

TITLE 7: LAND USE AND DEVELOPMENT CODE
SECTION 7.3.1
APPLICATION REQUIREMENTS AND REVIEW PROCEDURES

7.3.101 SUMMARY OF APPLICATION TYPES AND REVIEW PROCEDURES

All development permits and land use actions are processed under the City's administrative procedures. There are four types of actions, each with its own procedures. See Land Use Application process, Table 1. *(Revised Ordinance 600, effective 11/4/10)*

7.3.101.01 Type I Action

Type I actions are administrative reviews processed by the City staff. The review standards are generally clear and objective and allow little or no discretion. Conditions may be placed on the decision and notice is sent to the applicant and property owners within the required notice area. Appeal is to the Planning Commission. The following actions are processed under the Type I procedure:

- A. Minor Variance
- B. Property Line Adjustment
- C. Partitions
- D. Historic Exterior Alteration or New Construction (unless determined to require a Type II procedure by the City Manager) *(Added by Ordinance 600, effective 11/4/10)*

7.3.101.02 Type II Actions

A Type II action is a quasi-judicial review in which the Planning Commission applies a mix of objective and subjective standards that allow considerable discretion. Staff has an advisory role. Public notice and a public hearing is provided. Section 3.202 lists the notice requirements. Appeal of a Type II decision is to the City Council. The following actions are processed under a Type II procedure:

- A. Site Plan Review
- B. Conditional Use, including Flood Plain
- C. Major Variance, including Flood Plain
- D. Subdivision, Planned Unit Development and a Partition including a Private Street *(Revised by Ordinance #541, 06/03/02 - Effective 07/03/02)*
- E. Historic Demolition and Moving *(Added by Ordinance 600, effective 11/4/10)*
- F. Historic Exterior Alteration or New Construction (if referred to the Planning Commission by the City Manager) *(Added by Ordinance 600, effective 11/4/10)*

7.3.101.03 Type III Actions

A Type III action is a quasi-judicial process in which the City Council applies a mix of objective and subjective standards. Staff and the Planning Commission have advisory roles. Public notice is provided and public hearings are held before the Commission and City Council. Section 3.202 lists the notice requirements. Appeal of the decision is to the Land Use Board of Appeals (LUBA). The following actions are processed under a Type III procedure:

- A. Comprehensive Plan Map Amendments (involving 5 or fewer adjacent land ownerships or less than 10 acres)
- B. Zone Changes (involving 5 or fewer adjacent land ownerships or less than 10 acres)
- C. Annexation
- D. Historic Landmark and District Designation *(Added by Ordinance 600, effective 11/4/10)*

7.3.101.04 Type IV Actions

A Type IV action is a legislative review in which the City considers and enacts or amends laws and policies. Private parties cannot apply for a Type IV action; it must be initiated by City staff, Planning Commission, or City Council. Public notice and hearings are provided in a Type IV process. The following actions are processed under a Type IV procedure:

- A. Text Amendments to the Comprehensive Plan and Development Code
- B. Enactment of new Comprehensive Plan or Development Code text
- C. Comprehensive Plan Map Amendments (involving more than 5 separate land ownerships or more than 10 acres)
- D. Zone Changes (involving more than 5 separate land ownerships or more than 10 acres)

LAND USE APPLICATION PROCESS

LAND USE ACTION	TYPE	STAFF	PLANNING COMMISSION	CITY COUNCIL
Minor Variance	I	Final Decision	Appeal of Staff Decision	Appeal of Commission Decision
Lot Line Adjustment	I	Final Decision	Appeal of Staff Decision	Appeal of Commission Decision
Partition (inc. Expedited Review)	I	Final Decision	Appeal of Staff Decision	Appeal of Commission Decision
Historic Exterior Alteration or New Construction (unless determined to required a Type II procedure by the City Manager) <i>Added ORD 600 11-4-10</i>	I	Final Decision	Appeal of Staff Decision	Appeal of Commission Decision
Site Plan Review	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Conditional Use (inc. Flood Plain)	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Major Variance (inc. Flood Plain)	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Subdivision (inc. Expedited Review)	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Historic Demolition and Moving <i>Added ORD 600 11-4-10</i>	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Historic Exterior Alteration or New Construction (if referred by the City Manager) <i>Added ORD 600 11-4-10</i>	II	Recommendation to Commission	Final Decision	Appeal of Commission Decision
Comprehensive Plan Map Amendment	III	Recommendation to Commission	Recommendation to Council	Final Decision
Zone Change	III	Recommendation to Commission	Recommendation to Council	Final Decision
Annexation	III	Recommendation to Commission	Recommendation to Council	Final Decision
Historic Landmark and District Designation <i>Added ORD 600 11-4-10</i>	III	Recommendation to Commission	Recommendation to Council	Final Decision
Text Amendments Legislative Zone and Plan Map Changes	IV	Recommendation to Commission	Recommendation to Council	Final Decision

7.3.102 GENERAL PROVISIONS

7.3.102.01 Scope

These general provisions apply to all land use actions subject to requirements contained in Section 7.3.1.

7.3.102.02 Approval of a Land Use Application

Approval of a land use application shall only be granted if the application complies, or can comply with conditions, to all relevant decision criteria.

7.3.102.03 Approval and Conditions of Approval

Conditions of approval may be imposed to ensure compliance with the decision criteria. These conditions may include, but are not limited to, building location, buffering, setbacks, and, review and acceptance of development plans by the City Engineer without the need for further review by the decision authority.

