

SECTION 600
LAND USE REVIEW CRITERIA

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REVIEW CRITERIA

600.010 **Overview.** The Zoning and Development Code provides a combination of non-discretionary and discretionary standards for the City to use in evaluating land use proposals for compliance with the use and development requirements of the Code. The non-discretionary criteria provide the certainty needed in most situations by providing straightforward, clear, and objective standards. Discretionary criteria provide needed flexibility by allowing more subjective standards and objectives, and provide for the modification of regulations in response to specific site conditions. This chapter contains the criteria of the following land use applications:

- Adjustments
- Comprehensive Plan Amendments
- Conditional Uses
- Design Review
- Zoning Map Amendments
- Non-conforming Situations
- Vacations
- Variances
- Zoning and Development Code Amendments

600.020 **Function of Review Criteria.**

The review criteria that are listed with a specific review reflect the findings which must be made to approve the request.

- A. Review criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties. A proposal that complies with all the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot comply with mitigation measures will be denied.
- B. The review criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and review criteria means the proposal is in conformance with the Comprehensive Plan.
- C. When review criteria refer to the request's meeting a specific threshold, such as adequate services or no significant detrimental environmental impacts, the threshold includes any proposed improvements, mitigation measures, or limitations. All proposed improvements, mitigation measures, and limitations must be identified prior to a final decision by a review body.

600.030 **Burden of Proof.** The burden of proof is on the applicant to show that the review criteria are met. The burden is not on the City or other parties to show that the criteria have not been met.

600.040 **Conditions of Approval.** The City may attach conditions to the approval of a land use decision in accordance with Section 540.100 (3) - Findings.

600.050 **Relationship to Other Regulations.** Approval of a land use application based on review criteria in this Code does not relieve the applicant of responsibility for compliance with other applicable codes, ordinances, statutes or regulations.

COMPREHENSIVE PLAN AMENDMENTS

- 610.010 Purpose.** The Comprehensive Plan is the official and controlling land use document of the City, providing guidance to both public and private activities which affect the growth, development, and livability of the community. The Plan is intended to be a flexible document, reflecting changing circumstances and community attitudes through occasional amendments. This section provides a process whereby the Comprehensive Plan may be amended without violating the integrity of the Plan or frustrating its basic purposes. This process applies to proposed changes to the Comprehensive Plan map designations, and text.
- 610.020 Initiating a Comprehensive Plan Amendment.** Comprehensive Plan amendments which are legislative in nature can be initiated by the Planning Commission or City Council. The City Administrator and others may request the Planning Commission to consider an initiation. Requests for Comprehensive Plan amendments which are quasi-judicial in nature may be initiated by an applicant, the Planning Commission or the City Council. Initiations by the Planning Commission or City Council are made without prejudice towards the outcome.
- 610.030 Procedure.** Requests for Plan amendments determined by the City Administrator to be legislative in nature are reviewed through the legislative procedures stated in Section 560 - Legislative Process. Quasi-judicial requests are reviewed through the Type III procedure of Section 520 - Quasi-Judicial Process.
- 610.040 Review Criteria.** Amendments to the Comprehensive Plan will be approved if the Council finds that the applicant has shown that the following applicable criteria are met:
- A. A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plan adopted by the City Council.
 - B. A legislative amendment is needed to meet changing conditions or new laws.
 - C. The requested designation for a quasi-judicial map amendment meets all of the following tests:
 - (1) The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be more supportive of the Comprehensive Plan as a whole than the old designation.
 - (2) The requested designation is consistent with the Comprehensive Plan map pattern.
 - (3) The requested designation is consistent with the Statewide Planning Goals.

D. The review body shall find that:

The transportation system is capable of supporting the proposed use in addition to the existing uses in the area and will not significantly affect a transportation facility. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.

“Significantly” affect the transportation facility means the proposal would:

1. As measured at the end of the Wood Village TSP planning period or 15 years, whichever is greater, the proposal would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
2. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable; or
3. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable.

