessary, and that other alternatives are not feasible. Cost shall not be the sole factor in determining whether an alternative is feasible.

C. Definitions. The following definitions apply to regulations governing the preservation and removal of trees contained in this section exclusively:

“Arborist, certified” means a licensed tree care consultant, who is certified as an arborist by the International Society of Arboriculture, or other arborist approved by the city.

“Canopy cover” means the area above ground that is covered by the trunk and branches of the tree.

“Commercial forestry” means the removal of 10 or more trees per acre per calendar year for sale. Tree removal undertaken by means of an approved tree removal plan under subsection (F) of this section is not considered commercial forestry under this definition.

“Cut” means to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including girdling and topping.

“Development” means grading, excavation, fill, or construction on a site requiring site plan review, conditional use approval, subdivision approval, or planned unit development approval.

“Diameter” means diameter of tree measured at four and one-half feet above grade on the uphill side. In the case of multi-stemmed or trunked trees, the diameter shall be the sum of diameters of all individual stems or trunks, measured at a point no more than six inches above the surrounding grade or measured six inches from the point where the stems digress from the trunk, whichever produces the larger measurement. If a tree has been removed and

only a stump shorter than four and one-half feet remains, diameter shall be measured as the diameter of the top of the stump.

“Girdling” means the cutting or removal of the outer bark and conducting tissues of a tree, potentially causing death by interrupting the circulation of water and nutrients.

“Hazardous tree” means a tree that by reason of emergency conditions, disease, infestation, age, or other condition presents a known and immediate hazard to persons or to public or private property.

“Pruning” means the cutting or trimming of a tree in a manner consistent with recognized tree maintenance practices.

“Removal” means cutting or removing 50 percent or more of the crown, trunk or root system of a tree, or any action that results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. “Removal” includes topping, but shall not include pruning performed to applicable standards.

“Significant natural resource areas” means those lands described in Chapter 17.46 LCMC.

“Topping” means the severe cutting back of the tree’s crown limbs to stubs to such a degree so as to remove the natural canopy and disfigure the tree.

“Tree” means a perennial woody plant, typically of eight feet or more in height, with a single main stem (the trunk or bole), or in some cases, multiple trunks, from which branches and twigs extend to form a characteristic crown of foliage.

“Large tree” includes any tree that has a trunk at least six inches in diameter (see definition of diameter).

“Mitigation tree” includes any tree required by this section as a replacement for a tree removed.

“Protected tree” includes any tree preserved in a tree protection or landscape plan, any tree planted as mitigation for removed trees, any tree planted to fulfill a requirement of the city code, and any tree planted to replace protected trees that died or were removed.

D. Tree Removal Prohibitions.

1. Tree removal is prohibited, except as allowed in this section. Violations of this section are enforceable as Class B violations.
2. Topping is prohibited, except where necessary for utility work or public safety, in which case it requires a tree removal permit. The burden of proof is on the applicant to demonstrate in the permit application that topping is necessary, the only means of accomplishing the task, and preferable to removal. The city will rely on the most recent version of the ANSI A300 Standards for Tree, Shrub, and Other Woody Plant Maintenance to distinguish topping from pruning, and will keep a copy of the publication at the planning and community development department for review.
3. Removal of protected trees is prohibited. Protected trees must be maintained according to applicable tree protection plans, CC&Rs (conditions, covenants and restrictions), and other recorded agreements.
4. Removal of trees in wetlands that fall under the jurisdiction of state or federal government removed without concurrence from those state and/or federal agencies that have jurisdiction is prohibited.
5. Removal of trees as part of commercial forestry operations, as described in this section, is prohibited, and commercial forestry is not permitted, except as specifically allowed by this section.

E. When Tree Removal Is Allowed Without a Tree Removal Permit.

1. Generally.

a. In all cases, removal of trees must be conducted in a manner consistent with LCMC 12.08.050(B), which regulates land-disturbing activities.

b. Removal of trees less than six inches in diameter is permitted without a tree removal permit, unless they are protected trees.

2. Single-Family Dwellings and Duplexes or Two-Family Dwellings, and Attached Single-Family Dwellings. Removal of trees is allowed without a permit on a lot developed with a single-family dwelling, duplex or two-family dwelling, or attached single-family dwelling, provided:

a. The lot is not capable of further land division due to size or configuration, or if the lot is capable of further division, trees to be removed are within 100 feet of the dwelling; and

b. No protected tree may be removed without a permit, except that any tree planted to fulfill the landscaping requirements in LCMC 17.52.100 for lots with single- and two-family dwellings may be removed, if replaced by a plant or plants with equal plant unit value, as described in LCMC 17.52.100(G)(1).

