

CHAPTER 40 APPLICATIONS

[ORD 4224; September 2002]

40.03. FACILITIES REVIEW COMMITTEE

Consistent with Section 10.95.3. (Facilities Review Committee) of this Code, the Facilities Review Committee shall review the following Type 2 and Type 3 land use applications: all Conditional Use, Design Review Two, Design Review Three, Public Transportation Facility Reviews, Street Vacations, and applicable Land Divisions. Applicable land division applications are Replats, Partitions, Subdivisions, Fee Ownership Partitions, and Fee Ownership Subdivisions. In making a recommendation on an application-to the decision making authority, the Facilities Review Committee shall base its recommendation on a determination of whether the application satisfies all the following technical criteria. The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B., and all the following criteria have been met, as applicable: [ORD 4265; October 2003][ORD 4404; October 2006] [ORD 4487; August 2008]

- 1. All Conditional Use, Design Review Two, Design Review Three, and applicable Land Division applications:**
 - A. All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.
 - B. Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five (5) years of occupancy.
 - C. The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).

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- D. The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.
- E. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.
- F. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.
- G. The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.
- H. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.
- I. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard or ill-designed development.
- J. Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

40.03.1.

- K. Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.
- L. The application includes all required submittal materials as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]

- 2. Public Transportation Facility Improvements or Modifications, including Street Vacations. [ORD 4487; August 2008]**
- A. The transportation facility, as proposed or modified, conforms to the Transportation System Plan.
 - B. There are safe and efficient vehicular and pedestrian circulation patterns within the project boundaries.
 - C. The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are in place.
 - D. Adequate means are provided or proposed to be provided in a satisfactory manner, to ensure continued periodic maintenance and replacement of the following, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities.
 - E. The proposed transportation facility connects to the surrounding circulation systems in a safe, efficient, and direct manner.
 - F. The proposed transportation facility or modification thereof will provide adequate fire equipment facility access and turnaround area, as well as adequate street lighting for crime and accident prevention as well as protection from hazardous conditions due to inadequate, substandard or ill-designed development.
 - G. Grading and contouring are the minimum necessary to accommodate the proposed transportation facility, while mitigating adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.
 - H. Access and facilities for physically handicapped people are maintained and/or incorporated into the subject transportation facility, with particular attention to providing continuous, uninterrupted access routes.
 - I. The application includes all required submittal materials as specified in Section 50.25.1. of the Development Code.

40.05. ACCESSORY DWELLING UNIT

40.05.05. Purpose.

The purpose of an Accessory Dwelling Unit application is to provide a mechanism to allow accessory dwelling units. Accessory dwelling units are normal, incidental and subordinate to a detached dwelling. This Section is carried out by the approval criteria listed herein.

40.05.10. Applicability.

An Accessory Dwelling Unit application may be requested for a property with a detached dwelling as the principal use in any zoning district that allows accessory dwelling units.

40.05.15. Application.

There is a single Accessory Dwelling Unit application which is subject to the following requirements.

1. Accessory Dwelling Unit.

- A. Threshold. An application for Accessory Dwelling Unit shall be required when the following threshold applies:
 - 1. An accessory dwelling unit is proposed to be added to a property.

- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Accessory Dwelling Unit. The decision making authority is the Director.

- C. Approval Criteria. In order to approve an Accessory Dwelling Unit application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 - 1. The proposal satisfies the threshold requirements for an Accessory Dwelling Unit application.

 - 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

40.05.15.1.C.

3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
4. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance application which shall be already approved or considered concurrently with the subject proposal.
5. The proposal is consistent with all applicable provisions of Chapter 60 (Special Regulations) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Regulations) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
6. There is only one detached dwelling on the subject site.
7. The proposed accessory dwelling unit is no more than fifty percent (50%) of the gross floor area of the primary detached dwelling or 800 square feet, whichever is less.
8. The proposal is not located over any easement.
9. The exterior finish materials of the proposal is the same as the detached dwelling in terms of type, size, placement, and finish.
10. The roof pitch of the proposal matches the roof pitch of the detached dwelling.
11. The trim of the proposal is the same as the detached dwelling in type, size, location, and finish.
12. The windows of the proposal match those on the detached dwelling in terms of proportion (height to width ratio) and orientation (vertical vs. horizontal).
13. The eaves of the proposal project the same distance as the eaves on the detached dwelling.

40.05.15.1.C.

14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for an Accessory Dwelling Unit shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Accessory Dwelling Unit application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of an Accessory Dwelling Unit application to ensure compliance with the approval criteria.

- F. Appeal of a Decision. Refer to Section 50.60.

- G. Expiration of a Decision. Refer to Section 50.90.

- H. Extension of a Decision. Refer to Section 50.93.

