

## ARTICLE 4 – APPLICATION PROCEDURES AND APPROVAL CRITERIA

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TITLE 16  
ARTICLE 4

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\*\*\*Need to add Street Vacation section \*\*

## Chapter 4.1 – General Review Procedures

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| 4.1.010 | Purpose and Applicability   |
| 4.1.020 | Type I Procedure (Ministerial/Staff Review and Zoning clearance)                        |
| 4.1.030 | Type II Procedure (Administrative Review)   |
| 4.1.040 | Type III Procedure (Quasi-Judicial Review - Public Hearing)                             |
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| 4.1.060 | <del>General Provisions Applicable to All Reviews</del> <u>Time Limit: Consolidated</u> |

Review: City Planning Director's Duties

### 4.1.010 Purpose and Applicability

**A. Purpose.** The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 4.1.010 provides a **key guide** for determining the review procedure and the decision-making body for particular **approvals applications**.

**B. Applicability of Review Procedures.** All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections 1-4 below. Table 4.1.010 lists the City’s land use and development approvals and corresponding review procedure(s). Table 4.1.010 is not an exhaustive list of Planning applications or processes but is simply a tool for reference.

- (1) **Type I Procedure (Staff Review – Zoning clearance).** Type I decisions are made by the City ~~Planning Director~~ **Planning Official**, or his or her designee, without public notice and without a public hearing. A Type I procedure is used in applying City standards and criteria that do not require the use of discretion (i.e., clear and objective standards);
- (2) **Type II Procedure (Administrative/Staff Review with Notice).** Type II decisions **require use of discretion and** are made by the City ~~Planning Director~~ **Planning Official**, with public notice and an opportunity for appeal to the Planning Commission. ~~Alternatively, the City Planning Director/Planning Official~~ may refer a Type II application to the Planning Commission for its review and decision in a public meeting;
- (3) **Type III Procedure (Quasi-Judicial Review – Public Hearing).** Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council; or in the case of a Quasi-Judicial zone change (e.g., a change in zoning on one property to comply with the Comprehensive Plan), a Type III decision is made by the City Council on recommendation of the Planning Commission. Quasi-Judicial decisions involve discretion but

implement established policy.

(4) **Type IV Procedure (Legislative Review).** The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, ~~zone changes~~, annexation, and **zone changes requiring comprehensive plan map amendments**). Type IV reviews may be considered by the Planning Commission, who makes a recommendation to City Council or taken up directly by the City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

| Table 4.1.010 – Summary of Approvals by Type of Review Procedure |   |   |
|--|---|---|
| Approvals*   | Review Procedures                               | Applicable Regulations  |
| Zoning Clearance Review  | Type I  | Applicants are required to complete a Zoning clearance before applying for any other permit or approval. See Section 4.1.020. |
| Access to a Street   |   |   |
| Adjustment   | Type II or III                                  | Chapter 4.7   |
| Annexation   | Type IV   | See Oregon Revised Statute 222  |
| Code Text Amendment  | Type IV   | Chapter 4.6   |
| Comprehensive Plan <del>Map or Text</del> Amendment              | Type IV   | Chapter 4.6   |
| Conditional Use Permit   | Type III  | Chapter 4.4   |
| Heritage Tree Designation / Removal                              | Type III  | Chapter 3.6   |
| Home Occupation  | No permit, except when required by Chapter 4.7. |   |
| Fences or Walls  | Type I  | Chapter 3.4   |
| Legal Lot Determination  | Type I or II                                    | Chapter 1.3   |
| Modification to Approval or Condition of Approval                | Type I, II or III                               | Chapter 4.5   |
| Non-Conforming Use or Structure, Expansion of                    | Type I, II or III                               | Chapter 4.9   |
| Partition or Re-plat of 2-3 lots<br>Preliminary Plat             | Type III  | Chapter 4.3   |
|  | Type II   | Chapter 4.3   |
| Property Line Adjustments, including Lot Consolidations          | Type I  | Chapter 4.3, Chapter 5  |
| PUD approval Prelim<br>Preliminary Plat                          | Type III  |   |
|  | Type I  |   |
| Final Plat   |   |   |

Commented [2]: Group Q - After review of section or code draft, do we like this as user friendly tool. Citizens may not know the title of a procedure so not able to find alphabetically.

Commented [3]: Double check if this is enough review for this use. Find comp JMC provision.

Commented [4]: Make sure that this is a criteria for each Type II or III and for site plan Type I reviews. Building of a house should be the place to do lot legality.

Commented [5]: 10-8 CAC: Make sure that lot legality is a criteria for land division.

Commented [6]: 10-8 CAC: Amy says we don't do that so we should pull this. Maybe it should be a higher level of review and fee.

Commented [7]: 2/2/15 Staff to remove during clean up.

Commented [8]: 10-1 CAC Double check state statute on is there a difference between Preliminary and Tentative plat?

Commented [9]: 10-8 CAC: PLA or land division in Historic Core zoning or DHO overlay should be different.

|  |                   |              |
|--|-------------------|--------------|
| Sign Permits   | Type I            | Chapter 3.7  |
| Site Design Review                                   | Type II or III    | Chapter 4.2  |
| Subdivision or Replat of >3 lots<br>Preliminary Plat | Type III          | Chapter 4.3  |
| Final Plat   | Type II           | Chapter 4.3  |
| Tree Removal Permit (non-Heritage)                   | Type I, II or III | Chapter 3.64 |
| Variance   | Type III          | Chapter 4.7  |
| Zoning District Map Change                           | Type III or IV    | Chapter 4.6  |

\* Table 4.1.010 is intended as a reference tool for users and the level of review, applicable standards for approval and process are governed by the specific sections of the Development Code. The applicant may be required to obtain building permits and other approvals from other agencies, such as a road authority or natural resource regulatory agency. The City's failure to notify the applicant of any requirement or procedure of another agency shall not invalidate a permit or other decision made by the City under this Code.

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Commented [11]: 2/2/15: Need to add vacation form / petition and process.

Commented [12]: street vacation.

**4.1.020 Type I Procedure (Staff Review and Zoning Clearance)**

A clearance is not a formal land use decision. It is intended to help property owners verify city requirements before beginning a project. The form may be completed at city hall with staff assistance, or at home. The clearance is like a questionnaire or record of Planning Department communications. In summary form, owners are asked to provide information about their project proposal so that city staff can identify applicable code requirements, if any. At a minimum, the form should help identify whether a proposed project (e.g., new structure, remodel, fence, excavation, etc.) requires land use approval prior to issuance of any building permit. Where no land use decision is required, but a building permit is required, the form, signed by the responsible city official, is presented to the building department as proof of compliance with the development code.

**A. Type I Procedure (Staff Review).** The City ~~Planning Director~~**Planning Official**, or his or her designee, without public notice and without a public hearing, makes ministerial decisions through the Type I procedure. Ministerial decisions are those where City standards and criteria do not require the exercise of discretion (i.e., clear and objective standards).

**B. Zoning clearance.** The City ~~Planning Director~~**Planning Official** reviews proposals requiring a Type I review using a Zoning Clearance Review. The Zoning Clearance is a preliminary review that is intended to ensure a project proposal meets the basic requirements of Article 2 (Zoning) and Article 3 (Design Standards) before more detailed plans are prepared and before the City authorizes the Building Official to issue a building permit or directly issues a permit (such as a Tree Removal or Sign permit).

Commented [13]: Amy, is this covering how you see a ZCS working?

Commented [14]: 2/2/15 Amy says yes.

**C. Application Requirements.**

**(I) Application Forms.** Approvals requiring Type I review, including Zoning Clearances, shall be made on forms provided by the City. In this Form, owners are asked to provide information about their project proposal so that city staff can identify applicable code requirements, if any. The Form will help identify

whether a proposed project (e.g., new structure, remodel, fence, excavation, etc.) requires land use approval prior to issuance of any building or other type of permit (tree removal, sign, etc).

**(2) Application Requirements. When a Zoning Clearance is required, it shall:**

- a. Include the information requested on the application form;
- b. Address the criteria in sufficient detail for review and ~~action~~; and
- c. Be filed with the required fee.

Commented [15]: Staff will have to build the form to address all necessary info to meet standards of different Type I actions and reviews.

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

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

**F.Response and Effective Date.** A Zoning Clearance action and Type I decision shall be made ~~within~~ 30 days of receipt of a complete application or request and the decision is final on the date it is signed by the City ~~Planning Director~~~~Planning Official~~ or designee. It is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the State Land Use Board of Appeals. See also, Section 1.2.0970, Zoning ~~C~~clearance ~~Sheets~~ and ~~Coordination of Building Permits~~.

Commented [16]: 10-1 CAC The vision is that this is often over the counter ZCS.

Commented [17]: 10-8 CAC: Amy clarified vision of ZCS options.

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

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

It is intended that the following process complies with ORS 197.195 (limited land use decisions) and are subject to ORS 227.178 (120 day rule).

**A. Application Requirements.**

- (1) **Application Forms.** Applications for projects requiring Administrative Review shall be made on forms provided by the City ~~Planning Director~~~~Planning Official~~.
- (2) **Submittal Information.** The City ~~Planning Director~~~~Planning Official~~ shall advise the applicant on application submittal requirements, and may meet with the applicant in a pre-application conference to identify potential issues related to the request. At a minimum, the application

shall include all of the following information:

- a. The information requested on the application form;
- b. Plans and exhibits required for the specific approval(s) being sought (For example, requirements for property line adjustments are in Chapter 4.3.);
- c. A written statement or letter explaining how the application satisfies ~~each and~~ all of the relevant criteria and standards in sufficient detail; and
- d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and
- e. The required fee.

**B. Procedure.**

- (1) The City ~~Planning Director~~~~Planning-Official~~ shall mail notice of a pending Type II decision to the following individuals and agencies, set forth in this section, not less than fourteen (14) days prior to making the Type II decision.
- (2) The purpose of the Administrative decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the ~~Planning Director~~~~Planning-Official~~ issues the decision. The intent is to invite people to participate early in the decision-making process. Therefore all of the following individuals and agencies shall be notified:
  - a. All owners of record of real property within a minimum of 100 feet of the subject ~~site~~;
  - b. Any person who submits a written request to receive a notice; and
  - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City ~~Planning Director~~~~Planning-Official~~ shall notify the road authority if different than the City of Jacksonville. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.
- (3) The notice of pending Administrative Decision, at a minimum, shall contain all of the following information:
  - a. The deadline for submitting written comments, which must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled Planning Commission meeting date where an application is referred to the Commission for review;
  - b. A summary of the proposal and the relevant approval criteria. The notice must have sufficient detail to help the public identify and locate applicable code requirements;
  - c. The address and City contact person for submitting written comments; and the date, time and location the City ~~Planning Director~~~~Planning-Official~~ or Planning Commission, as applicable, is scheduled to make a decision on the application;

Commented [18]: 10-8 CAC: ORS 227.175 requires only 100 ft. Current code says 200 ft. Amy suggests we report it out as an option.

