

## Article 5 — Exceptions to Code Standards

### Chapters:

- 5.1-~~100~~ Variances
- 5.2-~~200~~ Non-Conforming Uses and Development
- 5.3-~~300~~ Lots of Record
- 5.4 Compensation Claims

### Chapter 5.1 — Variances

#### Sections:

- 5.1.100 Purpose
- 5.1.200 Applicability
- 5.1.300 Class A Variances
- 5.1.400 Class B Variances
- 5.1.500 Class C Variances
- 5.1.600 Application and Appeals

**Background:** The code is designed to be more flexible than conventional zoning; the model code frequently allows uses permitted via a Type I procedure, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the code provides flexibility in lot sizes and setbacks, as well as minimum parking ratios that are below the minimums of some codes. It also allows reductions to required off-street parking if an applicant can demonstrate through a parking study that less parking would be sufficient.

Typical variance procedures require the property owner to demonstrate that a hardship exists which is not self-imposed; there are unusual or extraordinary circumstances related to the site; and rights that others in the vicinity enjoy would be denied without a variance. In contrast, the three variance options in Chapter 5.1 provide a range of standards and approval criteria based on the specific type of variance requested. For example, it should be fairly easy to modify a yard setback in order to protect significant trees or to provide other amenities if all applicable building and fire codes are met.

**5.1.100 Purpose.** This Chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code as exceptions to code standards. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. Chapter 5.1 provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development

standard is met.

### 5.1.200 Applicability

- A. Exceptions and Modifications versus Variances.** A code standard or approval criterion (“code section”) may be modified without approval of a variance if the applicable code section expressly allows exceptions or modifications. If the code section does not expressly provide for exceptions or modifications, then a variance is required to modify that code section and the provisions of Chapter 5.1 apply.
- B. Mandatory Adjustments to Housing Development Standards.** As required by SB 1537 (2024), Baker City grants adjustments to specific development and design standards if an application meets certain residential or mixed-use residential land use criteria as described in Section 38. The project criteria and mandatory adjustments established in Section 38 of SB 1537 are hereby adopted by reference. An “adjustment” is a deviation from an existing land use regulation. Eligible applicants are required to complete the Adjustment Review Application distributed by Baker City confirming the proposal complies with Section 38 of SB 1537 (2024) ~~on the City’s website.~~
- C. Combining Variances with Other Approvals; Permit Approvals by Other Agencies.** Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.
- D. Types of Variances.** There are three types of variances (Class A, B, or C); the type of variance required depends on the extent of the variance request and the discretion involved in the decision making process. Because some variances are granted using “clear and objective standards,” they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or III procedure because they involve discretionary decision-making.

### 5.1.300 Class A Variances

- A. Applicability.** The following variances are reviewed using a Type I procedure, as governed by Chapter 4.1, using the approval criteria in Subsection B, below:
1. Front yard setbacks. Up to a 15 percent change to the front yard setback standard in the land use zone.
  2. Interior setbacks. Up to a 15 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use zone.
  3. Lot coverage. Up to 15 percent increase of the maximum lot coverage required in the base zone.

4. Landscape area. Up to 10 percent reduction in landscape area (overall area or interior parking lot landscape area).
5. Minimum lot size. Up to a 10 percent reduction to the minimum lot size standard in the base land use zone. Applies to existing lots only.
6. Sign height. Up to a 15 percent increase to the maximum sign height permitted in the base land use zone.
7. Sign area. Up to a 15 percent increase to the maximum sign area permitted in the base land use zone.

**B. Approval criteria.** A Class A Variance shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;
3. The variance will not result in violation(s) of any other adopted ordinance or code standard; each code standard to be modified shall require a separate variance request.
4. An application for a Class A variance is limited to one lot per application.
5. No more than three Class A variances may be approved for one lot or parcel in 12 months.

#### 5.1.400 Class B Variances

**A. Applicability.** Class B variance requests apply to the types of requests meeting the approval criteria in Sections 5.1.400.B through 5.1.400.H, and that conform to subsections 1-3, below. Class B variances shall be reviewed using a Type II procedure, in accordance with Chapter 4.1:

1. The Class B variance standards apply to individual platted and recorded lots only.
2. The Class B variance procedure shall not be used to modify a standard for lots yet to be created through a partition or subdivision process; such requests shall utilize the Class C variance procedure.
3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use zone (Article 2).