E. **Amendments that Affect Transportation Facilities.** Except as provided in Subsection F, 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 Wood Village 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 Wood Village TSP or 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 for development or through a development agreement or similar funding method, specifying when such measures will be provided.

F. **Exceptions.** Amendments to the Comprehensive Plan or land use regulation with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the Wood Village TSP or the Regional Transportation Plan, may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange areas, 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, mitigate 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.

610.050

Corrections to the Comprehensive Plan Map. The City Administrator may initiate a review through the Type II procedure for the types of corrections to the Comprehensive Plan Map listed below:

- A. The correction may be made for mapping errors such as:
 - (1) A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches;
 - (2) The line on the map does not match the legal description or map shown or references in the ordinance which applied to the designation; or
 - (3) When there is a discrepancy between maps and there is a clear legislative intent for where the line should be.
- B. The correction may be made when a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar items. Map line changes in these cases must not be more than a minor change to the map pattern and must not result in any significant impacts to abutting lots.

CONDITIONAL USES

620.010 Purpose. Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but not necessarily do, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these proposed uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use process provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose conditions to address identified concerns, or to deny the use if the concerns cannot be resolved.

Uses identified in Sections 200 and 300 as requiring Conditional Use approvals may be permitted, enlarged or altered in accordance with the provisions of this Section. In addition, where a use is not authorized in any district or where ambiguity exists concerning the appropriate classification of a particular use or type of development within the intent of this Code, the use or type of development may be established by Conditional Use approval in accordance with this Section.

620.020 Scope. Approval of a conditional use permit shall not constitute a zone change and shall be granted only for the specific use requested. Any change of use or modification of a limitation or condition shall be subject to Planning Commission approval under the Conditional Use review process.

620.030 Procedure. Conditional Use applications or modifications to an existing Conditional Use Permit are reviewed as a Type III procedure.

620.040 Review Criteria. Requests for Conditional Uses will be approved if the review body finds that the applicant has shown that all of the following criteria have been met, either outright, or with conditions that bring the proposal into compliance:

- A. The use is listed as a conditional use in the base zone or is approved by the Planning Commission for consideration as a conditional use.
- B. The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal calls for mitigation of difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
- C. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses in the zone.
- D. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area and will not significantly affect a transportation facility. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.

“Significantly” affect the transportation facility means the proposal would:

1. As measured at the end of the Wood Village TSP planning period or 15 years, whichever is greater, the proposal would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
2. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable; or
3. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable.

If it is determined that a proposed land use significantly affects a transportation facility, the applicant shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility by one of the following methods:

- (a). Alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
 - (b). Provide measures demonstrating that the use can be consistent with the planned function of the transportation facility, or provide other measures as a condition of development through a development agreement or similar method, specifying when such measures will be provided.
- E. Public service for water, sanitary and storm sewer, water management and for fire and police protection are capable of servicing the proposed use.
- F. The proposal will not have significant adverse impact on the livability of nearby residentially zoned lands due to:
- (1) Noise, glare, odor, litter, and hours of operation.
 - (2) Privacy and safety issues.
- G. Conditional Uses which fall within the Waste Related Use Category (See Section 710.330) must also meet the criteria defined in the Mitigation Agreement for Siting Solid Waste Facilities between Metro and the City.

620.050 **Conditions of Approval.** The review body may attach conditions to a conditional use approval to ensure that the proposal will conform to the applicable review criteria. Some of the most frequently imposed conditions relate to but are not limited to, the following: special yards and spaces; fences and walls; street dedications and improvement petitions (or bonds); improvement of public facilities such as water, sanitary sewer, storm drainage, sidewalks, curbs, and fire hydrants; ingress and egress; off-street parking; signs; building textures, colors, architectural features and height; landscaping, screening and buffering noise, vibration, odors or other similar nuisances; hours for certain activities; time period within which the proposed use shall be developed; duration of use; preservation of natural vegetative growth and open space; public safety & crime prevention; and undergrounding of utilities.