- d. The street address or other easily understandable reference to the location of the proposed use or development;
  - e. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the approval criteria are considered relevant evidence;
  - f. Statement that all evidence relied upon by the City ~~Planning Director~~~~Planning Official~~ or Planning Commission, as applicable, to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the City; and
  - g. Statement that after the comment period closes the City will issue its decision and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.
4. At the conclusion of the comment period, the City ~~Planning Director~~~~Planning Official~~ shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria. Alternatively, the City ~~Planning Director~~~~Planning Official~~ may transmit all written comments received, if any, along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
5. Where the City ~~Planning Director~~~~Planning Official~~ refers an application subject to Administrative Review to the Planning Commission, the Planning Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Code criteria. The Planning Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in Section 4.1.060 of this Code. Alternatively, the applicant may voluntarily waive his or her right to a final decision within the 120-day timeframe and the Commission may decide to accept oral and written testimony in a public hearing review of the application, pursuant to Section 4.1.040; in which case a new public notice must be mailed to those who received the original notice indicating the change to a quasi-judicial (public hearing) review procedure.
6. Within seven (7) days of a Type II (Administrative) decision, the City ~~Planning Director~~~~Planning Official~~ shall mail a notice of decision to the applicant, property owner (if different), the Building Official, those who provided written comments on the proposal, and those who requested a copy of the decision. The City ~~Planning Director~~~~Planning Official~~ shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above



and was mailed within the time required by law.

**7. The Administrative Notice of Decision shall contain all of the following information:**

- a. A description of the applicant's proposal and the City's decision on the proposal. The notice may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (i.e., copy of assessor's map may be used);
- c. A statement of where the City's decision can be obtained;
- d. The date the decision shall become final, unless appealed; and
- e. A statement that all persons entitled to notice may appeal the decision to City Council pursuant ~~with to~~ subsection 4.1.030.D.

**C. Effective Date of Decision.** Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective upon expiration of the time to appeal the decision as set forth in subsection 4.1.030.D.

**D. Appeal of Type II (Administrative) Decision.** A Type II Administrative Decision made by the City ~~Planning Director~~~~Planning Official~~ may be appealed to the Jacksonville Planning Commission; and a Type II Administrative Decision made by the Planning Commission may be appealed to the City Council, as applicable, pursuant ~~with to~~ the following:

**1. Who may appeal.** The following people have legal standing to appeal a Type II Administrative Decision:

- a. The applicant or owner of the subject property;
- b. Any person who was entitled to written notice of the Type II decision;
- c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.

**2. Appeal filing procedure.**

- a. *Notice of appeal.* Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures.
- b. *Time for filing.* A Notice of Appeal shall be filed with the City ~~Planning Director~~~~Planning Official~~ within the timeframe specified on the Notice of Decision; typically, this will be within ten (10) days of the date the Notice of Decision is mailed.
- c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required

filing fee and shall contain:

- (1) An identification of the decision being appealed, including the date of the decision;
- (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
- (3) A statement explaining the specific issues being raised on appeal; and
- (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.

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

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

Type III decisions are made by the Planning Commission and Historic Preservation Committee (HPC) after a public hearing, with an opportunity for appeal to the City Council.

##### A. Application Requirements.

1. **Application Forms.** Applications requiring Quasi-Judicial review shall be made on forms provided by the City ~~Planning Director~~**Planning Official**.
2. **Submittal Information.** The City ~~Planning Director~~**Planning Official** shall advise the applicant on application submittal requirements, ~~and may meet with the applicant in a pre-application conference to identify potential issues related to the request.~~ **At a minimum, the application shall include all of the following information; and may meet with the applicant in a pre-application conference to identify potential issues related to the re**
  - a. The information requested on the application form;
  - b. Plans and exhibits required for the specific approval(s) being sought;
  - c. A written statement or letter explaining how the application satisfies ~~each and~~ all of the relevant criteria and standards in sufficient detail; and

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- d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable;
- e. The required fee.

**B. Procedure.**

**1. Mailed and Posted Notice.**

- a. The City shall mail public notice of a public hearing on a Quasi-Judicial application at least 20 days before the initial hearing date to the individuals and organizations listed below. The City ~~Planning Director~~~~Planning Official~~ shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed. Notice shall be mailed to:

- (1) All owners of record of real property located within a minimum of 100 feet of the subject site.
- (2) Any person who submits a written request to receive a notice; and
- (3) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City ~~Planning Director~~~~Planning Official~~ shall notify the road authority if different than the City of Jacksonville. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.

- b. At least twenty (20) days before the first hearing, the City shall post notice of the hearing in a prominent public location within the ~~City~~.

Commented [19]: 10-8 CAC: Group wanted to keep this existing standard rather than a posting on the site.

**2. Content of Notice. Notice of a Quasi-Judicial hearing to be mailed and published per Subsection 1 above shall contain all of the following information:**

- a. A summary of the proposal and the relevant approval criteria. The notice must have sufficient detail to help the public identify and locate applicable code requirements;
- b. The date, time and location of the scheduled hearing;
- c. The street address or other clear reference to the location of the proposed use or development;
- d. A disclosure statement that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the City Council, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
- e. A statement that a copy of the application, all documents and evidence submitted by or for

the applicant, and the applicable criteria and standards shall be available for review at the office of the City ~~Planning Director~~**Planning Official** and that copies shall be provided at a reasonable cost;

- f. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven (7) days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- g. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
- h. A statement that after the public hearing closes, the City will issue its decision, and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

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

- 1. At the commencement of the hearing, the Chairperson of the Commission or Mayor, as applicable, or his or her designee, shall state to those in attendance all of the following information and instructions:
  - a. The applicable approval criteria by Code chapter that apply to the application;
  - b. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
  - c. Failure to raise an issue with sufficient detail to give the hearing body and the parties an opportunity to respond to the issue, may preclude appeal to the State Land Use Board of Appeals on that issue;
  - d. At the conclusion of the evidentiary hearing, the hearing body shall deliberate and make a decision based on the facts and arguments in the public record. See subsection 'E' Record of the Public Hearing.
  - e. Any participant may, during the initial public hearing, ask the hearing body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the hearing body grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 of this subsection, or leave the record open for additional written evidence or testimony as provided paragraph 6 of this subsection.
- 2. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions

related to ex parte contact are concerned, members of the hearing body shall follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the hearing body shall not participate in the hearing, except where State law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the hearing body shall individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they shall be excused from the proceedings.

**3. Presenting and receiving evidence.**

- a. The hearing body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
- b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing but prior to the closing of the record, only as provided by this Section;
- c. Members of the hearing body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing or during the public process of the hearing, and an opportunity is provided to dispute the evidence.

**4. The hearing body, in making its decision, shall consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.**

**5. If the hearing body decides to continue the initial hearing, the hearing shall be continued to a date that is at least seven (7) days after the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven (7) days, so that they can submit additional written arguments in response to the new written evidence. No additional evidence, only the rebuttal argument, shall be accepted during this final response time.**

**6. If, prior to closing the record but at the conclusion of the public hearing, the hearing body leaves the record open for additional written testimony, the record shall be left open for at least seven (7) days. The process for accepting such testimony shall follow the standards of ORS 197.763(6)-(7).**

Commented [20]: 10-8 CAC: We like this but this is an educational issue making sure members know what they need to disclose and when they can rely upon it, or reopen the hearing.

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

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

~~CD.~~ **Effective Date of Decision.** Unless the conditions of approval specify otherwise, a final Quasi-Judicial Decision becomes effective upon the expiration of the applicable appeal time. The City may not issue permits related to any decision until the ~~expiration of any appeal time period expires.~~ In the event a permit has been issued prior to the effective date of a Decision, the appeal of any decision for which a permit has been issued shall stay any permit pending final resolution of the appeal.

Commented [21]: The section that defines the final decision. Effective on applicable appeal time? Date of Decision

~~DE.~~ **Appeal of Planning Commission or HPC Decision.** The Planning Commission's or HPC's decision may be appealed to the City Council as follows:

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1. Who may appeal. The following people have legal standing to appeal:

- a. The applicant or owner of the subject property;
- b. Any other person who testified orally or in writing during the subject public hearing before the close of the public record.

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2. Appeal filing procedure.

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

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b. **Time for filing.** A Notice of Appeal shall be filed with the City ~~Planning Director~~ **Planning Official** within the timeframe specified on the Notice of Decision; this will be within fourteen (14) days of the date of the Decision. ~~The decision is final when the order is signed.~~

Commented [22]: 10-15: CAC rather than the standard 10 days from date of mailing.

c. **Content of notice of appeal.** The Notice of Appeal shall be accompanied by the required filing fee and shall contain:

- (1) An identification of the decision being appealed, including the date of the decision;
- (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;

- (3) A statement explaining the specific issues being raised on appeal; and
- (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.

3. Scope of appeal. The appeal of a Type III Quasi-Judicial Decision shall be a hearing on the record before the City Council. The appeal shall be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Quasi-Judicial Decision and relevant arguments.

**EF. Record of the Public Hearing.**

- 1. The official public hearing record shall include all of the following information:
  - a. All materials considered by the hearings body;
  - b. All materials submitted by the City ~~Planning Director~~ **Planning Official** to the hearings body regarding the application;
  - c. The minutes of the hearing;
  - d. The final written decision; and
  - e. Copies of all notices given as required by this Chapter, and correspondence regarding the application that the City mailed or received.
- 2. The meeting minutes shall be available from the City ~~Planning Director~~ **Planning Official** and may be hardcopy or electronic. The minutes and other evidence presented as a part of the hearing shall be part of the record.
- 3. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.

**FG. Effective Date and Appeals to State Land Use Board of Appeals (LUBA). A Quasi-Judicial Decision or Appeal Decision, as applicable, is effective upon the expiration of the final applicable appeal time for the Decision. Appeals of final orders under this Chapter shall be filed with the State Land Use Board of Appeals pursuant ~~with to~~ ORS 197.805 - 197.860. The filing of an appeal with LUBA shall toll any time periods within the Development Code relating to expiration of a permit or final order.**

Commented [23]: 10-15: CAC deleted: The hearing appeal body may allow additional evidence, testimony or argument concerning any applicable standard, criterion, condition, or issue. Desire is to have appeals on the record not de novo.