40.10. ADJUSTMENT**40.10.05. Purpose.**

The purpose of an Adjustment application is to provide a mechanism by which certain regulations in the Development Code may be adjusted if the proposed development continues to meet the intended purpose of such regulations. This Section is carried out by the approval criteria listed herein. [ORD 4584; June 2012]

40.10.10. Applicability.

An Adjustment may be requested only for numerical Site Development Requirements contained in Chapter 20 (Land Uses), the grading standards contained in Chapter 60 (Special Requirements), Section 60.15.10, or the numerical standards identified in Food Cart Pod Regulations contained in 60.11 (Food Cart Pod Regulations). [ORD 4397; August 2006] [ORD 4697; December 2016]

40.10.15. Application.

There are Four (4) Adjustment applications which are as follows: Minor Adjustment, Major Adjustment, Minor Adjustment – Affordable Housing, Major Adjustment – Affordable Housing. [ORD 4759; March 2019]

1. Minor Adjustment.

- A. Threshold. An application for Minor Adjustment shall be required when one or more of the following thresholds apply:
1. Involves up to and including a 10% adjustment from the numerical Site Development Requirements specified in Chapter 20 (Land Uses). This threshold does not apply where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7. [ORD 4531; April 2010]
 2. Involves up to and including a 10% adjustment from the numerical Development Standards for Grading specified in Section 60.15.10. (Land Division Grading Standards) of this Code. [ORD 4397; August 2006]

40.10.15.1.A

3. Involves up to and including a 10% adjustment from the numerical Food Cart Pod standards specified in Section 60.11.10 and 60.11.15 of this Code. [ORD 4662; September 2015]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Minor Adjustment. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Minor Adjustment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Minor Adjustment application.
 2. The application complies with all applicable submittal requirements as specified in Section 50.25.1. and includes all applicable City application fees.
 3. Special conditions or circumstances exist on the site that make it physically difficult or impossible to meet the applicable development standard for an otherwise acceptable proposal.
 4. The special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute financial hardship or inconvenience.
 5. Granting the adjustment as part of the overall proposal will not obstruct pedestrian or vehicular movement.
 6. City designated significant trees and/or historic resources, if present, will be preserved.
 7. If more than one adjustment is being requested concurrently, the cumulative effect of the adjustments will result in a proposal which is still consistent with the overall purpose of the applicable zoning district.

40.10.15.1.C.

8. Any adjustment granted shall be the minimum necessary to permit a reasonable use of land, buildings, and structures.
9. The proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment.
10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more Adjustment, Variance, Planned Unit Development applications that already have been approved or are considered concurrently with the subject proposal.
11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
12. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.
13. The proposal does not include any lot area averaging as specified in Section 20.05.50.1.B. or include any lot dimension reductions as specified in Sections 20.05.50.2.A.2. and .4. or 20.05.50.2.B.2. and .4. [ORD 4487; August 2008] [ORD 4498; January 2009]

40.10.15.1.C.

14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006] [ORD 4473; March 2008]

- D. Submission Requirements. An application for a Minor Adjustment shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Minor Adjustment application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Minor Adjustment application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

[ORD 4584; June 2012]

2. Major Adjustment.

- A. Threshold. An application for Major Adjustment shall be required when one or more of the following thresholds apply:
1. Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Site Development Requirement specified in Chapter 20 (Land Uses). This threshold does not apply where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7. [ORD 4531; April 2010]
 2. Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Development Standards for Grading specified in Section 60.15.10. (Land Division Grading Standards) of this Code. [ORD 4397; August 2006]
 3. Any change from the numerical requirements contained in Section 60.30. (Off-Street Parking). [ORD 4473; March 2008]
 4. Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Food Cart Pod standards specified in Section 60.11.10 and 60.11.15 of this Code. [ORD 4662; September 2015]
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Major Adjustment. The decision making authority will be the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve a Major Adjustment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Major Adjustment application.
 2. The application complies with all applicable submittal requirements as specified in Section 50.25.1. and includes all applicable City application fees.

40.10.15.2.C.

3. Special conditions or circumstances exist on the site that make it difficult or impossible to meet the applicable development standard for an otherwise acceptable proposal.
4. The special conditions or circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute financial hardship or inconvenience.
5. Granting the adjustment as part of the overall proposal will not obstruct pedestrian or vehicular movement.
6. City designated significant trees and/or historic resources, if present, will be preserved.
7. If more than one adjustment is being requested concurrently, the cumulative effect of the adjustments will result in a proposal which is still consistent with the overall purpose of the applicable zoning district.
8. Any adjustment granted shall be the minimum necessary to permit a reasonable use of land, buildings, and structures.
9. Either it can be demonstrated that the proposed modification equally or better meets the intent of the standard to be modified or the proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment.
10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more applications that already have been approved or are considered concurrently with the subject proposal.

40.10.15.2.C.