3. Public Utilities and Public Works.

a. Removal of trees is allowed without a permit if performed by utility or city public works personnel to remove vegetation and trees that present a danger to life or property, to restore utility services, or to reopen a public thoroughfare to traffic.

b. Removal of trees is allowed without a permit if performed by city public works personnel to remove trees that are deemed nuisances under Chapter 8.12 LCMC, Nuisances, or to remove trees necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly owned and dedicated rights-of-way or public utility easements.

4. Dangerous and Nuisance Trees. Removal of a tree that is a hazard or a nuisance, affecting public safety as defined in LCMC 8.12.080, as demonstrated to the satisfaction of the director of planning and community development in consultation with the city engineer, as applicable to the circumstances.

F. When a Tree Removal Permit Is Required. Except as allowed in subsection (E) of this section, no person shall engage in or cause land clearance or tree removal without first having obtained a tree removal permit issued by the city.

1. A tree removal permit may be issued only for:

a. Single-Family Dwellings, Duplexes, Two-Family Dwellings, and Attached Single-Family Dwellings. Removal of trees is allowed with a permit on a lot adjacent to a lot developed with a single-family dwelling, duplex or two-family dwelling, or attached single-family dwelling, provided:

i. The adjacent lot is owned by the owner of the developed lot or the owner of the developed lot has written permission from the owner of the adjacent lot, and the trees to be removed are within 100 feet of the dwelling; and

ii. No protected tree may be removed, except that any tree planted to fulfill the landscaping requirements in LCMC 17.52.100 for lots with single- and two-family dwellings may be removed, if replaced by a plant or plants with equal plant unit value, as described in LCMC 17.52.100(G)(1).

b. Multifamily Dwellings, Commercial or Industrial Sites, Undeveloped Sites, Trees More Than 100 Feet from Single-Family Dwellings and Duplexes or Two-Family Dwellings, and Attached Single-Family Dwellings on the same lot. Removal of trees is allowed with a permit for the following reasons only:

i. Diseased or Dead. Removal of dead trees or diseased tree(s) weakened by age, storm, fire or other injury. If a visual inspection by the city staff cannot establish that the tree is dead or diseased, the applicant shall, at the applicant's cost, obtain the services of a certified arborist to make that

determination. If the arborist determines that the tree is dead or diseased and cannot be saved, the director of planning and community development shall approve its removal;

ii. Solar Access. Removal of tree(s) to allow solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation, and planned uses and densities, which cannot be accomplished by pruning as demonstrated by an appropriate professional;

iii. Surveyor Access. Selective removal of tree(s) and vegetation to allow reconnaissance surveys, topographical determinations of a project site, coring to permit geotechnical evaluation and soil surveys, and similar efforts, to the extent the applicant demonstrates such removal is necessary to perform such surveys;

iv. Spread of Disease, Insects and Threat of Natural Hazard. Where removal is necessary to prevent the spread of disease or insects declared to be a nuisance by a government agency or certified arborist, or to correct or eliminate a verified natural hazard to the property owner, surrounding properties, or the community at large;

v. Selective Thinning on Open Space and Park Zoned Land. Where crowding is impairing the health and vigor of trees as determined by an appropriately qualified forester, after notice and hearing pursuant to LCMC 17.76.020 and 17.76.030 the city council may allow selective thinning on property zoned open space or park according to an acceptable maintenance plan to improve the health of the forest and using the lowest impact forestry methods practical;

vi. Development. Removal of tree(s) for the placement of structures and other improvements, in accordance with subsection (F)(9) of this section and provided:

(A) The city has approved a site plan, subdivision, planned unit development or building permit; and

(B) The city has approved a tree protection plan, if required by subsection (H) of this section.

2. Conditions. The city may place conditions on any tree removal permit as appropriate to assure that the tree removal is conducted in a manner consistent with this section and LCMC 12.08.050(B), which regulates land disturbing activities. Where conditions of a permit conflict with requirements of this section, the more restrictive shall apply.

3. Review Process. If part of a project that requires subdivision review, site plan review, or a conditional use permit, the permit for tree removal shall be processed as part of development or conditional use permit review. Other tree removal applications shall be reviewed by the director of planning and community development, who may require an erosion control plan to determine conformance with Chapter 12.08 LCMC, Grading and Erosion Control, and rules issued by the public works department.

Where a tree protection plan is required for development review, the city shall not issue a tree removal permit until the applicant has demonstrated compliance with all conditions of the development approval that are required to be met prior to the start of any land clearing, grading, or construction.

4. Fee. The city council may adopt by resolution a fee to cover the actual or average costs of reviewing or issuing a tree removal permit.

