

## Article 4 - Administration of Land Use and Development

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### Chapter 4.1 - Types of Review Procedures

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#### 4.1.100 Purpose and Applicability of Review Procedures

- 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 4.1.100 provides a key for determining the review procedure and the decision-making body for particular approvals.
- B. Applicability of Review Procedures.** All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures: Type I, II, III, and IV. These procedures are described in subsections 1-4 below. Table 4.1.100 lists all of the City’s land use and development approvals and their required review procedure(s). All decisions may be appealed

before the Land Use Board of Appeals (LUBA) once other resources have been exhausted.

Table 4.1.100 Summary of Approvals by Type of Review Procedure		
Approvals*	Review Procedures	Applicable Regulations
Access Permit (public street)	Type I	Chapters 3.1, 4.2, 4.3; Engineering Standards
Building Permit	N/A	Building Code
Code Interpretation	Type I/III	Chapter 4.8
Code Amendment	Type IV	Chapter 4.7
Comprehensive Plan Amendment	Type IV	Comprehensive Plan
Conditional Use Permit	Type III	Chapter 4.4
Flood Plain Development Permit	Type I	Chapter 3.7, Building Code
Home Occupation exceeding the criteria in Section 2.2.200.F	Type III	Chapter 4.9
Master Planned Development	Type III	Chapter 4.5
Modification to Approval	Type I/II/III	Chapter 4.6
Land Use Zone Map Change Quasi-Judicial (no plan amendment required) Legislative (plan amendment)	Type III Type IV	Chapter 4.7 Chapter 4.7
Land Use Review	Type I	Chapter 4.2, Building Code
Property Line Adjustments and Lot Consolidations	Type I	Chapter 4.3
Lot of Record Determination	Type I	Chapter 5.3
Non-Conforming Use or Development Confirmation	Type I	Chapter 5.2
Partition (2-3 lots)	Type II	Chapter 4.3
Sign Permit	Type I/III	Chapter 3.5
Site Design Review	Type I/II/III	Chapter 4.2
Subdivision (4 lots or more) Tentative Subdivision – Commercial or Industrial Uses Tentative Subdivision – Residential/Mixed Use Residential Uses Final Plat	Type III Type II† Type I	Chapter 4.3
Expedited Land Division	Type I	Chapter 4.1
Temporary Use Permit	Type I	Chapter 4.9
Variance Class A Class B Class C	Type I Type II Type III	Chapter 5.1 Chapter 5.1 Chapter 5.1

\* 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.

1. Type I Procedure (Administrative). Type I decisions are made by the City Planning Official, or someone he or she officially designates, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying City standards and criteria requires limited discretion;
2. Type II Procedure (Administrative). Type II decisions are made by the City Planning Official or designee with public notice, and an opportunity for a public hearing if appealed. The Type II procedure is used when there are clear and objective approval criteria, and applying City standards and criteria requires limited discretion. The appeal of a Type II decision is heard by the Planning Commission;
3. Type III Procedure (Quasi-Judicial). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.
4. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire zones, not just one property). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

#### 4.1.200 Type I Procedure (Administrative)

##### A. Application Requirements

1. Application Forms. Type I applications shall be made on forms provided by the City Planning Official or designee.
2. Application Requirements. Type I applications 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.

**B. Administrative Decision Requirements.** The City Planning Official or designee's decision shall address all of the approval criteria, including applicable requirements of any road authority. Based on the criteria and the facts contained within the record, the City Planning Official shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

**C. Final Decision.** A Type I decision is the final decision of the City. It cannot be appealed to City officials.

**D. Effective Date.** A Type I decision is final on the date it is made.

#### **4.1.300 Type II Procedure (Administrative with Notification)**

**A. Pre-application Conference.** A pre-application conference is recommended for Type II reviews. Pre-application conference procedures are in Section 4.1.600.

#### **B. Application Requirements**

1. Application Forms. Type II applications shall be made on forms provided by the City Planning Official or designee.
2. Submittal Information. The application shall:
  - a. Include the information requested on the application form;
  - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 4.2 (Land Use Review or Site Design Review), 4.3 (Land Divisions), 4.6 (Modifications), 4.8 (Code Interpretations), and 4.9 (Miscellaneous Permits); and
  - c. Be accompanied by the required fee.

#### **C. Notice of Application for Type II Administrative Decision**

1. Before making a Type II Administrative Decision, the City Planning Official or designee shall mail notice to:
  - a. All owners of record of real property within 100 feet of the subject site;
  - b. All City recognized neighborhood groups or associations whose boundaries include the site;
  - c. Any person who submits a written request to receive a notice; and
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
  - e. The City's official may also post the notice on the City's website.

2. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process.
3. Notice of a pending Type II Administrative Decision shall:
  - a. Provide a 14-day period for submitting written comments before a decision is made on the permit;
  - b. List the relevant approval criteria;
  - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
  - d. Include the name and telephone number of a contact person regarding the Administrative Decision;
  - e. Describe the proposal and identify the specific permits or approvals requested;
  - f. Describe the street address or other easily understandable reference to the location of the site;
  - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
  - h. State that all evidence relied upon by the City Planning Official or designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
  - i. State that after the comment period closes, the City Planning Official or designee shall issue a Type II Administrative Decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
  - j. Contain the following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Baker City Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

**D. Administrative Decision Requirements.** The City Planning Official or designee shall make a Type II written decision addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the City Planning Official or designee shall approve, approve with conditions, or deny the requested permit or action. Alternatively, the applicant may refer the application to the Planning Commission for review in a public hearing, in which case the review shall follow the Type III procedures in Section 4.1.400.

**E. Notice of Decision**

1. Within five days after the City Planning Official or designee signs the decision, a Notice of Decision shall be sent by mail to:
  - a. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
  - b. Any person who submits a written request to receive notice, or provides written comments during the application-review period;
  - c. Any City-recognized neighborhood group or association whose boundaries include the site; and
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.
  - e. The City may also post the decision onto the City's website.
2. The City Planning Official or designee 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.
3. The Type II Notice of Decision shall contain:
  - a. A description of the applicant's proposal and the City's decision on the proposal (i.e., may be a summary);
  - 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, where applicable;
  - c. A statement of where the City's decision can be obtained;
  - d. The date the decision shall become final, unless appealed;
  - e. A statement that all persons entitled to notice may appeal the decision; and
  - f. A statement briefly explaining how to file an appeal, the deadline for filing an appeal, and where to obtain further information concerning the appeal process.

**F. Final Decision and Effective Date.** A Type II administrative decision is final for purposes of appeal, when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

**G. Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:

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 administrative decision; and
  - c. Any other person who participated in the proceeding by submitting written comments.
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 Official or designee within 12 days of the date the Notice of Decision was mailed;
  - c. *Content of notice of appeal.* The Notice of Appeal shall contain:
    - i. An identification of the decision being appealed, including the date of the decision;
    - ii. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
    - iii. A statement explaining the specific issues being raised on appeal;
    - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period; and
    - v. Filing fee.
3. Scope of appeal. The appeal of a Type II Administrative Decision by a person with standing shall be a hearing *de novo* before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Type II administrative review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type II Administrative Appeals, as provided in Sections 4.1.400.C - E;
5. Further appeal to City Council. The decision of the Planning Commission regarding an appeal of a Type II Administrative Decision is the final decision of the City unless appealed to City Council. An

appeal to City Council shall follow the same notification and hearing procedures as for the Planning Commission hearing. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 - 197.860.

#### 4.1.400 Type III Procedure (Quasi-Judicial)

**A. Pre-application Conference.** A pre-application conference is recommended for all Type III applications. The procedures for a pre-application conference are described in Section 4.1.600.C.

#### **B. Application Requirements**

1. Application forms. Type III applications shall be made on forms provided by the City Planning Official or designee; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
2. Submittal Information. When a Type III application is required, it shall:
  - a. Include the information requested on the application form;
  - b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 4.2 (Land Use Review and Site Design Review), 4.3 (Land Divisions), 4.6 (Modifications), 4.8 (Code Interpretations), and 4.9 (Miscellaneous Permits); and
  - c. Be accompanied by the required fee.

#### **C. Notice of Hearing**

1. Mailed notice. The City shall mail the notice of the Type III action. The records of the Baker County Assessor's Office are the official records for determining ownership. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:
  - a. At least 20 days before the hearing date, notice shall be mailed to:
    - i. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
    - ii. All property owners of record within 100 feet of the site;

- iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
  - iv. Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
  - v. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
  - vi. Any person who submits a written request to receive notice;
  - vii. For appeals, the appellant and all persons who provided testimony in the original decision; and
  - viii. For a land use zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
- b. The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
  - c. At least 14 days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
  - d. The City may also post the notice on the City's website.
2. Content of notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:
- a. The nature of the application and the proposed land use or uses that could be authorized for the property;
  - b. The applicable criteria and standards from the development code(s) that apply to the application;
  - c. The street address or other easily understood geographical reference to the subject property;
  - d. The date, time, and location of the public hearing;

- e. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request or to have the record held open.
  - f. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
  - g. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
  - h. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Baker City Hall at no cost and that copies shall be provided at a reasonable cost;
  - i. 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 days before the hearing, and that a copy shall be provided on request at a reasonable cost;
  - j. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
  - k. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Baker City Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
3. Notice List. The records of the Baker County Assessor's Office are the official records for determining ownership. The most current assessment records must be used to produce the notice list.

**D. Submission of testimony.**

- 1. Testimony can be submitted prior to the hearing in writing or verbally at the hearing.
  - a. Testimony submitted in writing shall include eight (8) copies, for Planning Commission members and staff.
  - b. Testimony submitted digitally or without the requisite eight (8) copies shall be assessed reasonable fees associated with copying. Fees are determined according to the Baker City fee schedule which is approved by City Council.
  - c. Written testimony must be fully contained in the text of the letter, email, memo or report. Submissions that cite URLs or other external sources will be considered incomplete.

- d. The person providing testimony is responsible for providing a specific nexus between the documents submitted and the criteria the decision-making body must consider. Testimony which fails to do so may not be considered in the decision-making process.
- e. The person providing testimony is responsible for confirming receipt of said testimony by Planning Department staff prior to the hearing.

**E. Conduct of the Public Hearing.**

1. At the commencement of the hearing, the hearings body shall state to those in attendance:
  - a. The applicable approval criteria and standards that apply to the application or appeal;
  - b. A statement that 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. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue;
  - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a “continuance”) per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.
2. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
3. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.
  - a. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;

- b. An extension of the hearing or record granted pursuant to Section 4.1.400.D is subject to the limitations of ORS 227.178 (“120-day rule”), unless the continuance or extension is requested or agreed to by the applicant;
  - c. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant’s final submittal shall be part of the record but shall not include any new evidence;
  - d. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
  - e. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
  - f. The review authority shall retain custody of the record until the City issues a final decision.
4. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing *ex parte* contacts (see Section 4.1.400.D-(6) below) as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
- a. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing *ex parte* contacts (as defined in Section 4.1.400.D(5) below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
  - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
  - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
  - d. If a member of the hearings body abstains or is disqualified, the City may provide a substitute in a timely manner subject to the impartiality rules in Sections 4.1.400.D(4) through (5) and

the needs for a quorum. In this case, a member of the City Council appointed by the Mayor may substitute for a member of the Planning Commission.

- e. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be requalified to make a decision;
- f. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.

5. Ex parte communications

- a. Members of the hearings body shall not:
  - i. Communicate, directly or indirectly, with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice at the public hearing;
  - ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
- b. No decision or action of the hearings body shall be invalid due to *ex parte* contacts or bias resulting from *ex parte* contacts, if the person receiving contact:
  - i. Places in the record the substance of any written or oral *ex parte* communications concerning the decision or action; and
  - ii. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
- c. A communication between City staff and the hearings body is not considered an *ex parte* contact.

6. Presenting and receiving evidence

- a. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
- b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section 4.1.400.D;

- c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

## F. The Decision Process

1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection 2, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten days after the close of the deliberation;
5. Notice of decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
6. Final decision and effective date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.

**G. Appeal.** A Type III Planning Commission decision may be appealed to the City Council as follows:

1. Who may appeal. The following people have legal standing to appeal a Type III Quasi-Judicial Decision:
  - 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.
2. Appeal filing procedure.
  - 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;
  - b. *Time for filing.* A Notice of Appeal shall be filed with the City Planning Official or designee within 12 days of the date the Notice of Decision was mailed;
  - c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required filing fee and shall contain:
    - i. An identification of the decision being appealed, including the date of the decision;
    - ii. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
    - iii. A statement explaining the specific issues being raised on appeal; and
    - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. Scope of appeal. The appeal of a Type III Quasi-Judicial Decision shall be a hearing *de novo* before the City Council. 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 Quasi-Judicial Decision, but may include other relevant evidence and arguments. The City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. Appeal procedures. Type III notice, hearing procedures and decision process shall be used for all Type III Quasi-Judicial Appeals, as provided in Section 4.1.400.C - E;
5. Effective Date and further appeal to the Land Use Board of Appeals (LUBA). The decision of the City Council regarding an appeal of a Type III Quasi-Judicial Decision is the final decision of the City. The decision of the City Council on an appeal is final and effective on the date it is mailed by

the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 - 197.860.