7.3.102.04 Financial Assurances

The City may require performance bond or other guarantee acceptable to the City Attorney, to ensure compliance with the conditions of approval, public facility improvements or other requirements.

7.3.102.05 Time Limit

Approvals shall be effective for a period of one year from the date of final approval.

7.3.102.06 Time Extension

Prior to the expiration of the one year time limit, an applicant may request a time extension for a period not to exceed one year, subject to the following:

- A. No changes are made to the approved land use application.
- B. The applicant can show intent to initiate construction on the site or begin the approved activity within the one year extension period.
- C. There have been no changes in the facts or applicable policies or Code provisions on which the original approval was based.
- D. Only one time extension may be granted.

7.3.103 MINOR VARIANCES

7.3.103.01 Purpose

The development standards in this Development Code protect the public health, safety and welfare by establishing standard setbacks, maximum building heights and other development standards that apply to various uses. For lands or uses with unique characteristics the intent and purpose of the development standards may be maintained while allowing for a variance to quantifiable requirements. A minor variance may be approved for those requests resulting in no more than a 10% change in a quantifiable standard.

7.3.103.02 Review and Approval Process

Minor Variance applications shall be reviewed in accordance with the Type I review procedures specified in Section 7.3.201.

7.3.103.03 Application and Fee

An application for a variance shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.103.04 Applicability

Under the following provisions, a property owner or his designate may propose a modification or variance from a standard or requirement of this Code, except when one or more of the following apply:

- A. The proposed variance would allow a use which is not permitted in the district;
- B. Another procedure and/or criteria is specified in the Code for modifying or waiving the particular requirement or standard;
- C. Modification of the requirement or standard is prohibited within the district; or,
- D. An exception from the requirement or standard is not allowed in the district.

7.3.103.05 Criteria and Procedure

Staff may grant a minor variance in accordance with the Type I review procedures. Approval of a minor variance shall require compliance with the following:

- A. The intent and purpose behind the specific provision being varied is either clearly inapplicable under the circumstances; OR, the particular proposed development otherwise clearly satisfies the intent and purpose of the provision being varied.
- B. The proposed development will not unreasonably impact adjacent existing or planned uses and development.

- C. The minor variance does not expand or reduce a quantifiable standard by more than 10 percent and is the minimum necessary to achieve the purpose of the minor variance.
- D. There has not been a previous land use action prohibiting an application for a minor variance.

7.3.104 PROPERTY LINE ADJUSTMENTS

7.3.104.01 Area of Application

A property line adjustment application is required whenever a property boundary separating two lots or parcels is reconfigured. Property line adjustments do not create new parcels.

7.3.104.02 Validity

Property line adjustment approval is valid in perpetuity, upon recording of the new deeds.

7.3.104.03 Submittal Requirements for Preliminary Review

- A. Application Process. Applications for partitions shall be submitted on forms provided by the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.
- B. Submittal Requirements. Each application shall be accompanied by a preliminary adjustment plan drawn to scale and containing at a minimum, the following:
 - 1. Map number and tax lot or tax account number of subject properties.
 - 2. The boundary lines and approximate area of the subject properties in square feet and location of structures on property.
 - 3. The approximate location of existing streets, easements or right-of-ways adjacent to, or within, the subject properties, and, existing improvements on the property.
 - 4. The location of the property boundary after the proposed adjustment is completed.

7.3.104.04 Process for Preliminary Review

Property line adjustments shall be reviewed in accordance with the Type I review procedures specified in Section 7.3.201.

7.3.104.05 Review Criteria

Approval of a property line adjustment shall require compliance with the following:

- A. After the adjustment, each parcel shall satisfy the dimensional standards of applicable zoning district, unless a variance from these standards is approved.
- B. Each parcel shall meet the land division standards in Section 7.2.307.

7.3.104.06 Completion of a Property Line Adjustment

Within one year of the final decision approving the property line adjustment, the applicant shall record modified deeds. A survey record may be required pursuant to ORS Chapter 92.

7.3.105 PARTITIONS

7.3.105.01 Area of Application

A partition is required for any land division which creates two or three parcels in a calendar year.

7.3.105.02 General Provisions

- A. Validity. Partition approval is valid in perpetuity, upon recording of the final surveyed plat. Parcels shall be created only upon recording of the final plat.
- B. Master Plan. A master plan for development is required for any application which leaves a portion of the subject property capable of further land divisions.

7.3.105.03 Submittal Requirements for Preliminary Review

- A. Application Process. Applications for partitions shall be submitted on forms provided by the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.
- B. Submittal Requirements. Each application shall be accompanied by a preliminary partition plat drawn to scale on a minimum 11" x 17" sheet and containing at a minimum, the following:
 - 1. Appropriate identification stating the drawing is a preliminary plan.
 - 2. North point, scale and date.
 - 3. Name and addresses of land owner, applicant, engineer, surveyor, planner, architect or other individuals responsible for the plan.
 - 4. Map number and tax lot or tax account number of subject property.
 - 5. The boundary lines and approximate area of the subject property.
 - 6. Dimensions and size in square feet or acres of all proposed parcels.
 - 7. The approximate location of existing streets, and bicycle and pedestrian easements or right-of-ways adjacent to, or within, the subject property, and, existing improvements on the property. *(Revised by Ordinance 589 – Effective 4/2/09)*
 - 8. The location of any flood boundary.