5. Authority. The city manager or the city manager's designee, including the director of planning and community development in the case of development approval, or the public works director in the case of a public works permit, is authorized to issue, extend, enforce, and revoke a tree removal permit.

6. Permit Notice and Appeal.

a. The city shall provide notice of decision or hearing in conjunction with the required notice for subdivision, partition, site development review, planned development or conditional use and in accordance

with Chapter 17.76 LCMC, Administrative Provisions. Notice shall not be required for other tree removal permits.

b. Appeals of a tree removal permit shall be as provided in this title for quasi-judicial land use decision. Administrative decisions by the director of planning and community development may be appealed to the planning commission, which shall be the final appeal. Decisions of the planning commission, not including appeals of administrative decisions, may be appealed to the city council in the same manner as provided for in Chapter 17.76 LCMC.

c. The city shall not issue a tree removal permit approved in conjunction with a development review until the time allowed for appeals has passed and no appeal has been filed, or after all appeals have been exhausted. The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the outcome of the appeal.

7. Display of Permit – Inspection. The tree removal permit shall be kept on site during permitted activities. The permit grantee shall allow city representatives to enter and inspect the premises at any reasonable time, and failure to allow inspection shall constitute a violation of this section.

8. Duration. A tree removal permit shall be effective for 18 months from the date of approval. Upon written request by the applicant prior to the expiration of the existing permit, a tree removal permit shall be extended for a period of up to one year if the approval authority finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.

9. Tree Removal for Development. Removal of tree(s) for the placement of structures and other improvements shall comply with the following:

a. Timing of Permit Issuance.

i. Building. A permit for tree removal from individual building lots shall be issued in conjunction with, and not prior to, issuance of the building permit.

ii. Infrastructure. A tree removal permit may not be issued under this subsection for removal for installation of street, gutter, curb, sidewalk, sanitary sewer, storm sewer, and water system improvements until the city engineer has given final approval to the design of the improvements and to the grading and erosion control plans, and, to the extent otherwise required by this section or this code, the owner has entered into a public infrastructure improvement agreement for the improvements and provided financial security therefor, including for tree mitigation; and the director of planning and community development has approved a tree protection and mitigation plan, if required.

iii. Phased Developments. For phased developments, a separate tree removal permit is required for each phase of infrastructure development, which will not be issued until such time as public works approves commencement of grading for the phase. Tree removal permits issued for infrastructure development shall apply only to the minimum area necessary to accommodate the improvements.

b. Tree removal shall conform to the approved tree protection and replacement plan, if required by subsection (H) of this section, and to subsection (I) of this section, Tree Protection and Replacement Plan Required.

c. Revegetation. Immediately following completion of the improvements, areas disturbed by tree removal shall be revegetated in accordance with the requirements of LCMC 17.52.100(F), (G), (H), and (I).

d. Bond Required. Whenever trees are removed that according to this chapter require replacement, if removal is in conjunction with a development, the anticipated cost of replacement trees and vegetation required shall be covered by the bonding mechanism approved for the development, or a separate bond expressly for the purpose of required tree replacement.

G. Replacement of Trees Lawfully Removed.

1. **Applicability.** The standards of this section apply to trees removed with a permit required by subsection (F) of this section that are more than 100 feet from a building subject to site plan review, or conditional use approval, or that are removed to allow development of parking in excess of the amount of required parking, or that are removed for purposes other than compliance with a governmental requirement. If the tree being removed is dead, dying, diseased or dangerous to life or property, replacement is encouraged, but not required, unless the tree is a protected tree, in which case replacement is required.
2. **Replacement Requirement.** Removed trees six inches or more in diameter must be replaced on a one-for-one basis.
3. **Pre-Development Tree Removal.** Any trees that were located in the areas described in subsection (G)(1) of this section that were removed within one year prior to application for a tree permit shall be included among those required to be replaced under subsections (G)(1) and (G)(2) of this section.
4. **Tree Replacement Specifications – Species, Size and Location.** When replacement of a tree or trees legally removed is required by subsection (G)(2) of this section, the number, species and size shall be governed by all of the following:
 - a. **Species.** The city prefers native trees, including conifers; however, the planning commission or director of planning and community development shall take into consideration site compatibility as well as the property owner's preference, provided the species of replacement tree is expected to mature to approximately the same environmental and aesthetic value as the tree being removed.
 - b. **Size.** The minimum diameter of a replacement tree shall be one and one-half inches. The planning and community development director or planning commission may adjust the size requirement for tree species where the applicant demonstrates to the satisfaction of the director of planning and community development that the minimum size would be unreasonable or impractical in the circumstances.
 - c. **Location.** Trees shall be replaced according to a planting plan provided by the applicant and approved by the director of planning and community development, showing all preserved and replacement trees.
5. **Planting Site.** The preferred replacement site shall be on the property from which a tree is being removed. Provided one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the director of planning and community development may either require that (a) the applicant pay an in-lieu payment into the city tree fund an amount equivalent to the value of the replacement trees after installation, as provided in this subsection, or that (b) the applicant plant one or more replacement trees on other private or public property within the city, with the consent of the owner and under a management plan approved by the city. The planting location of mitigation trees on city property shall be determined by the city council, whose authority is hereby delegated to the city manager. The city manager, in conjunction with staff, shall select an appropriate planting site on open space, a park, or other public land suitable for new trees.
6. **In-Lieu Payment.** The in-lieu payment amount shall be equivalent to the cost of the replacement trees, plus the cost of delivery, installation, and maintenance for a period of one year. The in-lieu payment approved and received shall be used by the city for planting and maintenance of mitigation trees on city-owned property. Any unspent funds shall be carried forward from year to year for the purpose of meeting the intent of this chapter to maintain the city's urban forest.
7. **Responsibility to Replace Mitigation Trees.** The planting of replacement trees shall take place in such a manner as to reasonably ensure that the trees grow to maturity. Any mitigation tree planted on private property dying within one year of the date of planting shall be replaced by the owner of the property.
8. **Timing of Replacement.** Replacement trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within six months of the date of issuance of a tree removal permit or death of a mitigation tree, unless the director of planning and community development has granted an extension of time no longer than six months due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this chapter and subject to the penalties provided for in subsection (K) of this section.