#### 4.1.500 Type IV Procedure (Legislative)

**A. Pre-Application Conference.** A pre-application conference is recommended for all Type IV applications. The procedures for a pre-application conference are described in Section 4.1.600.C.

#### **B. Application Requirements**

1. Application forms. Type IV applications shall be made on forms provided by the City Planning Official or designee.
2. Submittal Information. The application shall contain:
  - 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; and
  - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

#### **C. Notice of Hearing**

1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications, except annexations where only a hearing by the City Council is required.
2. Notification requirements. Notice of public hearings for the request shall be given by the City Planning Official or designee in the following manner:
  - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
    - i. Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment);

- ii. Any affected governmental agency;
  - iii. Any person who requests notice in writing;
  - iv. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175; and
  - v. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.
- b. At least 10 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City and may be posted on the City's website.
  - c. The City Planning Official or designee shall:
    - i. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection a; and
    - ii. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b.
  - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD Certificate of Mailing.
  - e. Notifications for annexation shall follow the provisions of this Chapter.
3. Content of notices. The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of the City Planning Official or designee's office where additional information about the application can be obtained;
  - b. The proposed site location;
  - c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;
  - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall (See Section 4.1.500.E); and

- e. Each mailed notice required by Section 4.1.500.D shall contain the following statement:  
“Notice to mortgagee, lien holder, vendor, or seller: The Baker City Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”
- 4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:
  - a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
  - b. Published notice is deemed given on the date it is published.

#### **D. Hearing Process and Procedure**

- 1. Unless otherwise provided in the rules of procedure adopted by the City Council:
  - a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
    - i. Regulate the course, sequence, and decorum of the hearing;
    - ii. Direct procedural requirements or similar matters; and
    - iii. Impose reasonable time limits for oral presentations.
  - b. No person shall address the Commission or the Council without:
    - i. Receiving recognition from the presiding officer; and
    - ii. Stating their full name and address.
  - c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
- 2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council shall conduct the hearing as follows:
  - a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council;
  - b. The City Planning Official or designee’s report and other applicable staff reports shall be

presented;

- c. The public shall be invited to testify;
- d. The public hearing may be continued to allow additional testimony or it may be closed; and
- e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

**E. Continuation of the Public Hearing.** The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

**F. Decision-Making Criteria.** The recommendation by the Planning Commission and the decision by the City Council shall be based on the following factors:

- 1. Approval of the request is consistent with the Statewide Planning Goals;
- 2. Approval of the request is consistent with the Comprehensive Plan; and
- 3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

**G. Approval Process and Authority**

- 1. The Planning Commission shall:
  - a. After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
  - b. Within 14 days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the City Planning Official or designee.
- 2. Any member of the Planning Commission who votes in opposition to the Planning Commission's majority recommendation may file a written statement of opposition with the City Planning Official or designee before the Council public hearing on the proposal. The City Planning Official or designee shall send a copy to each Council member and place a copy in the record;
- 3. If the Planning Commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal within 60 days of its first public hearing on the proposed change, the City Planning Official or designee shall:

- a. Report the failure together with the proposed change to the City Council; and
  - b. Provide notice and put the matter on the City Council's agenda for the City Council to hold a public hearing and make a decision. No further action shall be taken by the Commission.
4. The City Council shall:
- a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application;
  - b. Consider the recommendation of the Planning Commission; however, the City Council is not bound by the Commission's recommendation; and
  - c. Act by ordinance, which shall be signed by the Mayor after the Council's adoption of the ordinance.

#### **H. Vote Required for a Legislative Change**

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.
  2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.
- I. Notice of Decision.** Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five days after the City Council decision is filed with the City Planning Official or designee. The City shall also provide notice to all persons as required by other applicable laws.
- J. Final Decision and Effective Date.** A Type IV 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. The City Council decision may specify a "time phased rezone and/or comprehensive plan map amendment in which the rezone and comprehensive plan map amendment, if any, does not become effective for a specified period of time of up to 10 years.

#### **K. Record of the Public Hearing**

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record;
2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;

3. The official record shall include:
  - a. All materials considered by the hearings body;
  - b. All materials submitted by the City Planning Official or designee to the hearings body regarding the application;
  - c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
  - d. The final ordinance;
  - e. All correspondence; and
  - f. A copy of the notices that were given as required by this Chapter.

#### 4.1.600 General Provisions: Applicable to all Reviews

- A. **120-day Rule.** The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions - plan and code amendments - under ORS 227.178.)
- B. **Time Computation.** In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.
- C. **Pre-application Conferences**
  1. Participants. When a pre-application conference is recommended, the applicant may meet with the City Planning Official or his/her designee(s) and other parties as appropriate;
  2. Information provided. At such conference, the City Planning Official or designee may:
    - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
    - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
    - c. Provide available technical data and assistance that will aid the applicant;

- d. Identify other governmental policies and regulations that relate to the application; and
  - e. Reasonably identify other opportunities or constraints concerning the application.
3. Disclaimer. Failure of the City Planning Official or his/her designee to provide any of the information recommended by this Section 4.1.600.C shall not constitute a waiver of any of the standards, criteria or requirements for the application;
4. Changes in the law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

#### D. Acceptance and Review of Applications

1. Initiation of applications:
- a. Applications for approval under this Chapter may be initiated by:
    - i. Order of City Council;
    - ii. Resolution of the Planning Commission;
    - iii. The City Planning Official or designee;
    - iv. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
  - b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
2. Consolidation of proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.
- a. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.
  - b. When proceedings are consolidated:
    - i. The notice shall identify each application to be decided;
    - ii. The decision on a plan map amendment shall precede the decision on a proposed land

use zone change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and

iii. Separate findings and decisions shall be made on each application.

3. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:

a. Acceptance. When an application is received by the City, the City Planning Official or designee shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant;

i. The required form;

ii. The required fee;

iii. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

b. Completeness

i. Review and notification. After the application is accepted, the City Planning Official or designee shall review the application for completeness. If the application is incomplete, the City Planning Official or 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 180 days to submit the missing information, or 14 days to submit a refusal statement;

ii. Application deemed complete for review. In accordance with the application submittal requirements of this Chapter, the application shall be deemed complete upon the receipt by the City Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Official or designee in Section 4.1.600.D.3.b(1), above. For the refusal to be valid, the refusal shall be made in writing and received by the City Planning Official or designee no later than 14 days after the date on the City Planning Official or designee's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on 31st day after the City Planning Official or designee first accepted the application.

iii. Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted.

4. Changes or additions to the application during the review period. Once an application is deemed complete:
  - a. All documents and other evidence relied upon by the applicant shall be submitted to the City Planning Official or designee at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by City Planning Official or designee, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation;
  - b. When documents or other evidence are submitted by the applicant during the review period but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application;
  - c. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see “d”, below), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;
  - d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions, at the choice of the applicant:
    - i. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;
    - ii. Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (Section 4.1.600.A above) on the existing application. If the applicant does not consent, the City shall not select this option;
    - iii. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its **decision-making** process without considering the new evidence;
  - e. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

**E. City Planning Official's Duties.** The City Planning Official or designee shall:

1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions;
2. Accept all development applications that comply with Section 4.1.600;
3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report may also provide a recommended decision of: approval; denial; or approval with specific conditions that ensure conformance with the approval criteria;
4. Prepare a notice of the proposal decision:
  - a. In the case of an application subject to a Type I or II review process, the City Planning Official or designee shall make the staff report and all case-file materials available at the time that the notice of the decision is issued;
  - b. In the case of an application subject to a hearing (Type III or IV process), the City Planning Official or designee shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by Sections 4.1.400.C (Type II), 4.1.400.C (Type III), or 4.1.500.D (Type IV);
5. Administer the hearings process;
6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law;
7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and
8. Administer the appeals and review process.

**F. Amended Decision Process**

1. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes

that do not materially alter the decision.

2. The City Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new 10-day appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures in Chapter 4.6. All other changes to decisions that are not modifications under Chapter 4.6 follow the appeal process.

**G. Re-submittal of Application Following Denial.** An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 12 months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the City Planning Official or designee.

**H. Appeal Process.** An appeal by a person with standing shall be a hearing *de novo* and following the Type III procedure under Section 4.1.400. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the proceeding below. The Planning Commission or City Council may allow additional evidence, testimony, or argument concerning any standard, criterion, condition, or issue relevant to the original application.

#### **4.1.700 Expedited Land Division (ELD) Review ~~Special Procedures~~**

**A. Purpose.** ~~An Expedited Land Division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.~~ At the request of the applicant, or as specified within this code, certain land divisions may be processed as ELDs under the provisions of ORS 197.360 through 197.380. In general, the ELD process will be an expedited means of processing applicable land divisions. Middle Housing Land Division, as described in Section 4.3.118, will utilize ELD review, unless the applicant requests otherwise. The project applicability and process established by ORS 197.360 through 197.380 are hereby adopted by reference.

~~**B. Applicability.** ELD review may be used when all of the following criteria are met:~~

- ~~1. The proposal includes only residential zoned land.~~
- ~~2. The development is solely for residential use, including recreational or open space uses~~

~~accessory to residential use.~~

- ~~3. The development does not include dwellings or accessory buildings to be located on land in a resource area, marsh or wetland area, streams, stream buffer, or wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection.~~
- ~~4. The development satisfies minimum street and pedestrian connectivity standards.~~
- ~~5. The development will either result in at least 80% of the maximum net density allowed in the underlying zone; or all dwellings will be sold or rented to households with incomes below 120 percent of the area median income.~~

~~a. If the development is to be at the specified affordability level, a copy of a deed restriction or other legal mechanism approved by the Director shall be submitted.~~

- ~~6. The development satisfies all other applicable standards for access, sewer, water, drainage, and on-site and off-site improvements.~~

~~**G. Process.** The City will use an expedited Type I procedure for preliminary ELD plat approval, in compliance with ORS 197.360 through 197.380. Deviations from the Type I procedure are as follows:~~

~~**D. Selection. Request.** An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit his/her right to use it. Middle Housing Land Divisions will go through the ELD review process by default.~~

~~**E. Review procedure.** All applications for Expedited Land Divisions shall comply with ORS 197.360 through 197.380 and the Baker City Comprehensive Plan; ORS 197.360 through ORS 197.380 details the criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.~~

~~**F. Appeal procedure.** An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a city employee), the City Attorney shall serve as the referee for ELD appeals.~~

~~**G. Completeness Review.**~~

~~**H.** If the application is incomplete, the City must notify the applicant of the missing information within 21 days of receiving an application. The applicant has 180 days to submit the missing information. The application must be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.~~

~~**I.** If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted.~~

~~**J.** Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the code.~~

~~**K.**~~

~~**L. Notice of Application.**~~

- ~~M. Written notice of the receipt of the completed application must be provided to the following parties:  
The written notice requirement will be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.~~
- ~~N. The applicant;~~
- ~~O. Owners of record of the property as shown on the most recent property tax assessment roll;~~
- ~~P. To the addresses based on the City's current addressing records within 100 feet of the property for which the application was submitted.~~
- ~~Q. Any neighborhood or community planning organization recognized by the City;~~
- ~~R. Any agency responsible for providing public services or facilities to the subject site.~~
- ~~S.—~~
- ~~T. The notice must include the following:~~
- ~~U. The deadline for submitting written comments;~~
- ~~V. A statement that issues that may provide the basis for an appeal to the Hearings Officer must be raised in writing prior to the expiration of the comment period;~~
- ~~W. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue;~~
- ~~X. The applicable criteria for the decision;~~
- ~~Y. The place, date, and time that comments are due;~~
- ~~Z. A time and place where copies of all evidence submitted by the applicant will be available for review;~~
- ~~AA. The street address or other easily understood geographical reference to the subject property;~~
- ~~BB. The name and telephone number of a local government contact;~~
- ~~CC. A brief summary of the local decision-making process for the land division decision being made.~~
- ~~DD. A 14-day comment period will be provided.~~
- ~~EE.—~~
- ~~FF. Decision on Preliminary Plat.~~
- ~~GG.— The City must issue the administrative decision on the application within 63 days of receiving a completed application, compliant with ORS 197.365.~~
- ~~HH. A 14-day post-notice must also be sent to all parties who received an initial notice of application, informing them of the decision.~~
- ~~II. An approval may include conditions to ensure that the application meets the applicable land use regulations.~~
- ~~JJ. No timeline extension or public hearing is permitted, compliant with ORS 197.365.~~
- ~~KK.—~~
- ~~LL. Final Plat Approval. The final plat must be approved within 3 years of the preliminary plat final decision or the approval will be void. Residential construction must be underway with an as-built survey of buildings and underground services provided before the final plat is approved.~~
- ~~MM.—~~
- ~~NN.— Appeals. An appeal of an ELD shall follow the procedures in ORS 197.375. The Baker City Planning Commission will serve as referee.~~

#### 4.1.800 Neighborhood Meetings.

Applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about

the proposed development. Master Planned developments and cove subdivision proposals are eligible for community design workshop assistance from the city to increase neighborhood collaboration

#### **4.1.900 Traffic Impact Studies.**

The purpose of this section of the code is to assist in determining which road authorities participate in land use decisions, and to implement Section 660-012-0045 (2) (e) of the State Transportation Planning Rule that requires the City to adopt a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. This Chapter establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a Traffic Impact Study; and who is qualified to prepare the Study.