7.3.105.04 Process for Preliminary Review *(Revised by Ordinance #541, 06/03/02 - Effective 7/03/02)*

Preliminary plats for partitions shall be reviewed in accordance with the following procedures:

- A. Partitions that do not involve the creation of a private street shall be reviewed as a Type I application consistent with provisions in Section 7.3.202.01.
- B. Partitions that include a private street shall be reviewed as a Type II application consistent with provisions in Section 7.3.202.02.

7.3.105.05 Review Criteria

Approval of a partitioning shall require compliance with the following:

- A. Each parcel shall satisfy the dimensional standards of applicable zoning district, unless a variance from these standards is approved.
- B. Adequate public facilities shall be available to all parcels.
- C. Each parcel shall meet the land division standards in Section 7.2.307.

7.3.105.06 Process for Final Plat Approval

- A. Survey. Within one year of the final decision approving a preliminary plat, a final survey of the approved plat shall be recorded. Failure to record a plat within the required time period shall void the approval and require a new partitioning application.
- B. Final Approval. The City shall sign the final plat if the plat substantially conforms with the approved preliminary plat, and if the conditions of approval are satisfied.
- C. Final Plat. The final plat shall conform to the requirements in ORS Chapter 92 and applicable County surveying requirements.
- D. Recording of Approved Plat. No building permit shall be issued, or parcel sold, transferred or assigned until the final approved Plat has been recorded with the County Recorder. The applicant shall be responsible for all recording fees.
- E. Improvements/Bonding. Prior to issuance of an occupancy permit, all improvements required by the conditions of approval shall be constructed or the construction shall be guaranteed through a performance bond or other instrument acceptable to the City Attorney.

7.3.105.07 Expedited Land Division

- A. Eligibility. Land designated for residential use, including recreational and open space uses accessory to residential use, is eligible to apply for an expedited land division process when creating two or three parcels. The expedited land division process may be used in lieu of a Type I process.
- B. Exclusion.
 - 1. Property and process exclusions include properties specifically mapped and designated in the Comprehensive Plan or Development Code for

full or partial protection of natural features under the statewide planning goals that protect open space, scenic and historic areas and natural features and not eligible for the construction of dwelling units or accessory buildings.

2. The expedited land division process is not a land use or limited land use decision and is not subject to the permit requirements of City enabling legislation. Decisions are not subject to the Comprehensive Plan and not eligible for appeal to the Land Use Board of Appeals (LUBA).
- C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.
- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 100 feet of the site proposed for the land division. The notice shall include the following:
1. The deadline for submission of written comments.
 2. The time and place where all copies of evidence submitted by the applicant will be available for review.
 3. The name, address, and telephone number of the City's staff person available to comment on the application.
 4. Summary of the local decision making process for such a decision.
 5. Applicable decision criteria.
 6. Notification that participants must raise all issues during the written comment period.
- E. Initial Decision. The local government must allow at least 14 days for written comments and shall render a decision within 63 days of a complete application. No public hearing may be held during the initial decision making phase.
- F. Notice of Final Decision. A notice of decision must be given to the applicant and other participants of the decision. The notice of decision shall state the appeal process.
- G. Time Extension.
1. Applicant: If a decision is not made within 63 days, the applicant may seek review by writ of mandamus.
 2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in applications makes the 63 day period impracticable. Following a 7 day

notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That determination is specifically declared not to be a land use decision or limited land use decision.

- H. Decision Criteria. Criteria for approving the partition shall be as follows:
1. The criteria established in Section 3.105.05
 2. Density. The application must be able to establish at least 80 percent of the allowable density of the applicable residential zone.
 3. Street Standards. The application must comply with the most recent City of Dayton Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards contained within this Code.
- I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within 14 days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.
- J. Appeal Fee. Filing an appeal requires a deposit according to the City's Fee Schedule cover costs. An appellant faces the possibility of a higher assessment for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded. (*Revised Ordinance 614, 10/7/13- Effective 11/06/13*)
- K. Basis of an Appeal of the Initial Decision. The local appeal is shall based on the following:
1. The failure to meet local substantive and procedural requirements,
 2. Unconstitutionality,
 3. The decision was not within the expedited land division category, or
 4. A party's substantive rights have been substantially prejudiced by an error in procedure of the local government.
- L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.
- M. Hearings Officer Notification. Within 7 days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.
- N. Appeal Hearing. The hearings officer conducts a hearing that:

1. Follows the Commission proceeding requirements,
 2. Allows the local government's explanation of its decision, and
 3. May consider evidence not previously considered.
- O. Hearings Officer Decision. In all cases, not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.
- P. Appeal of Hearings Officer Decision. Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.
- Q. Basis of an Appeal of the Hearings Officer Decision. The grounds for review of a hearings officer's decision are limited to:
1. Whether the decision followed the process for an expedited land division and the appellant raised that issue,
 2. Unconstitutionality, and
 3. Certain bias or interest on the part of the hearings officer or local government.
- R. Process for Final Plat Approval. Final plats for expedited land divisions shall be reviewed consistent with the requirements in Section 3.105.06 .

7.3.106 SITE DEVELOPMENT REVIEW

7.3.106.01 Purpose

The Site Development Review Process is intended to guide future growth and development in accordance with the Development Codes; provide an efficient process and framework to review development proposals; ensure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment; and resolve potential conflicts that may arise between proposed developments and adjacent uses.

The site development review provisions are not intended to preclude uses that are permitted in the underlying zones.