H. Design Modifications for Tree Retention – Design Modifications of Public Improvements. The planning commission, with input from the city engineer, may adjust design specifications of public improvements to accommodate tree retention where possible and where it would not interfere with safety.

I. Tree Protection and Replacement Plan Required.

1. Applicability. Requirements of this subsection apply to any lot, parcel or combination of lots or parcels for which an application for a subdivision, site plan review, planned unit development or conditional use is filed if the proposed project will involve tree removal.
2. Elements of a Tree Protection Plan. The owner of lots or parcels specified in subsection (I)(1) of this section shall provide a tree protection plan for the planting, maintenance, removal and protection of trees, prepared by a certified arborist to meet the approval of the director of planning and community development and the city engineer. The tree protection plan shall include all of the following items; however, the director of planning and community development and the city engineer may waive one or more of the items where the required information already has been made available to the city, or is not necessary to review the application.
 - a. Identification of the location, size and species of all existing, large trees and protected trees.
 - b. An accurate topographical survey, subdivision map or plat map that bears the signature of a qualified, registered surveyor or engineer, and showing:
 - i. The shape and dimensions of the property, and the location of any existing and proposed structures or improvements;
 - ii. The location of the individual large trees and protected trees on the site, and indicating species, approximate height, diameter, canopy spread and common name; and
 - iii. The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.
 - c. In lieu of the map or survey required in subsection (I)(2)(b) of this section, an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the director of planning and community development, that clearly indicate the information required by this subsection.
 - d. Arborist Report. The report, prepared by a certified arborist, shall describe all large trees and all protected trees on the site and any large or protected trees removed within the period of one year prior to application for a tree permit. The report shall include the following:
 - i. Information on the health and condition of all large trees and protected trees;
 - ii. Information on species, common name, diameter, and approximate height and age of all large trees and protected trees; and
 - iii. Indication of those subject to removal or transplanting.
 - e. Tree Identification. Unless specifically exempted by the director of planning and community development and the city engineer, a statement that any trees proposed for removal will be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction documents.
 - f. Replacement Plan. A detailed description and map of the proposed tree replacement program, meeting the standards of subsection (I)(2) of this section and including the information on the number, size, species, and cost.

g. Covenants, Conditions and Restrictions (CC&Rs). Where the applicant is proposing to remove trees on common areas in a recorded subdivision or planned unit development, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.

h. Tree Protection Program. A program describing how preserved trees will be protected during tree removal and construction that meets the requirements of subsection (I) of this section, unless specifically exempted by the director of planning and community development. The tree protection program shall commit the property owner to a maintenance plan that promotes the vitality of all protected trees.

3. Recording of Tree Protection Plan. Approved tree protection plans shall be recorded, either separately or included in development agreements required in LCMC Titles 16 and 17 for planned unit developments (PUDs) and subdivisions. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that trees preserved and planted in accordance with an approved tree protection plan may be removed only with a permit and only for the reasons described in subsection (E) of this section, in which case the tree shall be replaced. The form of this deed restriction shall be subject to approval by the director of planning and community development and the city attorney. Except as provided in this subsection, removal of a tree designated for protection under a tree protection plan recorded as a condition of development approval shall constitute a Class B violation.