620.060 **Conditional Use Permit.** A conditional use permit shall be obtained for each approved conditional use before site development begins. The permit shall specify any conditions, limitations and restrictions imposed by the Planning Commission in addition to those specifically set forth in this section.

620.070 **Expiration.** Approval of a conditional use permit shall be void after two (2) years, or a lesser time as may be specified by the Planning Commission, unless substantial construction has taken place. A one (1) year extension may be granted by the Planning Commission through a Type III procedure if the applicant requests such an extension before the expiration of the initial time limit.

620.080 **Building Permit.** A building permit for all or any portion of a conditional use shall be issued only on the basis of the plan as approved by the Planning Commission. Any changes in the approved plan shall be submitted to the City for processing as a modification to a conditional use.

620.090 **Revocation.** A conditional use permit shall be subject to revocation by the Planning Commission through a Type III procedure. The burden of proof shall be on the applicant to show why the conditional use permit should not be revoked. The Planning Commission may revoke the permit if:

- (1) the application contained false or misleading information; or
- (2) the conditions of approval have not been met or are not being maintained; or
- (3) the scope of the use has changed so as to be significantly different than that originally contemplated.

The Planning Commission may also attach new conditions and reapprove the conditional use permit as part of its consideration of a conditional use revocation.

DESIGN REVIEW

630.010 Purpose. Design Review of certain developments and improvements is intended to promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment.

630.020 Design Review Plan. When required by this Code a Design Review Plan shall be submitted. The elements of a Design Review Plan are: the layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas, outdoor storage areas, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.

630.030 Design Review Plan Approval Required. No buildings, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Design Review Board.

630.040 Application of Design Review Regulations. Except for single family dwellings in Light Residential zones, all new construction, remodeling or alteration of an existing structure or building, parking development or alteration, sign erection or alteration or any land use shall be subject to Design Review under this Section.

630.050 Compliance.

- A. Non-compliance by the applicant or his successor in interest with a final approved design review plan, as approved, shall be considered a zoning code violation and enforced as such.
- B. The City Council or Planning Commission may, as a condition of approval of land use reviews, require that design review plan approval be obtained prior to issuance of any required permit.

630.060 Procedure. Requests for Design Review shall be processed under the Type II procedure.

630.070 Design Review Plan Contents.

- A. Any preliminary or final design review plan shall be filed on forms provided by the City Administrator and shall be accompanied by such drawings, sketches and descriptions as are necessary to describe the proposed development. A plan shall not be deemed complete unless all information requested is provided.
- B. Contents:
 - (1) Preliminary Site Development Plan;
 - (2) Preliminary Site Analysis Diagram;

- (3) Preliminary Architectural Drawings, indicating floor plans and elevations;
 - (4) Preliminary Landscape Plan;
 - (5) Design Review Application Fee;
 - (6) For developments that generate more than 400 average daily motor vehicle trips (ADT's), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding street system.
- C. A preliminary site analysis diagram may be in freehand form and shall generally indicate the following characteristics:
- (1) Relation to adjacent lands;
 - (2) Topography;
 - (3) Natural drainage;
 - (4) Natural features and structures having a visual or other significant relationship with the site.
- D. A preliminary site development plan may be in freehand form and shall generally indicate the following as appropriate to the nature of the use:
- (1) Access to site from adjacent rights-of-way, streets, and arterials;
 - (2) Parking and circulation areas;
 - (3) Location and design of buildings and signs;
 - (4) Orientation of windows and doors;
 - (5) Entrances and exits;
 - (6) Private and shared outdoor recreation spaces;
 - (7) Pedestrian circulation;
 - (8) Outdoor play areas;
 - (9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
 - (10) Areas to be landscaped;
 - (11) Exterior lighting;
 - (12) Provisions for handicapped persons; and
 - (13) Other site elements and spaces which will assist in the evaluation of site development.
- E. The preliminary landscape plan shall indicate:
- (1) The size, species and approximate locations of plant materials to be retained or placed on the site; and
 - (2) Proposed site contouring.