11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
12. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.
13. The proposal does not include any lot area averaging as specified in Section 20.05.50.1.B. or include any lot dimension reductions as specified in Sections 20.05.50.2.A.2. and .4. or 20.05.50.2.B.2. and .4. [ORD 4487; August 2008] [ORD 4498; January 2009]
14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006] [ORD 4473; March 2008]

- D. Submission Requirements. An application for a Major Adjustment shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Major Adjustment application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Major Adjustment application to ensure compliance with the approval criteria.

40.10.15.2.

- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

[ORD 4584; June 2012]

3. Minor Adjustment – Affordable Housing. [ORD 4758; March 2019]

- A. Threshold. An application for Minor Adjustment – Affordable Housing shall be required when one or more of the following thresholds apply:
1. For eligible regulated affordable housing developments, an adjustment up to and including 10% from the numerical Site Development Requirements specified in Chapter 20 (Land Uses). This threshold does not apply to adjustment requests for height where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7
 2. For eligible regulated affordable housing development, an adjustment up to and including 10% from the numerical Development Standards for Grading specified in Section 60.15.10. (Land Division Grading Standards) of this Code.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Minor Adjustment – Affordable Housing. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Minor Adjustment – Affordable Housing application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Minor Adjustment – Affordable Housing application.
 2. The application complies with all applicable submittal requirements as specified in Section 50.25.1. and includes all applicable City application fees.
 3. Granting the adjustment as part of the overall proposal will not obstruct pedestrian or vehicular movement.

40.10.15.3.C.

4. If more than one adjustment and/or variance is being requested concurrently, the cumulative effect of the modifications will result in a proposal which is still consistent with the overall purpose of the applicable zoning district.
5. The proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment.
6. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more Adjustment, Variance, Planned Unit Development applications that already have been approved or are considered concurrently with the subject proposal.
7. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
8. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.
9. If the proposal includes lot area averaging as specified in Section 20.05.15.D, the request for the Minor Adjustment – Affordable Housing is not for an adjustment to minimum land area standards.
10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.10.15.3.

- D. Submission Requirements. An application for a Minor Adjustment—Affordable Housing shall be made by the owner of the subject property, or the owner’s authorized agent, on a form provided by the Director and shall be filed with the Director. The Minor Adjustment – Affordable Housing application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), verification of regulated affordable housing status, and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Minor Adjustment – Affordable Housing application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

4. Major Adjustment – Affordable Housing [ORD 4758; March 2019]

- A. Threshold. An application for Major Adjustment – Affordable Housing shall be required when one or more of the following thresholds apply:
1. For eligible regulated affordable housing developments, an adjustment of more than 10% and up to and including 50% adjustment from the numerical Site Development Requirement specified in Chapter 20 (Land Uses) except for height standards, which shall be limited to a 25% adjustment. Density shall be limited to a 25% adjustment in Residential Zoning Districts. This threshold does not apply to adjustment requests for height where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7.
 2. For eligible regulated affordable housing developments, an adjustment of more than 10% and up to and including 50% adjustment from the numerical Development Standards for Grading specified in Section 60.15.10. (Land Division Grading Standards) of this Code.
 3. For eligible regulated affordable housing developments, any change from the numerical requirements contained in Section 60.30. (Off-Street Parking).
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Major Adjustment – Affordable Housing. The decision making authority will be the Planning Commission.
- C. Approval Criteria. In order to approve a Major Adjustment – Affordable Housing application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Major Adjustment – Affordable Housing application.
 2. The application complies with all applicable submittal requirements as specified in Section 50.25.1. and includes all applicable City application fees.

40.10.15.4.C.

3. Granting the adjustment as part of the overall proposal will not obstruct pedestrian or vehicular movement.
4. If more than one adjustment and/or variance is being requested concurrently, the cumulative effect of the modifications will result in a proposal which is still consistent with the overall purpose of the applicable zoning district.
5. The proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment.
6. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more applications that already have been approved or are considered concurrently with the subject proposal.
7. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
8. In the case of an adjustment to the numerical requirements contained in Section 60.30. (Off-Street Parking), any part of the site of the proposed development shall be connected by a public route that is no longer than one-quarter mile from a bus transit stop that has 20-minute or more frequent peak-hour transit service or connected by a public route that is no longer than one-half mile to a light-rail platform. Alternatively, the application shall provide a parking analysis demonstrating that the actual parking needs of the development can be accommodated onsite. The parking analysis shall include examples from at least two other comparable developments. Additional examples may be required by the City Engineer or designee.

40.10.15.4.C.

9. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.
 10. If the proposal includes lot area averaging as specified in Section 20.05.15.D, the request for the Major Adjustment – Affordable Housing is not for an adjustment to minimum land area standards.
- D. Submission Requirements. An application for a Major Adjustment – Affordable Housing shall be made by the owner of the subject property, or the owner’s authorized agent, on a form provided by the Director and shall be filed with the Director. The Major Adjustment – Affordable Housing application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), verification of regulated affordable housing status, and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Major Adjustment – Affordable Housing application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.15. CONDITIONAL USE**40.15.05. Purpose.**

The purpose of a Conditional Use application is to review uses that may be compatible in the underlying zoning district but because of their size, operation, or other characteristics require review on a case-by-case basis. These uses are subject to the regulations in this Section because they may, but do not necessarily, result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area or create nuisances. Conditional Uses may be approved, approved with site-specific conditions designed to minimize or mitigate identified adverse impacts, or denied. A Planned Unit Development is a special kind of Conditional Use that permits the modification of the development standards in the underlying zoning district to achieve innovative design, preserve natural resources, reduce energy consumption and/or otherwise address unique site opportunities and constraints. Such approval allows the modification of such design standards without the necessity for separate Adjustment or Variance applications. Within the SC-S (Station Community-Sunset) zoning district, a Planned Unit Development is required to ensure that specific development requirements are satisfied. This Section is carried out by the approval criteria listed herein. [ORD 4473; March 2008] [ORD 4578; March 2012]

40.15.10. Applicability.

The uses listed in Chapter 20 (Land Uses) for each zoning district as a Conditional Use shall be subject to the provisions of this section.

40.15.15. Application.

There are four (4) Conditional Use applications which are as follows: Minor Modification of a Conditional Use, Major Modification of a Conditional Use, New Conditional Use, and Planned Unit Development.

1. Minor Modification of a Conditional Use.

- A. Threshold. An application for Minor Modification of a Conditional Use shall be required when one or more of the following thresholds apply:

40.15.15.1.A.

1. An increase in the gross floor area of an existing Conditional Use up to and including 25% and not to exceed 3,000 gross square feet of floor area for properties that are not located in a Residential zoning district and are located at a distance of more than 50 feet from a Residential zoning district.
 2. An increase in the gross floor area of an existing Conditional Use up to and including 10% and not to exceed 1,000 gross square feet of floor area for properties that are located in a Residential zoning district or within a distance of up to and including 50 feet of a Residential zoning district.
 3. A projected or actual increase in vehicular traffic to and from a site approved for an existing Conditional Use of less than 200 vehicle trips per day as determined by using the Institute of Transportation Engineers (ITE) Trip Generation manual or an evaluation by a traffic engineer or civil engineer licensed by the State of Oregon for all properties that are not located in a Residential zoning district and are located at a distance of more than 50 feet from a Residential zoning district.
 4. A projected or actual increase in vehicular traffic to and from a site approved for an existing Conditional Use of up to and including 100 vehicle trips per day as determined by using the Institute of Transportation Engineers (ITE) Trip Generation manual or an evaluation by a traffic engineer or civil engineer licensed by the State of Oregon for all properties that are located in a Residential zoning district or within a distance of up to and including 50 feet of a Residential zoning district.
 5. The addition of portable classrooms to an elementary, middle, or high school campus. [ORD 4659; June 2015]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Minor Modification of a Conditional Use. The decision making authority is the Director.

40.15.15.1.C.

- C. Approval Criteria. In order to approve a Minor Modification of a Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Minor Modification of a Conditional Use application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The existing use has been approved as a Conditional Use as governed by the regulations in place when the use was established and complies with the applicable conditions of the Conditional Use approval. [ORD 4473; March 2008]
 5. The proposal will not remove or modify previously established conditions of approval for the prior Conditional Use consistent with Section 50.95.6. of the Development Code. [ORD 4473; March 2008] [ORD 4584; June 2012]
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Minor Modification of a Conditional Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Minor Modification of a Conditional Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

40.15.15.1.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Minor Modification of a Conditional Use application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.15.15.

2. Major Modification of a Conditional Use.

- A. Threshold. An application for Major Modification of a Conditional Use shall be required when one or more of the following thresholds apply:
1. An increase in the gross floor area of an existing Conditional Use more than 10% or more than 1,000 gross square feet of floor area for all properties that are located in a Residential zoning district or within a distance of up to and including 50 feet of a Residential zoning district.
 2. An increase in the gross floor area of an existing Conditional Use by more than 25% or in excess of 3,000 gross square feet of floor area for all properties that are not located in a Residential zoning district and are located at a distance of more than 50 feet from a Residential zoning district.
 3. Projected or actual increase in vehicular traffic to and from a site approved for an existing Conditional Use of more than 100 vehicle trips per day as determined by using the Institute of Transportation Engineers (ITE) Trip Generation manual or an evaluation by a traffic engineer or civil engineer licensed by the State of Oregon for all properties that are located in a Residential zoning district or are located at a distance of up to and including 50 feet from a Residential zoning district.
 4. A projected or actual increase in vehicular traffic to and from a site approved for an existing Conditional Use of more than 200 vehicle trips per day as determined by using the Institute of Transportation Engineers (ITE) Trip Generation manual or an evaluation by a traffic engineer or civil engineer licensed by the State of Oregon for all properties that are not located in a Residential zoning district and are located at a distance of more than 50 feet from a Residential zoning district.