- A. When a Traffic Impact Study is Required.** The City or other road authority with jurisdiction may require a Traffic Impact Study (TIS) as part of an application for development, a change in use, or a change in access. A TIS may be required when a land use application involves one or more of the following actions:
1. A change in zoning or a plan amendment designation;
  2. Any proposed development or land use action that a road authority states may have operational or safety concerns along its facility(ies);
  3. An increase in site traffic volume generation by 300 Average Daily Trips (ADT) or more; or
  4. An anticipated increase in peak hour volume of a particular movement to and from the State or road authority highway by 20 percent or more; or
  5. An increase in use of adjacent streets by vehicles exceeding the 20,000-pound gross vehicle weights by 10 vehicles or more per day; or
  6. The location of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard; or
  7. A change in internal traffic patterns that may cause safety problems, such as back up onto a street or greater potential for traffic accidents.
- B. Traffic Impact Study Preparation.** A Traffic Impact Study shall be prepared by a professional engineer licensed in Oregon in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), consult ODOT's regional development review planner and OAR 734-051-180.

## Chapter 4.2 - Land Use Review and Site Design Review

### Sections:

- 4.2.100 Purpose
- 4.2.200 Applicability
- 4.2.300 Land Use Review
- 4.2.400 Site Design Review
- 4.2.500 Bonding and Assurances
- 4.2.600 Development in Accordance with Permit Approval; Modifications; Permit Expiration

**4.2.100 Purpose.** The purpose of this Chapter is to:

- A. Provide rules, regulations and standards for efficient and effective administration of land use and site development review;
- B. Carry out the development pattern and plan of the City and its comprehensive plan policies;
- C. Promote the public health, safety and general welfare;
- 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;
- E. Encourage the conservation of energy resources; and
- F. Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

**4.2.200 Applicability.** Land Use Review or Site Design Review shall be required for all new developments and modifications of existing developments described below. 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.

- A. **Residential Project Types.** Table 4.2.200 summarizes the review process and permit types for common residential project types.

Table 4.2.200 Summary of Review Process by Type of Residential Project			
Project Type	Potential Units	Review Process	Permit Type(s)
Detached Residential (1-2 units)	1-2	Land Use Review	Type I

Accessory Dwelling Units	1-2	Land Use Review	Type I
Manufactured Home (1 per lot)	1	Land Use Review	Type I
Attached or Stacked Residential (2 units)	2	Land Use Review	Type I
Re-use or Conversion of an existing building (Section 2.2.200)	varies	Land Use Review	Type I
Zero-Lot Line Housing	varies	Site Design Review	Type I
Multiple Attached or Stacked, including Multi-Family (3+ units)	3+	Site Design Review	Type I
Subdivision (4+ lots)	4+	Site Design Review	Type I & Type III
Middle Housing Land Division	varies	Site Design Review	Expedited Land Division (modified Type I)
Cottage Cluster(s)	4+	Site Design Review	Type I
Manufactured Home Park	varies	Site Design Review	Type I
Group Living	varies	Site Design Review	varies
Master Plan Developments	varies	Site Design Review	Type III

**4.2.300 Land Use Review.** Land Use Review is a review conducted by the City Planning Official or designee for changes in land use and developments that do not require a conditional use permit or site design review approval. Land Use Review ensures compliance with the basic land use and development standards of the land use zone, such as lot area, building setbacks and orientation, lot coverage, maximum building height, and other provisions of Article 2.

**A. Applicability.** Land Use Review is required for all of the types of land uses and development listed below. Land uses and developments exceeding the thresholds below require Site Design Review.

1. Any change in land use deemed to not be significant defined as one that would not result in a change of "Use Categories" as recognized in Chapter 1.4 or as may be determined by the City Planning Official;
2. Re-use or re-development of an existing building with no expansion of the existing footprint;
3. Up to two (2) ~~single family~~ detached dwellings (including manufactured home on its own lot);
4. Accessory dwelling units;
- ~~5. Duplex dwellings;~~
65. Up to two (2) ~~single family~~ attached (~~town home~~) units not requiring a land division, and

accessory parking on the same lot;

- ~~76.~~ Non-residential building additions up to 1,000 ft<sup>2</sup> or 20% of an existing structure, whichever is greater;
- ~~87.~~ Minor Modifications to development approvals as defined by Chapter 4.6;
- ~~98.~~ Any proposed development that has a valid conditional use permit. Major modifications to a development with a conditional use permit shall require review and approval in accordance with Chapter 4.4 - Conditional Use Permits;
- ~~109.~~ Home occupations requiring a permit under ~~Chapter 4.9~~ Section 2.2.200.F;
- ~~1110.~~ Temporary uses requiring a permit under Chapter 4.9;
- ~~1211.~~ Accessory structures and accessory or commercial parking lots of 50 spaces or less;
- ~~1312.~~ Development and land uses that are part of a previously approved Site Design Review or Conditional Use Permit application;
- ~~1413.~~ Public improvements required by a condition of approval (e.g., transportation facilities and improvements, parks, trails, and similar improvements, as determined by the City Planning Official).

**B. Procedure.** When Land Use Review is required, it shall be conducted prior to issuance of building permits, occupancy permit, or public improvement permits, as determined by the City Planning Official. The City shall conduct Land Use Reviews as a Type I procedure.

**C. Approval Criteria.** The City Planning Official shall be responsible for determining the required review procedure. An application for Land Use Review shall be approved only upon meeting all of the following criteria:

1. The proposed land use or development is permitted by the underlying land use zone (Article 2);
2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use zone and any applicable overlay district(s) are met (Article 2); and
3. When development is proposed, the applicable sections of Article 3, Design Standards apply.
4. Land Use Reviews do not address a project's compliance with applicable building, fire and life safety regulations.

**D. Application Materials.** The following materials are required for a Land Use Review Application.

1. **Application Form.** A completed application form signed by all parties is required. Multiple forms may be used in necessary.
2. **Application Fee.** The application fee is due at the time of submittal. Checks should be made out to Baker City.
3. **Site Plan.** A clear site plan, or site plans, showing existing conditions and proposed changes, including the following elements:
  - a. Property boundaries and dimensions;
  - b. Names of roads used to provide access to parcel;
  - c. Any easements or rights-of way;
  - d. Proposed and existing structures with dimensions including the distance from all property lines (building setbacks are measured from the nearest point of a structure to the nearest property line);
  - e. Compass showing direction or north arrow;
  - f. Existing or proposed driveway access; and
  - g. Approximate location of any unusual topographical features.
4. **Additional Materials.** Additional materials are required for some project types, as listed below.
  - a. **Housing Benefit Incentive Projects.** Any development project utilizing any of the incentives allowed through Section 2.2.220, and subject to Land Use Review, are required to submit the following materials in addition to the basic application materials.
    - i. Floor plans for each unit proposed as part of the project, or, if the units are the same, a single representative floor plan. Plans must be at an appropriate scale to be legible, and usable in verifying code compliance.
    - ii. Accessible units must submit interior elevations, annotated floorplans, or specification sheets that can be used to verify that the kitchen, bathroom, and entry design elements will comply with the requirements.
  - b. **Income-Restricted Housing.** Applicants must submit an affidavit of affordability that verifies the proposed units will comply with the requirements of Section 2.2.210.

#### 4.2.400 Site Design Review.

Land uses and developments exceeding the thresholds in Section 4.2.200.(A) require Site Design Review to ensure compliance with the land use and development standards in Article 2 (e.g., lot area, building setbacks and orientation, lot coverage, maximum building height), and the design standards and public improvement requirements in Article 3.

**A. Applicability.** All uses and developments requiring Site Design Review shall be processed using a Type I procedure, except those uses or developments specifically described below:

1. Uses or developments requiring Type II Site Design Review:

- a. Commercial or industrial uses or developments which abut a residential zone
2. Uses or developments requiring Type III Site Design Review:
    - a. Large Format Retail Sales developments (see Chapter 1.5 - *Definitions*)
    - b. Those uses or developments which require a Traffic Impact Analysis, as described in Section 4.1.900
    - c. A use or development, as deemed by the Planning Director, which will generate substantial public interest and/or includes unusual circumstances. The Planning Director has the discretion to re-designate an application qualifying for Type II review as a Type III review. The Planning Director shall notify the applicant in writing of his/her intent to review the application by means of a Type III procedure within 30 days of the submission of a complete application per the requirements of Section 4.1.600.
- B. Procedure.** Where Site Design Review is required, it shall be conducted using a Type I, Type II or Type III procedure, consistent with Section 4.2.400.~~(A)~~, and using the application requirements and approval criteria contained in Sections 4.2.400.~~(C)~~ through 4.2.400~~(D)~~, below.
- C. Application Submission Requirements.** All of the following information is required for Site Design Review application submittal:
1. **General Submission Requirements.** An application for Site Design Review shall contain all of the information required for a Type I review (Section 4.1.200), Type II review (Section 4.1.300) or Type III review (Section 4.1.400), consistent with project designations under Section 4.2.400.~~(A)~~.
  2. **Site Design Review Information.** In addition to the general submission requirements, an applicant for Site Design Review shall provide the following additional information, as deemed applicable by the City Planning Official. The Planning Official may deem applicable any information that he or she needs to review the request and prepare a complete staff report and recommendation to the approval body:
    - a. Proposed Site Plan. The site plan shall generally contain the following information:
      - i. 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;
      - ii. Topographic contour lines at 2-foot intervals for slopes of 6 to 10 percent, and 5-foot intervals for steeper slopes. Contour lines are not required for slopes of less than ~~six (6)~~ percent;

- iii. Identification of slopes greater than 25 percent;
- iv. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
- v. Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;
- vi. Resource areas, including marsh and wetland areas, streams, and wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection;
- vii. Site features, including existing structures, pavement, large rock outcroppings, and drainage ways, canals and ditches;
- viii. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
- ix. The location and size of existing and proposed trees and other vegetation;
- x. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed;
- xi. Name and address of project designer, engineer, surveyor, architect, and/or planner, if applicable.
- xii. The proposed development site, including boundaries, dimensions, and gross area;
- xiii. Features identified on the existing site analysis maps that are proposed to remain on the site;
- xiv. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development;
- xv. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
- xvi. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
- xvii. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;

- xviii. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops);
  - xix. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
  - xx. Loading and service areas for waste disposal, loading and delivery;
  - xxi. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
  - xxii. Location, type, and height of outdoor lighting;
  - xxiii. Location of mail boxes, if known;
  - xxiv. Name and address of project designer, if applicable;
  - xxv. Locations of bus stops and other public or private transportation facilities; and
  - xxvi. Locations, sizes, and types of signs.
- b. Architectural drawings. Architectural drawings showing one or all of the following shall be required for new buildings and major remodels:
- i. Building elevations (as determined by the City Planning Official) with building height and width dimensions;
  - ii. Building materials, colors and type;
  - iii. Applications for Cottage Clusters or projects utilizing any of the Housing Benefit Incentives allowed through Section 2.2.220 must also submit labeled floor plans for each distinct building design.
- c. Preliminary grading & surface water retention plan. A preliminary grading plan prepared by a registered engineer shall be required for development sites **one (1) acre or larger**. 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 retention and treatment plans ~~may also~~ will be required, **when an increase in impermeable area on site (building, sidewalk and pavement) is 5,000 square feet or more**, in accordance with Section 3.4.4600. **All stormwater (surface water retention and treatment) management plans shall be submitted to the City Engineer for review.**
- d. Landscape plan. A landscape plan may be required and at the direction of the City Planning Official shall show the following:

- i. The location and height of existing and proposed fences, buffering or screening materials;
- ii. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
- iii. The location, size, and species of existing and proposed plant materials (at time of planting), as well as documentation of the following;
  - A. no plants included in the landscape plan are listed as invasive plants by the Oregon State University (OSU) Extension Service in the applicable OSU bulletins for Baker County; and
  - B. for trees, shrubs, bushes or other woody vegetation proposed to be planted in or removed from any public parking strip or other public place in the City, approval of said vegetation from the Baker City Tree Board administered through the Baker City Public Works Department, in accordance with Section 3.2.400;
- iv. Existing and proposed building and pavement outlines;
- v. Other information as deemed appropriate by the City Planning Official; and
- vi. An arborist's report may be required for sites with mature trees that are protected under Chapter 3.2. Landscape, Street Trees, Fences and Walls of this Code.
- e. Sign drawings. If signage is proposed, drawings and information for all signs shall be included. Signs shall conform with Chapter 3.5 - *Signs*.
- f. Deed restrictions. If deed restrictions are proposed, copies of all existing and proposed restrictions or covenants, including those for access control, shall be provided.
- g. Narrative. A written narrative shall be included, documenting compliance with the applicable approval criteria contained in Section 4.2.400.~~(D)~~ - Approval Criteria.
- h. Traffic Impact Study. When required, a traffic impact study shall be prepared in accordance with the road authority's requirements. See Section 4.1.900 and Section 3.4.~~1300~~ for relevant standards.
- i. Other Information. As determined by the City 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.), in conformance with this Code. Supplemental analysis may include Public Facilities and Service Impact Studies. Said studies may be required to quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Section 4.1.600.C).
- j. Dedication of Real Property. In situations where this Code requires the dedication of real property

to the City, and where the applicant has not proposed the dedication voluntarily, the City shall either (1) include in the written decision evidence that shows that the required property dedication is directly related to and roughly proportional to the projected impacts of the development on public facilities and services, or (2) delete the dedication as a condition of approval.