630.080 Decision on Design Review Plan.

- A. The Design Review Board may approve a design review plan, disapprove it, or approve it with such modifications and conditions as may be consistent with the

criteria and standards listed in this section. Conditions and/or restrictions may be applied to the approval of a design review plan in order to assure Code compliance and to mitigate transportation or public facility impacts and to protect those facilities.

630.090 Review Criteria.

A. Approval of a design review plan shall be based on the following criteria:

(1) **Relation of Design Review Plan Elements to Environment.**

- (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.
- (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.
- (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

(2) **Safety and Privacy** - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

(3) **Special Needs of Disabled Persons** - Where appropriate, or required, the design review plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.

(4) **Preservation of Natural Landscape** - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

(5) **Pedestrian and Vehicular Circulation and Parking** - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.

(6) **Drainage** - Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.

- (7) **Buffering and Screening** - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.
 - (8) **Utilities** - All utility installations must be located underground and shall be located so as to minimize adverse impacts on the site and neighboring properties. At the time of development, public facilities and services, including public sanitary and storm sewer, water and public streets, shall be extended across a site to facilitate service to adjoining properties, unless determined unreasonable by the Design Review Board.
 - (9) **Signs and Graphics** - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.
 - (10) **Plan and Code Compliance** – The proposal shall be in compliance with the City, County and Regional Transportation Plans, the City Stormwater Master Plan and the City Water Master Plan. Further, ODOT access permit approval is required abutting a state roadway prior to design review approval by the City.
- B. Guidelines designed to assist applications in developing design review plans may be adopted by the Design Review Board.

630.100 Expiration of Approval.

- A. Design review approval shall expire in two (2) years from the date of final design review approval if significant construction has not taken place.

NON-CONFORMING SITUATIONS

640.010 Purpose. Within the City there are lots, developments, and uses which were lawful before this Code was adopted or amended, but which would no longer be allowed under the current terms of this Code. It is the intent of these provisions to permit such non-conformities to continue, but not to encourage their perpetuation. All nonconformities are referred to as "Non-conforming Situations".

640.020 Status and Documentation of a Non-conforming Situation. The non-conforming situation regulations apply only to those situations which were allowed when established or which were approved through a land use review. Non-conforming situations which were not allowed when established have no grandfather rights and must be removed. The burden of proof is on the property owner or applicant to document that a non-conforming situation was allowed when established and was maintained over time. Evidence might consist of building permits, utility hookups, tax records, or telephone directory listings.

640.030 Types of Non-conforming Situations. A specific site may be non-conforming because it contains either a non-conforming use, an allowed residential use that exceeds that allowed density, a non-conforming development, or a combination of these.

640.040 Regulations That Apply to All Non-conforming Situations.

- A. The status of a non-conforming situation is not affected by changes in ownership.
- B. A non-conforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the non-conforming rights are lost and a non-conforming situation may not be re-established.
- C. A non-conforming use may change to a conditional use if approved through a conditional use review. Once a conditional use occupies the site, the non-conforming rights are lost and a non-conforming use may not be re-established.
- D. Normal maintenance and repair of non-conforming situations is allowed.

640.050 Loss of Non-conforming Status.

- A. The non-conforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ceases to be occupied by a permitted or legally non-conforming use for any reason for a continuous period of one year. Extensions of up to two additional years may be granted under the Type II procedure if the Planning Commission finds that:
 - (1) Conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone or

- (2) The proposed use will be compatible with both non-conforming and conforming uses in the immediate area.
- B. Non-conformance with any development standards or condition other than building setback, coverage, or height shall be deemed terminated if the building, structure, or land ceases for any reason to be occupied by a permitted or legally non-conforming use for a continuous period of one year.
 - C. Any non-conforming use or development dependent upon a building or structure which is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed 70 percent of its fair market value shall be deemed terminated.
 - (1) Cost of repair or restoration and the fair market value shall be determined by independent professional appraisal in a form satisfactory to the City. Such determinations of value and cost are appealable to the City Council. Exceptions to this standard may be applied for under the Type II procedure.
 - (2) The Planning Commission may grant additional degrees of reconstruction under a Type II procedure, upon finding that:
 - (a) Conversion to any conforming use will result in a substantial economic loss, and
 - (b) The proposed use will result in greater conformance with the development standards of the zone, or
 - (c) The reconstructed use will be compatible with both non-conforming and conforming uses in the immediate area.
 - D. Rebuilding of structures which have been intentionally destroyed and which contained non-conforming uses is prohibited.