**B. Variance to minimum housing density standard (Chapter 2.2).** The City may approve a variance to a

minimum housing density standard in Chapter 2.2 after finding that the minimum housing density cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means steep topography, unusual parcel configuration, or a similar constraint. The variance approved shall be the minimum variance necessary to address the specific physical constraint on the development.

- C. Variance to Vehicular Access and Circulation Standards (Chapter 3.1).** Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the City may grant a variance to the access requirements after finding all of the following:
1. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
  2. There are no other alternative access points on the street in question or from another street;
  3. The access separation requirements cannot be met;
  4. The request is the minimum variance required to provide adequate access;
  5. The approved access or access approved with conditions will result in a safe access;
  6. The visual clearance requirements of Chapter 3.1 will be met; and
  7. Variances for street access deviations shall be subject to review and approval by the roadway authority.
  8. Variances for access deviations on a Baker County road right-of-way shall be subject to review and approval by Baker County.
- D. Variance to Street Tree Requirements (Chapter 3.2).** The City may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 3.2, after finding the following:
1. Installation of the tree would interfere with existing utility lines, and no substitute tree with a lower canopy is appropriate for the site;
  2. The tree would cause visual clearance problems; or
  3. There is not adequate space in which to plant a street tree; and
  4. The City may require the installation of additional or replacement landscaping elsewhere on the site (e.g., parking lot area trees) to compensate for the street tree variance.

5. Street tree approval or modification of standards within an ODOT or Baker County right-of-way may require approval, respectively, by ODOT or Baker County.

**E. Variance to Parking and Loading Standards (Chapter 3.3)**

1. The City may approve variances to the minimum or maximum standards for off-street parking (quantities and dimensions of parking spaces) in Chapter 3.3.1 upon finding all of the following:
  - a. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;
  - b. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
  - c. All other code standards are met, in conformance with Article 2 (Land Use Zones) and Article 3 (Design Standards).
2. The City may reduce the number of required bicycle parking spaces per Chapter 3.3.200, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
3. The City may allow a reduction in the amount of vehicle stacking area required in for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
4. The City may modify the loading area standards if such a reduction is deemed appropriate after analysis of the use, anticipated shipping or delivery traffic generated by the use and alternatives for loading/unloading, such as use of on- or off-street parking areas during non-business hours provided that traffic is not impeded.

**F. Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features (Chapters 2.2-2.65 – Land Use Zones).** The City may grant a variance to the applicable setback requirements of this Code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.

**G. Variances to Transportation Improvement Requirements (Chapter 3.4.1300).** The City may approve, approve with conditions, or deny a variance to a transportation improvement standard in Table 3.4.1300.F. when the variance does not exceed 20 percent of the standard. When a variance request to the standards in Table 3.4.1300.F. exceeds 20 percent, then the request shall be reviewed as a Class C variance.

H. **Variances to Fencing Standards (Chapter 3.2).** The City may grant a variance from the fencing standards provided in Section 3.2.500 after finding the following:

1. The proposed variance will not adversely affect the following interests of the City:
  - a. Visibility for public safety and neighborhood security;
  - b. Preservation of access for public right of ways, utilities and emergency services;
  - c. Attractive appearance; and
  - d. Safety physical environment;
2. The proposed variance will not adversely affect the neighboring property owners; and
3. Substantial reasons exist why the fence cannot be constructed in accordance with current regulations; or there is a hardship on the land, and that the hardship is not a personal or self-created hardship.

#### 5.1.500 Class C Variances

A. **Applicability.** Class C variance requests are those that do not conform to the provisions of Sections 5.1.300-5.1.400 (Class A and Class B), and that do not conflict with the criteria in 1-4, below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 4.1:

1. The Class C variance procedure may be used to modify a standard for 3 or fewer lots, including lots yet to be created through a partition process.
2. An applicant who proposes to vary a standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure. Approval of a Master Planned Development shall be required to vary a standard for lots yet to be created through a subdivision process, where a specific code section does not otherwise permit exceptions.
3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use zone (Article 2).

B. **Approval Process.** Class C variances shall be processed using a Type III procedure, as governed by ~~Chapter Section~~ 4.1.400, using the approval criteria in subsection C, below. In addition to the application requirements contained in ~~Chapter Section~~ 4.1.400, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection C.