**D. Approval Criteria.** The review authority shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying an application:

1. The application is complete, as determined in accordance with Chapter 4.1 - Types of Applications and Section 4.2.400 ~~.(C)~~, above.
2. The application complies with all of the applicable provisions of the underlying Land Use Zone (Article 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;
3. The applicant may be required to upgrade existing development that does not comply with the applicable land use zone standards, in conformance with Chapter 5.2, Non-Conforming Uses and Development;
4. The application complies with all of the Design Standards in Article 3 and other City Ordinances:
  - a. Chapter 3.1 - Access and Circulation;
  - b. Chapter 3.2 - Landscaping, Street Trees, Fences and Walls;
  - c. Chapter 3.3 - Parking and Loading
  - d. Chapter 3.4 - Public Facilities
  - e. Chapter 3.5 - Signs;
  - f. Chapter 3.6 -Radio Frequency Transmission Facilities;
  - g. Baker City Design Review Guidelines for Historic District Properties.
5. Existing conditions of approval required as part of a prior Land Division (Chapter 4.3), Conditional Use Permit (Chapter 4.4), Master Planned Development (Chapter 4.5) or other approval shall be met.

#### 4.2.500 Bonding and Assurances

- A. **Performance Bonds for Public Improvements.** On all projects where public improvements are required, the City shall require a bond or cash in an amount not greater than 100%.
- B. **Release of Performance Bonds.** The bond or assurance shall be released when the City Planning Official finds the completed project conforms to the site development approval, including all conditions of approval.
- C. **Completion of Landscape Installation.** Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping as determined by the City Planning Official or a qualified landscape architect is filed with the City Planning Official assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation.

#### 4.2.600 Development in Accordance with Permit Approval; Modifications; Permit Expiration

Development shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., site design review approval) and building permits. 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 the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Section 4.2.700. Development Review and Site Design Review approvals shall be subject to all of the following standards and limitations:

- A. **Modifications to Approved Plans and Developments.** Minor modifications of an approved plan or existing development, as defined in Chapter 4.6, shall be processed as a Type I procedure and require only Land Use Review. Major modifications, as defined in Chapter 4.6, shall be processed as a Type II or Type III procedure and shall require Site Design Review. For information on Type I, Type II and Type III procedures, please refer to Chapter 4.1. For Modifications approval criteria, please refer to Chapter 4.6.
- B. **Approval Period.** Development Review and Site Design Review approvals shall be effective for a period of two years 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 two years of approval; or
  - 2. Construction on the site is in violation of the approved plan.
- C. **Extension.** The Planning Director may, upon written request by the applicant, grant a written extension of the approval period not to exceed one year; provided that:

1. No changes are made on the original approved site design review plan;
2. The applicant can show intent of initiating construction on the site within the one-year extension period;
3. 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 expired 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; and
4. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one year of site design approval was beyond the applicant's control.

**D. Phased Development.** Phasing of development may be approved with the Site Design Review application, subject to the following standards and procedures:

1. A phasing plan shall be submitted with the Site Design Review application.
2. The Planning Commission shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than 5 years without reapplying for site design review.
3. Approval of a phased site design review proposal requires satisfaction of all of the following criteria:
  - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
  - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Section 4.3.180. A temporary public facility is any facility not constructed to the applicable City or zone standard, subject to review by the City Engineer;
  - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
  - d. An application for phasing may be approved after Site Design Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 4.6).

## Chapter 4.3 - Land Divisions and Property Line Adjustments

### Sections:

- 4.3.100 Purpose
- 4.3.110 General Requirements
- 4.3.115 Flexible Lot Size; Flag Lots; Lots Accessed by Mid-Block Lanes
- 4.3.118 Middle Housing Land Division (MHLD)
- 4.3.120 Preliminary Plat - Approval Process
- 4.3.130 Preliminary Plat - Submission Requirements
- 4.3.140 Preliminary Plat - Approval Criteria
- 4.3.150 Variances Authorized
- 4.3.160 Final Plat - Submission Requirements and Approval Criteria
- 4.3.170 Public Improvements Required
- 4.3.180 Performance Guarantee
- 4.3.190 Filing and Recording
- 4.3.200 Re-platting and Vacation of Plats
- 4.3.210 Property Line Adjustments

### **4.3.100 Purpose.**

The purpose of this chapter is to:

- A. Provide rules, regulations and standards governing the approval of subdivisions, partitions, property line adjustments and lot line adjustments.
- B. Carry out the City's development pattern, as envisioned by the Comprehensive Plan.
- C. Encourage efficient use of land resources, full utilization of urban services, and 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; and
- F. Encourage the conservation of energy resources.

### **4.3.110 General Requirements**

#### **A. Definitions.**

1. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year.
2. Partitions are the creation of three or fewer parcels within one calendar year.

**B. Subdivision, Partition and Re-Plat 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 include all conditions of approval of the preliminary plat.

In addition to the standard procedures for the subdivision, partitioning or re-platting of land under this chapter, there are alternative formats permitted under the Development Code. ~~A modified process will be used for Expedited Land Division. In particular, refer to Chapter 4.5 that deals with master planned developments, cove subdivision design, and technical assistance programs offered by the City. The following chart provides a brief comparison of the standard tract development and master planned options offered:~~

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

**D. Future Re-Division Plan.** When subdividing, partitioning or re-platting tracts into large lots (i.e., greater than three times or 300 percent the minimum lot size allowed by the underlying land use zone), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use zone and this Code. A re-division plan shall be submitted for large lots identifying:

1. Potential future lot division(s), consistent with the density and lot size standards of Article 2;
2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;
3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

**E. Lot Size Averaging.** ~~Single family Detached~~ residential lot size may be averaged to allow lots less than the minimum lot size in Residential zones, as provided by Section 2.2.150, Flexible Lot Size Option, or through approval of a Master Planned Development under Chapter 4.5.

- F. **Temporary Sales Office.** A temporary sales office in conjunction with a subdivision may be approved as set forth in Section 4.9.100, Temporary Uses.
- G. **Minimize Flood Damage.** All subdivisions, partitions and re-plats shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway and, where possible, allow building outside of the flood fringe. Development in a 100-year flood plain shall comply with the National Flood Insurance Program and state building code requirements, including elevating structures above the base flood elevation. The applicant shall be responsible for obtaining floodplain development permit from the NFIP and local jurisdiction.
- H. **Determination of Base Flood Elevation.** Where a development site consists of five (5) or more acres or 50 or more lots, and is located in or near areas prone to inundation for which the base flood elevation has not been mapped, the applicant shall have the base flood elevation prepared by a qualified professional as part of the land division application.
- I. **Need for Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.
- J. **Need for Adequate Drainage.** All subdivision, partition and re-plat 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.
- K. **Floodplain, Park, and Open Space Dedications.** Where land filling and/or development is allowed within or adjacent to regulatory flood plain and the Comprehensive Plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway and/or trail adjoining or within the flood plain for transportation, storm drainage/water quality, or park purposes in the public interest. When practicable, this area shall include portions at a suitable elevation for the construction of a multi-use pathway in accordance with the City's adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, or storm water management requirements, consistent with Chapter 3.4.200 and 3.4.400, and assist in obtaining any floodplain permit that may be required.

#### 4.3.115 Flexible Lot Size; Flag Lots; Lots Accessed by Mid-Block Lanes

- A. **Flexible Lot Size.** To allow creativity and 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 20% modification to the lot area and/or lot dimension (width/depth) standards in Section 2.2.120, provided that the overall density of the subdivision does

not exceed the allowable density of the zone and the approval body finds that granting the modification allows for a greater variety of housing types, or enhancement in urban design and creation of open space, or it improves development compatibility with natural features or adjacent land uses. The approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than 20,000ft<sup>2</sup>.

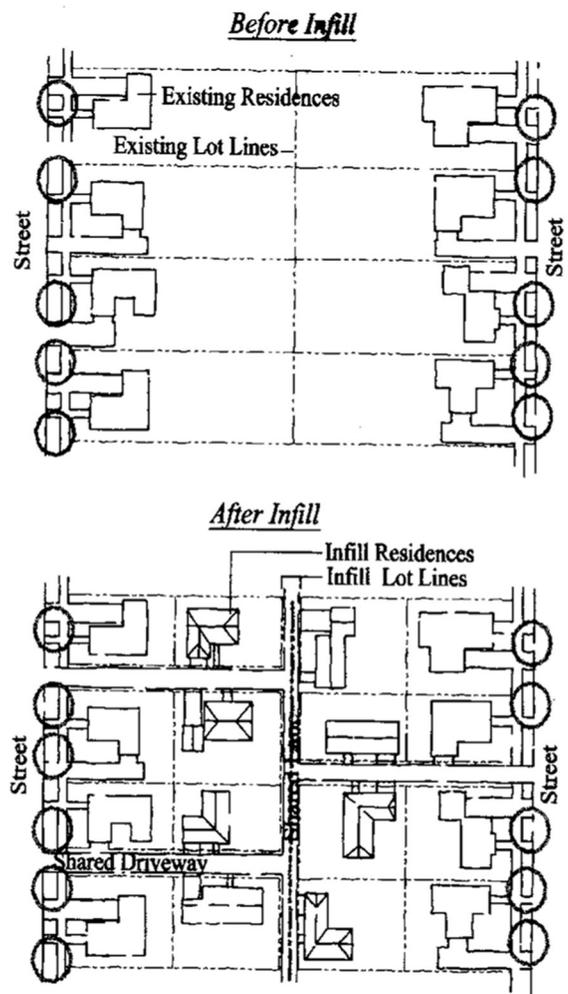
- B. Mid-block lanes and Reverse Frontage Lots.** Lots may be developed without frontage onto a public street when lot access is provided by mid-block lanes, as shown above. Mid-block lanes or shared driveways, as illustrated in Figure 4.3.115.B, may be required when practicable to provide connectivity between infill developments. Mid-block lanes with access easements for adjoining properties may be allowed as an alternative to requiring through streets where block lengths do not necessitate a through street. The lanes shall meet the standards for alleys, per Chapter 3.4, and the standards under subsections C-F, below. The Public Works Department may require the granting of utilities access easements.

- C. Flag lots.** Flag lots may be created only when a through street or mid-block lanes cannot be extended to serve abutting uses or future development. A flag lot driveway (“flag pole”) may serve no more than two (2) dwelling units, including accessory dwellings and dwellings on individual lots, unless Uniform Fire Code (UFC) standards are met for more units. When UFC standards are met, the maximum number of dwellings shall be four (4). A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots. No fence, structure or other obstacle shall be placed within the drive area. The Fire Marshal may require an emergency turn-around. 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. Driveway and lane width.** The minimum width of all shared drives and lanes shall be 10 feet; the maximum width is 20 feet, except as required by the Uniform Fire Code when more than 2 flag lots are created.

- E. Easement and improvement of drive lane.** The property owner shall record a 20-foot easement benefiting all properties that are to receive vehicle access. The drive lane shall be improved with an all-weather surface approved by the City.

Figure 4.3.115.B Mid-Block Infill



Dedication or recording, as applicable, shall be so indicated on the face of the subdivision or partition plat.

- F. **Maximum drive lane length.** The maximum drive lane length is subject to requirements of the Uniform Fire Code, but shall not exceed 400 feet.
- G. **Future street plans.** Building placement and alignment of shared drives shall be designed so that future street connections can be made as surrounding properties develop (*i.e.*, as shown in ~~the~~ Figure 4.3.115.B).