Commented [24]: Need to clarify- the decision is final when the order is signed. Clarify Sections D & G

**4.1.050 Type IV (Legislative Decisions)**

**A. Timing of Requests.** The City Council may initiate its own legislative proposals at any time. Legislative requests are not subject to the 120-day review period under ORS 227.178.

**B. Application Requirements.**

- 1. Application forms. Legislative applications shall be made on forms provided by the City **Planning**

**Director~~Planning Official~~.**

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

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

1. The City **Planning Director~~Planning Official~~** shall notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments (zone change, rezoning with annexation, or comprehensive plan amendment) at least thirty-five (35) days before the first **Planning Commission** public hearing at which public testimony or new evidence will be received. The notice shall include a DLCD Certificate of Mailing.
2. At least twenty (20) days, but not more than forty (40) days, before the date of the first **Planning Commission** hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for **any** zone change **that includes a comprehensive plan amendment**, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
  - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one Comprehensive Plan land use designation to another). See also, ORS 227.186 for instructions;
  - b. Any affected governmental agency;
  - c. Any person who requests notice in writing; and
  - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
3. At least ten (10) days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the City.
4. For each mailing and publication of notice, the City **Planning Director~~Planning Official~~** shall keep an affidavit of mailing/publication in the record.

**D.Final Decision and Effective Date.** A Legislative Land Use decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant. Notice of a Legislative Land Use decision shall be mailed to the



applicant, all participants of record, and the Department of Land Conservation and Development within twenty (20) business days after the City Council decision is filed with the City ~~Planning Director~~**Planning Official**. The City shall also provide notice to all persons as required by other applicable laws.

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

**A. Time Limit - 120-day Rule.** The City shall take final action on Administrative and Quasi-Judicial land use applications, pursuant ~~with to~~ this Chapter, including resolution of all appeals, within 120 days from the date the City ~~Planning Director~~**Planning Official** deems the application complete for purposes of processing, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (Note: The 120-day rule does not apply to Legislative Land Use decisions.)

~~-Add a para that on applications being deemed complete, If an application for a permit, limited land use decision, or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the governing body or its designee of:~~

~~(a) All of the missing information;~~

~~(b) Some of the missing information and written notice from the applicant that no other information will be provided; or~~

~~(c) Written notice from the applicant that none of the missing information will be provided.~~

Commented [25]: 10-15 CAC - Amy really wants the 30 days to determine completeness in here. Pull statute and draft by staff.

**B. Time Periods.** In computing time periods prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is not on a weekend or legal holiday.

**C. Consolidated Review of Applications.** When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings may be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.

**Chapter 4.2 - Site Design Review**

**Sections:**

**4.2.010**

**Purpose**

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

**4.2.010 Purpose**

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

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

**4.2.020 Applicability**

Site Design Review approval is required for new development, except as specifically set forth below. Site Design Review approval is also required to expand a non-conforming use or development.

Although an applicant may not need to go through Site Design Review, development exempt from Site Review under this chapter will still require a permit or Zoning Clearance Sheet from the ~~Planning Director~~ **Planning Official**.

Except as specified by a condition of approval on a prior City decision, or as required for uses subject to Conditional Use Permit approval, Site Design Review is not required for the following:

- A.** Change in occupancy from one type of permitted land use to a different permitted land use resulting in no increase in vehicular traffic or development;
- B.** Single-family detached dwelling or addition (including manufactured home) on its own lot, except as ~~as~~ related to properties on the City's Historic Landmarks List or properties within the Historic Core zone;
- C.** Fences or walls as permitted in 3.4.040;

Commented [26]: 2/2/15 Staff removed because where the overlay trumps the exception will be in each individual item listed.

Commented [27]: Add historic overlay

Commented [28]: 2/2/15 - is there a List and Overlay or all one?

Commented [29]: Also in sub D bleow.

**D.** Non-residential building addition of up to 500 square feet or 10 percent, whichever is greater, provided no such addition has been made within the past 5 years, except as as related to properties on the City's Historic Landmarks List or properties within the Historic ~~Overlay District~~ ~~Core zone~~;

Commented [30]: 10-15 CAC ? so is a small commercial expansion ok as a Type I approval?

**E.** Home occupation, except for uses requiring a Conditional Use Permit;

**F.** Development and land uses that are already approved as part of a Site Design Review or Conditional Use Permit application, provided modifications to such plans may require Site Design Review, pursuant ~~with to~~ Chapter 4.7;

**G.** Public improvements required by City standards or as stipulated by a condition of land use approval (e.g., transportation facilities and improvements, parks, trails, utilities, and similar improvements), as determined by the City ~~Planning Director~~ ~~Planning Official~~, except where a condition of approval requires Site Design Review.

**H.** Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair ~~shall be exempt from review~~, except as related to properties on the City's Historic Landmarks List or properties within the Historic Core zone.

#### 4.2.030 Review Procedure

Site Design Review shall be conducted using the Type II procedure in Section 4.1.030, except that proposals which include any of following, shall be reviewed using the Type III procedure in Section 4.1.040:

**A.** The proposed use's estimated vehicle trip generation exceeds 100 average daily trips, based on the latest edition of the Institute of Transportation Engineers (ITE) Manual; or

**B.** The use exceeds 5,000 square feet of gross leasable floor area; or the project involves more than one ~~half an~~ acre total site area; or

**C.** The proposal involves a Conditional Use (new or expanded); or

**D.** The proposal involves a variance under Chapter 4.7; or

**E.** The proposal involves expansion of a non-conforming use; or

**F.** The proposal is for non-residential uses, ~~which is~~ adjacent to property zoned for residential use; or

**G. Development on properties subject to the City's Historic ~~Properties~~ Overlay ~~District or in the Historic Core~~; or**

Commented [31]: 2/2/15 Clean up this upon resolution of scope of overlay.

**H. The City ~~Planning Director~~ ~~Planning Official~~ determines that, due to the nature of the proposal, a public hearing is the most effective way to solicit public input in reviewing the application.**

#### 4.2.040 Application Submission Requirements

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

##### A. General Submission Requirements

1. Information required for Type II or Type III review, as applicable. (See Chapter 4.1); and
2. Public Facilities and Services Impact Study. The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study. The study shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system; water system; and sewer system. For each system and type of impact, the study shall propose improvements necessary to meet City requirements.

**B. Site Design Review Information.** In addition to the general submission requirements an applicant for Site Design Review shall provide the following information, as deemed applicable by the City ~~Planning Director~~ ~~Planning Official~~ at a pre-application review. The City ~~Planning Director~~ ~~Planning Official~~ may request any information that he or she needs to review the proposal and prepare a complete staff report and recommendation to the approval body:

Commented [32]: Add something for pre-applications. make sure it is defined.

1. Existing Site analysis map. The site analysis map shall contain the following information, as the City ~~Planning Director~~ ~~Planning Official~~ deems applicable:
  - a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the City, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;
  - b. Topographic contour lines at 2-foot intervals for slopes, except where the Public Works Director determines that larger intervals will be adequate for steeper slopes;
  - c. Identification of slopes greater than fifteen (15) percent, with slope categories identified in 5 percent increments (e.g., 0%-5%, >5%-10%, >10%-15%, >15%-20%, and so forth);

Commented [33]: 10-15: CAC application should include an example of both maps required so to head off getting only one site plan with all of it on one.

Commented [34]: Compare to our current site plan requirements for Hillside Residential development now.

- d. The location and width of all public and private streets, bus stops, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
  - e. Potential natural hazard areas, including, as applicable, riparian areas, delineated wetlands, the base flood elevation identified on FEMA Flood Insurance Rate Maps or as otherwise determined through site specific survey, areas subject to high water table, and areas designated by the City, County, or State as having a potential for geologic hazards;
  - f. Areas subject to overlay zones;
  - h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
  - i. The location, size and species of trees having a caliper (diameter) of eight (8) inches or greater at four (4) feet above grade and any identified Heritage Trees;
  - j. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed;
  - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable.
2. Proposed site plan. The site plan shall contain the following information showing the proposed features:
- a. The proposed development site, including boundaries, dimensions, gross area, and total lot coverage of impervious surfaces;
  - b. Features identified on the existing site analysis maps that are proposed to remain on the site;
  - c. Features identified on the Existing Site analysis map which are proposed to be removed or modified, if any, by the development;
  - d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
  - e. The location and dimensions of all existing and proposed structures, utilities, mechanical equipment, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
  - f. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;
  - g. The number of existing and proposed parking spaces, location and dimensions of all parking

Commented [35]: 10-15: Making sure this works with new tree code ideas.

Commented [36]: 10-15 Went through Donna's example of would you try and remove trees before SDR. No because of 3.4 Tree Removal permit standards.

and vehicle circulation areas (show striping for parking stalls and wheel stops);

- h. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
  - i. Loading and service areas for waste disposal, loading and delivery;
  - j. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
  - k. Location, type, and height of outdoor lighting;
  - l. Location of mail boxes, if known;
  - m. Name and address of project designer, if applicable;
  - n. Locations of proposed bus stops and other public or private transportation facilities;
  - o. Locations, sizes, and types of signs if proposed. Sign permits may be deferred for later approval.
3. Architectural drawings. Architectural drawings, as applicable:
- a. Building elevations with dimensions;
  - b. Building materials, colors and type;
  - c. Details of materials, treatments or design elements relating to Historic Property standards set forth in this Code;
  - d. Name and contact information of the architect or designer.
4. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for development sites one-half (½) acre or larger, or where otherwise required by the City. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with Section 3.6.0450.
5. Landscape plan. Where a landscape plan is required, it shall show the following, pursuant ~~with~~ to Chapter 3.4:
- a. The location and height of existing and proposed fences, buffering or screening materials;
  - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and

Commented [37]: 10-15 CAC: Make sure this standard will work for everything HPC will need.

play areas;

- c. The location, size, and species of the existing and proposed plant materials (at time of planting). An arborist's report may be required for sites with mature trees that are to be retained and protected;
- d. Existing and proposed building and pavement outlines;
- e. Specifications for soil at time of planting, irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule;
- f. Other information as deemed appropriate by the City ~~Planning Director~~ **Planning Official**.

6. Deed restrictions. Copies of all existing and proposed restrictions or covenants, including those for roadway access control.

7. Narrative. Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 4.2.050.

8. Traffic Impact Analysis, when required by Section 3.6.020.A(4).

9. Other information determined by the City ~~Planning Director~~ **Planning Official**. The City may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), as necessary to determine a proposal's conformance with this Code.