J. Protection Standards Related to Construction.

1. Applicability. These standards apply to all construction or development that requires a tree removal permit.

2. Standards.

a. All trees required to be protected must be clearly labeled as such.

b. The property owner shall give notice to the city a minimum of two business days (at least 48 hours) in advance of any grading or clearing of the site.

c. The property owner shall permit the city to enter the site at any time to review compliance with the tree protection plan and tree removal permit.

d. No person may conduct any construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, or construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, unless a plan for such construction activity has been approved by the director of planning and community development or the planning commission based upon the recommendation of an arborist.

e. No person shall attach any device or wire to any tree unless needed for tree labeling or protection.

f. Protective Barrier.

i. Before development, land clearing, excavation, filling, or any land alteration for which a tree removal permit is required, the developer shall delineate clearly the exterior property lines of the project.

ii. The developer shall erect and maintain barriers adequate to prevent incursion of machinery within drip lines of trees the tree protection plan identifies to be preserved in and within drip lines of trees on adjoining properties.

iii. Barriers must be sufficiently substantial to withstand nearby construction activities, and the most appropriate and protective barrier shall be utilized. Plastic tape or similar forms of markers do not constitute barriers. For street rights-of-way and utility easements, however, barriers may consist of stakes set a maximum of 50 feet apart along the outside perimeters of areas to be cleared and connected with ribbon, plastic tape, rope, or similar material used for demarcation.

iv. Selection and installation of demarcations and barriers must be approved by the director of planning and community development or the city engineer prior to commencement of grading or tree removal. Protective barriers shall remain in place until the city authorizes their removal or issues a final certificate of occupancy, whichever occurs first.

K. Violation – Enforcement.

1. Responsibility/Liability. The owner and the owner's agents and contractors, including but not limited to an arborist, contractor, engineer or other person responsible for clearing, grading, construction or tree removal on a project, are responsible for meeting the requirements of this section and shall have joint and separate liability for any violation of this section.
2. Violations Defined. A violation of this section includes cutting, damaging, or removing a tree:
 - a. Without a valid tree removal permit; or
 - b. In noncompliance with, or breach of, any condition of approval of a tree removal permit, tree protection plan, or tree maintenance plan; or
 - c. In noncompliance with any condition of any city permit including but not limited to a building permit, public works permit, approved tree protection plan, covenants, codes and restrictions (CC&Rs) imposed by a condition of approval and required to be reviewed and approved by the city, or other development approval that results in damage to, or contributes to the decline or failure of, a tree or its root system; or
 - d. In noncompliance with any recorded covenant; or
 - e. In noncompliance with any other section of this title or code.
3. Remedies. If the city manager or the city manager's designee has reason to believe that a violation of this chapter has occurred, then he or she may do any or all of the following:
 - a. Require the owner of the land on which the tree was located to submit sufficient documentation, which may include a written statement from a certified arborist, demonstrating that removal of the tree was authorized by law;
 - b. Issue a stop work order, as provided in subsection (K)(4) of this section;
 - c. Issue a citation pursuant to Chapter 1.16 LCMC with an expedited hearing;
 - d. File an action to temporarily restrain and/or permanently enjoin the owner from continuing to violate this section;
 - e. Take any other action allowed by law.
4. Authorization to Enforce Compliance. The director of planning and community development, the building official, and the public works director are each authorized to issue a stop work order, withhold approval of a final plat or public works permit, or withhold issuance of a certificate of occupancy, permits or conduct of required inspections or acceptance of work until the provisions of this section, including any conditions attached to a public works permit, tree protection plan or tree removal permit, have been fully met.
 - a. Use of Stop Work Order. In the event any grading, clearing, excavation, filling, construction or land-disturbing activity on the property is about to occur, is occurring or has occurred in such a manner that preserved trees or trees required to be protected on the site are in imminent danger of damage or removal from such activities, any person authorized to enforce this chapter may order all work on the site to cease until adequate safeguards are in place as follows:
 - i. Notification. Based on sufficient evidence that activities on site are likely to cause or have caused harm to trees required to be protected, city staff shall immediately notify any responsible person on the