#### 4.3.118 Middle Housing Land Division (MHL D)

A. **Purpose.** MHL D, as required by ORS 197.360(1) and ORS 92.031, is intended to streamline the process of subdividing existing lots to create ownership opportunities in small, middle housing developments. This process is not intended to be used as a substitute for a traditional, large-scale subdivision. The project applicability and process established by ORS 197.360(1) and ORS 92.031 are hereby adopted by reference

~~B. **Applicability.** For a development project to qualify for MHL D, all of the following criteria must be met.~~

- ~~1. The land must be zoned for residential use.~~
- ~~2. Only one unit is allowed per child lot. Units may be attached as long as they are located on individual child lots.~~
- ~~3. Only attached housing types (duplexes, triplexes, fourplexes, townhomes) and cottage clusters may utilize MHL D.~~
- ~~4. The residential structure type developed at the time of MHL D must remain the same, in order to maintain one unit per lot. A duplex can only be replaced with a duplex.~~
- ~~5. All units must have separate utilities. Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways, parking, and dedicated common area must be provided and indicated on the preliminary plan.~~

~~C. **Timing.** A middle housing land division application may be submitted when:~~

- ~~1. The parent lot is already developed with middle housing; or~~
- ~~2. The parent lot has an active building permit to construct middle housing; or~~
- ~~3. The application is being reviewed concurrently with a building permit application for construction of middle housing; an application for MHL D may be submitted at the same time as the submittal of an application for building permits for middle housing.~~

~~D. **Limitations.**~~

- ~~1. Child lots created through the MHL D process cannot be further subdivided at any time.~~

~~2. MHL D is only permitted for parent lots that are .5 acres or less and, no more than 8 child lots can be created.~~

~~E. Exemptions. Individual child lots created through MHL D are exempt from the following development standards:~~

- ~~1. Minimum lot width~~
- ~~2. Minimum lot depth~~
- ~~3. Minimum lot size~~
- ~~4. Required street frontage: the parent lot is required to comply with the frontage standards within this code, however, the individual lots created by the MHL D are exempt from these standards.~~
- ~~5. Parking for each unit is not required to be located on the same lot as the unit it serves; parking and parking access may be shared for all units. If shared parking is provided, a shared easement for the parking area and access is required.~~

~~F. Parent Lot. "Parent lot" refers to the original parcel or site of development, before land division. Public improvement requirements and development standards for the underlying zone only apply to the parent lot, even after the land division is complete. For example, setback requirements will only apply at the edges of the parent lot, not to the individual child lots. All building, fire, and life safety codes must still be met, including minimum separations.~~

~~G. Child Lot. See Chapter 1.3, "Lot, child."~~

H. **Review Process.** Applications for MHL D are subject to the Expedited Land Division procedure, as specified in Section 4.1.700, unless an applicant requests otherwise.

#### 4.3.120 Preliminary Plat-Approval Process

- A. **Review of Preliminary Plat.** Review of a preliminary plat for a partition with 3 or fewer lots shall be processed with a Type II procedure, under Section 4.1.300. Preliminary plats for a subdivision with 4 or more lots shall be processed with a Type III procedure under Section 4.1.400. All preliminary plats shall be reviewed using approval criteria in Section 4.3.140. An application for subdivision may be reviewed concurrently with an application for a Master Planned Development under Chapter 4.5.
- B. **Review of Final Plat.** Review of a final plat for a subdivision or partition shall be processed as a Type I procedure under Section 4.1.200, using the approval criteria in Section 4.3.160.
- C. **Preliminary Plat Approval Period.** Preliminary plat approval shall be effective for a period of three (3) years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the 3-year period.
- D. **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 4.6 - Modifications. The City Planning Official may, upon written request by the applicant and payment of

the required fee, grant a written extension of the approval period not to exceed one year; provided that:

1. Any changes to the preliminary plat follow the procedures in Chapter 4.6;
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; and
5. The extension request is made before expiration of the original approved plan.

#### **E. Phased Development**

1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be more than 5 years without reapplying for a preliminary plat;
2. The criteria for approving a phased land division proposal are:
  - a. Public facilities shall be constructed in conjunction with or prior to each phase;
  - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Section 4.3.180. A temporary public facility is any facility not constructed to the applicable City or zone standard;
  - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
  - d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.

#### **4.3.130 Preliminary Plat - Submission Requirements**

**A. General Submission Requirements.** For all partitions of (3) or fewer lots, the application shall contain

all of the information required for a Type II procedure under Section 4.1.300. For all subdivisions of (4) or more lots, the application shall contain all of the information required for a Type III procedure under Section 4.1.400.

**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. Submission requirements may be adjusted at the discretion of the Planning Director.

a. General information:

- a. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in Baker County (please 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. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the designer, and engineer and surveyor if any, and the date of the survey if submitted; and
- e. Identification of the drawing as a "preliminary plat".

b. Site analysis:

- a. Streets: Location, name and present width of all existing and proposed streets, alleys, driveways and rights-of-way on and abutting the site; approximate radius of street curves; approximate finished street center line grades;
- b. Easements: Width, location and purpose of all existing and proposed easements of record on and abutting the site;
- c. Utilities: Location and identity of all existing and proposed utilities on and abutting the site, including street lighting fixtures. 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 5-foot vertical intervals for ground slopes exceeding 10 percent and at 2-foot intervals for ground slopes of less than 10 percent or as required by the City. Such ground elevations shall be related to some established benchmark or other datum approved by the City Surveyor. This requirement may be waived for partitions and subdivisions when grades, on average, are less than 6 percent;

- e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
- f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
- g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, relevant portions of the Comprehensive Plan.);
- h. Site features, including existing and proposed structures, pavement, large rock outcroppings, and drainage ways, canals and ditches;
- i. Designated historic and cultural resources on the site and adjacent parcels or lots;
- j. Other information, as deemed appropriate by the City Planning Official. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements including a public facilities and services impact study and/or traffic impact study; and
- k. 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. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
- l. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use;
- l. Proposed improvements, as required by Article 3 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- m. Proposed method of surface water drainage and treatment ~~if required~~ per stormwater management plan reviewed by the City Engineer;
- n. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s); and
- o. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable.
- p. Proposed public dedications, if applicable.

#### 4.3.140 Preliminary Plat - Approval Criteria

**A. General Approval Criteria.** The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this Article, and the applicable chapters and sections of Article 2 (Land Use Zones) and Article 3 (Design Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 5;
2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat; and
5. Evidence that any required State and federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Evidence that improvements or conditions required by the City, road authority, Baker County, special zones, utilities, and/or other service providers, as applicable to the project, have been or can be met; and
7. If any part of the site is located within a previously approved Master Planned Development, it shall conform to the applicable regulations and/or conditions.
8. No lots that are created by a Type II partition process of 3 lots or less may be further divided by a Type II process within five (5) years of initial recording. Said lots may only be divided within the five (5) year limit through a Type III procedure.

**B. Layout and Design of Streets, Blocks and Lots.** All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area and dimensional requirements of the applicable land use zone (Article 2), and the standards of Section 3.4.1400.H.4 - Street Connectivity and Formation of Blocks.

2. Setbacks shall be as required by the applicable land use zone (Article 2).
3. Each lot shall conform to the standards of Chapter 3.1 - Access and Circulation.
4. Landscape or other screening may be required to maintain privacy for abutting uses. See Article 2 - Land Use Zones, and Chapter 3.2 - Landscaping.
5. In conformance with the Uniform Fire Code, a 20-foot ~~width~~ **wide** fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See Chapter 3.1- Access and Circulation.
6. Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.

**C. Conditions of Approval.** The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 3.4 (Public Facilities).

**4.3.150 Variances Authorized.** Variances to the standards of this Chapter shall be processed in accordance with Chapter 5.1 - Variances. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted, and the applications shall be reviewed together.

#### **4.3.160 Final Plat - Submission Requirements and Approval Criteria**

- A. Submission Requirements.** Final plats shall be reviewed and approved by the City prior to recording with Baker County. The applicant shall submit the final plat within 3 years of the approval of the preliminary plat as provided by Section 4.3.120. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the City Planning Official.
- B. Approval Criteria.** By means of a Type I procedure, the City Planning Official and City Engineer shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with 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 Engineer or appropriate service provider (*e.g.*, road authority). Alternatively, the developer has provided a performance guarantee in accordance with Section 4.3.180;
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. The streets and roads held for private uses have been approved by the City as conforming to the preliminary 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, sewage disposal storm drainage and water supply systems;
6. The applicant has provided copies of all recorded homeowners association Covenants, Conditions and Restrictions (CC&R's); deed restrictions; private easements and agreements (*e.g.*, for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;
7. The plat complies with the applicable Sections of this code (*i.e.*, there have been no changes in land use or development resulting in a code violation since preliminary plat approval);
8. The developer shall certify, as applicable, that water and sanitary sewer service is available to every lot depicted on the plat; or bond, contract or other assurance has been provided by the subdivider/partitioner to the City that such services will be installed in accordance with Chapter 3.4 - Public Facilities, and the bond requirements of Section 4.3.180. The amount of the bond, contract or other assurance by the subdivider/partitioner shall be determined by a registered professional engineer, subject to review and approval by the City;
9. 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 established by the U.S. Geological Survey, or giving two or more permanent objects for identifying its location.
10. The Plat contains language indicating if lots are subject to Codes, Covenants, and Restrictions (CC&R's).
11. No plat containing a dedication of land, right of way, or other improvement to the public shall be recorded without the City indicating acceptance of the dedication on the face on the final plat.

**4.3.170 Public Improvements Required.** Before City approval is certified on the final plat, all required public improvements ~~must reach substantial completion shall be installed, inspected, and approved.~~ Alternatively, the subdivider/partitioner shall provide a performance guarantee, in accordance with Section 4.3.180.

**4.3.180 Performance Guarantee**

**A. Performance Guarantee Required.** When a performance guarantee is required under Section 4.3.170, the subdivider/partitioner shall file an assurance of performance with the City supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
3. Cash.

**B. Determination of Sum.** The assurance of performance shall be for a sum determined by the City as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

**C. Itemized Improvement Estimate.** The developer shall furnish to the City an itemized improvement estimate, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.

**D. Agreement.** An agreement between the City and developer shall be recorded with the final plat. The agreement may be prepared by the City or prepared by the applicant as a letter. It shall not be valid until it is signed and dated by both the applicant and City Planning Official. The agreement shall contain all of the following:

1. The period within which all required improvements and repairs shall be completed;
2. A provision that if work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the applicant;
3. The improvement fees and deposits that are required;
4. (Optional) A provision for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

**E. When Developer Fails to Perform.** In the event the developer fails to carry out all provisions of the

agreement and the City has unreimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.

- F. **Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

#### 4.3.190 Filing and Recording

- A. **Filing Plat with County.** Within 60 days of the City approval of the final plat, the applicant shall submit the final plat to Baker 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 1 paper copy of all sheets of the recorded final plat. 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 it is approved by the City Surveyor in the manner provided by ORS Chapter 92.

#### 4.3.200 Lot Line Adjustments, Property Line Adjustments, Re-plats and Vacations.

Any plat or portion thereof may be adjusted, re-platted or vacated upon receiving an application signed by all of the owners as appearing on the deed.

##### A. Definitions.

1. **Lot Line Adjustments.** A lot line adjustment serves to reconfigure a boundary line within an existing subdivision plat. All lot line adjustments shall be processed using a Type I procedure, as specified in Section 4.3.210.
2. **Property Line Adjustments.** A Property Line Adjustment is the modification of parcel boundaries, when no parcel is created. A property line adjustment is required to relocate or eliminate all or a portion of a common property line between two abutting parcels of land that were lawfully established, as defined by ORS 92.010(3)(a). Property line adjustments shall not be used to create an additional parcel of land, or to create parcels of land that are non-conforming. No property line shall be relocated or eliminated without property line adjustment approval as set forth in this section.

3. **Re-Plats.** The act of re-platting shall allow the reconfiguration of lots and public easements within a recorded plat. A re-plat is required to reconfigure lots or parcels and public easements in a recorded partition or subdivision plat, to increase or decrease the number of lots in a subdivision, or where multiple property line adjustments require a re-plat. No re-plat shall occur without receiving tentative re-plat approval as set forth in this section. Re-plat applications shall be processed as a Type II or Type III procedure, as specified in Section 4.3.140.~~(A)~~(8). Once recorded, a re-plat shall operate to eliminate the force and effect of the plat prior to vacation.
4. **Vacations.** The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See Chapter 4.1 - Types of Applications and Review Procedures.) The road authority(ies) shall be notified of all applications for re-plats and street vacations. All street vacations shall also conform to the ORS Chapter 271.
  - a. Once recorded, a vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
  - b. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications described on the plat.
- B. **Basis for Denial.** 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 criteria.
- C. **After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.
- D. **Street Requirement.** Except as prohibited by law (e.g., ORS 92.837), in approving a right-of-way vacation or re-plat, the City may require dedication of access ways, paths or trails as a condition of the vacation of any public easement or right-of-way, in order to establish or maintain a safe, convenient and direct pedestrian and bicycle circulation system. Such requirements shall be coordinated with the applicable road authority.