640.060 Non-conforming Uses.

- A. Non-conforming uses may continue to operate. Changes in operations are allowed. However, non-conforming uses in residential zones may not extend their hours of operation into the period of 10 p.m. to 6 am.
- B. A change to another use in the same use category is allowed by right. A change to a use in a different use category which is prohibited by the base zone may be allowed through a non-conforming use review.
- C. Structural expansions shall be limited to the following:

<u>Existing Gross Floor Area</u>	<u>% of Expansion Allowed</u>
Building under 4,000 sq. ft.	25%
Building under 10,000 sq. ft.	20%
Building larger than 10,000 sq. ft.	15%

- D. Non-conforming uses and buildings may expand one time only.
- E. Expansion of the non-conforming use onto another site is prohibited, except in the following situation:
 - (1) The site is abutting the site of the non-conforming use; and
 - (2) The site was in the same ownership as the non-conforming site when it became non-conforming; and
 - (3) The prior zoning regulations on the expansion site would have allowed the use; and
 - (4) The expansion is approved through a non-conforming use review.
- F. The addition of new residential units to a non-conforming residential use is prohibited.

640.070 Non-conforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.

640.080 Non-conforming Development. This section is primarily aimed at upgrading non-conforming development elements that affect the appearance and impacts of a site. Non-conforming developments may continue unless specifically limited by Subsection (2) below or other regulations in this Code.

- A. Changes may be made to the site which are in conformance with the base zone development standards.
- B. Development not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.
 - (1) Landscaped setbacks for surface parking and exterior development areas;
 - (2) Interior parking lot landscaping;
 - (3) Landscaping in existing building setbacks;
 - (4) Minimum landscaped area (where land is not used for structures, parking or exterior improvements);
 - (5) Screening; and
 - (6) Paving of surface parking and exterior storage and display areas.

640.090 Sites That Are Non-conforming in Parking Spaces. When a site is non-conforming in the number of required parking spaces and changes to a use or building are made that

increase the number of required parking spaces, only the number of spaces related to the increase need to be provided.

640.100 Procedure. A non-conforming situation is reviewed through a Type II procedure.

640.110 Review Criteria. The request will be approved if the Planning Commission finds that the applicant has shown that all of the following criteria are met:

- A. The non-conforming situation was not created unlawfully.
- B. With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - (1) The hours of operation;
 - (2) Vehicle trips to the site and impact on surrounding on-street parking;
 - (3) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (4) Potential for increased litter; and
 - (5) The amount, location, and nature of any outside displays, storage, or activities; and either (C) or (D) below.
- C. If the non-conforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (1) Building scale, placement, and facade;
 - (2) Parking area placement;
 - (3) Buffering and the potential loss of privacy to abutting residential uses; and
 - (4) Lighting and signs.
- D. If the non-conforming use is in a commercial or industrial zone, and if the changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