- project that a stop work order is imminent and that all work on the site shall cease. Staff shall make reasonable attempts to inform the owner and developer by any means, including, but not limited to, telephone, facsimile, or electronic communication;
- ii. Written Form. The order shall be in written form, copied to the property owner, and include a brief description of the violations or imminent harm that are required to be immediately addressed;
 - iii. Posted Sign. A sign declaring the stop work order shall be posted on the site;
 - iv. Duration. The stop work order shall not be lifted until adequate safeguards, including any amendments to an agreement between the applicant and the city, a development approval, a tree protection plan, a tree removal permit, a public works permit, or other applicable permit, are reviewed and approved by the city;
 - v. Removal of Stop Work Order. The stop work order shall be removed after the city staff responsible for the matter has determined there is no longer a need for the order;
 - vi. Settlement. Whenever the city has issued a citation for violation of this code in connection with activities leading to issuance of a stop work order or order to cease and desist activities on land, the city and owner may agree to resolve the citations by means of settlement in lieu of further prosecution. Any monies paid in lieu of fines shall be deposited in the city tree fund. Any such settlement agreement shall be approved by the city council.
5. Violation – Penalties. A violation of this section shall be enforced as a Class B violation pursuant to Chapter 1.16 LCMC. Any person convicted of a violation of this section shall be subject to civil penalties including a fine up to the maximum amount provided by this code, with illegal removal of or damage to one tree constituting a single violation. In addition to the monetary fine, a person convicted of a violation under this section shall be required to remedy any damage caused by the violation.
- a. Upon conviction of a violation of this section, a person shall be required to mitigate the unlawful tree cutting or removal by replacing the removed trees with like kind trees. If the director of planning and community development makes a determination that one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the municipal court judge shall impose as a penalty a forfeiture in the amount of money equivalent to the cost of the replacement trees, plus the cost of delivery, installation, and maintenance for a period of one year.
 - b. In the event replacement trees are required to be planted as mitigation for unlawfully removed or damaged trees, the replacement trees must be planted in accordance with the specifications for tree replacement in subsection (K)(7) of this section.
 - c. The municipal court judge is authorized to impose an enhanced penalty of twice the value of the unlawfully removed or damaged trees where the tree removal was conducted in violation of this section and in disregard of any Lincoln City permit or approval.
6. Alternative Sentence for Multiple Violations. In the event a person is convicted of more than one violation of this section, the following alternative sentence may be imposed:
- If a person has gained money or property through the commission of an offense under this section, then upon conviction thereof, the municipal court judge may sentence the person to pay an amount, fixed by the court, not to exceed double the amount of the gain from the commission of the offense. “Gain” is defined as the amount of money or value of property derived from the commission of the violation, less the amount of money or value of property seized by or surrendered to the city. “Value” shall be the greater of the market value or replacement cost as determined by a licensed professional in the tree, nursery, or landscape field.
7. Specifications for Replacement of Unlawfully Removed Trees. Replacement of a tree removed in violation of this section shall be according to the following:

a. **Species.** A replacement tree shall be a substantially similar species, taking into consideration site characteristics. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the director of planning and community development may allow replacement with a different species of equivalent or greater natural resource value; and

b. **Size and Number.** If a replacement tree of the size cut is not reasonably available on the local market or would not be viable, the director of planning and community development shall require replacement with more than one tree of the maximum size reasonably available and viable, so that the sum of the calipers is equal to or greater than the estimated caliper of the tree removed or damaged. If this number of trees cannot be located viably on the subject property, the director of planning and community development may require one or more replacement trees to be planted on other property within the city, either public property or, with the consent of the owner, private property, or may accept fees in lieu of planting as described in subsection (G)(6) of this section; and

c. **Manner of Planting.** The planting of a replacement tree shall take place in a manner reasonably calculated to allow growth to maturity.

8. **Exclusivity.** The remedies set out in this section shall not be exclusive, and the city may take any action authorized by law to enforce this section.

9. Any person designated to enforce violations of city ordinances may enforce this section.

L. Tree Board.

1. **Purpose.** An advisory board is hereby established to advise staff and city council on matters relating to trees.

a. The tree board shall make recommendations on a tree manual implementing the requirements of this section and that establishes guidelines for tree selection, installation, and maintenance, using best practices. The city council shall adopt the tree manual by resolution.

b. The tree board shall make recommendations on suggested tree species for use in planting and landscaping in Lincoln City, Oregon.

c. The tree board shall make reports from time to time as it deems advisable on ordinance revisions and enforcement, information concerning tree disease or infestation, and other matters related to trees.

2. **Members.** The city council by ordinance shall establish the number of members and any membership qualifications of the tree board. (Ord. 2015-10 §§ 5, 6; Ord. 2011-04 § 1; Ord. 2010-03 § 1; Ord. 2008-16 § 1; Ord. 2002-09 § 2; Ord. 92-17 § 4; Ord. 84-2 § 4.220)

33.630 Tree Preservation**630**

Sections:

- 33.630.010 Purpose
- 33.630.020 Where These Regulations Apply
- 33.630.030 Exempt From These Regulations
- 33.630.100 Minimum Tree Preservation Standards
- 33.630.200 Tree Preservation Approval Criteria
- 33.630.400 Modifications That Will Better Meet Tree Preservation Requirements
- 33.630.500 Tree Preservation Credit
- 33.630.600 Recording Tree Preservation Plans and Related Conditions
- 33.630.700 Relationship To Other Tree Regulations