#### 4.3.210 Property Line Adjustments.

A Property Line Adjustment is the modification of lot boundaries, when no lot is created. The application submission and approval process 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 application, as governed by Section 4.1.200. The application shall include either a preliminary lot line map or preliminary survey prepared by an Oregon professional licensed surveyor. If a preliminary lot line map is provided it should be drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; existing fences and

walls; and any other information deemed necessary by the City Planning Official or designee for ensuring compliance with City codes.

#### **B. Approval Process**

1. Decision-making process. Property line adjustments shall be reviewed by means of a Type I procedure, as governed by Section 4.1.200, using approval criteria contained in Section 4.3.210.C below.
2. Time limit on approval. The property line adjustment approval shall be effective for a period of one (1) year from the date of approval, during which time the property line adjustment deed must be recorded and the survey map filed.
3. Lapsing of approval. The property line adjustment approval shall lapse if:
  - a. The property line adjustment is not recorded within the time limit in Section 4.3.210.B(2);
  - b. The property line adjustment has been improperly recorded with Baker County without the satisfactory completion of all conditions attached to the approval; or
  - c. The final recording is a departure from the approved plan.

#### **C. Approval Criteria**. The City Planning Official or designee 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;
2. Lot standards. All lots and parcels conform to the applicable lot standards of the land use zone (Article 2) including lot area, dimensions, setbacks, and coverage, and no resulting lot is wholly comprised of a flood hazard area or jurisdictional wetland;
3. Access and Road Authority Standards. All lots and parcels conform to the standards or requirements of Chapter 3.1 - Access and Circulation, and all applicable road authority requirements are met. If a lot is non-conforming to any City or road authority standard, it shall not be made even less conforming by the property line adjustment;

#### **D. 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 deed with Baker County within (1) year of approval (or the decision expires), and submit a copy of the property line adjustment survey (original filed with the County Surveyor) 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 15 days of recording and prior to the issuance of any building permits on the re-configured lots.

- E. Extension.** The City may, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:
1. No changes are made to the original property line adjustment as approved by the City;
  2. The applicant can show intent of recording the approved ~~plan~~ property line adjustment within the one-year extension period;
  3. There have been no changes in the applicable Code or plan provisions on which the approval was based. In the case where the property line adjustment conflicts with a code change, the extension shall be denied; and
  4. The extension request is made before expiration of the original approved plan.

## Chapter 4.4 - Conditional Use Permits

### Sections:

- 4.4.100 Purpose
- 4.4.200 Approvals Process
- 4.4.300 Application Submission Requirements
- 4.4.400 Criteria, Standards and Conditions of Approval
- 4.4.500 Additional Development Standards
- 4.4.600 Revocation of Conditional Use Permit

### 4.4.100 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. These are identified as “Conditional Uses” in Article 2 - Land Use Zones. The purpose of Chapter 4.4 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

### 4.4.200 Approvals Process

- A. **Initial Application.** An application for a new conditional use shall be processed as a Type III procedure (Section 4.1.400). The application shall meet submission requirements in Section 4.4.300, and the approval criteria contained in Section 4.4.400.
- B. **Modification of Approved or Existing Conditional Use.** Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 4.6 - Modifications.

### 4.4.300 Application Submission Requirements

In addition to the submission requirements required in Chapter 4.1, an application for conditional use approval must include the following information (A-G), as applicable to the particular request as determined by the Planning Official (For a description of each item, please refer to Section 4.2.400.C - Site Design Review Application Submission Requirements):

- A. Existing site conditions;
- B. Site plan;
- C. A landscape plan;
- D. Architectural drawings of all structures;
- E. Drawings of all proposed signs;
- F. A copy of all existing and proposed restrictions or covenants;
- G. Narrative report or letter documenting compliance with all applicable approval criteria in Section 4.4.400.

#### **4.4.400 Criteria, Standards and Conditions of Approval**

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.

##### **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 negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and
- 3. All required public facilities have adequate capacity to serve the proposal.

**B. Site Design Standards.** The Site Design Review approval criteria (Section 4.2.400.D) shall be met.

**C. 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, the following:

- 1. Limiting the hours, days, place and/or manner of operation;
- 2. Requiring site 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 or lot coverage, and/or location on the site;
5. Designating the size, number, location and/or design of vehicle access points or parking areas;
6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
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, 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 (Chapter 3.2);
13. Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 3.1, and Section 3.1.300 in particular.

#### **4.4.500 Additional Development Standards**

- A. Concurrent Variance Application(s).** A conditional use permit shall not grant variances to regulations otherwise prescribed by the Development Code. Variance application(s) may be filed in conjunction with the conditional use application, and both applications may be reviewed at the same hearing.
- B. Additional Development Standards.** Development standards for specific uses are contained in Article 2 - Land Use Zones.

**4.4.600 Revocation of Conditional Use Permit**

- A. Any previously granted conditional use permit may be revoked by the Planning Commission, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:
1. Failure to comply with the conditions of approval.
  2. Discontinuance of the use for a period in excess of two years.
  3. Failure to comply with other applicable provisions of the Baker City Development Code regarding design, dimensional or use requirements.
  4. A change in the Baker City Development Code or standards of the land use zone within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered in such zone.
- B. Revocations initiated under ~~(A)~~(1) or (2) above shall not be initiated for at least ~~six~~ (6) months after approval of the conditional use permit. Revocations initiated under ~~(A)~~(1), (2), and (3) above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under ~~(A)~~(4) above shall have the effect of making the previously granted conditional use a non-conforming use.

## Chapter 4.5 - Master Planned Developments

### Sections:

- 4.5.100 Purpose
- 4.5.200 Applicability
- 4.5.300 Review and Approvals Process
- 4.5.400 Modifications to Development Standards
- 4.5.500 Concept Plan Submission
- 4.5.600 Concept Plan Approval Criteria
- 4.5.700 Concept Plan and Expiration
- 4.5.800 Detailed Development Plan Submission
- 4.5.900 Detailed Development Plan Criteria
- 4.5.1000 Subsequent Development Reviews

### **4.5.100 Purpose.**

The purposes of Chapter 4.5 are to:

- A. Implement the Comprehensive Plan by providing a means for master planning large development sites as an alternative to piecemeal subdivision development;
- B. Encourage innovative planning that results in projects that benefit the community, for example, through greater efficiency in land use, improved protection of open spaces, transportation efficiency, and housing choices;
- C. Encourage housing options for a range of household sizes, incomes, and lifestyles;
- D. Encourage mixed-use development and diversified employment opportunities;
- E. Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F. Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;
- G. Encourage energy efficiency and improved air and water quality;
- H. Implement public facility master plans; and
- I. Provide flexibility in development standards, consistent with the above purposes.

#### **4.5.200 Applicability**

The master planned development designation may be applied over any of the City's residential zoning districts. It is an option available to developers of land.

#### **4.5.300 Review and Approvals Process**

**A. Review Steps.** There are three required steps to master planned development approval, which may be completed individually or combined for concurrent review:

1. Application for master planned development concept plan approval;
2. Application for detailed development plan approval, which may include a preliminary subdivision plan; and
3. Application(s) for final development plan (e.g., final plat and/or site design review) approval.

**B. Approval Process.**

1. The master planned development concept plan shall be reviewed pursuant to the Type III procedure in Section 4.1.400, the submission requirements in Section 4.5.500, and the approval criteria in Section 4.5.600.
2. The detailed development plan and preliminary subdivision plan shall be reviewed using the Type II procedure in Section 4.1.300 to ensure substantial compliance with the approved concept plan.
3. Site design review applications for approved planned developments shall be reviewed using a Type II procedure in Section 4.1.300 to ensure substantial compliance with the approved concept plan.
4. Steps 1-3, above, may be combined in any manner, so long as the decision-making sequence follows the above order. Notification and hearings may be combined.

#### **4.5.400 Modifications to Development Standards**

The standards of Article 2 and Article 3 may be modified through the master plan development process without the need for variance under Chapter 4.7. In evaluating this criterion, the Baker City Planning Commission shall consider whether the proposal, on balance, exceeds the City's minimum requirements and provides greater community benefits than would otherwise occur under the base Development Code requirements. In evaluating community benefits, the Planning Commission shall apply the following criteria; the City may deny an application for Master Planned Development concept plan approval that does not meet all of the following criteria:

- A. **Comprehensive Plan.** The modification does not conflict with the Comprehensive Plan. A Master Planned Development may exceed the maximum residential density (minimum lot size) permitted by the underlying zone, provided that the overall density of the project (average of total dwelling units per acre) is not greater than 110 percent of the density permitted by the underlying zone.
- B. **Purpose and Intent of Development Code.** The modification equally or better meets the purpose and intent of the Development Code section(s) to be modified, as compared to a project that strictly conforms to code standards.
- C. **Public Benefit.** The modification provides a net benefit to the public by one or more of the following:
  - 1. Greater variety of housing types or lot sizes than would be achieved under the base Development Code standards;
  - 2. More open space or more usable open space than would be required under the base Development Code standards;
  - 4. Greater protection of natural features than would be required under the base Development Code standards;
  - 5. Avoidance of natural hazards (e.g., geological hazards, river resources, or flood hazards); and
  - 6. Improved transportation connectivity, such as the provision of pathways and/or other transportation facilities, that would not otherwise be provided pursuant to base Development Code requirements.
- D. **Engineering Design Standards.** Modifications to the City's Engineering Design Standards require separate variance to such standards approved by the City Engineer. The City may grant such variances concurrently with the master planned development.

#### 4.5.500 Concept Plan Submission

- A. **General Submission Requirements.** An application for a Concept Development Plan shall follow the submission requirements for a Type III review under Section 4.1.400, and shall include all of the following:
  - 1. Statement of planning objectives to be achieved by the master planned development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
  - 2. Development schedule indicating the approximate dates when construction of the project and its various phases, if any, including public facilities, are expected to be initiated and completed;

3. Statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the planned development;
4. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section 4.5.600;
5. Maintenance plan for any common areas or lands not dedicated to a public agency or owned in fee simple; and
6. Additional reports or studies prepared by qualified professionals, as required by the City Manager, to determine potential project impacts and mitigation, if any, related to: transportation; public facilities; geologic or other hazards; architecture; noise, light, solar access, air quality, or similar concerns; and natural features.

**B. Additional Information.** In addition to the general information described in subsection A, above, the concept plan, data, and narrative shall include all of the following exhibits and information:

1. Existing conditions map, as defined in Section 4.2.00 Site Design Review - Application Submission Requirements;
2. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
3. Grading concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);
5. Architectural concept (e.g., plans illustrate architectural styles, building heights, and general materials);
6. Sign concept plan (e.g., locations, general size, style, and materials of signs), as applicable; and
7. Copy of all existing covenants and restrictions, and a general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

#### **4.5.600 Concept Plan Approval Criteria**

The City, in approving or approving with conditions a Concept Plan, shall make findings that all of the following criteria are met. The City must deny an application where not all of the criteria are met.

- A. Comprehensive Plan.** The proposal conforms to the Comprehensive Plan;
- B. Land Division Chapter.** Except as may be modified under Section 4.5.400, all of the requirements for land divisions, under Chapter 4.3, are met;

- C. **Article 2 and Article 3 Standards.** Except as may be modified under Section 4.5.400, all of the requirements of Articles 2 and Article 3 are met;
- D. **Open Space.** Master plans shall contain a minimum of 20 percent open space, which may be public, private, or a combination of public and private open space. Such open space shall be integral to the master plan and connect to a majority of the proposed residential lots. Plans shall provide space for both active and passive recreational uses, and may include, but are not limited to, neighborhood parks, pathways/trails, natural areas, plazas, and play fields. Open space areas shall be shown on the final plan and recorded with the final plat or separate instrument; the open space shall be conveyed in accordance with one of the following methods:
  - 1. By dedication to the City as publicly owned and maintained open space. Open space proposed for dedication to the City must be acceptable to the Planning Commission with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide an environmental assessment), and approved by City Council based on budgetary, maintenance, and liability considerations; or
  - 2. By leasing or conveying title (including beneficial ownership) to a corporation, homeowners' association, or other legal entity. The terms of such lease or other instrument of conveyance must include provisions for maintenance and property tax payment acceptable to the City. The City, through conditions of approval, may also require public access be provided, where the open space is deemed necessary, based on impacts of the development and to meet public recreational needs pursuant to the Comprehensive Plan.
- E. **Modifications to Standards.** Modifications to Code standards must conform to the criteria in Chapter 4.6.