VACATIONS

- 650.010 Purpose.** This section states the procedures and review criteria for the vacation of an easement, right-of-way, or plat.
- 650.020 Initiation.** A vacation proposal may be initiated by the City Council or by petition of adjoining and area owners in accordance with ORS 271.080.
- 650.030 Procedure.** Type III procedures as outlined in Section 520 - Quasi-Judicial Process shall be used as supplemented by the provisions of ORS Chapter 271. State law defines the affected area and mandates notice requirements. The City Council shall hear all requests for vacations.
- 650.040 Review Criteria.** A vacation request may be approved if the City Council finds that the applicant has shown that all of the following review criteria are met:
- A. The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.
 - B. The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.
 - C. The requested vacation will not have a negative effect on traffic circulation or emergency service protection.
 - D. The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.
 - E. The public interest, present and future, will be best served by approval of the proposed vacation.
- 650.050 Zoning of Vacated Right-of-Way.** Except as otherwise provided within the vacation ordinance or where the official City zoning map is not clear as to the zoning of vacated right-of-way, the zoning of each parcel of vacated territory shall be the same as the adjoining property to which the ownership of the parcel automatically reverts.
- 650.060 Conditions of Approval.** The City may attach conditions to the approval of a vacation request to ensure that the proposal will conform to the review criteria.

VARIANCES

660.010 Purpose. Variances provide flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Variances are necessary when the applicant requests a deviation from development standards.

660.020 Procedure. Variance requests shall be reviewed as a Type II procedure.

660.030 Regulations Which May and May Not Be Varied.

- A. Unless listed in Subsection B. below, all regulations in this Code may be modified using the variance process.
- B. Variances are prohibited for the following items:
 - (1) To allow a primary or accessory use that is not allowed by the regulations.
 - (2) As an exception to any restrictions on uses or development which contain the word "prohibited".
 - (3) As an exception to a threshold for a review.
 - (4) As an exception to a definition or classification.
 - (5) As an exception to the procedural steps of a procedure or to change assigned procedures.

660.040 Review Criteria. All variance requests will be approved if the Planning Commission finds that the applicant has shown that A. through E. or F. through H. have been met.

- A. The proposal will be consistent with the desired character of the area; and
- B. If more than one variance is being requested, the cumulative effect of the variances results in a project which is still consistent with the overall purpose of the zone; and
- C. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- D. Any impacts resulting from the variance are mitigated to the extent practical;
- E. The proposal is consistent with the function and designated carrying capacity of City, County and Regional Transportation Plans.

or

- F. Application of the regulation in question would preclude all reasonable economic use of the site.
- G. The requested variance is the minimum necessary to allow use of the site; and
- H. Any impacts resulting from the variance are mitigated to the extent practical.

ZONING AND DEVELOPMENT CODE AMENDMENTS

670.010 Purpose. The Zoning and Development Code is designed to implement the goals and policies of the Comprehensive Plan, which is a reflection of community values and needs. Because these needs and values may change with time and because new techniques for implementing the Plan may be appropriate, this Code must have some mechanism for response to those changes. Amendments to this Code should occur as needed in order to maintain a close relationship between the Zoning and Development Code and the Comprehensive Plan.

670.020 Procedure. Code amendments shall be processed in accordance with the legislative procedure in Sections 560 - Legislative Process.

670.030 Review Criteria. The amendment will be approved if the City Council finds that the applicant has shown that all of the following criteria are met:

- A. The proposed amendment(s) better achieves the goals and policies of the Comprehensive Plan than the existing regulatory language.
- B. The proposed amendments are consistent with the Zoning and Development Code purposes and with the purpose statement for the base zone, special district, additional use regulation, or development regulation for which the amendment is proposed.
- C. Proposals which significantly affect a transportation facility shall assure that allowed uses are consistent with the function, capacity, and level of service of the facility identified in the City, County and Regional Transportation Plans.
- D. The review body shall find that:

The transportation system is capable of supporting the proposed use in addition to the existing uses in the area and will not significantly affect a transportation facility. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.

“Significantly” affect the transportation facility means the proposal would:

- 1. As measured at the end of the Wood Village TSP planning period or 15 years, whichever is greater, the proposal would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
- 2. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable; or

3. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable.

If it is determined that a proposed land use significantly affects a transportation facility, the applicant shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility by one of the following methods:

- (a). Alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
- (b). Provide measures demonstrating that the use can be consistent with the planned function of the transportation facility, or provide other measures as a condition of development through a development agreement or similar method, specifying when such measures will be provided.