C. **Approval Criteria.** The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use zone or vicinity;

2. A hardship to development exists which is peculiar to the lot size or shape, topography, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone);
3. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
4. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
5. The hardship is not self-imposed; and
6. The variance requested is the minimum variance that would alleviate the hardship.

#### 5.1.600 Application and Appeals

- A. **Application.** The variance application shall conform to the requirements for Type I, II, or III applications (~~Chapter Sections 4.1.200, 4.1.300 to~~, 4.1.400), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.
- B. **Appeals.** Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.

## Chapter 5.2 — Non-Conforming Uses and Developments

### Sections:

- 5.2.100 Purpose
- 5.2.200 Non-Conforming Uses
- 5.2.300 Non-Conforming Development

**5.2.100 Purpose.** This Chapter provides standards and procedures for non-conforming situations (i.e., existing uses or development that do not comply with the Code). The standards for non-conforming uses and development are intended to provide some relief from code requirements for uses and developments that were established prior to the effective date of this Code and do not comply with current standards.

**5.2.200 Non-Conforming Uses.** Where at the time of adoption of this Code a use of land exists which would not be permitted by the regulations imposed by this Code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

- A. Expansion Prohibited.** No such non-conforming use is enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code, except as may be specifically provided for in Article 2 – Land Use Zones. No additional structure, building or sign shall be constructed on the lot in connection with such non-conforming use of land;
- B. Location.** No such non-conforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
- C. Discontinuation or Abandonment.** The non-conforming use of land is not discontinued for any reason for a period of 24 months or longer. For purposes of calculating the 24-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  - 1. On the date when the use of land is physically vacated;
  - 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
  - 3. On the date that a non-conforming use has been changed to a conforming use;
  - 4. On the date of termination of any lease or contract under which the non-conforming use has occupied the land; or
  - 5. On the date a request for final reading of water and power meters is made to the applicable

utility zones.

- D. Application of Code Criteria and Standards.** If the use is discontinued or abandoned for any reason for a period of 24 months or longer, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use zone in which such land is located except as follows:
1. Buildings that were specifically constructed to serve as residential buildings that have retained their residential floor plan and character that are now non-conforming uses within the land use zone in which they are located, may be used for residential applications even if the use has been discontinued for 24 months, except that once such a use is discontinued for a period of 12 months any new residential use within the building shall be subject to the obtainment of a Conditional Use Permit. Such a use shall not be utilized for a non-conforming residential application if the structure has been previously remodeled and utilized for commercial applications to such an extent that the building no longer retains its fundamental residential characteristics and floor plan.
  2. Buildings that were specifically constructed to serve as industrial or commercial applications that by their design and nature cannot be reasonably converted to residential applications, and that are non-conforming uses within the land use zone in which they are located, may be used for industrial or commercial applications even if the use has been discontinued for 24 months, except that once such a use is discontinued for a period of 12 months any new commercial or industrial use within the building shall be subject to the obtainment of a Conditional Use Permit.
  3. No non-conforming commercial or industrial building may be expanded in a way that increases the non-conformity of the structure.

**5.2.300 Non-Conforming Development.** Where a development exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot or other requirements concerning the development; and the development was lawful when constructed, the development may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

- A. Alterations.** No such non-conforming development may be enlarged or altered in a way that increases its non-conformity, but any development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its non-conformity;
- B. Destruction.** Should such non-conforming development or non-conforming portion of development be destroyed by any means to an extent more than 60 percent of its current value as assessed by either the Baker County Building Official or Baker County Assessor, it shall be reconstructed only in conformity with this Code;

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- C. Roadway Access.** The owner of a non-conforming access connection (i.e., street or highway access) may be required to bring the non-conforming access into conformance with this Code and other applicable standards as a condition of the City or other roadway authority approving a new access connection permit, or a change in land use.
- D. Relocation or Removal.** Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code.

## Chapter 5.3 - Lots of Record

### Sections:

- 5.3.100 Purpose
- 5.3.200 Applicability
- 5.3.300 Procedure
- 5.3.400 Platted Lots – Continuous Ownership of Substandard Lots

**5.3.100 Purpose.** The purpose of Chapter 5.3 is to establish criteria and a process for determining when a lot of record exists, and to establish criteria for the development or recombination of platted lots when more than one platted lot is held in continuous ownership.