7.3.106.02 Applicability of Provisions

A. Applicability. Site Development Review shall be applicable to all new developments and major remodeling, except:

1. Single-family detached dwellings;
2. A duplex; or
3. Any commercial, industrial or public facility expansion or remodel that does not exceed 25 percent of the total square footage of the structure existing at the time of the adoption of this Code and/or does not expand the activity/business area on the subject property beyond 25 percent (i.e. outdoor uses). *(Updated by ORD 594, adopted 2/1/10 & enacted 3/2/10)*
4. Wireless Communication Facilities for properties within a Public (P) zone district. *Added ORD 608 effective 10/6/11*

B. Underlying Zone. All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Code.

7.3.106.03 Review and Approval Process

Site Development Review applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.106.04 Application and Fee

An application for Site Development Review shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.106.05 Submittal Requirements

The following information shall be submitted as part of a complete application for Site Development Review:

- A. Proposed grading and topographical changes;
- B. All existing and proposed structures, roadway access, adjacent roads, bikeways, pedestrian facilities, public or private, easements or right-of-way to, or within 200 feet of the subject property and utilities including finished floor elevations and setbacks; *(Amended by Ordinance 589 – Effective 4/2/09)*
- C. Motor vehicle, bicycle and pedestrian circulation patterns, parking, loading and service areas; *(Amended by Ordinance 589 – Effective 4/2/09)*
- D. Proposed access to public roads, bikeways, pedestrian facilities, railroads or other transportation systems; *(Amended by Ordinance 589 – Effective 4/2/09)*
- E. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services. Inverse elevations may be required for all underground transmission lines;
- F. Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with surrounding properties and uses;
- G. Proposed on-premise signs, fencing or other fabricated barriers, together with their heights and setbacks; and,
- H. The expected development schedule.
- I. The location of any flood boundary.

7.3.106.06 Evaluation of Site Development Plan

The review of a Site Development Plan shall be based upon consideration of the following:

- A. Conformance with applicable General Development Standards in Section 7.2.3.
- B. Adequacy of public and private facilities.
- C. Traffic safety, internal circulation and parking;
- D. Provision for adequate noise and/or visual buffering from non-compatible uses.
- E. Conformance with development requirements of the underlying zone.

7.3.107 CONDITIONAL USE PERMITS

7.3.107.01 Purpose

A conditional use is a use which is generally acceptable as a land use activity in a particular zone, but due to certain aspects of the activity, buffering, screening, time limitations or other conditions are necessary to ensure compatibility with adjacent property. Conditional uses are assumed permitted uses unless conditions to ensure their compatibility cannot be established.

7.3.107.02 Review and Approval Process

Conditional Use applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.107.03 Application and Fee

An application for a Conditional Use Permit shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.107.04 Criteria for Approval

Conditional Use Permits shall be approved if the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- A. The use is listed as a conditional use in the underlying district.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.
- C. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services, existing or planned development for the area affected by the use.
- D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.

7.3.108 MAJOR VARIANCES

7.3.108.01 Purpose

The development standards in this Development Code protect the public health, safety and welfare by establishing standard setbacks, maximum building heights and other development standards that apply to various uses. For lands or uses with unique characteristics the intent and purpose of the development standards may be maintained while allowing for a variance to quantifiable requirements. Those requests which result in a more than 10% change in a quantifiable standard require a major variance.

7.3.108.02 Review and Approval Process

Major Variance applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.108.03 Application and Fee

An application for a variance shall be filed with the City Recorder and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.108.04 Applicability

Under the following provisions, a property owner or his designate may propose a modification or variance from a standard or requirement of this Code, except when one or more of the following apply:

- A. The proposed variance would allow a use which is not permitted in the district.
- B. Another procedure and/or criteria is specified in the Code for modifying or waiving the particular requirement or standard.
- C. Modification of the requirement or standard is prohibited within the district.
- D. An exception from the requirement or standard is not allowed in the district.

7.3.108.05 Criteria and Procedure

The Planning Commission may grant a major variance from a requirement or standard of this Code after a public hearing conducted in accordance with the Type II review procedures provided that the applicant provides evidence that all the following circumstances substantially exist:

- A. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the requirements of the Code, and is the minimum relief to relieve the hardship. Adverse economic impact shall not be considered an unreasonable hardship or practical difficulty.
- B. There are exceptional or extraordinary circumstances or conditions applying to

the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to the land, buildings, or uses in the same zone; however, non-conforming land, uses, or structures in the vicinity shall not in themselves constitute such circumstances or conditions.

- C. That granting the application will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises.
- D. That such variance is necessary for the preservation and enjoyment of the substantial property rights of petitioner.
- E. That the granting of the application will not, under the circumstances of the particular case, adversely affect the health or safety of persons working or residing in the neighborhood of the property of the applicant.
- F. The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone.
- G. The variance request is not the result of a deliberate action or knowing violation on the part of the applicant.

7.3.109 SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS

7.3.109.01 Area of Application

A subdivision is required for any land division which creates more than three parcels in a calendar year.

7.3.109.02 Submittal Requirements

Submittal Material. The following submittal requirements shall apply to all Preliminary Plan applications for subdivisions and planned unit developments.