[ORD 4365; October 2005] [ORD 4473; March 2008] [ORD 4498; January 2009]

40.15.15.2.

- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Major Modification of a Conditional Use. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a Major Modification of a Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Major Modification of a Conditional Use application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal complies with the applicable policies of the Comprehensive Plan.
 4. The existing use has been approved as a Conditional Use as governed by the regulations in place when the use was established and complies with the applicable conditions of the Conditional Use approval unless the applicant has received or is concurrently requesting one or more conditions be removed or modified as part of the current application. [ORD 4473; March 2008]
 5. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.
 6. The proposal will not modify previously established conditions of approval for the prior Conditional Use consistent with Section 50.95.6. of the Development Code. [ORD 4473; March 2008] [ORD 4584; June 2012]

40.15.15.2.C.

7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Major Modification of a Conditional Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Major Modification of a Conditional Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
 - E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Major Modification of a Conditional Use application to ensure compliance with the approval criteria.
 - F. Appeal of a Decision. Refer to Section 50.70.
 - G. Expiration of a Decision. Refer to Section 50.90.
 - H. Extension of a Decision. Refer to Section 50.93.

40.15.15.

3. New Conditional Use.

- A. Threshold. An application for a New Conditional Use shall be required when the following threshold applies:
1. The proposed use is Conditionally permitted in the underlying zoning district and a prior Conditional Use approval for the proposed use is not already in effect. [ORD 4332; January 2005] [ORD 4473; March 2008]
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for a New Conditional Use. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a New Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Conditional Use application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal will comply with the applicable policies of the Comprehensive Plan.
 4. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
 5. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site. [ORD 4473; March 2008]

40.15.15.3.C.

6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Conditional Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Conditional Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Conditional Use application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.15.15.

4. Planned Unit Development. [ORD 4432; April 2007]

- A. Threshold. A Planned Unit Development is an application process which: [ORD 4578; March 2012]
1. May be chosen by the applicant when one or more of the following thresholds apply: [ORD 4578; March 2012]
 - a. The Planned Unit Development (PUD) may be applied to Commercial, Industrial, Multiple Use, and Residential properties that are 2 acres or greater in size within any City zoning district. [ORD 4584; June 2012]
 - b. When a land division of 2 acres or greater in size within any City zoning district requires collectively more than 3 of the following land use applications or combination thereof: [ORD 4584; June 2012]
 - (1). Minor Adjustment;
 - (2). Major Adjustment;
 - (3). Flexible Setback; or
 - (4). Variance.[ORD 4578; March 2012]
 2. [ORD 4578; March 2012] Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community-Sunset) zoning district. Sign Applications excepted. [ORD 4597; February 2013]
 3. Is required for proposed residential development of a site that is equal to or greater than 10 acres, including all phases, and located within the South Cooper Mountain Community Plan Area. [ORD 4654; March 2015]
 4. Is required for developments located within the TC-MU or TC-HDR zone AND: is a phased development project OR is development of a site that is greater than 5 acres. [ORD 4697; December 2016]

40.15.15.4.

- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for PUD approval. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a PUD application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a PUD application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal meets the Site Development Requirement for setbacks within the applicable zoning district for the perimeter of the parent parcel unless otherwise provided by Section 60.35.03.
 4. The proposal complies with the applicable policies of the Comprehensive Plan.
 5. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
 6. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.
 7. The width of proposed lots or staggering of building setbacks within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.

40.15.15.4.C

8. The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15.
9. The proposal provides improved open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15.:
 - a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest and complement the overall site design.
 - b. The shape of the open space is such that the length is not more than three (3) times the width the purpose of which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.
 - c. The dedicated land(s) is located to reasonably serve all lots for the development, for which the dedication is required.
10. [ORD 4578; March 2012] For proposals within the SC-S (Station Community-Sunset) zoning district, the requirements identified in Sections 20.20.40.2. and 20.20.40.3. are satisfied.
11. If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. If a phased PUD has been approved, development applications for the future phases of the PUD shall be filed within five (5) years unless the PUD has received an extension approval pursuant to Section 50.93. of the Development Code. [ORD 4654; March 2015]

40.15.15.4.C

12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The PUD application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a PUD application to ensure compliance with the approval criteria.
- F. Phasing. If the application proposes to develop the PUD in a single phase, the decision shall expire two (2) years after the date of decision. Refer to Section 50.90.