**5.3.200 Applicability.** A lot of record is a plot of land that was created and recorded before April 9, 1956 (the date of adoption of Baker City's first subdivision ordinance), and for which the deed, or other instrument dividing the land, is recorded with Baker County. A lot of record shall be entitled to development of no less than one ~~single-family detached residential~~ dwelling and, provided all applicable Code standards are met, additional land use or development may be approved.

**5.3.300 Procedure.** A lot of record determination shall be made by the City Planning Official through a Type I procedure (~~Chapter-Section~~ 4.1.200). It shall be the property owner's responsibility to demonstrate that his or her plot of land meets the lot of record criteria in Section 5.3.200.

**5.3.400 Platted Lots – Continuous Ownership of Substandard Lots.** If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are on record as of April 9, 1956, and if all or part of the lots do not meet the requirements for lot area as established by this ordinance, no portion of said parcel shall be leased, rented, or sold which does not meet lot area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot areas below the requirements stated in this ordinance with the following exceptions:

- A. When lots of record in single ownership with continuous frontage exists, the owner may lease, rent, or sell up to two substandard lots of record if each lot has a minimum of ~~4,600~~ 3,000 ft<sup>2</sup> and it is not possible to reconfigure the lots in contiguous ownership to meet the minimum lot size requirement of the underlying land use zone;
- B. When lots of record in single ownership with continuous frontage exist that are substandard in lot area, the owner, at the discretion of the Planning Director, may reconfigure through re-plat up to two continuous lots so long as neither reconfigured lot has less than 4,600 ft<sup>2</sup>.

## Chapter 5.4 Compensation Claims

### Sections:

- 5.4.100 Purpose
- 5.4.200 Definitions
- 5.4.300 Application Process

**5.4.100 Purpose.** If the City enacts one or more land use regulations that restrict the residential use of private real property and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the City that enacted the land use regulation or regulations as provided in Oregon Revised Statute (ORS) 195.310 to 195.314, and this Chapter.

**5.4.200 Definitions.** The words used in this chapter that are the same as words used in ORS 195.300 to 195.336 shall have the same meaning as the words used in those subsections of the ORS, notwithstanding any different definition in city ordinances or regulations. *OWNER* shall have both a singular and plural meaning.

### **5.4.300 Application Process**

**A. Application for compensation or waiver.** An owner of private real property may apply for a waiver from a city regulation, whether in the Development Code or in any other city ordinance or regulation, if the owner believes that without a waiver, the owner is or will be entitled to compensation under ORS 195.310. A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

### **B. Form of Application.**

1. An application for compensation or a waiver under division (A) above shall be filed with the Planning Department on a completed application form established by the Department. Unless waived by the Director of the Department, an application shall include at least the following information, to the extent such information may be required as a condition of acceptance of filing an application under ORS 195.310-195.314:
  - a. A legal description of the private real property as to which the owner is applying for compensation or a waiver, including the common address and the Baker County Assessor's description of the property;
  - b. The name, address and telephone number of each owner of and security interest holder in the private real property, together with the signature of the owner making the application;
  - c. The date the owner acquired ownership of the private real property;

- d. A title report, current within 30 days prior to the application date verifying the owner's ownership of the private real property and documenting the date on which the owner acquired ownership;
- e. A description of each parcel of land owned by the owner of the private real property as to which the owner is applying for compensation that is either directly contiguous to the private real property or is indirectly contiguous through contiguity with another parcel under the same ownership that itself is directly or indirectly contiguous, together with the following:
  - i. The date of acquisition of each directly or indirectly contiguous parcel;
  - ii. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels, as a single economic unit, for example in the purchase and financing of the land and in the owner's development of and economic planning for the land; and
  - iii. Information showing the extent to which application of the subject regulation to the private real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land.
- f. The specific regulation as to which the owner is applying for compensation or a waiver, including the date the regulation was adopted, first enforced or applied;
- g. The manner in which, and the extent to which, the regulation restricts the use of the private real property as to which the owner is applying for compensation or a waiver;
- h. An appraisal of the private real property as to which the owner is applying for a variance or compensation, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property one year before application of the regulation and the evidence on which the appraiser's opinion is based;
- i. An appraisal of the private real property as to which the owner is applying for compensation or a waiver, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property one year after application of the regulation and the evidence on which the appraiser's opinion is based; in both appraisals required herein there shall be included a statement of the assumptions used in making the appraisals and separately stating the net cost to the owner of any affirmative obligation imposed on the owner and compensable under ORS 195.310, and included in the determination of the reduction of fair market value, with a statement and explanation of the acts required in order to accomplish the obligation; and

j. The amount the owner claims as compensation under ORS 195.310 in the event a waiver from the regulation is not permitted.