- A. All applications shall be submitted on forms provided by the City to the City along with the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.
- B. Applicants for subdivisions shall submit the following:
 - 1. Appropriate identification stating the drawing is a preliminary plat.
 - 2. North point, scale and date.
 - 3. Name and addresses of land owner, applicant, engineer, surveyor, planner, architect or other individuals responsible for the plan.
 - 4. Map number and tax lot or tax account number of subject property.
 - 5. The boundary lines and approximate area of the subject property.
 - 6. Dimensions and size in square feet or acres of all proposed parcels.
 - 7. The approximate location of existing streets, bikeways, pedestrian facilities, public or private, easements or right-of-ways adjacent to, or within, the subject property, and, existing improvements on the property. *(Amended by Ordinance 589 – Effective 4/2/09)*
 - 8. The location of any flood boundary.
 - 9. The name, address and phone number of the applicant engineer, land surveyor, or person preparing the application.
 - 10. Name of the subdivision.
 - 11. Date the drawing was made.
 - 12. Vicinity sketch showing location of the proposed land division.
 - 13. Identification of each lot by number.
 - 14. Gross acreage of property being subdivided or partitioned.

15. Direction of drainage and approximate grade of abutting streets.
 16. Streets proposed and their names, approximate grade, and radius of curves.
 17. Any other legal access to the subdivision, partition other than a public street.
 18. Contour lines at two foot intervals if 10% slope or less, five foot intervals if exceeding 10% slope, and a statement of the source of contour information.
 19. All areas to be offered for public dedication.
- C. Applicants for a planned unit development shall submit the material required in item "B." above as well as the following additional material:
1. Proposed uses of the property, including sites, if any, for attached dwelling units, recreational facilities, parks and playgrounds or other public or semi-public uses, with the purpose, condition and limitations of such reservations clearly indicated.
 2. The approximate location and dimensions of all commercial or multi-family structures proposed to be located on the site.
 3. Statement of improvements to be made or installed including streets, sidewalks, bikeways, trails, lighting, tree planting, landscaping, and time such improvements are to be made or completed.
 4. Written statement outlining proposals for ownership and maintenance of all open space areas, private streets and any commonly owned facilities.

7.3.109.03 Review Procedures

- A. **Planning Commission.** All Preliminary Plans for subdivisions and PUDs shall be heard by the Planning Commission pursuant to the requirements for a Type II procedure as set forth in Section 7.3.203.
- B. **Time Limit.** Approvals of any preliminary plans for a subdivision PUD shall be valid for one year after the date of the written decision. A Final Plat for a Final Plan for a subdivision shall be recorded within this time period.
- C. **Re-application Required.** Failure to record a plat within the required time period shall void the approval and require a new application before the Planning Commission. The applicant will be subject to all applicable standards currently in effect.

7.3.109.04 Review Criteria

Approval of a subdivision or PUD shall require compliance with the following:

- A. Each lot shall satisfy the dimensional standards and density standard of the applicable zoning district, unless a variance from these standards is approved or the development standards permit a modification of these requirements.
- B. Adequate public facilities shall be available to serve the existing and newly created parcels.
- C. The proposal shall comply with the applicable development standards in Section 7.2.307 (Land Divisions), or, Section 7.2.311 (Planned Unit Developments).

7.3.109.05 Form of Final Subdivision Plat

The final plat shall conform to the requirements in ORS Chapter 92 and applicable County surveying requirements

7.3.109.06 Final Plat Review of Subdivisions

- A. Final Review. The final subdivision or PUD plat shall be submitted to the City staff for review. Staff shall review the plat to assure compliance with the approved preliminary plat and with the conditions of approval. The City Manager shall signify staff approval of the final plat by signing the document.
Amended ORD 608 effective 10/6/11
- B. Recording of Approved Plat. No building permit shall be issued, or parcel sold, transferred or assigned until the final approved Plat has been recorded with the County Recorder. The applicant shall be responsible for all recording fees.
- C. Improvements/Bonding. Prior to issuance of an occupancy permit, all improvements required by the conditions of approval shall be constructed or the construction shall be guaranteed through a performance bond or other instrument acceptable to the City Attorney.

7.3.109.07 Expedited Land Division

- A. Eligibility. Land designated for residential use, including recreational and open space uses accessory to residential use, is eligible to apply for an expedited land division process when creating more four or more lots. The expedited land division process may be used in lieu of a Type II process.
- B. Exclusion.
 - 1. Property and process exclusions include properties specifically mapped and designated in the Comprehensive Plan or Development Code for full or partial protection of natural features under the statewide planning goals that protect open space, scenic and historic areas and natural features and not eligible for the construction of dwelling units or

accessory buildings.

2. The expedited land division process is not a land use or limited land use decision and is not subject to the permit requirements of City enabling legislation. Decisions are not subject to the Comprehensive Plan and not eligible for appeal to the Land Use Board of Appeals (LUBA).
- C. Complete Application. The City shall review an application and makes a decision on its completeness within 21 days of submittal. Upon determination of an incomplete application, the applicant has 180 days to submit the missing information.
- D. Public Notice. Upon submittal of a complete application, the City shall send written notice to affected governmental agencies and property owners within 100 feet of the site proposed for the land division. The notice shall include the following:
1. The deadline for submission of written comments.
 2. The time and place where all copies of evidence submitted by the applicant will be available for review.
 3. The name, address, and telephone number of the City's staff person available to comment on the application.
 4. Summary of the local decision making process for such a decision.
 5. Applicable decision criteria.
 6. Notification that participants must raise all issues during the written comment period.
- E. Initial Decision. The local government must allow at least 14 days for written comments and shall render a decision within 63 days of a complete application. No public hearing may be held during the initial decision making phase.
- F. Notice of Final Decision. A notice of decision must be given to the applicant and other participants of the decision. The notice of decision shall state the appeal process.
- G. Time Extension.
1. Applicant: If a decision is not made within 63 days, the applicant may seek review by writ of mandamus.
 2. City: The City may extend the 63 day period up to 120 days based on the determination that an unexpected or extraordinary increase in applications makes the 63 day period impracticable. Following a 7 day notice to the applicant, consideration of an extension is considered at a regularly scheduled City Council meeting. That determination is specifically declared not to be a land use decision or limited land use decision.