#### 4.5.700 Concept Plan and Expiration

- A. **Filing.** Upon approval of a concept plan, the approved plan, including any conditions of approval, shall be binding on future uses and development of the property, except where an approval expires.
- B. **Expiration.** Except as provided by subsection C, below, a concept plan shall become void three years after the date of approval if the applicant, or successor, has not filed with the City an application for detailed development plan and final plat approval in conformance with Sections 4.5.800 and 4.5.900.
- C. **Extension.** The City may grant extensions of the concept plan approval period, not to exceed one year per extension, provided that the extension request is made before expiration of the master planned development approval, the applicant can show intent of applying for detailed development plan review within the one-year extension period, and there have been no substantive changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based.

**4.5.800 Detailed Development Plan Submission.** Detailed development plan submittal requirements are determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan submittal shall meet the minimum requirements for final plat submission under Chapter 4.3 and shall contain information demonstrating compliance with the concept plan. The detailed development plan and preliminary subdivision plan shall be reviewed using the Type II procedure in Section 4.1.300 to ensure substantial conformance to the approved concept plan. ~~Where the proposal is for a multifamily development, Site Design Review is required, pursuant to Chapter 4.2. Site Design Reviews on detailed development plans shall be processed through the Type II procedure.~~

**4.5.900 Detailed Development Plan Criteria.** Approval of the detailed development plan shall be based upon a finding that the final plan substantially conforms to the concept plan, including any concept plan conditions of approval. Minor changes to the approved concept plan may be approved with the detailed plan where the City Manager finds that the modification is necessary to correct an error or to address changes in circumstances beyond the applicant's control that have occurred since the date of project approval. Other changes must be reviewed as major modifications under Chapter 4.5.

**4.5.1000 Subsequent Development Reviews.** Notwithstanding the provisions of Section 4.2.300, where the City has previously approved a development project in concept as part of a master planned development approval, as determined by the City Manager, subsequent land use applications for the same project may be processed through a Type I review.

## Chapter 4.6 - Modifications to Approved Plans and Conditions of Approval

### Sections:

- 4.6.100 Purpose
- 4.6.200 Applicability
- 4.6.300 Major Modifications
- 4.6.400 Minor Modifications

#### **4.6.100 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.

#### **4.6.200 Applicability**

- A. This Chapter applies to all development applications approved through the provisions of Chapter 4, including:
  - 1. Land Use Review approvals;
  - 2. Site Design Review approvals;
  - 3. Subdivisions, Partitions, and Property Line Adjustments;
  - 4. Conditional Use Permits;
  - 5. Master Planned Developments; and
  - 6. Conditions of approval on any of the above permit types.
- B. This Chapter does not apply to Comprehensive Plan amendments, land use zone changes, text amendments, annexations, temporary use permits, or other permits not listed in subsection A.

#### **4.6.300 Major Modifications**

- A. **Major Modification Defined.** The City Planning Official shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:

1. A significant change in land use defined as one that would result in a change of “Use Categories” as recognized in Chapter 1.4 or as may be determined by the City Planning Official;
2. An increase in density by more than ten (10) percent, provided the resulting density does not exceed that allowed by the land use zone or as approved in a Master Planned Development;
3. A change in setbacks or lot coverage by more than 30 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use zone or as approved in a Master Planned Development;
4. A change in the type and/or location of access-ways, drives or parking areas significantly affecting off-site traffic;
5. An increase in the floor area proposed for non-residential use by more than 20 percent where previously specified;
6. A reduction of more than 10 percent of the area reserved for common open space; or
7. Change to a condition of approval, or a change similar to items 1-6, that could have a significant detrimental impact on adjoining properties. The City Planning Official shall have discretion in determining detrimental impacts warranting a major modification.

**B. Major Modification Applications; Approval Criteria.** An applicant may request a major modification using a Type II review procedure, as follows:

1. Upon the City Planning Official determining that the proposed modification is a major modification, the applicant shall submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.
2. The application shall be subject to a Type II procedure utilizing the approval criteria employed in the initial project approval with the following exceptions. Adding a conditional use to an approved project shall be subject to a Type III procedure. In addition, if in the judgment of the City Planning Official the modification request is of such a magnitude or level of discretion as to warrant additional review, the modification request shall be reviewed using a Type III procedure if the initial request was processed as a Type III procedure.
3. The scope of review shall be limited to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping. Notice shall be provided in accordance with Chapter 4.1.
4. The City Planning Official or decision making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the criteria.

**4.6.400 Minor Modifications**

- A. Minor Modification.** Any modification to a land use decision or approved development plan that is not within the description of a major modification as provided in Section 4.6.300.A, above.
- B. Minor Modification Review Procedure.** An application for approval of a minor modification shall be reviewed by the Planning Official using a Type I procedure under Section 4.1.200. The Planning Official is responsible for determining the appropriate review procedure based on the following criteria.
- C. Minor Modification Applications.** An application for minor modification shall include an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.
- D. Minor Modification Approval Criteria.** The Planning Official shall approve, deny, or approve with conditions an application for minor modification based on written findings that the modification is in compliance with all applicable requirements of the Development Code and conditions of approval on the original decision, and the modification is not a major modification as described in Section 4.6.300.A, above.

## Chapter 4.7 - Land Use Zone Map and Text Amendments

### Sections:

- 4.7.100 Purpose
- 4.7.150 Typographical Errors
- 4.7.200 Legislative Amendments
- 4.7.300 Quasi-Judicial Amendments
- 4.7.400 Conditions of Approval for Quasi-Judicial Amendments
- 4.7.500 Record of Amendments
- 4.7.600 Transportation Planning Rule Compliance

### **4.7.100 Purpose**

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the land use zone map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

### **4.7.150 Typographical Errors**

Typographical errors may be corrected by means of a Type I procedure, as governed by Section 4.1.200. A log shall be kept identifying all corrections, which shall be provided to the Baker County Planning Commission for review on an annual basis.

### **4.7.200 Legislative Amendments**

Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV procedure in Section 4.1.500 and shall conform to the Transportation Planning Rule provisions in Section 4.7.600, as applicable.

### **4.7.300 Quasi-Judicial Amendments**

**A. Applicability of Quasi-Judicial Amendments.** Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or Code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial zone map amendments shall follow the Type III procedure, as governed by Section 4.1.400, using standards of approval in Section 4.7.300.B. The approval authority shall be as follows:

1. The Planning Commission shall review and act upon land use zone map changes that do not involve comprehensive plan map amendments;
2. The Planning Commission shall make a recommendation to the City Council on an application for a comprehensive plan map amendment. The City Council shall decide such applications; and

3. The Planning Commission shall make a recommendation to the City Council on a land use zone change application that also involves a comprehensive plan map amendment application. The City Council shall decide both applications.

**B. Criteria for Quasi-Judicial Amendments.** A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. Approval of the request is consistent with the Statewide Planning Goals;
2. Approval of the request is consistent with the Comprehensive Plan;
3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided in the planning period; and
4. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the comprehensive plan or land use zone map regarding the property which is the subject of the application; and
5. The amendment conforms to the Transportation Planning Rule provisions under Section 4.7.600.

#### **4.7.400 Conditions of Approval for Quasi-Judicial Amendments**

A quasi-judicial decision may be for denial, approval, or approval with conditions; conditions shall be based on applicable regulations and factual evidence in the record. Legislative amendments may only be approved or denied.

#### **4.7.500 Record of Amendments**

The City Recorder shall maintain a record of amendments to the text of this Code and the land use zone map in a format convenient for public use. This shall be located in Article 6.

#### **4.7.600 Transportation Planning Rule Compliance**

**A. Review of Applications for Effect on Transportation Facilities.** When a development application includes a proposed comprehensive plan amendment or land use zone change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060 (the Transportation Planning Rule - TPR) and the Traffic Impact Study provisions of Section 4.1.900. "Significant" means the proposal would:

1. Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors). This would occur, for example, when a proposal causes future traffic to exceed the levels associated with a “collector” street classification, requiring a change in the classification to an “arterial” street, as identified by the City’s Transportation System Plan (“TSP”); or
2. Change the standards implementing a functional classification system; or
3. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the City’s Comprehensive Plan; or
4. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the road authority’s transportation system plan (TSP).

**B. Amendments That Affect Transportation Facilities.** Except as provided in subsection C, amendments to the comprehensive plan and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the TSP. This shall be accomplished by one of the following:

1. Adopting measures that demonstrate that allowed land uses are consistent with the planned function of the transportation facility; or
2. Amending the Comprehensive Plan to provide transportation facilities, improvements, or services adequate to support the proposed land uses; such amendments shall include a funding plan to ensure the facility, improvement, or service will be provided by the end of the planning period; or,
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
4. Amending the planned function, capacity or performance standards of the transportation facility; or
5. Providing other measures as a condition of development or through a development agreement or similar funding method, specifying when such measures will be provided.

**C. Exceptions.** Amendments to the Comprehensive Plan or land use regulations with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the road authority’s transportation system plan (TSP), may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange area, as defined under applicable law;

2. The currently planned facilities, improvements or services are not adequate to achieve the standard;
3. Development resulting from the amendment will, at a minimum, mitigates the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development; and
4. The road authority provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility.

## Chapter 4.8 - Code Interpretations

### Sections:

- 4.8.100 Purpose
- 4.8.200 Procedure

**4.8.100 Purpose.** Some terms or phrases within the Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

### **4.8.200 Procedure**

- A. Requests.** A request for a code interpretation shall be made in writing to the City Planning Official.
- B. Decision to Issue Interpretation.** The Planning Official shall have the authority to interpret the code, or refer the request to the Planning Commission for its interpretation. The Planning Official shall advise the person making the inquiry in writing within 14 days after the request is made, on whether or not the City will make an interpretation.
- C. Written Interpretation.** If the City decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy. The written interpretation shall be issued within 14 days of the request. The decision shall become effective 14 days later, unless an appeal is filed in accordance with E-F below.
- D. Type I Procedure.** Code Interpretations shall be made using a Type I procedure under Section 4.1.300.
- E. Appeals.** The applicant and any party who received notice or who participated in the proceedings through the submission of written or verbal evidence may appeal the decision to the Planning Commission for a Type III decision. The appeal must be filed within 14 days after the interpretation was mailed or delivered to the applicant. Initiating an appeal requires filing a notice of appeal with the City Planning Official pursuant to Section 4.1.400.
- F. Interpretations on File.** The City shall keep on file a record of all code interpretations.

## Chapter 4.9 - Miscellaneous Permits

### Sections:

- 4.9.100 Temporary Use Permits
- 4.9.200 Home Occupation Permits
- 4.9.300 Mobile Vending Units

**4.9.100 Temporary Use Permits.** Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Temporary Use applications shall be processed using a Type I procedure, except that the Planning Official may chose, at his or her discretion, to process a request under a Type II procedure. Four types of temporary uses require permit approval (See A, B, C and D):

- A. Seasonal and Special Events.** These types of uses occur only once in a calendar year and for no longer a period than 30 days. Using a Type I procedure under Section 4.1.200, the City shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:
1. The use is permitted in the underlying land use zone and does not violate any conditions of approval for the property (e.g., prior development permit approval);
  2. The applicant has proof of the property-owner's permission to place the use on his/her property;
  3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under Chapter 3.3 - Vehicle and Bicycle Parking;
  4. The use provides adequate vision clearance, as required by Section 3.1.200, and shall not obstruct pedestrian access on public streets;
  5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Section 3.1.200 - Vehicular Access and Circulation;
  6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses in the zone do not affect the adjoining use; and
  7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

**B. Temporary Sales Office or Model Home.** Using a Type I procedure under Section 4.1.200, the City may approve, approve with conditions or deny an application for the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary sales office:

- a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
- b. The property to be used for a temporary sales office shall not be permanently improved for that purpose;
- c. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

2. Model house:

- a. The model house shall be located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and
- b. The model house shall be designed as a permanent structure that meets all relevant requirements of this Code and other applicable codes and permit requirements.