2. An application shall also include an application fee, in the amount established by resolution of the City Council, to at least partially cover the city's cost of processing the application, to the extent an application fee may be required as a condition of acceptance of the filing of an application under ORS 195.310.

**C. Application completeness and acceptance for filing.** The Planning Director shall review the application and determine whether it is complete within 60 days after receiving the claim. If deemed complete, the 180-day period referred to in ORS 195.312 shall commence as of the date of filing. If the Planning Director determines that the application is not complete, the Planning Director shall inform the applicant in writing of the additional information necessary to make the application complete. The application shall be deemed complete at such time that the additional information is submitted unless additional information is required to make the application complete. If the Planning Director determines that the additional information still does not result in a complete application, the Planning Director shall inform the applicant in writing of the remaining additional information necessary to make the application complete. If the Planning Director fails to mail notice of the determination of incompleteness within 60 days from the date of filing the application, the application shall be deemed complete as of the date of initial filing of the application. If the Planning Director fails to mail notice of the determination of incompleteness within 30 days from the date of filing the supplemental information submitted following initial determination of incompleteness, the application shall be deemed complete as of the date of filing of the supplemental information. A claim filed under this section is deemed withdrawn if the Planning Department gives notice to the claimant and the claimant does not comply with the requirements of this section.

**D. Review and report to City Council.** The City Manager shall, following the filing of a complete application for compensation or a waiver under this section, determine whether a waiver is necessary to avoid the owners being entitled to compensation under ORS 195.310 and, if so, the extent of the waiver needed to avoid the owner's being entitled to the compensation and the amount of compensation to which the owner would be entitled without a waiver. If the City Manager determines that a waiver is needed to avoid the owner's being entitled to compensation, the City Manager shall compare the public benefits from application of the regulation to the owner's private real property, to the public burden of paying the required compensation to the owner if the waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims. Based on this comparison, the City Manager shall prepare a written report to the City Council stating his or her determinations and the evidence on which they are based; and, if the City Manager has determined that a waiver is needed to avoid the owner's being entitled to compensation, making a recommendation to grant a waiver that will avoid the owner's being entitled to compensation, to grant a waiver that will not avoid, but will reduce, the compensation to which the owner is entitled and to pay the reduced compensation, or to deny a waiver and pay the compensation to which the owner is entitled. The City Manager shall provide the written report to the City Council.

**E. Notice of City Council hearing.**

1. Upon receipt of the written report provided above, the City Council shall schedule a public hearing on the application for compensation or a waiver. Public notice of the hearing shall be given as follows.
  - a. The city shall mail written notices of the public hearing at least thirty (30) days in advance of the hearing date to the applying owner and any other owners of the private real property as to which the owner is applying for compensation or a waiver; to the owners of record of property within 100 feet from the exterior boundary of the private real property as to which the owner is applying for compensation as reflected on the most recent property tax assessment roll; to Baker County; and to any neighborhood or community organization recognized by the City Council and whose boundaries include the private real property as to which the owner is applying for compensation or a waiver.
  - b. The notice mailed under division (E)(1)(a) above shall contain the following information:
    - i. The City Council will hold a public hearing to determine whether an owner of private real property is entitled under ORS 195.310 to receive either compensation or a waiver from a city regulation and, if so, to determine whether to pay compensation or grant a waiver;
    - ii. The date, time and location of the City Council public hearing, and the final date for submission of written evidence and arguments relating to the claim;
    - iii. The name of the applying owner;
    - iv. The common address or other easily understood geographical reference to the private real property as to which the owner is applying for compensation or a waiver and a map showing its location;
    - v. The regulation in relation to which the owner is applying for compensation or a waiver;
    - vi. The amount of compensation claimed by the owner if a waiver is not granted;
    - vii. The possibility that the City Council, following the public hearing, would grant the owner a waiver from the regulation in relation to which the owner is applying for compensation or a waiver, rather than paying the amount of claimed compensation; the City Council's decision will be based on:
      - A. A determination whether the applying owner is or will be entitled to compensation under ORS 195.310 unless the city grants a waiver from the regulations; and, if so,