- H. Decision Criteria. Criteria for approving the subdivision shall be as follows:
1. The criteria established in Section 3.109.04.
 2. Density. The application must be able to establish at least 80 percent of the allowable density of the applicable residential zone.
 3. Street Standards. The application must comply with the most recent City of Dayton Transportation Plan or provide evidence of meeting the City's minimum street connectivity standards contained within this Code.
- I. Appeal of Initial Decision. A decision may be appealed to a local hearings officer within 14 days of filing the notice of decision by the applicant or any person or organization that filed comments on the initial decision.
- J. Appeal Fee. Filing an appeal requires a deposit according to the City's Fee Schedule to cover costs. An appellant faces the possibility of a higher assessment for the total costs of local proceedings if the appellant does not prevail. If an appellant materially improves its position, the deposit and appeal fee shall be refunded. *(Revised Ordinance 614, 10/7/13- Effective 11/06/13)*
- K. Basis of an Appeal of the Initial Decision. The local appeal is shall based on the following:
1. The failure to meet local substantive and procedural requirements,
 2. Unconstitutionality,
 3. The decision was not within the expedited land division category, or
 4. A party's substantive rights have been substantially prejudiced by an error in procedure of the local government.
- L. Hearings Officer. The appeal of the initial expedited land use decision shall be heard by a City designated hearings officer. The hearings officer may not be a City officer or City employee.
- M. Hearings Officer Notification. Within 7 days of the hearings officer's appointment, the City shall notify the appellant, the applicant (if not the appellant), and the persons or organizations entitled to notice and which provided written comments, of the hearing date before the hearings officer. If a person submitting comments did not appeal, the issues presented by that person are limited to those in their submitted comments.
- N. Appeal Hearing. The hearings officer conducts a hearing that:
1. Follows the Commission proceeding requirements,
 2. Allows the local government's explanation of its decision, and

3. May consider evidence not previously considered.
- O. Hearings Officer Decision. In all cases, not involving a procedural issue, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements. The hearings officer may not reduce the density of the application or remand the application to the City, but shall make a written decision on the appeal within 42 days of the filing of the appeal. Unless the local government determines that exigent circumstances exist, a hearings officer who fails to decide a case within the 42 day period shall receive no compensation for services as the hearings officer. If the decision was not an expedited land division, the hearings officer must remand the decision for proper procedural determination.
 - P. Appeal of Hearings Officer Decision. Appeals of the Hearings Officer decision are to the Oregon Court of Appeals.
 - Q. Basis of an Appeal of the Hearings Officer Decision. The grounds for review of a hearings officer's decision are limited to:
 1. Whether the decision followed the process for an expedited land division and the appellant raised that issue,
 2. Unconstitutionality, and
 3. Certain bias or interest on the part of the hearings officer or local government.
 - R. Process for Final Plat Approval. Final plats for expedited land divisions shall be reviewed consistent with the requirements in Section 3.109.06..

7.3.110 COMPREHENSIVE PLAN MAP AMENDMENTS

7.3.110.01 Process

Amendments to the Comprehensive Plan map shall be reviewed in accordance with the Type III review procedures specified in Section 7.3.201. Type III reviews shall be limited to map amendments affecting 5 or fewer adjacent parcels ownerships, or less than 10 acres. Map amendments affecting more than 5 adjacent parcels ownerships or more than 10 acres shall be considered legislative actions and subject to a Type IV review process.

7.3.110.02 Application and Fee

An application for a map amendment shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.110.03 Criteria for Approval

Plan map amendment proposals shall be approved if the applicant provides evidence substantiating the following:

- A. Compliance is demonstrated with the Statewide Land Use Goals that apply to the subject properties or to the proposed land use designation. If the proposed designation requires an exception to the Goals, the applicable criteria in the LCDC Administrative Rules for the type of exception needed shall also apply.
- B. Consistency with the applicable goals and policies in the Comprehensive Plan is demonstrated.
- C. The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation and the addition of this property to the inventory of lands so designated is consistent with projected needs for such lands in the Comprehensive Plan.
- D. The Plan provides more than the projected need for lands in the existing land use designation.
- E. The proposed land use designation will not allow zones or uses that will destabilize the land use pattern in the vicinity or significantly adversely affect existing or planned uses on adjacent lands.
- F. Public facilities and services necessary to support uses allowed in the proposed designation are available or will be available in the near future.

7.3.111 ZONE CHANGE

7.3.111.01 Process

Zone changes shall be reviewed in accordance with the Type III review procedures specified in Section 7.3.201. Type III reviews shall be limited to zone changes affecting 5 or fewer adjacent parcels ownerships or less than 10 acres of land. Zone changes affecting more than 5 adjacent parcels ownerships or more than 10 acres shall be considered legislative actions and subject to a Type IV review process.