#### 4.2.050

#### Approval ~~Criteria~~

An application for Site Design Review shall be approved if the proposal meets all of the following criteria. The City decision-making body ~~may~~, in approving the application, ~~may~~ impose reasonable conditions of approval, consistent with the applicable criteria.

A. The application is complete, in accordance with Section 4.2.040, above.

B. The application complies with all of the applicable provisions of the underlying Land Use District (Article 2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards;

C. The proposal includes required upgrades, if any, to existing development that does not comply with the applicable land use district standards, pursuant to Chapter ~~4.9-1.4~~, ~~Non-Conforming Uses and Development Situations~~;

Commented [38]: This is the heart of the matter for new significant development.

Commented [39]: 10-15 CAC 2x that 1.4 is right citation.

**D. The proposal complies with all of the Development and Design Standards of Article 3, as applicable, including but not limited to:**

1. Chapter 3.3 - Access and Circulation;
2. Chapter 3.4 - Landscaping, Fences and Walls, Outdoor Lighting, Tree Removal;
3. Chapter 3.5 - Parking and Loading; and
4. Chapter 3.6 - Public Facilities; and
5. Chapter 3.7 - Signs.

**E. The proposal meets all existing conditions of approval for the site or use, as required by prior land use decision(s), as applicable.**

**Note: Compliance with other City codes and requirements, though not applicable land use criteria, may be required prior to issuance of building permits.**

**4.2.060 Assurances**

Public improvement required as part of a Site Design Review approval shall be subject to the performance guarantee and warranty bond provisions of Section 3.6.090, as applicable.

Commented [40]: 10-15 CAC 2x this citation.

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

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

Commented [41]: 10-15 AH do we need to clarify expire of appeal time for start?

Commented [42]: 2/2/15 My position is that commencement before appeal expiration is a risk of the applicant.

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

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

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



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

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

### Chapter 4.3 - Land Divisions and Property Line Adjustments

Sections:

|                    |  |
|--------------------|--|
| 4.3.010            | Purpose  |
| 4.3.020            | General Requirements                                     |
| 4.3.030            | Approval Process   |
| <del>4.3.040</del> | <del>Pre-Planning for Large Sites</del>                  |
| 4.3.0450           | Flexible Lot Size and Flag Lots                          |
| 4.3.050            | Preliminary Plat Submission Requirements                 |
| 4.3.060            | Preliminary Plat Approval Criteria                       |
| 4.3.070            | Land Division-Related Variances                          |
| 4.3.080            | Final Plat Submission Requirements and Approval Criteria |
| 4.3.090            | Filing and Recording                                     |
| 4.3.100            | Re-platting and Vacation of Plats                        |
| 4.3.110            | Property Line Adjustments                                |

4.3.010 Purpose

The purpose of this chapter is to implement the objectives in subsections A-E, below:

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

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

Commented [43]: Plug in a pre-app

Commented [44]: Amy wants to double check that if there is a rule to prevent serial partition. Amy wants to make sure that partition will not prevent future development.

Commented [45]: This is met by 4.3.020C

in the creation of new lots (includes consolidation of lots).

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

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

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

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

**4.3.020 General Requirements**

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

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

**Note:** Property line adjustments and lot consolidation requests (i.e., no new lot is created) are subject to Section 4.3.120; they are not subject to 4.3.020 through 4.3.110.

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

**C. Future Re-division Plan.** When subdividing or partitioning tracts into large lots (i.e., greater than three times or 300 percent the minimum lot size allowed by the underlying land use district), the lots shall be of such size, shape, and orientation as to facilitate future re-division and extension of streets and utilities. The applicant shall submit a non-binding, conceptual future re-division plan (or shadow plan) indicating how re-division of oversized lots and extension of planned public facilities to adjacent parcels can occur in the future. See also, Section 4.3.040 Pre-Planning for Large Sites.]

Commented [46]: This probably should be a standard, not just a reference of 3 times the min size. Perhaps even double sized lots should have future plan already done.

Commented [47]: 10-18 CAC group is fine with 3x for needing shadow plan.

**D. Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as streets, water, sewer, gas, and electrical systems, pursuant ~~with- to~~ Chapter 3.6. These systems shall be located and constructed underground unless determined to be unfeasible based upon evidence by a licensed engineer.

**E. Adequate Drainage.** All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. ~~Water quality or quantity control improvements may be required, pursuant ~~with to~~ Chapter 3.6.~~

Commented [48]: Talk with Jeff about this. Are we mandated to have water quality control or is it the City's choice?

**F. Adequate Access.** All lots created or reconfigured shall have adequate vehicle access and parking, as may be required, pursuant ~~with to~~ Chapter 3.3.

**G. Building Envelope Approvals.** All lots created shall have approved building envelopes as part of a consolidated approval process or the applicant shall include as a matter of record on the resulting plat or deed of the created lots that building envelope approvals may still need to be obtained from the Planning Department prior to building permits being issued.

#### 4.3.030 Preliminary Plat Approval Process

**A. Review of Preliminary Plat.** Preliminary plats shall be processed using the Type III procedure under Section 4.1.040. All preliminary plats, including partitions and subdivisions, are subject to the approval criteria in Section 4.3.070.

Commented [49]: 10-18 CAC we are fine with Type III.

**B. Preliminary Plat Approval Period.** Preliminary plat approval shall be effective for a period of two (2) years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted pursuant ~~with to~~ Section 4.3.090, within the 2-year period. The Planning Commission may approve phased subdivisions, pursuant ~~with to~~ subsection 4.3.030.D, with an overall time frame of not more than five (5) years between preliminary and final plat submission for the last phase.

Commented [50]: PC will be happier keeping this in front of them.

**C. Modifications and Extensions.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.5. The Planning Commission may, upon written request by the applicant and payment of the required fee, grant written extensions of the approval period not to exceed one (1) year per extension, provided that all of the following criteria are met:

1. Any changes to the preliminary plat follow the procedures in Chapter 4.5;
2. The applicant has submitted written intent to file a final plat within the one-year extension period;
3. An extension of time will not prevent the lawful development of abutting properties;
4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required;
5. The extension request is made before expiration of the original approved plan and no further extension has been granted as part of this entire development; and
6. In the case of phased development, an extension of a phased portion of the development shall

extend out the total time allowed for submission of a final plan (pursuant to (4.3.030D(4)) in amount of time equal to the extension period, for a total of no greater than six (6) years.

Commented [51]: 10-18 CAC compromise position of one extension per preliminary plan, including if one phase is extended, it can extend the total 5 year period for phased subdivision final plan submission

**D. Phased Subdivision.** The Planning Commission may approve plans for phasing a subdivision, and changes to approved phasing plans, provided applicant’s proposal meets all of the following criteria:

1. In no case shall the construction time period (i.e., for required public improvements, utilities, streets) for the first subdivision phase be more than one (1) year;
2. Public facilities shall be constructed in conjunction with or prior to each phase;
3. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that are required as part of the approved development proposal;
4. The proposed phasing schedule shall be reviewed with the preliminary subdivision plat application and the total time between preliminary plan and final plan of the last phase shall be no longer than 5 years; and
5. Planning Commission approval is required for modifications to phasing plans.

**4.3.040 Lot Size Averaging, Flag Lots, and Infill Development**

**User’s Guide:** The following provisions are optional but recommended, in order to promote a variety housing choices, particularly where development sites are constrained by topography, parcelization (small parcel sizes), irregular boundaries, natural resources, or other challenges. The standards are intended to provide flexibility in these situations and encourage well planned neighborhoods, though they may not be appropriate for some communities.

**A. Lot Size Averaging.** To allow flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a [10-20] percent modification to the lot area and/or lot dimension (width/depth) standards in Chapter 2.3, provided that the overall density of the subdivision does not exceed the allowable density of the district and the approval body finds that all of the following are met:

1. Granting the modification is necessary to achieve planned housing densities, as allowed by the underlying zone, or to improve development compatibility with natural features or adjacent land uses;
2. Where a proposed subdivision would abut an existing subdivision with standard-, or larger-, sized lots, the perimeter of the proposed subdivision shall contain standard-, or larger-, sized lots; except that this provision does not apply where the existing lots are larger than [20,000] square feet;

Commented [52]: 7/18/13 - We decided to update PUD section but not a zone deleted the master Plan section because we need flexibility, not really master plan large tracts --Staff would rather do away with PUD provisions of JMC. Check Master Plan section at end.

Commented [53]: Nov - decided to keep current zoning leaving PUD zone and reference PUD section.

3. The ~~City-Planning Commission decision-making body~~ may require screening, buffering, or other transitions in site design where substandard lots are proposed to abut standard-, or larger-, sized lots.

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**User's Guide:** The standards in subsections B-E should be developed in consultation with your local fire marshal. Note that City standards supersede Fire Code standards.

**B. Flag Lots.** Flag lots may be created only when a through street is not currently planned by the City to be extended to serve abutting uses or future development. A flag lot driveway ("flag pole") shall serve not more than 3 lots, provided applicable building and fire code requirements are met. The layout of flag lots, the placement of buildings on such lots, and the alignment of shared drives shall be designed so that future street connections can be made as adjacent properties develop, to the extent practicable, and in accordance with the transportation connectivity and block length standards of Section 3.6.020.D.

Commented [54]: Switch to lots not dwellings. Need to check the driveway standards to make sure it works with potential dwellings. Potentially include an in-between standard of driveway and full street.

**C. Emergency Vehicle Access.** A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots it serves. No fence, structure or other obstacle shall be placed within the drive area. Where required, emergency vehicle apparatus lanes, including any required turn-around, shall conform to applicable building and fire code requirements. Fire sprinklers may also be required for buildings that cannot be fully served by fire hydrants (i.e., due to distance from hydrant or insufficient fire flow).

**D. Maximum Drive Lane Length and Width.** The maximum length of a drive serving more than one dwelling is subject to requirements of the Uniform Fire Code, but in no case shall it exceed [X] feet or serve more than [Y] dwelling units without providing secondary access/egress.

Commented [55]: Amy to check with fire chief.

Commented [56]: Amy to also check width needed.

#### 4.3.050 Preliminary Plat Submission Requirements

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

Commented [57]: preapp language

##### A. General Submission Requirements.

1. Information required for a Type III review. (See Section 4.1.040); and
2. **Public Facilities and Services Impact Study.** The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study, which shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system (for subdivisions and planned unit developments of 20 or more dwelling units); water system; and sewer system. For each system and type of impact, the study shall propose improvements

necessary to meet City standards under adopted ordinances and facility master plans. The City may require a Traffic Impact Analysis pursuant ~~with to~~ Section 3.6.020.A(5).