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- B. A comparison of the public benefits from application of these regulations to the owner's private real property to the public burden of paying the required compensation to the owner if the waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims.
- viii. The name of the city representative to contact and the telephone number where additional information may be obtained;
  - ix. A copy of the application, all documents and evidence relied on by the applying owner and the City Manager's report to the City Council are available for inspection at no cost and will be provided at a reasonable cost;
  - x. Written testimony may be submitted to the Planning Department at any time prior to the hearing for inclusion in the hearing record and may also be submitted at the hearing; and oral testimony may be given at the hearing;
  - xi. Judicial review of the final determination of the City on the claim is limited to the written evidence and arguments submitted to the City; and
  - xii. Judicial review is available only for issues that are raised with sufficient specificity to afford the City an opportunity to respond.
- c. In addition, the city, in its discretion, may publish the notice described in division ~~(E.)(1)(b.)~~ of this section in a newspaper of general circulation in the city and may give other notice by such means as the city deems appropriate.
2. The failure of the city to give notice as provided in this section or the failure of any person to receive notice given under this section shall not invalidate any action of the City Council under this chapter.
  3. Except as provided in item 4 of this section, written evidence and arguments in the proceedings on the claim must be submitted to the Planning Department not later than the close of the final public hearing on the claim.
  4. The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.
  5. The Planning Department shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in items 3 and 4 of this section.

**F. City Council hearing and action.**

1. The City Council shall hold a public hearing on the application for compensation or a waiver. The hearing shall be legislative in nature. At the close of the hearing, the City Council shall:
  - a. Determine whether the applying owner is or will be entitled to compensation under ORS 195.310; and
  - b. If so entitled, the City Council shall compare the public benefits in the application of the regulation to the owner(s)' private real property, to the public burden of paying the required compensation to the owner if a waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims.
2. If the City Council has determined that either compensation or a waiver is appropriate, then based on this comparison:
  - a. If the City Council finds that the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of the claims, is sufficient to justify, foregoing the public benefits from application of the regulation to the owner's private real property, the City Council shall grant a waiver from the specified regulation to the extent necessary to avoid the owner's being entitled to the compensation;
  - b. If the City Council finds that the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of the claims, the City Council shall deny a waiver from the specified regulation and the city shall pay the required compensation; and
  - c. If the City Council finds that some of the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration the city's financial resources for the payment of the claims, but that other public benefits are not sufficient to justify the public burden of paying the balance of required compensation, taking into consideration the city's financial resources for the payment of the claims, the City Council shall grant a waiver to the limited extent necessary to avoid the owner's being entitled to compensation as to that part of the specified regulation providing public benefits not sufficient to justify the public burden of paying compensation and the city shall pay the required compensation as to that part of the specified regulation as to which a waiver is not granted.
3. The City Council's decision shall be by written order that shall include the findings and conclusions based on which the City Council has made its decision. If the Council has determined that a waiver should be granted or compensation should be paid, or both, the order shall state the extent of the waiver granted or the amount of compensation to be paid, or both.

- G. Notice of City Council decision.** The City shall mail a copy of the City Council's written order to the applying owner and to all other persons who submitted written or oral testimony at the City Council hearing and to any person who submitted written evidence or arguments before the close of the record. The failure of the City to give notice as provided in this section, or the failure of any person to receive notice given under this section, shall not invalidate any action of the City Council under this section. The Planning Department shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located.
  
- H. Extent of waiver in case of Court review.** If the City Council has taken an action under division ~~(F)~~ above, and the owner nevertheless files a Court action seeking compensation or additional compensation from the city in relation to the specified regulation as it affects the owner's private real property and, if a final Court decision determines that the extent of the waiver specified as being granted by the City Council is not sufficient to avoid the owner's being entitled to compensation, then the extent of the original waiver granted by the city shall be deemed to be the extent of waiver necessary to avoid the owner's being entitled to compensation or additional compensation, effective as of the original date of the City Council's decision.
  
- I. Termination of waiver.** Any waiver granted under this section shall be applicable during such time as the property owner owns the property and so long after the property owner is no longer the property owner as the property qualifies under any Baker City land development ordinance as a non-conforming use. At such time as the use of the property ceases to qualify as a non-conforming use, all regulations then in effect will apply to the property.