7.3.111.02 Application and Fee

An application for a zone change shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.111.03 Criteria for Approval

Zone change proposals shall be approved if the applicant provides evidence substantiating the following:

- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
- B. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
- C. Allowed uses in the proposed zone can be established in compliance with the development requirements in this Code.
- D. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.
- E. For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met.

7.3.111.04 Zone Change Conditions

- A. Imposition of Conditions. Approval of a zone change application may be conditioned to require provisions for buffering or provision of off-site public facilities. In order to impose conditions on a zone change, findings must be adopted showing that:
 - 1. The zone change will allow uses more intensive than allowed in the current zone; and
 - 2. The conditions are reasonably related to impacts caused by development allowed in the proposed zone or to impacts caused by the specific development proposed on the subject property; and

3. Conditions will serve a public purpose such as mitigating the negative impacts of allowed uses on adjacent properties; and
- B. Conditions. Conditions that could meet the criteria in A., include, but are not limited to:
1. Dedication of right-of-way for public streets, utility easements, etc.; including additional right-of-way consistent with the requirements of an approved Transportation Plan..
 2. Improvement of private roadways or public streets, including bike paths, curbs, and sidewalks.
 3. Provision of storm drainage facilities.
 4. Extension of public sewer, storm drain, and water service including over-sizing to permit development on other lands.
 5. Provision of fire suppression facilities and equipment.
 6. Provision of transit and traffic control facilities.
 7. Special building setbacks, orientation, landscaping, fencing, berming, and retention of natural vegetation.
 8. Special locations for truck loading, parking, access routes, or any outdoor activity that could impact adjacent property.
 9. Financial contributions to public agencies to offset increased costs for providing services or facilities related to the intensification of the use of the property.

7.3.112 TEXT AMENDMENTS

7.3.112.01 Process

Amendments to the Comprehensive Plan and Development Code texts shall be reviewed in accordance with the Type IV review procedures specified in Section 7.3.201.

7.3.112.02 Application and Fee

A Plan or Code text amendment can only be initiated by the Planning Commission or City Council. Upon direction of either the Commission or Council, City staff shall establish a file and set a schedule to review the proposed changes. No fee is required. Notice shall be subject to the provisions in Section 7.3.204.

7.3.112.03 Criteria for Approval

Amendments to the Comprehensive Plan or Development Code text shall be approved if the evidence can substantiate the following:

- A. Impact of the proposed amendment on land use and development patterns within the city, as measured by:
 - 1. Traffic generation and circulation patterns;
 - 2. Demand for public facilities and services;
 - 3. Level of park and recreation facilities;
 - 4. Economic activities;
 - 5. Protection and use of natural resources;
 - 6. Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.
- B. A demonstrated need exists for the product of the proposed amendment.
- C. The proposed amendment complies with all applicable Statewide Planning Goals and administrative rule requirements.
- D. The amendment is appropriate as measured by at least one of the following criteria:
 - 1. It corrects identified error(s) in the provisions of the plan.
 - 2. It represents a logical implementation of the plan.
 - 3. It is mandated by changes in federal, state, or local law.
 - 4. It is otherwise deemed by the council to be desirable, appropriate, and proper.

7.3.113 ANNEXATIONS

7.3.113.01 Authority of City to Annex

The boundary of the City may be extended by the annexation of territory not then within the City and which territory is within the urban growth boundary and contiguous to the City or separated from it by a stream or right-of-way only.

7.3.113.02 General Annexation Procedure

A. Following submission of annexation proposal or initiation, the City Recorder shall set a date for hearing with the Planning Commission. Notice shall be pursuant to the proposed method of annexation.

B. The Planning Commission shall hear testimony and shall recommend approval or denial of the proposed annexation and submit such recommendation to the Council within 10 days for the hearing. The Planning Commission's decision shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan. For all annexations the decision shall state how the proposal will:

1. Affect the community's air resources;
2. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands;
3. Relate to areas with natural hazards;
4. Affect the fish and wildlife in the proposed annexation;
5. Utilize energy resources and conserve energy use;
6. Protect open spaces and scenic views and areas;
7. Provide for transportation needs in a safe, orderly and economic manner;
8. Provide for an orderly and efficient arrangement of public services;
9. Provide for the recreation needs of the citizens;
10. Affect identified historical sites and structures and provide for the preservation of such sites and structures;
11. Improve and enhance the economy of the City; and
12. Provide quality, safe housing through a variety of housing types and price ranges.

C. The City Recorder shall set a date for a public hearing with the Council upon receipt of the Planning Commission's recommendation. Notice shall be

pursuant to the proposed method of annexation. After considering all testimony the Council shall sustain or reverse the Planning Commission's recommendation. The Council shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan. The decision shall state how the proposed annexation will address the criteria stated in 3.111.02 (B).