E. **Amendments that Affect Transportation Facilities.** Except as provided in Subsection F, 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 Wood Village 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 Wood Village TSP or 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 for development or through a development agreement or similar funding method, specifying when such measures will be provided.

F. **Exceptions.** Amendments to the Comprehensive Plan or land use regulation with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the Wood Village TSP or the Regional Transportation Plan, may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange areas, 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, mitigate 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.

ZONING MAP AMENDMENTS

680.010 Purpose. This section states the procedures and review criteria necessary to process an amendment to the base zones, special districts, and other map symbols of the Zoning Map. The section differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner.

680.020 Initiation.

- A. Quasi-judicial zoning map amendments may be initiated by the property owner, a representative of the owner, the City Administrator, the Planning Commission, or the City Council.
- B. Legislative zoning map amendments may be initiated by the City Administrator, Planning Commission or City Council. Citizens may request that the Planning Commission initiate a legislative amendment through written communication.
- C. Initiations by a review body are made without prejudice towards the outcome.

680.030 Procedure. Zoning map amendments will be reviewed through a Type III procedure as outlined in Sections 520 - Quasi-Judicial Process or by legislative action as provided for the Sections 560 - Legislative Process.

680.040 Special Notice Requirements. If a zone change request would change the zone of property which includes all or part of a manufactured home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the mobile or manufactured home park at least 20 days before the date of the first hearing on the application. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.

The review body shall find that:

The transportation system is capable of supporting the proposed use in addition to the existing uses in the area and will not significantly affect a transportation facility. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.

“Significantly” affect the transportation facility means the proposal would:

1. As measured at the end of the Wood Village TSP planning period or 15 years, whichever is greater, the proposal would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
2. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Regional

Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable; or

3. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable.

If it is determined that a proposed land use significantly affects a transportation facility, the applicant shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility by one of the following methods:

- (a). Alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
- (b). Provide measures demonstrating that the use can be consistent with the planned function of the transportation facility, or provide other measures as a condition of development through a development agreement or similar method, specifying when such measures will be provided.

680.050

Review Criteria. Zoning map amendments will be approved if the Planning Commission finds that the applicant has shown that all of the following criteria are met:

- A. The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for in accordance with Sections 610 - Comprehensive Plan Amendments.
- B. Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation. Proposals that significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity and level of service identified in the City, County and Regional Transportation Plans.
- C. Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.
- D. Any unique natural features or special areas involved such as floodplain, slopes, significant natural vegetation, will not be jeopardized as a result of the proposed rezoning.
- E. The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.

F. The review body shall find that:

The transportation system is capable of supporting the proposed use in addition to the existing uses in the area and will not significantly affect a transportation facility. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.

“Significantly” affect the transportation facility means the proposal would:

1. As measured at the end of the Wood Village TSP planning period or 15 years, whichever is greater, the proposal would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
2. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable; or
3. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard in the Regional Transportation Plan (RTP), Oregon Highway Plan, Wood Village TSP or Comprehensive Plan, as applicable.

If it is determined that a proposed land use significantly affects a transportation facility, the applicant shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility by one of the following methods:

- (a). Alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
- (b). Provide measures demonstrating that the use can be consistent with the planned function of the transportation facility, or provide other measures as a condition of development through a development agreement or similar method, specifying when such measures will be provided.

680.060

Corrections to the Official Zoning Map. The City Administrator may initiate a review following the Type II procedure for the types of corrections to the Official Zoning Map listed below:

- A. A map line that was intended to follow a topographical feature but does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks and drainage ditches.

- B. The line on the map does not match the legal description or map shown or references in the ordinance which applied the designation.
- C. There is a discrepancy between maps and there is a clear legislative intent for where the line should be.
- D. It can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

680.070

Zoning Upon Annexation. Upon Annexation, the zoning of annexed property shall be determined as a legislative process. The Planning Commission shall determine which City zone most closely matches the zoning which existed before annexation and apply that zone, unless a change of zoning is desired to better fulfill the goals and objectives of the Comprehensive Plan.