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

**1. General information:**

- a. Name of subdivision (~~not required for~~ partitions ~~are named by year and file number~~). This name shall not duplicate the name of another land division within Jackson County (check with County Surveyor);
  - b. Date, north arrow, and scale of drawing;
  - c. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
  - d. Zoning of parcel to be divided, including any overlay zones; and
  - e. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the name of the engineer and surveyor, and the date of the survey; and
  - f. Identification of the drawing as a “preliminary plat”.
- 2. Existing Conditions.** Except where the City ~~Planning Director~~ ~~Planning Official~~ deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on existing conditions of the site:
- a. **Streets:** Location, name, and present width of all streets, alleys and rights-of-way on and abutting the site;
  - b. **Easements:** Width, location and purpose of all existing easements of record on and abutting the site;
  - c. **Utilities:** Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
  - d. **Ground elevations** shown by contour lines at 2-foot vertical interval. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor;

- e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
  - f. Riparian areas and the Base Flood Elevation, per FEMA Flood Insurance Rate Maps, as applicable;
  - g. North arrow and scale; and
  - h. Other information, as deemed necessary by the City ~~Planning Director~~**Planning Official** for review of the application. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
3. Proposed Development. Except where the City ~~Planning Director~~**Planning Official** deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on the proposed development:
- a. Proposed lots, streets, tracts, open space and park land (if any); location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
  - b. Easements: location, width and purpose of all proposed easements;
  - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;
  - d. Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose of surface water management, recreation, or other use;
  - e. Proposed public street improvements, pursuant to Chapter 3.6;
  - f. On slopes exceeding an average grade of 10%, as determined by the City Engineer, the preliminary location of development on lots (e.g., building envelopes), demonstrating that future development can meet minimum required setbacks, access and applicable engineering design standards;
  - g. Preliminary design for extending City water and sewer service to each lot and construction of facilities to each lot, per Chapter 3.6;
  - h. Proposed method of storm water drainage and treatment, if required, pursuant to Chapter 3.6;

Commented [58]: 10-18 CAC: We need to add a definition that clarifies how to evaluate this average grade idea.

Commented [59]: CAC: is there a slope where it cannot be developed.

Commented [60]: Yes, added to Art 2 HR zone that great than 30% is unbuildable.

Commented [61]: 10-18 CAC cross check to 3.6 to make sure lots facilities are stubbed out to each lot. That is criteria intent.

- i. The approximate location and identity of other utilities, including the locations of street lighting fixtures, as applicable;
- j. Evidence of compliance with applicable overlay zones; and
- k. Evidence of contact with the applicable road authority for proposed new street connections.

**4.3.060 Preliminary Plat Approval Criteria**

**A.Approval Criteria.** The Planning Commission may approve, approve with conditions or deny a preliminary plat. The Planning Commission decision shall be based on findings of compliance with all of the following approval criteria:

- 1. The land division application shall conform to the requirements of Chapter 4.3;
- 2. All proposed lots, blocks, and proposed land uses shall conform to the applicable provisions of Article 2 (Zoning);
- 3. Access to individual lots, and public improvements necessary to serve the development, including but not limited to water, sewer and streets, shall conform to Article 3 (Development and Design Standards);
- 4. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
- 5. The proposed streets, utilities, and surface water drainage facilities conform to City of Jacksonville adopted master plans and applicable engineering standards, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications;
- 6. All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas is assured through appropriate legal instrument;
- 7. Evidence that any required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development;
- 8. Evidence that improvements or conditions required by the City, road authority, Jackson County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and
- 9. On developed properties, the proposed land division will not conflict with conditions of approval



~~affecting a previous land use action. reduce the amount of landscaping to a nonconforming status. The architectural (housing variety) standards of Section 3.2.030.D are met.~~

Commented [62]: the proposed division will demonstrate that there will not be a conflict with conditions of approval.

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

#### 4.3.070 Land Division-Related Variances

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

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

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

**A. Submission Requirements.** The applicant shall submit the final plat within two (2) years of the approval of the preliminary plat as provided by Section 4.3.070. The format of the plat shall conform to ORS 92.

**B. Approval Process and Criteria.** The ~~Planning Director~~ ~~Planning Official~~ shall review and approve or deny the final plat application based on findings of compliance or noncompliance with all of the following criteria:

1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
2. All public improvements required by the preliminary plat have been installed and approved by the City or applicable service provider if different than the City of Jacksonville (e.g., road authority) in conformance with Section 3.6.090, or otherwise bonded in conformance with Section 3.6.~~1090~~;
3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
4. All required streets, access ways, roads, easements, and other dedications or reservations are shown on the plat;

5. The plat and deed contain a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, and water and sewer facilities, as applicable;
6. As applicable, the applicant has furnished copies of Covenants, Conditions and Restrictions (CC&R's) which comply with applicable statutes and approvals; easements, maintenance agreements (e.g., for access, common areas, parking, etc.); and other documents pertaining to common improvements recorded and referenced on the plat;
7. Verification by the City that water and sanitary sewer service is available to every lot depicted on the plat; and
8. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner approved by the Jackson County Surveyor for purposes of identifying its location.

Commented [63]: 10-18 CAC Define this - this is not a public road yet....

#### 4.3.090 Filing and Recording

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

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

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

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

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

## Chapter 92.

### 4.3.100 Re-platting and Vacation of Plats

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

### 4.3.110 Property Line Adjustments (must not conflict with new replatting rules)

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

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

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

1. **Parcel Creation.** No additional parcel or lot is created by the lot line adjustment; and
2. **Lot Standards.** All lots and parcels conform to the applicable lot standards of the zoning district (Article 2) including lot area, dimensions, setbacks, and coverage. As applicable, all lots and parcels shall conform the City of Jacksonville Flood Plain Overlay; and

3. **Access and Road Authority Standards.** All lots and parcels conform to the standards or requirements of Chapter 3.3 - Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made less conforming by the property line adjustment.

**C. Recording Property Line Adjustments**

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

Need to address replatting when PLA affects subdivision or partition plats

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## Chapter 4.4 - Conditional Use Permits

Sections:

|         |  |
|---------|--|
| 4.4.010 | Purpose  |
| 4.4.020 | Approvals Process                              |
| 4.4.030 | Application Submission Requirements            |
| 4.4.040 | Criteria, Standards and Conditions of Approval |
| 4.4.050 | Supplemental Development Standards             |

**4.4.010 Purpose**

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

**4.4.020 Approvals Process**

The Planning Commission using a Type III procedure, per Section 4.1.040, reviews conditional use applications. The Planning Commission may require annual, or less frequent, renewal of conditional use permits. Modifications to conditional use permits are subject to Chapter 4.5 Modifications.

**4.4.030 Application Submission Requirements**

In addition to the submission requirements for a Type III review under Section 4.1.040, applications for conditional use permits shall comply with Section 4.2.040 (Site Design Review Application Submission Requirements) and include a description of existing conditions, a site plan, and information on any existing and any proposed restrictions or covenants. An application for a Conditional Use Permit shall also contain a narrative report or letter responding to the applicable approval criteria in Section 4.4.040. The narrative report will ~~identify~~ assess the impacts flowing from the operation / function of the development.

Commented [64]: 10-18 CAC last sentence was added to clarify what the narrative is designed to target.

**4.4.040 Criteria, Standards and Conditions of Approval**

The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, including requests to enlarge or alter a conditional use, based on findings of fact with respect to all of the criteria and standards in A and B below.

**A. Use Criteria**

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.
2. The significant adverse impacts of the proposed use, if any, on adjacent properties and on the public can be mitigated through application of other Code standards, or other conditions of approval.
3. All required public facilities, including water, sanitary sewer, and streets, have adequate capacity or are to be improved to serve the proposal, consistent with City standards.
4. A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.

**B. Conditions of Approval.** The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, one or more of the following:

1. Limiting the hours, days, place and/or manner of operation;
2. Requiring site, landscape or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size, lot coverage, and/or location on the site;
5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;
6. Requiring street right-of-way to be dedicated and street improvements made, or the installation of pathways or sidewalks, as applicable;

7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height and/or lighting of signs;
9. Limiting or setting standards for the location, type, design, and/or intensity of outdoor lighting;
10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands;
13. Requiring improvements to water, sanitary sewer, or storm drainage systems, in conformance with City standards.

## Chapter 4.5 - Modifications to Approved Plans and Conditions

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

### 4.5.010 Purpose

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

### 4.5.020 Applicability

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

### 4.5.030 Major Modifications

**A. Major Modification.** The Planning Commission reviews applications for major modifications through the Quasi-Judicial Type III procedure. Any one of the following changes constitutes a major modification:

1. A change in land use, from a less intensive use to a more intensive use, as evidenced by parking, paved area, estimated an increase in automobile or truck trips (peak and/or average daily trips), an increase in hours of operation, an increased demand for parking, additional paved area, or similar factors, where the increase is 10 percent or more, provided the standards of Article 2

**Commented [65]:** 10-18 CAC deleted "14. . The Planning Commission may require review and renewal of conditional use permits annually or in accordance with another timetable as approved pursuant with this Chapter. Where applicable, the timetable shall provide for periodic review and renewal, or expiration, of the conditional use permit to ensure compliance with conditions of approval; such periodic review may occur through a Type III review process, except where the Planning Commission delegates authority to the City Planning Official to issue renewals, who shall do so through a Type I or Type II procedure, as applicable (See Chapter 4.1 for review procedures.)."

**Commented [66]:** We took this out because CAC wanted to balance the burden on applicants and that PC can do better with created conditions with alternate mitigation options.

and Article 3 are met; or

2. An increase in floor area to a commercial or industrial development, or an increase in the number of dwelling units in a multifamily development, by 10 percent or more, provided the standards of Article 2 and Article 3 are met; or
3. Any reduction in setbacks, or an increase in lot coverage, by 10 percent or more, provided the standards of Article 2 and Article 3 are met; or
4. A change in the type and/or location of vehicle access points or approaches, driveways, or parking areas affecting off-site traffic when roadway authority determines the change could cause a significant adverse impact on traffic operations or safety (i.e., requiring mitigation); or
5. A reduction to screening, or a reduction to the area reserved for common open space or landscaping by 10 percent or more; or
6. Change to a condition of approval, or a change similar to items 1-5, above, that could have a detrimental impact on adjoining properties. The City ~~Planning Director~~ ~~Planning Official~~ shall have discretion in determining that the impacts resulting from the modification are significant and shall be processed as a major modification; or
7. Other changes similar to those in subsections 1-6, above, in scale, magnitude, or impact to adjacent properties, as determined by the City ~~Planning Director~~ ~~Planning Official~~.