33.630.010 Purpose

The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;
- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

33.630.020 Where These Regulations Apply

- A.** Generally. The regulations of this chapter apply to all proposals for land divisions on sites outside the Central City plan district that have at least one tree that is at least 6 inches in diameter, except where all trees on the site are exempt under 33.630.030. Where a tree trunk is partially on the land division site, it is considered part of the site.
- B.** Sites in C, E, I, and CI zones where all of the proposed lots are currently developed with commercial, employment, industrial, or institutional development may defer tree preservation review to the time of any future development or redevelopment of the site. Sites that use this option are subject to the standards of Title 11, Trees at the time of development. Sites in the IH, IG1, EX, and CX zones are not eligible to use this provision.

- C. Proposals to divide sites that are partially within an environmental overlay zone or the Pleasant Valley Natural Resources overlay zone and include a concurrent environmental review or Pleasant Valley Resource review are not subject to the tree preservation standards of Section 33.630.100. However, the tree preservation approval criteria in 33.630.200 apply to these proposals.

33.630.030 Exempt From These Regulations

The following trees are exempt from the regulations of this chapter:

- A. Trees that are on the Nuisance Plants List;
- B. Trees that are less than 6 inches in diameter;
- C. Trees that are dead, dying, or dangerous as determined by an arborist. The review body may require additional analysis or documentation to confirm the condition of the tree;
- D. Trees where the trunk is within 10 feet of an existing building that will remain on the site;
- E. Trees where the trunk is located completely or partially within an existing right-of-way that is not part of the land division site;
- F. Trees where the trunk is located completely or partially within Environmental or Pleasant Valley Natural Resources Overlay zones. Those trees are instead subject to the regulations of Chapter 33.430, Environmental Zones, or 33.465, Pleasant Valley Natural Resources Overlay Zones.

33.630.100 Minimum Tree Preservation Standards

- A. **The applicant must show how existing trees will be preserved.** The options listed below represent minimum tree preservation standards. Additional tree preservation may be required to meet the approval criteria of Section 33.630.200. The total tree diameter on the site is the total diameter of all trees completely or partially on the site, minus the diameter of trees that are listed in Section 33.630.030, Trees exempt from these regulations. The applicant must choose one of the following options:
 1. Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site;
 2. Option 2: Preserve at least 75 percent of the trees that are 20 or more inches in diameter and at least 25 percent of the total tree diameter on the site;
 3. Option 3: Preserve at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site;
 4. Option 4: Where all trees are less than 20 inches in diameter, preserve at least 35 percent of the total tree diameter on the site;
 5. Option 5: If one or more tree groves are located completely or partially on the site, preserve all of the grove trees located on the site and at least 20 percent of the total tree diameter or canopy area on the site; or
 6. Option 6: If the site is larger than one acre, preserve at least 35 percent of the total tree canopy area on the site.

- B. Heritage Trees.** Heritage Trees located on the land division site may be counted toward meeting preservation standards. Heritage Trees must be preserved unless removal has been approved by the Urban Forestry Commission.
- C. Calculations.**
 - 1. Tree diameter and number of trees. When calculating the amount of tree diameter and the number of 20 inch diameter and larger trees on the site, the applicant may choose one of the following methods of measurement:
 - a. Tree inventory. A tree inventory identifies all trees on the site, specifying location, species, and diameter of each tree; or
 - b. Statistical sampling. Statistical sampling may be used to estimate the total tree diameter and total number of trees at least 20 inches in diameter present. Sampling must be carried out by a professional forester based on standard methodologies.
 - 2. Tree canopy. When calculating the amount of tree canopy on the site, the total canopy area must be based on the most recent aerial photograph available. The aerial photograph used must be no more than 5 years old. Other data such as LiDAR may be used to help in calculating tree canopy as appropriate.
- D. Location of preserved trees.** Trees may be preserved on lots, within tree preservation tracts, or within other privately managed tracts, such as flood hazard, recreation area or stream, spring, seep, and wetlands tracts. Proposed tree preservation within tracts that are to be managed by the City of Portland or a service district, must be approved by the City or service district.

33.630.200 Tree Preservation Approval Criteria

Applicants must demonstrate how the proposed tree plan will meet the following tree preservation criteria. In meeting these criteria, applicants may use options available in this and other chapters of this Title to modify development standards and minimum density in order to preserve trees.