7.3.113.03 Annexation by Election

- A. The Council, upon approval of the annexation proposal, has the authority to submit, except when not required under ORS. 222.850 to 222.915, to dispense with submitting the proposal for annexation to the registered voters of the City.
- B. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose. The proposal for annexation may be voted upon by the voters of the City and of the territory simultaneously or at different times not more that twelve months apart.
- C. Two or more proposals for annexation may be voted upon simultaneously; however in the City each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.
- D. The Council shall give notice of each annexation election by publication prior to such election one each week for four successive weeks in a newspaper of general circulation in the City. Whenever simultaneous elections are held, the same notice and publication shall fulfill the requirements of publication for the City election and the election held in the territory. Notice shall also be given by posting notices of the election in four public places within the City if votes are to be cast therein and four public places in each territory proposed to be annexed for a like period as provided in this section for publication of notice. The notice shall distinctly state the proposition to be submitted, shall contain a legal description of, and a map indicating the boundaries of each territory proposed to be annexed, and the registered voters shall be invited thereby to vote upon such annexation. The Council shall also designate and the notice shall state the hours during which the polls will be open within the City and each territory proposed to be annexed. If the election is to be held at the usual precinct polling places designated for a general election held at that time, or if the election is not held at the same time as a general election, but is held at the same polling places used for the last preceding general election, the notice shall so state; if any polling place is to be different that the regular polling places, the notice shall describe the location of the polling places to be used in the area or precincts in which the polling places are different.

7.3.113.04 Annexation Procedure Without City Election

- A. By ordinance, the Council may elect to dispense with submitting the annexation proposal to the registered voters of the City, set a date for public hearing, at which time the registered voters of the City can be heard on the annexation proposal.

- B. Notice of the public hearing shall be published once a week for two successive weeks prior to the day of the hearing, in a newspaper of general circulation in the City, and posted in four public places in the City for a like period.
- C. Written notice shall be given to all property owners within the boundaries of the proposed annexation and within 500 feet of the external boundaries of the proposed annexation.
- D. After the public hearing the Council, by ordinance subject to referendum, and containing a legal description of the proposed annexation:
 - 1. Declare that the territory is annexed to the City upon the condition that the majority of the votes cast in the territory is in favor of annexation;
 - 2. Declare that the territory is annexed to the City where persons with land ownership in the proposed territory consent in writing to such annexation.

7.3.113.05 Annexation Procedure with Election in Proposed Territory

- A. The Council need not call or hold an election in any contiguous territory proposed to be annexed, or post notice in the contiguous territory, if more than half the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file the annexation proposal on or before the day:
 - 1. The public hearing procedure shall be pursuant to Subsections 7.3.113.02.A., and B.; and Subsections 7.3.113.04.B., and C. If the Council dispenses with submitting the question to the registered voters of the City; or
 - 2. The Council takes the necessary action to call the annexation election in the City under Subsection 7.3.111.03.D., if the Council submits the question to the registered voters of the City.

7.3.113.06 Island Annexation

- A. It is within the power and authority of the City by ordinance subject to referendum, to annex land, provided it is not an incorporated City, that is surrounded by the corporate limits or boundaries of the City, with or without consent of any property owner or resident in the territory.
- B. Notice and procedure for public hearing shall be provided pursuant to the provisions of Section 7.3.113.02.
- C. If the Council elects to submit the questions to the registered voters of the City, procedure shall be pursuant to Subsection 7.3.113.03.

7.3.113.07 Submission of Annexation Reports

- A. The City shall report all changes in the boundaries or limits of the City to the County Clerk and County Assessor. The report shall contain a legal description of the new boundaries and shall be filed within 10 days from the effective date of the change of any boundary lines.
- B. With the exception of "Island Annexation" the City Recorder shall submit to the Secretary of State:
 - 1. A copy of the annexation ordinance;
 - 2. An abstract of the vote within the City if votes were cast therein, which shall show the whole number of registered voters voting therein on the annexation, the number of votes cast against annexation;
 - 3. A copy of the statement of consent of landowners in the territory annexed;
 - 4. A copy of the ordinance of the City declaring that no election is required in the City; and
 - 5. An abstract of the vote upon the referendum if a referendum petition was filed with respect to the deferred ordinance.

7.3.113.08 Effective Date of Annexation

The annexation shall be complete from the date of filing with the Secretary of State as provided in ORS 222.150, 222.160, 222.170, 111.900, and Subsection 7.3.113.07.B. Thereafter, the annexed territory shall be and remain part of the City. The date of such filing shall be the effective date of annexation, provided such filing is not made later than 90 days prior to any general or primary election; otherwise, the effective date of such annexation shall be the day after the primary or general election next following the date of filing.

7.3.113.09 Zone Designation of Annexed Property

The City Council shall establish the appropriate Comprehensive plan designation and Zoning district upon annexation of the property to the City.

7.3.114 SIMILAR USES *(Section added 09/06/07; Ord#583)*

7.3.114.01 Purpose and Scope

The purpose of this Section is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein. Zoning districts in which a similar use may be authorized are:

- A. Limited Density Residential Zone (R-2)
- B. Medium Density Residential Zone (R-3)
- C. Commercial Residential Zone (CR)
- D. Commercial Zone (C)
- E. Industrial Zone (I)

7.3.114.02 Review and Approval Process

Similar Use applications shall be reviewed in accordance with the Type II review procedures specified in Section 7.3.201.

7.3.114.03 Application and Fee

An application for a Similar Use shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 7.3.204.

7.3.114.04 Review Criteria

A similar use may be authorized provided that the applicant demonstrates that the proposed use satisfies the following criteria:

- A. The use is consistent with the purpose of the underlying zoning district and is similar in character, scale and performance to permitted uses specified in the underlying district.
- B. The use is capable of conforming with the applicable standards and limitations of the underlying zoning district.

7.3.114.05 Conditions of Approval

In approving an application for a similar use, the Planning Commission may impose such conditions as it deems appropriate to ensure compliance with the standards of the development code.

7.3.114.06 Site Development

The development of an approved similar use in any zone shall be subject to a Site Development Review.