Commented [67]: Here I would say any increase is an issue.

**B. Major Modification Applications; Approval Criteria.** Requests for major modifications shall conform to all of the following procedures and criteria:

1. The applicant shall submit an application form, filing fee, a letter describing the modification, and a site plan using the same plan format as in the original approval. The City may require other relevant information, as necessary, in evaluating the request;
2. The application shall be subject to the same approval criteria used for the initial project approval; except that a modification adding a conditional use to a project approved without a conditional use shall require findings in conformance with Chapter 4.4;
3. The scope of review shall be limited to the modification request. For example, a request to modify a commercial development's parking lot shall require Site Design Review only for the proposed parking lot and any changes to associated access, circulation, etc. Notice shall be provided in accordance with Chapter 4.1; and
4. The Planning Commission shall approve, deny, or approve with conditions an application for major modification based on written findings on the applicable Code criteria (e.g., subdivision, Site Design Review, conditional use, etc.).



**4.5.040 Minor Modifications**

**A.Minor Modification.** A minor modification is a change to an approved plan or condition of approval that does not meet any of the thresholds for a major modification listed in Section 4.5.030.A. The City Planning Director through a **Type II procedure will review proposals for Minor Modifications**. Minor modifications include technical corrections to comply with codes and regulations, and changes that fall below the thresholds in 4.5.030, as determined by the City ~~Planning Director~~**Planning Official**.

Commented [68]: 10-18 CAC wants this to be Type II rather than Type I in all cases

Commented [69]: so it would be 0-10% as staff review. Seems like these should be variances or adjustments. See section below.

**B.Minor Modification Applications; Approval Criteria.** An application for minor modification shall include an application form, filing fee, a letter describing the modification, and a site plan using the same plan format as in the original approval. The City ~~Planning Director~~**Planning Official** may require other relevant information, as necessary, in evaluating the request.

**C.Minor Modification Approval Criteria.** The City ~~Planning Director~~**Planning Official** or Planning Commission shall approve, deny, or approve with conditions an application for minor modification based on findings of compliance or noncompliance with the applicable requirements of the Development Code and the conditions of approval on the original decision.

**Chapter 4.6 – Amendments to Zoning Map or Code**

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

**4.6.010 Purpose**

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

**4.6.020 Procedure**

**A.Except for corrections, amendments to Development Code text are Legislative (Type IV).**

Commented [70]: 10-18 CAC I will look up the proper process on scrivner errors. Figure it is just Council action but clarify it.

**B.Amendments to the Zoning Map that affect more than one parcel or more than one-half (1/2) acre ~~whichever is greater,~~ are Legislative (Type IV) actions.**

**C. Amendments to the Zoning Map that require an amendment to the Comprehensive Plan are Legislative (Type IV) actions.**

**D. Amendments ~~that do not meet~~ subject to the criteria under subsection 4.6.020.A, 4.6.020.B, or 4.6.020.C may be processed as Quasi-Judicial amendments, pursuant to the Type III procedure.**

**4.6.030 Criteria**

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

**A. If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;**

**B. The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);**

**C. The City Council must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or code; and**

**D. The amendment must conform to Section 4.6.050 Transportation Planning Rule Compliance.**

**4.6.040 Record of Amendments**

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

**4.6.050 Transportation Planning Rule Compliance**

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

## Chapter 4.7 - Adjustments and Variances

Commented [71]: Move this section to go after site plans

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

### 4.7.010 Purpose

Chapter 4.7 provides standards and procedures for adjustments and variances, which are modifications to development standards that are not otherwise permitted elsewhere in this Code.

### 4.7.020 Intent

Adjustments and variances are intended to provide relief to code standards in specific situations. Both procedures are intended to ensure that the resulting development is compatible with adjacent properties and is consistent with the intent of the Code.

**A.Adjustments.** Adjustments provide relief from specific code provisions when a code provision has the unintended effect of preventing reasonable development in conformance with all other code requirements. Adjustments are allowed in limited situations pursuant to Section 4.7.030.

**B.Variances.** Variances provide greater flexibility to code standards than adjustments where the physical characteristics of a site or its surroundings prevent reasonable development in compliance with a code standard.

### 4.7.030 Adjustments

Adjustments are minor modifications to Code standards that are intended to provide reasonable flexibility for planned land uses and development. Adjustments are subject to the following standards and procedures. Permitted uses and minimum lot area, as provided in Article 2, shall not be Adjusted.

**A.Applicability.** The City Planning ~~Director~~ Official through a Type II or Planning Commission through a Type III procedure may adjust the following standards:

1. **Setbacks:** Up to a ~~10% to 15%~~ percent reduction to a minimum setback.
2. **Lot Coverage:** Up to a ~~10% to 15%~~ percent increase to the maximum lot coverage.
3. **Lot Dimensions:** Up to a ~~10% to 15%~~ percent decrease to a minimum lot dimension.
4. ~~Lot Area: Up to a [0-10] percent decrease in minimum lot area.~~
4. **Other Dimensional Standards:** Up to a ten (10) percent increase or decrease in a quantitative

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(numerical) standard not listed above. This option is limited to standards in Article 2 (Table 2.2.030 and Chapter 2.3 Special Uses) and Article 3; it does not include building code requirements, engineering design standards, public safety standards, or standards implementing State or Federal requirements, as determined by the City ~~Planning Director~~**Planning Official**.

**B.Approval criteria.** The City may grant an Adjustment only upon finding that all of the following criteria are met. The burden is on the applicant to demonstrate compliance with the criteria.

1. The Adjustment allows for a building plan that is more compatible with existing adjacent development, structures and uses, or it does not create a conflict with adjacent development, structures and uses;
2. Approval of the Adjustment does not ~~create a violation(s) of~~ any other adopted ordinance or code standard, and does not create the need for a Variance;
3. An application for an Adjustment is limited to one (1) lot per legal parcel; this is specifically applicable to land division applications ~~creating more than one lot~~;
4. Requests for more than one Adjustment on the same lot shall be consolidated on one application and reviewed concurrently by the City;
5. Not more than three (3) Adjustments may be approved for one lot or parcel in a continuous 12-month period; and
6. All applicable building code requirements and engineering design standards shall be met.

Commented [73]: 4/29 CAC: making sure that the comparison is with structures and uses.

Commented [74]: 4/29 CAC: making sure that the comparison is with structures and uses.

Commented [75]: is there more lots per a parcel?

Commented [76]: How about subdivision standard

Commented [77]: For one lot only- work on this language

#### 4.7.040 Variances

**A.Applicability.** A Variance is a request for relief from development standards that does not otherwise meet the criteria under subsection 4.7.030

**B.Approval Criteria.** The Planning Commission through a Type III procedure may approve a Variance upon finding that it meets all of the following criteria:

1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site;
2. The Variance requested is the minimum necessary to address the special or unique physical circumstance of the subject site;
3. The need for the Variance is not self-imposed by the applicant, property owner or prior owner. (For example, the Variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant);
4. The Variance does not conflict with other applicable City policies or other applicable regulations;
5. The Variance will not cause significant adverse impacts to adjacent property owners or the public; and
6. All applicable building code requirements and engineering design standards shall be met.

Commented [78]: 10-18 CAC make sure this is up to date on current case law.

**4.7.050 Expiration**

Approvals granted under Chapter 4.7 shall expire if not acted upon by the property owner within one (1) year of the City approving the variance. Where the owner has applied for a building permit or final plat, has made site improvements consistent with an approved development plan (e.g., Site Design Review or preliminary subdivision plan), or provides other evidence of working in good faith toward completing the project, the City ~~Planning Director~~**Planning Official** may extend an approval accordingly.

**Chapter 4.8 PLANNED UNIT DEVELOPMENT**

4.8.010 Purpose and Applicability

4.8.020 PUD Approval Process; Consolidated Applications Authorized

4.8.030 Application

4.8.040 Limitation on application

4.8.050 Hearing Procedure

4.8.060 Criteria for approval

~~Planning commission action~~

4.8.070 Deviations to be authorized

4.8.080 Common Elements

~~4.8.090 Postponed Preliminary PUD Plan Approval for Building Architectural Approval and Final PUD Plan Approval Engineering Construction Plans~~

4.8.100 Engineering Construction Plans

4.8.110 Approval of Final PUD Plan; Approval Criteria

4.8.120 Building Permits; Development and Operation of a PUD

4.8.130 Revision of a Preliminary or Final PUD Plan

4.8.140 Termination of a PUD

**4.8.010 Purpose and Applicability**

A. The purpose of the planned unit development approach is to:

- I. Promote creative and imaginative design for urban development in a way that is more compatible with the natural topography.

Commented [79]: 2/4 CAC change 'purpose' to standards

Commented [80]: Maybe something else. Staff to do.

2. Promote the preservation of important natural features, visual and scenic qualities of the land.
3. Promote a mixture of housing types.
4. Promote a more economic and efficient use of urbanizable land while integrating with the surrounding neighborhood and not compromising the public health, safety or general welfare.
5. Promote clustering of housing to preserve open space, historic resources and limit the amount of key facilities or infrastructure to service the development.
6. Promote a mixture of land use types if permitted by the underlying zoning district, that are thoughtfully planned and integrated.
7. Promote the development, public utilization and appropriate maintenance of open spaces and other elements intended for common use and ownership.
8. Provide overall "development concepts" that are compatible with the City's National Landmark status and Comprehensive Plan through encouraging differentiation. Jacksonville's character is to a large extent defined by its uniqueness; differentiation abounds, from street to street, from house to house. Structural character changes in size, height, shape, roof configurations, setbacks, spacing, streetscapes, and material textures occur frequently. The compact nature of Jacksonville generally creates less distinct divisions, with new and old resources intermingling city-wide.
9. Promote the use of energy-efficient development.

Commented [81]: 2/4/15 CAC may need to clean up if only residential or no mixed use.

10. Promote construction of pedestrian ways including internal pedestrian circulation.

B. The provisions of this PUD Chapter are applicable to residentially zoned property, including property zoned Planned Unit Development and its permitted uses as set forth in Article 2.

Commented [82]: 10-18 CAC can commercial property do a PUD?

Commented [83]: Idea now that total revision of zoning map is better a phase 2 of this work, leave current zoning everywhere and tag for review in summer of 2014.

#### 4.8.020 PUD Approval Process; Consolidation Applications

Approval of a PUD by the Planning commission shall be a two-step process involving approval of a Preliminary PUD Plan as the first step and approval of a Final PUD Plan as the second step. Except applications for major and minor comprehensive plan amendments and annexations, applications for development permits and other planning actions may be consolidated with an application for a Preliminary PUD Plan. Where use is made of the planned unit development process as provided in this chapter, no building or other permit shall be issued for such development or part thereof until the planning commission has approved said development.