Phasing of the development may be permitted with approval of the Planning Commission. A deed restriction for those areas of the parent parcel in which deferred development will occur shall limit the number of future units developed to an amount consistent with the minimum and maximum density or Floor Area Ratio (FAR) permitted for the overall development. [ORD 4584; June 2012]

- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. The PUD decision shall expire five (5) years after the date of decision. Refer to Section 50.90.
- I. Extension of a Decision. Refer to Section 50.93.

40.15.15.

5. Modification of a Nonconforming Use. [ORD 4696: Dec 2016]

- A. **Threshold.** An application for a Modification of a Nonconforming Use shall be required when one or more of the following thresholds apply:
1. The proposal includes the modification, movement, or reconstruction of a nonconforming use or nonconforming structure which was adversely impacted or made nonconforming by a governmental agency action.
- B. **Procedure Type.** The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Modification of a Nonconforming Use. The decision making authority is the Director.
- C. **Approval Criteria.** In order to approve a Modification of a Nonconforming Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Modification of a Nonconforming Use application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The structure or use proposed to be modified, moved, or reconstructed is a lawful nonconforming structure or use of land that was made nonconforming by a governmental agency action, as identified in Section 30.25.3 or Section 30.30.2 of the Development Code.
 4. The structure or use is adversely impacted or destroyed as a result of a governmental agency action.
 5. The reconstructed or relocated use does not occupy an area greater than that occupied prior to the relocation.

6. This Modification of a Nonconforming Use application was made prior to the adverse impact or destruction of the use or structure.
 7. The reconstructed or relocated use is on the same property or an abutting property under the same ownership.
 8. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. **Submission Requirements.** An application for a Modification of a Nonconforming Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Modification of a Nonconforming Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. **Conditions of Approval.** The decision making authority may impose conditions on the approval of a Modification of a Nonconforming Use application to ensure compliance with the approval criteria.
- F. **Appeal of a Decision.** Refer to Section 50.60.
- G. **Expiration of a Decision.** Refer to Section 50.90.
- H. **Extension of a Decision.** Refer to Section 50.93.

40.20. DESIGN REVIEW [ORD 4332; January 2005]**40.20.05. Purpose.**

The purpose of Design Review is to promote Beaverton's commitment to the community's appearance, quality pedestrian environment, and aesthetic quality. It is intended that monotonous, drab, unsightly, dreary and inharmonious development will be discouraged. Design Review is also intended to conserve the City's natural amenities and visual character by ensuring that proposals are properly related to their sites and to their surroundings by encouraging compatible and complementary development. To achieve this purpose, the Design Review process is divided into two major components; Design Standards and Design Guidelines. Both standards and guidelines implement Design Principles, which are more general statements that guide development of the built environment. The Design Standards are intended to provide a "safe harbor" approach to designing a project. Depending on the design thresholds, designing a project to the standards would result in an administrative review process. However, the applicant may elect to bypass design review under the Design Standards and go straight to Design Review under the Design Guidelines, where review is subject to a public hearing at the applicant's option. [ORD 4584; June 2012]

An applicant for Design Review approval can address design review requirements through a combination of satisfying certain Design Standards, and in instances where it elects not to utilize Design Standards, satisfy applicable Design Guidelines. In such a case, the public hearing and decision will focus on whether or not the project satisfies the requirements of the applicable Design Guidelines only.

Because the Design Standards are a "safe harbor", there is no penalty for not meeting the Design Standards. Rather, the public hearing process would be required to consider the project by relying solely on the Design Guidelines which correspond to the Design Standards but are intended to allow more flexibility and originality. Design Guidelines are also intended to recognize unique circumstances where corresponding standards are found to be unnecessary or undesirable. Where Design Guidelines apply, the project proponent will simply be required to demonstrate how the project meets these Guidelines at a public hearing. The decision making authority must make findings how the guidelines are met or if they apply to the proposal.

The purpose of Design Review as summarized in this Section is carried out by the approval criteria listed herein.

[ORD 4531; April 2010]

40.20.10. Applicability.

1. The scope of Design Review shall be limited to the exterior of buildings, structures, and other development and to the site on which the buildings, structures, and other development are located. [ORD 4584; June 2012]
2. Considering the thresholds for the Design Review Compliance Letter, Design Review Two, or Design Review Three applications and unless exempted by Section 40.20.10.3. (Design Review) approval shall be required for the following: [ORD 4584; June 2012]
 - A. All uses listed as Conditional Uses in the R10, R7, and R5 zoning districts. [ORD 4584; June 2012]
 - B. All uses listed as Permitted and Conditional Uses in the R4, R2, and R1 Residential zoning districts. [ORD 4584; June 2012]
 - C. All uses listed as Permitted and Conditional Uses in all Commercial, Industrial, and Multiple Use zoning districts.
 - D. Site grading.
3. Design Review approval shall not be required for the following:
 - A. All uses listed as Permitted Uses in the R10, R7 and R5 Residential zoning districts. [ORD 4584; June 2012]
 - B. Detached dwellings and related residential accessory structures in any Residential or Commercial zoning district. [ORD 4542; June 2010]
 - C. Maintenance of a building, structure, or site in a manner that is consistent with previous approvals.
 - D. Painting of any building in any zoning district.
 - E. Wireless communication facilities.
 - F. Food Cart Pods. [ORD 4662; September 2015]

40.20.10.