- A.** To the extent practicable, trees proposed for preservation provide the greatest benefits as identified in the purpose of this chapter. In general, healthy, native or non-nuisance trees that are 20 or more inches in diameter and tree groves, are the highest priority for preservation. However, specific characteristics of the trees, site and surrounding area should be considered and may call for different priorities, such as native tree growth rates and priority tree sizes as described in the *Portland Plant List*, buffering natural resources, preventing erosion or slope destabilization and limiting impacts on adjacent sites;
- B.** Trees proposed for preservation are suitable based on their health, overall condition and potential for long-term viability, considering the anticipated impact of development and tolerance typical for the tree species;
- C.** Tree preservation is maximized to the extent practicable while allowing for reasonable development of the site, considering the following:

1. The specific development proposed;
 2. The uses and intensity of development expected in the zone and the area in which the site is located;
 3. Requirements to provide services to the site under Chapters 33.651 through 33.654, including street connectivity and street plan requirements. Options to limit impacts on trees while meeting these service requirements must be evaluated;
 4. Requirements to protect resources in Environmental, Pleasant Valley Natural Resources, or Greenway Natural, Water Quality, and River Environmental overlay zones. Protection of environmental resources and retention of benefits from trees should be maximized for the site as a whole; and
 5. Other site constraints that may conflict with tree preservation, such as small or oddly shaped sites or trees located in existing utility easements.
- D. Mitigation.** Where the minimum tree preservation standards of 33.630.100 can not be fully met, as determined by evaluating the above criteria, or when there is a concurrent Environmental Review and the minimum tree preservation standards do not apply, mitigation must be provided as needed to replace the functions of trees removed from the site. Options for mitigation may include preservation of smaller diameter or native trees, permanent preservation of trees within a tree preservation or environmental resource tract, tree planting, payment into the City's Tree Planting and Preservation Fund, or other options that are consistent with the purpose of this chapter.

33.630.400 Modifications That Will Better Meet Tree Preservation Requirements

- A. Site-related development standards.** The review body may consider modifications to site-related development standards as part of the land division review. These modifications are done as part of the land division process and do not require an adjustment. Adjustments to use-related development standards are subject to the adjustment process of Chapter 33.805, Adjustments. Modification to a regulation that contains the word "prohibited," or a regulation that is a qualifying situation or threshold is prohibited.

In order to approve the modification, the review body must find that the modification will result in improved tree preservation, considering the tree preservation priorities for the site, and will, on balance, be consistent with the purpose of the regulation being modified.

B. Minimum Density.

1. In multi-dwelling zones, minimum density may be reduced to preserve trees as stated in Paragraph 33.120.205.C.3. This provision may be used to reduce minimum density during the land division process. Sites that reduce minimum density at the time of the land division are not eligible to further reduce minimum density at the time of development on the lots.
2. A reduction in minimum density in single-dwelling zones may be approved as part of the land division review. The reduction is done as part of the land division review and does not require an adjustment.

- a. Minimum density may be reduced by 20 percent or one lot, whichever is more, up to a maximum reduction of 4 lots. Reductions greater than those listed in this paragraph are prohibited.
- b. The review body will approve the reduction in minimum density if the following are met:
 - (1) The reduction in minimum density will result in improved tree preservation, considering the tree preservation priorities for the site; and
 - (2) The lot or lots where trees are proposed to be preserved are not large enough to be further divided under the current zoning. Trees proposed for preservation may be placed in a tree preservation tract to reduce lot sizes and provide better protection for the trees to be preserved.

33.630.500 Tree Preservation Credit

Trees that are preserved in a tree preservation tract that is outside of an Environmental or Pleasant Valley Natural Resources overlay zone may count toward meeting the tree density standards for individual lots in Chapter 11.50, Trees in Development Situations. If this option is chosen, at least one tree must be planted or preserved on each lot created for single-dwelling or duplex development. The preliminary plan must indicate the lots where the credit from the preserved trees will be used.

33.630.600 Recording Tree Preservation Plans and Related Conditions

Tree preservation plans approved as part of the preliminary plan and related conditions of approval must be recorded with the County Recorder. The documents must be approved by BDS prior to recording.

33.630.700 Relationship To Other Tree Regulations

Other tree regulations of this Title and other Titles may apply at the time of a land division and at the time of development.

(Added by: Ord. Nos. 175965 and 176333, effective 7/1/02. Amended by: Ord. No. 178657, effective 9/3/04; Ord. No. 179980, effective 4/22/06; Ord. No. 181357, effective 11/9/07; Ord. No. 182429, effective 1/16/09, effective 5/13/11; Ord. No. 184524, effective 7/1/11; Ord. No. 186053, effective 1/1/15; Ord. No. 187216, effective 7/24/15; Ord. No. 188259, effective 3/31/17; Ord. No. 188177, effective 5/24/18; Ord. No. 188958, effective 5/24/18).