#### 4.8.030 APPLICATION

The owner (or agent) may make application for planned unit development approval by filing an application with the City. The application shall be accompanied by the following:

- A. A filing fee in an amount established by general resolution of the city council. No part of the fee shall be refundable.
- B. A current assessor's map with the boundaries of the proposed PUD identified.
- C. Preliminary Plan. All applications shall be accompanied by a general development plan prepared in accordance with the Site Design Review chapter 4.2. Additionally, such plans shall include preliminary plans for the provision of public access, water and sanitary sewer service.
- D. A proposal for the PUD's operative Covenants, Codes, and Restrictions (CC&Rs).

Commented [84]: 10-18 CAC wants to make sure that PUD ensure the initial vision of what is approved as a PUD.

The applicant shall also submit one copy of the Preliminary PUD Plan which has been reduced to a size suitable for photocopy reproduction.

If a tentative plat for a land division is submitted concurrently with a Preliminary PUD Plan, the Preliminary PUD Plan and tentative plat shall be on separate sheets, with the tentative plat submitted in accordance with the application requirements for a land division.

If any of the subject property is on the Historic Landmark List (National Registry contributing resources or Local Landmarks) or adjacent to any such listed property, approval of architectural plans for proposed buildings shall be referred to the HPC for recommendations to the Planning Commission either concurrent to the application or such review may be postponed. Architectural design and plans may be deferred if the design and architecture features are not the basis for satisfying any of the Purpose statements of 4.8.010A.

When the approval of architectural plans for buildings is to be referred to the HPC, the Preliminary PUD Plan shall show the footprint of planned buildings in conceptual form and indicate their approximate height(s). Such building envelopes shall reasonably anticipate and separately define the maximum extent of the footprint for each building in the PUD.

**E. A narrative description of the PUD which shall cover the following:**

1. The nature, planned use, future ownership and method of perpetual maintenance of access ways and land to be left in natural or developed open space or which is otherwise to be held in common ownership.
2. A listing of all deviations from the strict provisions of this Code by citing each provision of the Code to be deviated from, followed by a brief explanation which covers the nature and extent of the deviation.
3. A proposed development schedule which indicates the approximate date when construction of the PUD is expected to begin and end. If the PUD will be developed in phases, the development schedule for each phase shall be keyed to a plan that indicates PUD phasing boundaries.
4. Such other pertinent information shall be included as may be considered necessary by the planning commission to make a determination that the contemplated arrangement or use makes it necessary and desirable to adopt regulations and requirements differing from those ordinarily applicable under this Code.

**F. Written findings of fact and conclusions of law which address the approval criteria of this Section 4.8.060.**



~~G. The names and mailing addresses of the owners of property which are located within two hundred (200') feet of the exterior boundary of the whole PUD. The names and mailing addresses shall be typed on mailing labels.~~

#### 4.8.040 Limitation on Application

No application shall be accepted for a use which will require a change of zoning district, unless said application is accompanied by an application for a zoning amendment. A PUD shall not increase the total density on the subject parcel or parcels.

#### 4.8.050 Hearing Procedure

A Planned Unit Development is a Type III land use decision and shall be conducted in accordance with ORS 197.195 and provisions of this Code for such procedure.

#### 4.8.060 Criteria for Approval

In granting approval for a planned unit development, the Planning Commission shall make findings that all of the following are satisfied:

- A. The ~~total parcel(s) area~~ subject to the PUD proposal is one acre or greater.
- B. The proposal conforms with all specific standards of the Code, except those for which a specific deviation has been approved under 4.8.070,
- C. The project shall accrue benefits to the city as reflected in meeting at least six (6) of the PUD Purpose statements set forth in 4.8.010(A),
- D. The project has met the standards for addressing the traffic it generates by means of adequate off-street parking, access points and additional street rights-of-way improvements,
- E. The project will be compatible with the adjacent natural environment and resource areas, and

Commented [85]: define what a public benefit is

Commented [86]: 10-18 CAC discussed 3-5 needed to be met.

Commented [87]: 2/4/15 CAC decided to increase from 4 to 6 of the statements should be met to get deviations from design standards.

**F. The property is or can be supplied at the time of development with the following types of public facilities that are determined to be sufficient in their condition and capacity to support development of the property as anticipated by the PUD:**

- 1. Public sanitary sewerage collection facilities**
- 2. Public domestic water distribution facilities**
- 3. Storm drainage facilities**
- 4. Public Streets**
  
- 5. Parks and Recreational facilities**

**G. The project creates a balance of the benefit to the public, as evidenced by meeting the Purposes in 4.8.010, in relation to the specific deviations the standards as outlined in 4.8.070. The decision maker must find that the deviations granted are rationally related to and proportionate to the Purposes addressed in 4.8.010.**

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**H. The CC&Rs for the project shall ensure the creation of the public benefits proposed and the City shall be granted enforcement authority of those provisions of the CC&Rs and the CC&Rs provide that these provisions cannot be amended or altered without the consent of the City in writing.**

#### **4.8.070 Deviations to be Authorized**

The ~~P~~lanning ~~C~~ommission may authorize the design and approval of PUD's which deviate from the strict standards of this Code, provided that no deviations shall be permitted from the criteria contained in Section 4.8.060. It is further provided that the nature and extent of potential Code deviations shall be limited and pertain to the limitations, restrictions and design standards which are listed below:

- A. Size, dimension, location, position and coverage of lots.**
- B. Location, size, height, yards and setbacks for buildings and other structures.**
- C. Off-street vehicle parking and loading.**
- D. Lot frontage, access, buffer yards and agricultural buffering.**
- E. Private streets with respect to length, width, intersection standards, curve radii, turnarounds, easements, street lighting, sidewalks, curbs and driveway approaches for streets within the PUD, provided they allow for adequate fire access. However, it is further provided that any deviations from**

the standards adopted in this Code shall be of an equivalent or better structural quality with respect to the amount, quality and installation of construction materials. It is also provided that when deviations are proposed for the design of streets, which the City Engineer shall have sole discretion whether said streets will be accepted as dedicated city streets or shall be held in private ownership and such determination shall be made at the time the Preliminary PUD Plan is approved. In no instance shall this section be used to deviate from the standards of this Code which apply to collector or arterial streets whether such streets occur adjacent to or within the PUD.

#### 4.8.080 Common Elements

Where a PUD has open spaces, parking areas or other elements to be owned or maintained in common by the owners or future owners of land or improvements within the PUD, the Final PUD Plan shall not be approved and in no event shall any lot or unit be sold or conveyed until the PUD has been found to comply with the following requirements, as applicable:

1. If the PUD is a planned community under ORS Chapter 94, the declaration and plat for the planned community shall be submitted with the Final PUD Plan for approval by the Planning Commission before being recorded in the official records of Jackson County.
2. If the PUD is a condominium under ORS Chapter 100, the declaration and plat for the condominium shall have been recorded in the official records of Jackson County and a copy of the recorded declaration and plat shall be submitted with the Final PUD Plan. A condominium declaration and plat that has been approved by the Oregon Real Estate Commissioner and recorded in the official records of Jackson County is not required to be reviewed and approved by the Planning Commission and the Planning Commission shall have no authority under this Subsection to require changes thereto.
3. If the PUD contains elements intended for common ownership but ORS Chapters 94 and 100 do not apply, there shall be appropriate legal documents which assure that the common elements will be improved and perpetually maintained for their intended purposes. The legal documents in such instance shall be submitted to the Planning Commission for approval as part of the Final PUD Plan before being recorded in the official records of Jackson County.
4. When a PUD is proposed to be developed in phases, the phased provision of improved common

**Commented [89]:** 10-18 CAC make sure that Riparian zone overlay and standards include this restoration and set backs.

**Commented [90]:** 10-18 CAC removed density bonus idea from the JMC - F. At the Planning Commission's discretion, the over all residential housing density for the entire portion of the PUD which is devoted to residential uses may be increased by not more than thirty-five percent over the maximum density allowed in the underlying zone. Density bonus credits shall be applied in four (4%) percent increments for each of the following bonus standards:  
Fifteen percent (15%) of the homes are less than thirteen thousand (1,300') square feet in gross floor area.

Twenty-five percent (25%) of construction materials shall originate from recycled materials.  
Fifty percent (50%) of the average energy usage of the project shall be supplemented through the use of non-fossil fuel energy generation or fuel collected onsite. Two additional bonus credits may be available for each additional twenty-five percent (25%) of supplemental energy produced. Energy may be stored, used onsite and/or sold back to utilities.

The project shall receive a bonus credit for every thirty-five (35') linear feet of riparian bank restoration per proposed dwelling unit (a 10 unit PUD would have to provide three hundred - fifty (350') feet of one sided stream bank restoration).

- (a) Restoration may be on public or private land (including off project site) and is subject to mutual agreement between property and project owners and must be in the City of Jacksonville on Daisy or Jackson Creek.
- (b) Riparian restoration areas shall be identified by the city engineer as "in need".
- (c) Restoration plan shall be approved with the PUD application and implemented within one (1) year of the first permit issued.
- (d) Maximum of three (3) bonus credits.

elements shall be proportional with the development of housing and other elements intended for private ownership. Nothing in this Subsection shall prevent the provision of improved common elements at a rate that is proportionally greater than the development of housing and other elements intended for private ownership.

**5. Land shown on the Final Development Plan as a common element shall be conveyed under one of the following options:**

- a. To a public entity which shall agree in writing to perpetually maintain the common element(s) being conveyed.**
  
- b. To an association of owners created pursuant to ORS Chapters 94 and 100 or as otherwise created, in which instance the City shall be made a party to the legal document which establishes the association and such document shall provide that the association cannot be terminated or discontinued without the City's prior consent, and that the City may enforce any and all of its provisions.**

**4.8.090 Postponed Architectural Approval and final PUD Approval**

**When the approval of architectural plans for buildings in the PUD has been postponed under Subsection 4.8.030:**

**A. The Final PUD Plan may be approved, conditioned upon the final approval of architectural plans for the subject buildings and design elements within the jurisdiction of the HPC, if applicable or upon approval of building plans through the Planning Department.**

**B. At the discretion of the Planning Commission, the approval of architectural plans for buildings can occur as a one-step procedure when combined with the submittal of a Final PUD Plan which incorporates the building(s) and the landscaping and other site improvements which surround the building(s).**

#### **4.8.100 Engineering Construction Plans**

Engineering construction plans, profiles, details and specifications for all public facility and utility improvements shall be prepared by a qualified engineer registered in Oregon. The required engineering plans shall be submitted to and approved by the City before the start of construction and built to those plans.