4. Design review approval through one of the procedures noted in Section 40.20.15. will be required for all new development where applicable. The applicable design standards or guidelines will serve as approval criteria depending on the procedure. Existing developments, and proposed additions, demolitions and redevelopments associated with them, will be treated according to the following principles:

A. Development constructed or approved prior to December 15, 2004 is not subject to Design Review standards and guidelines, and is considered fully conforming to the approvals issued at the time the development was approved by the City. Existing developments constructed prior to December 15, 2004, are not considered nonconforming if they do not meet design standards. If existing development is structurally damaged or destroyed by casualty, replacement shall occur as follows:

1. If structural damage or destruction is less than or equal to fifty percent (50%) of the existing gross floor area of the existing development, the area of damage or destruction can be replaced as legally existed on the site before the casualty loss.
2. If structural damage or destruction is more than fifty percent (50%) of the existing gross floor area of the existing development, the area of damage or destruction must meet the provisions of this Code in every regard unless otherwise authorized by the provisions of this Code.

[ORD 4531; April 2010]

B. Proposed new free-standing building(s) within an existing development will be subject to all applicable design standards.

C. Proposed redevelopment of existing structures and project site area is subject to all applicable design standards or guidelines to the extent where redevelopment of existing building or site area is proposed. Only that portion of existing building or site area that is proposed for redevelopment is subject to design review standards or guidelines as determined applicable. [ORD 4531; April 2010]

40.20.10.

5. Design Review approval is required for all applicable new and existing developments. The City recognizes, however, that meeting minimum Floor Area Ratio (FAR) in an early phase of a multi-phased development on a large site may be difficult. The City also recognizes that creating high quality pedestrian environments along public streets is a priority. In recognition of these and other issues, the following options are available.

A. Projects may use a Design Review Build-out Concept Plan (DRBCP), approved through a Type 3 process, to develop a site by demonstrating conceptually full compliance at build-out with the design review standards and/or guidelines established in Section 60.05. Such projects shall demonstrate in a DRBCP how future development of the site, to the minimum applicable floor area ratio (FAR), while meeting the development standards contained in Chapter 20 of the Beaverton Development Code and to the minimum applicable design standards contained in Section 60.05. or greater, can be achieved at ultimate build out of the DRBCP. A DRBCP shall:

1. Include a plan and narrative intended to address feasibility of constructing future phases, consistent with applicable development standards of the Development Code within the total site area where the project is proposed, and may include abutting properties if under same ownership;
2. Not rely on the removal of a structure in an early phase in order to demonstrate compliance in later phases.
3. Compliance with any applicable Design Standards and/or Guidelines shall not be deferred to future phases of a DRBCP.

[ORD 4531; April 2010] [ORD 4706; May 2017]

B. When a development site abuts two (2) or more Arterial Streets that are also designated Major Pedestrian Routes, application of the applicable design standards may be moved from along the Arterial Streets. This alternative is to provide parking lot drive aisles developed as internal private streets, and to locate buildings along the internal private streets, subject to the following:

40.20.10.5.B.

1. The internal private streets shall extend from the Arterial Street to another public street, or back to an Arterial Street in such a way that street continuity is maintained along the entire internal street, and with abutting properties.
2. A public access easement shall be required along the internal private streets.
3. Buildings shall occupy a minimum percentage of the frontage of the internal private streets that is equal to the amount of lineal building frontage that would have been required under the standards for the Major Pedestrian Routes, and a minimum of 50% of the internal private streets shall have building frontage on both sides of the street.
4. All applicable design standards contained in Section 60.05., particularly 60.05.15.6. *Building location and orientation along streets in Commercial and Multiple Use districts*, 60.05.15.7 *Building scale along Major Pedestrian Routes*, 60.05.20.4 *Street frontages and parking areas*, 60.05.20.6 *Off-Street parking frontages in Multiple Use zones*, and 60.05.20.9 *Ground floor uses in parking structures* shall be met by buildings along the internal private streets. [ORD 4584; June 2012]

40.20.15. Application.

There are three (3) Design Review applications which are as follows: Design Review Compliance Letter, Design Review Two, and Design Review Three.

1. Design Review Compliance Letter.

- A. Threshold. An applicant may utilize the Design Review Compliance Letter process when the application is limited to one or more of the following categories of proposed action:
 1. Minor design changes to existing building or site including, but not limited to:
 - a. Façade changes, except changes in color.
 - b. Addition, elimination, or change in location of windows.