**C. Temporary Building, Kiosk, or Structure.** Temporary or permanent placement of a building, kiosk, or structure, including but not limited to prefabricated building(s), for use on any real commercial or industrial property within the City shall require a development permit. Using a Type I procedure, as governed by Section 4.1.200, the City may approve, approve with conditions or deny an application for a placement of a building, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, based on following criteria:

1. The temporary building shall be located within the specified property line setbacks of the parcel of land on which it is located;
2. Ingress and egress are safe and adequate as demonstrated by an approach permit approved by the road authority, as applicable. See also, Section 3.1.200 - Vehicular Access and Circulation;
3. There is adequate parking for the customers or users of the temporary use as required by Chapter 3.3 - Bicycle and Vehicle Parking;
4. The use will not result in vehicular congestion on streets;

5. The use will pose no impediment or hazard to pedestrians in the area of the use;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses in the zone do not affect the adjoining use;
7. The building complies with applicable building codes;
8. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
9. The length of time that the temporary building will be used does not exceed 6 months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit; and

Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

**D. Temporary Occupancy of Motor Homes and Travel Trailers in Residential Zones.**

1. The temporary occupancy of motor homes and travel trailers in residential zones may be approved, approved with conditions, or denied, following the criteria, procedures and conditions listed below:
  - a. Short-term stays, defined as 28 or fewer consecutive days, are exempt.
  - b. Manufactured homes (mobile homes) are not eligible for temporary use permits.
  - c. Per ORS 197.493, residing in a travel trailer for an unlimited period of time is allowed if it is located in a mobile home park and lawfully connected to water, sewer, and electrical systems.
  - d. This permit requirement does not waive any permit requirements of the City or State of Oregon, including the City requirements for connection to water or sewer services.
2. Using a Type I procedure, motor homes and travel trailers, regardless of location in a residential zone or other standards imposed by this ordinance, may be allowed temporary occupancy in the circumstances described in sections (a) or (b) below, if the following criteria are met:
  - a. The motor home or travel trailer is being used to provide shelter while a dwelling is under construction or for temporary housing subsequent to disaster (i.e., fire, earthquake, landslide, flood, or other similar disaster) for a specified period not to exceed one (1) year and is subject to the following requirements:

- i. An application shall include a description of the dwelling being constructed or the disaster, and an estimate of the amount of time the motor home or travel trailer will need to be occupied.
  - ii. The criteria in section (c) below shall be met.
- b. A “hardship” is suffered by the resident that necessitates the use of the motor home or travel trailer in order to provide or receive care. As used in this section, “hardship” means a condition created when a person is aged, infirm or suffers from a medical condition, or when an individual is providing care of such a person. A permit approval for “hardship” is permitted for a period of six (6) months and is subject to the following requirements:
- i. An application shall include written verification of the hardship and the need for assistance from a medical professional. Specific information regarding medical conditions shall not be requested nor required as part of the application.
  - ii. Within 30 days of the hardship ceasing to exist, the temporary occupancy of the motor home or travel trailer shall cease.
- c. In addition, the following standards shall be met:
- i. All application requirements set forth in Chapter 4.1.200 have been met.
  - ii. All property line setback requirements set forth in the applicable underlying zone are met, as well as other specific siting requirements deemed necessary by the Planning Official.
  - iii. The unit is not to be parked in, or in any way obstructing, a public right-of-way and is sited a minimum of five (5) feet from any structure.
  - iv. Any previously granted temporary use permit may be revoked by the Planning Commission, following a hearing, upon the following grounds:
    - A. the applicant or property owner is cited by the Baker City Police Department for any reason relating to the property or activities conducted thereon
    - B. violation of the Baker City Development Code
    - C. violation of any of the conditions of approval required by the temporary use permit

#### 4.9.200 Home Occupation Permits

- A. Purpose.** The purpose of this Section is to encourage those who are engaged in small commercial ventures that do not conform to the Special Standards for Certain Uses in Section 2.2.200.F. Home Occupation. The standards referenced above allow home occupations to be permitted via a Type I procedure, which does not require Development Review or Site Design Review.
- B. Approval Process and Criteria.** Section 4.9.200 provides a process for more intense home occupations to be allowed with Site Design Review by the Planning Commission and notice to surrounding property owners. These home occupations may be permitted, with conditions of approval when appropriate, in order to increase the benefits of people working and living in the same place, while protecting neighboring residents from adverse impacts of home occupation activities. These benefits to the business owner and to the general public include: reduced number of commute-to-work trips, day-time “eyes on the street” at the residence, and a neighborhood-scale version of mixed residential and commercial uses.
1. Home Occupation Permit. Applications for proposals that cannot meet all of the standards in Section 2.2.200.F. shall be processed using a Type III procedure, as governed by Chapter 4.1.400, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.400.B., the applicant shall provide:
    - a. A written narrative or letter:
      - i. describing the proposed home occupation;
      - ii. demonstrating compliance with those standards in subsection 2.2.200.F that can be met, and explaining why the other standards in subsection 2.2.200.F cannot be met, and
      - iii. demonstrating compliance with the criteria in subsection 2 below.
    - b. A site plan, not necessarily to scale, of the lot proposed for the home occupation, including:
      - i. the property lines and their dimensions;
      - ii. outlines of the foundations of all buildings proposed for home occupation use with dimensions for each wall, and the distances from each wall to the nearest property line;
      - iii. boundaries and dimensions of driveways and parking areas, indicating areas for use by home occupation employees and customers;
      - iv. outlines of the foundations of abutting residences, and the distances from the shared property line to the nearest wall of each neighboring residence; and
      - v. identifying the buildings and areas of those buildings in which home occupation

activities will take place, and identifying which activities will take place in which buildings and areas.

2. The City shall approve, approve with conditions, or deny an application for a Type III home occupation based on all of the following criteria:
  - a. The proposed use will not be materially detrimental to the stated purposes of applicable Code requirements and to other properties within a radius of 100 feet of the subject property;
  - b. Impacts to surrounding properties may exist but can be mitigated; and
  - c. Existing physical and natural systems, such as, but not limited to drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred in compliance with Section 2.2.200.F.

#### 4.9.300 Mobile Vending Units

- A. **Purpose.** The purpose of this section is to allow for mobile vending units to be sited within Baker City. As with temporary uses, permanent site improvements may not be required; however, the standards and permit processes of this section are intended to ensure that mobile vending units are conducted as lawful uses and in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents.
- B. **Exemptions.** The following are exempt from provisions of this section. Additional fire/life safety requirements may apply.
  1. Locations where mobile vending units stop for less than two hours in any twenty-four (24) hour period.
  2. Locations where mobile vending units are stored when not in operation are exempt from the provisions of this section; however, the storage of commercial vehicles may be subject to other requirements of the Baker City Development and Municipal Codes.
  3. Mobile vending units that are operated as part of an approved farmer's market or event that has received approval from the City.
- C. **Types of Mobile Vending Units.**
  1. Temporary Mobile Vending Units. Mobile vending units which will be sited for less than 60 days are considered temporary.

2. Permanently-Sited Mobile Vending Units. Mobile vending units which will be sited for more than 60 days are considered permanent.

**D. Permit Procedures.** Mobile vending unit permits will be processed as follows:

1. Type I. The following uses shall be reviewed as a Type I procedure in accordance with Section 4.1.200:
  - a. A temporary mobile vending unit, including ancillary trashcans and portable accessory items (such as picnic tables).
  - b. A permanently-sited mobile vending unit, including ancillary trashcans and portable accessory items (such as picnic tables).
  - c. Accessory structures ancillary to a permanently-sited mobile vending unit, in accordance with Section 4.9.300.(A)(3) below.
2. Type II. The following uses shall be reviewed as a Type II procedure in accordance with Section 4.1.300:
  - a. Three or more permanently-sited mobile vending units on one site, including ancillary trashcans and portable accessory items (such as picnic tables), and any necessary accessory structures.

**E. Mobile Vending Unit Standards.** The following standards apply to all mobile vending units unless stated otherwise:

1. Consent. The applicant has proof of the property-owner's permission to place the mobile vending unit on his/her property;
2. Zoning. Mobile vending units are permitted within commercial and industrial zones as set forth in Table 2.3.110 and Table 2.4.110, respectively.
3. Density. Mobile vending units shall be permitted at a density not to exceed one (1) unit per 1,200 square feet of site area.
4. Accessory Items and Structures. Portable accessory items, such as picnic tables and storage buildings, may be permitted with all mobile vending units. New accessory structures may be constructed only in conjunction with permanently-sited mobile vending units through a Type I procedure, as follows:
  - a. A maximum of two restroom structures, provided that the combined square footage does not exceed two hundred (200) square feet;

- b. One storage building that does not exceed two hundred (200) square feet;
  - c. One trash enclosure sited no more than ten (10) feet from the mobile vending unit; and
  - d. Covered, outdoor seating areas are permitted, provided that the combined square footage does not exceed  $\pm 200$  square feet per mobile vending unit, or a maximum of  $\pm 2,000$  square feet for a grouping of mobile vending units on one site, whichever is less.
5. Signs. Signs attached to the body of the mobile vending unit and which do not extend beyond the roof or wall of the mobile vending unit are permitted. All other signs must receive a permit in accordance with Chapter 3.5 - *Signs*, unless exempt.
  6. Minimum Setbacks and Separation Distance. All mobile vending units on the site shall be located a minimum of:
    - a. Five (5) feet from any structure or other mobile vending unit;
    - b. Ten (10) feet from any front lot line; and
    - c. Five (5) feet from any side or rear lot line, except if such lot line abuts a residential zone the minimum setback shall be 20 feet.
    - d. Within 600 feet of a fire hydrant.
  7. Screening. Temporary mobile vending units are exempt from screening requirements. All permanently-sited mobile vending unit sites abutting a residential zone shall be screened from the residential property. This shall include the mobile vending unit and associated seating, as well as queuing or parking areas which abut the residential zone. Screening shall meet standards set forth in Chapter 3.2 - *Landscaping, Street Trees, Fences & Walls*.
  8. Setback from Vehicular and Pedestrian Use Areas. Windows and doors used for service to customers shall be located a minimum of ten (10) feet from loading areas, driveways, on-site circulation drives, and parking lot aisles, and a minimum of five feet from bicycle parking spaces and walkways.
  9. Vision Clearance. Mobile vending units shall provide adequate vision clearance, as required by Section 3.1.200, and shall not obstruct pedestrian access on public streets.
  10. Vehicular Access and Circulation. Ingress and egress for the mobile vending unit shall be safe and adequate when combined with the other uses of the property, and conform to standards set forth in Section 3.1.200 - *Vehicular Access and Circulation*.
  11. Surfacing. Permanently-sited mobile vending units shall be placed on a hard-surfaced area, and any associated parking, loading, and maneuvering areas for vehicles shall be on existing hard-

surfaced areas, unless a permeable parking, loading, or maneuvering area surface was authorized as part of a previously approved use on the site, or has been reviewed and approved by the Baker City Public Works Department. Temporary mobile vending units are exempt from the above hard-surface requirements but shall provide dust abatement to the site and any associated parking, loading, and maneuvering areas for vehicles. The selected dust abatement method shall be approved by the Baker City Public Works Department prior to application.

12. Driveway Access. All mobile vending units shall utilize driveway access which conforms with the standards of Section 3.1.200 - *Access and Circulation* and which are permitted by the Baker City Public Works Department.
13. Off-Site Impacts. The mobile vending unit shall not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which is greater than other uses allowed in the zone.
14. Public Facilities. All permanently-sited mobile vending units shall be adequately served by City sewer and water. The applicant shall be responsible for obtaining any related permits. Temporary mobile vending units requiring public facilities shall obtain all required permits.
15. Utilities. To the extent that utilities are desired by the applicant or are required by applicable regulations, mobile vending units shall have self-contained utilities. If on-site utility connections are proposed, such utilities shall be installed underground, except where prohibited by the City or utility company.
16. Parking. A minimum of two parking spaces shall be provided for customers of any mobile vending unit. Parking spaces shall conform to standards set forth in Chapter 3.3 - *Vehicle and Bicycle Parking*. No parking shall be utilized by customers and employees of the mobile vending unit which is needed by the property owner to meet minimum parking requirements for previously-permitted uses.
17. Fuel Tanks. Fuels tanks which are permanently attached to the mobile vending unit are permitted, or shall measure less than 10 gallons if sited upon the ground. These fuel tanks shall be setback **five (5)** feet from any public right-of-way and 10 feet from any structure. Permanently-sited mobile vending units may site one (1) fuel tank measuring more than 120 gallons upon the ground if said fuel tank meets the required setback distances of 50 feet from any public right-of-way or structure. All fuel tanks must be secured to prevent tipping and tampering. Skirting of fuel tanks or mobile vending units with fuel tanks is not permitted.
18. Attachments. Temporary attachments to mobile vending units, such as awnings or canopies, are permitted. Building permits may be required. Neither the mobile vending unit nor any item relating to the unit shall lean against or hang from any structure or utility pole. No structures shall be attached to the mobile vending unit.

19. Accessory Storage. Except as specifically allowed by Section 4.9.300.~~(E)~~(3), items relating to the mobile vending unit shall be stored in, on, or under the unit.
  20. Interior Seating or Vending. Customer seating or vending inside any mobile vending unit is prohibited.
  21. Other Licenses Required. In addition to the requirements of this section, the operator of a mobile vending unit must obtain all necessary local, state and/or federal permits, including those required by the Oregon Health Authority.
- F. Approval Period and Time Extension.** An approved mobile vending unit must be established within one year of the date of the final written decision. Extension requests are permitted and must be made to the Planning Director in writing.
- G. Grounds for Revocation.** The Planning Official or designee may revoke a mobile vending unit permit approval if the standards within this chapter have not been or are not being complied with and the mobile vending unit is otherwise being conducted in a manner contrary to this chapter. The Planning Official or designee shall approve the use as it exists, revoke the mobile vending unit permit, or compel measures to be taken to ensure compatibility with the neighborhood and conformance with this section after reviewing a complaint. A fire code official or building official also has the ability to inspect, and temporarily close if necessary, a mobile vending unit for violations of State Fire Code or State Building Code, respectively.