Unless specifically authorized by the Planning Commission at the time of Preliminary PUD Plan approval, all public facilities and utilities shall be designed in accordance with the standards and procedures of the City or other public entity to which ownership of said facilities or utilities will be conveyed. The procedures for engineering design, plan approval and inspection shall in all respects be the same as for land divisions under this Code.

#### **4.8.110 Approval of Final Planned Unit Development (PUD) Plan; Approval Criteria**

The following provisions shall govern the submittal and approval of a Final PUD Plan:

**A. Filing Requirements: Time Extensions: Within twelve (12) months following final approval by the Planning Commission of the Preliminary PUD Plan and any appeal therefrom, the applicant shall file a Final PUD Plan. The Final PUD Plan shall contain in final form all information and materials required by Section 4.8.030. As appropriate, the Final PUD Plan shall incorporate all conditions imposed by the Planning Commission at the time the**

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**Preliminary PUD Plan was approved. In its sole discretion and upon the written request by an applicant filed prior to expiration of the Preliminary PUD Plan, the Planning Commission may extend the time for filing a Final PUD Plan for one additional twelve (12) month period or such lesser period as may be established by the Planning Commission. Any such extension shall not extend the time periods for filing final plat(s) as required.**

**B. Phased PUD / Time Limit Between Phases: The Final PUD Plan may be submitted for the entire project or on a phase-by-phase basis consistent with the approved Preliminary PUD Plan. If the Planning Commission approves a Final PUD Plan for the first phase of a PUD having approved multiple phases, such approval shall secure the applicant's rights under this Section to complete subsequent future phases. However, it is further provided that after Final PUD Plan approval for the first phase and for each successive phase thereafter, no more than five (5) years shall elapse between the approvals of phases. If more than five (5) years pass between the Final PUD Plan approval of any two (2) PUD phases, the Planning Commission may, without consent of the owners of the PUD, initiate action to terminate undeveloped portions of the PUD under Subsection 17.64.150(2). Nothing in this Subsection shall prohibit or limit the ability of the Planning Commission to establish time periods within which substantial construction of a PUD or any phase thereof is required to occur after a Final PUD Plan has been approved.**

Commented [93]: 10-18 CAC We all want Final PUD plan to be an admin review of Prelim Plan plus conditions. Alan to check to see if there is any reason why PC should hear all Final Plans and why Final Plan approval should be in phases.

**C. Final Plat for Land Division: Application for the approval of a Final PUD Plan may occur before, after or concurrent with the approval of a final plat for a land division by the Planning Director. However, it is further provided that no building permits shall be issued by the City and no buildings intended for human occupancy shall be constructed and no lot shall be sold until the Final PUD Plan has been approved by the Planning Commission.**

**D. Final PUD Plan Approval Criteria: A Final PUD Plan shall be approved by Planning Director as an administrative process if it is concluded that compliance exists with each of the following criteria:**

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- 1. Provisions for the establishment and maintenance of elements to be held in common ownership, if any, have or will comply with the standards in the Section.**
- 2. The Final PUD Plan is substantially consistent with Preliminary PUD Plan and the**

conditions, if any, which were attached by the Planning Commission to the approval of the Preliminary PUD Plan. An applicant may seek written clarification from the Planner or Planning Commission regarding whether any anticipated differences between the Preliminary and Final PUD Plans meet the test of being substantially consistent. In no instance shall a Final PUD Plan be approved if inconsistencies with the approved Preliminary PUD Plan exist in any of the ways listed below and when such inconsistencies are found to occur, these shall result in the need to approve a revision to the approved Preliminary PUD Plan.

- (a) The exterior boundaries of the PUD have changed except for slight deviations which are the result of correcting boundary errors or inconsistencies that are found to exist at the time the PUD property is surveyed.
  
- (b) The number of housing units have increased or decreased.
  
- (c) There are new deviations to provisions of this Code which were not approved by the Planning Commission as part of the Preliminary PUD Plan.

#### **4.8.120 Building Permits: Development and Operation of a PUD**

All building and construction plans submitted for the purpose of obtaining building and other site improvement permits shall be consistent with the approved Final PUD Plan. In addition to other provisions of the Jacksonville Municipal Code and law, the City shall have authority under this Section to ensure the successful completion of all public improvements. The development and operation of the PUD shall conform in all respects with the approved Final PUD Plan.

#### **4.8.130 Revision of a Preliminary or Final PUD Plan**

The revision of a Preliminary or Final PUD Plan shall follow the same procedures required for

**initial approval.**

#### **4.8.140 Termination of a PUD**

**A PUD may be terminated by action of the Planning Commission subject to the following procedures:**

**A. If substantial construction or development of the PUD has not occurred or if no lots or units therein have been sold, the PUD may be terminated by filing with the City a written petition signed by the owner or owners who control a majority interest in the land covered by the approved PUD. Upon receipt of a petition submitted by the PUD owners, the Planning Commission shall determine compliance with this Section. The Planning Commission's termination of a PUD shall be evidenced by a Final Order declaring the same and after the Final Order is signed the PUD shall be terminated and previous PUD Plan approvals shall be considered void and of no further effect. Termination of a PUD shall in no way affect other land use actions taken by the City which concern the PUD property.**

**B. If substantial construction or development of the PUD has occurred or if lots or units within the PUD have been sold, the PUD may be terminated by filing with the city a written petition signed by the owner or owners who control a majority interest in the land covered by the approved PUD and the owners of any sold lots. Upon receipt of the petition, the Planning Commission shall give public notice of the proposed PUD termination and conduct a public hearing on the matter. The Planning Commission shall declare the PUD terminated if it concludes that the termination will not produce greater than minimal harm to the public health, safety or general welfare. The Planning Commission's termination of a PUD shall be evidenced by a Final Order declaring the same and after the Final Order is signed the PUD shall be terminated and previous PUD Plan approvals shall be considered void and of no further effect. Termination of a PUD shall in no way affect other land use actions taken by the City which concern the PUD property.**



## Chapter 4.9 — Non-Conforming Situations

### Sections:

|         |                            |
|---------|----------------------------|
| 4.9.010 | Purpose and Applicability  |
| 4.9.020 | Non-conforming Use         |
| 4.9.030 | Non-conforming Development |
| 4.9.040 | Non-conforming Lot         |

### 4.9.010 Purpose and Applicability

Chapter 4.9 provides standards and procedures for the continuation of uses and developments that are lawfully established but do not comply with current Code standards (“non-conforming situations”). The Code is intended to protect public health, safety, and general welfare, while allowing reasonable use of private property. The chapter contains three sections as follows:

**A. Non-conforming uses** (e.g., industrial use in residential zone) are subject to Section 4.9.020;

**B. Non-conforming developments** (e.g., structure does not meet setback or height standards) are subject to Section 4.9.030; and

**C. Non-conforming lots** (e.g., lot is smaller than minimum area standard) are subject to Section 4.9.040.

### 4.9.020 Non-conforming Use

Where a use of land exists that would not be permitted under the current Code, but was lawful at the time it was established, the use may continue, provided it conforms to the following requirements:

**A. Expansion of Non-conforming Use Limited.** An expansion of a non-conforming use shall not exceed a total of 10 percent of the subject site or building, and not more than 1000 square feet of building area (footprint or floor area), whichever is less.

**B. Location of Non-conforming Use.** A non-conforming use shall not be moved in whole or in part from one lot to another lot, except as to bring the use into conformance with this Code.

**C. Discontinuation or Abandonment of Non-conforming Use.** A non-conforming use that is discontinued for any reason other than fire or other catastrophe beyond the owner’s control for a

period of more than 12 months shall be deemed abandoned and shall no longer be an allowed use. For purposes of calculating the 12 month period, a use is discontinued upon the first occurrence of any one of the following:

1. The date when the use of land is physically vacated;
2. The date the use ceases to be actively involved in the sale of merchandise or the provision of services; for example, as evidenced by the removal of signs, goods/stock, or office equipment, or the disconnection of telephone or utility service;
3. The date of termination of any lease or contract under which the non-conforming use has occupied the land;
4. The date a request for final reading of water and power meters is made to the applicable utility districts;
5. The date when the owner's utility bill or property tax bill account became delinquent; or
6. The date of an event similar to those listed in subsections 1-5, above, as determined by the Planning Commission.

**D. Application of Code Criteria and Standards to Non-conforming Use.** Once the City deems a use abandoned pursuant to subsection 4.9.020.C, any subsequent use of the subject lot shall conform to the current standards and criteria of this Code. After the City has deemed a non-conforming use abandoned, the use shall not be allowed to resume, in whole or in part, under the same or different ownership/management; any such activity is a violation of this Code and subject to enforcement proceedings under Chapter 1.6.

#### 4.9.030 Non-conforming Development

Section 4.9.030 regulates non-conforming development. Non-conforming development includes situations where a development exists on the effective date of adoption or amendment of this Code that could not be built under the terms of the Code today; for example, by reason of restrictions on lot area, lot coverage, location on a lot, setbacks, height, yard, equipment, access, parking, landscaping, or other physical restriction or requirement. If the development was lawful when constructed, it may remain on the site so long as it remains otherwise lawful and complies with the following regulations:

**A. Alterations.** Any expansion of a non-conforming development shall not exceed 10 percent of the subject building area or development area or 1000 square feet, whichever is less; for example, such area may include floor area or other surface area, paving, parking spaces, landscaping, outdoor storage, signage, lighting, or other developed areas. A non-conforming development shall not be enlarged or altered in a way that increases its non-conformity. A development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or moves in the direction of conformity;

**B. Destruction.** Should a non-conforming development or non-conforming portion of development be destroyed by any means to an extent more than 50 percent of its current value as assessed by the *Jacksonville* County Assessor, it shall be reconstructed only in full conformity with this Code. This does not preclude the reestablishment of a non-conforming use after fire or other catastrophe as allowed under Section 4.9.020 within 12 months of the fire or other catastrophe;

**C. Roadway Access.** The owner of a non-conforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the non-conforming access into conformance with the standards of the applicable roadway authority.

**D. Relocation or Removal.** Once a non-conforming structure or a portion of a non-conforming structure or development is moved it shall thereafter conform to current Code standards.

**4.9.040 Non-conforming Lot**

**A legal lot or lot of record with an area or dimensions that do not meet the standards of the zoning district in which the property is located, may be occupied by a use permitted in the zone subject to other requirements of the zone; provided that if there is a lot area deficiency, residential use shall be limited to a single-family dwelling.**