40.20.15.1.A.1.

- c. Addition, elimination, or change in location of person doors and loading doors.
 - d. Addition of new and change to existing awnings, canopies, and other mounted structures to an existing façade.
 - e. Demolition or other reduction in square footage of an existing building. [ORD 4584; June 2012]
 - f. Modification of up to 15 percent on-site landscaping with no reduction in required landscaping.
 - g. Modification of off-street parking with no reduction in required parking spaces or increase in paved area.
 - h. Addition or modification of new fences, retaining walls, or both. [ORD 4531; April 2010]
 - i. Changing of existing grade.
 - j. Removal of Landscape Trees [ORD 4659; June 2015]
 - k. Addition of no more than twenty-five (25) percent landscape features that consist only of natural materials. [ORD 4397; August 2006]
 - l. Addition or modification of on-site lighting [ORD 4531; April 2010] [ORD 4584; June 2012]
2. Proposed additions of gross floor area to buildings in residential, commercial, or multiple use zones up to and including building area equal to 25% of the gross square feet of floor area of the existing building, but not to exceed 2,500 gross square feet of floor area.
 3. Proposed additions to buildings in industrial zones up to and including building area equal to 15% of the gross square feet of floor area of the existing building, but less than 30,000 gross square feet of floor area.
 4. New construction of non-habitable buildings in commercial, industrial, multiple use zones, or for approved Conditional Uses in residential zones, up to and including a gross building area of 1,000 square feet. [ORD 4531; April 2010] [ORD 4584; June 2012]
 5. Construction of new Community Gardens or additions to existing Community Gardens. [ORD 4659; June 2015]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Design Compliance Letter. The decision making authority is the Director.

40.20.15.1.

- C. Approval Criteria. [ORD 4365; October 2005] In order to approve a Design Review Compliance Letter application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Design Compliance Review Letter.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal meets all applicable Site Development Requirements of Sections 20.05.15., 20.10.15., 20.15.15., and 20.20.15. of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance application which shall be already approved or considered concurrently with the subject proposal. [ORD 4584; June 2012]
 5. The proposal, which is not an addition to an existing building, is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards).
 6. If applicable, the proposed addition to an existing building, and only that portion of the building containing the proposed addition, complies with the applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) as they apply to the following:
 - a. Building articulation and variety. (Section 60.05.15.1.).
 - b. Roof forms. (Section 60.05.15.2.).
 - c. Exterior building materials. (Section 60.05.15.4.).
 - d. Foundation landscaping requirements. (Section 60.05.25.4.D.).
 - e. Screening roof-mounted equipment requirements. (Section 60.05.15.5.).

40.20.15.1.C.

- f. Screening loading areas, solid waste facilities and similar improvements. (Section 60.05.20.2.).
- g. Lighting requirements. (Section 60.05.30.).
- h. Pedestrian circulation
[ORD 4578; March 2012].40.20.15.1.C.

- 7. The proposal complies with all applicable provisions in Chapter 60 (Special Regulations).
- 8. Except for conditions requiring compliance with approved plans, the proposal does not modify any conditions of approval of a previously approved Type 2 or Type 3 application.
- 9. Proposals for Community Gardens comply with Section 60.05.25.14 of Chapter 60. Community Gardens are exempt from Criteria 4, 5, 6, 7, and 8 above. [ORD 4659; June 2015]
- 10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4659; June 2015]

- D. Submission Requirements. An application for a Design Compliance Letter shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Design Compliance Letter application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Design Compliance Letter application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.20.15.

2. Design Review Two.

- A. Threshold. An application for Design Review Two shall be required when an application is subject to applicable design standards and one or more of the following thresholds describe the proposal:
1. New construction of up to and including 50,000 gross square feet of non-residential floor area where the development does not abut any Residential District. [ORD 4462; January 2008]
 2. New construction of up to and including 30,000 gross square feet of non-residential floor area where the development abuts or is located within any Residential District. [ORD 4462; January 2008]
 3. New construction of attached residential dwellings excluding duplexes, in any zone where attached dwellings are a Permitted or Conditional Use. [ORD 4410; December 2006]
 4. New construction of detached residential dwellings in Multiple Use zoning districts where detached dwellings are a Permitted or Conditional Use. [ORD 4542; June 2010]
 5. Building additions in Residential, Commercial, Industrial, or Multiple Use zones less than 30,000 gross square feet of floor area that do not qualify for consideration under the Thresholds for Design Review Compliance Letter. [ORD 4659; June 2015]
 6. Any change in excess of 15 percent of the square footage of on-site landscaping or pedestrian circulation area with the exception for an increase in landscape art of up to 25 percent. [ORD 4397; August 2006]

40.20.15.2.A.

7. Any new or change to existing on-site vehicular parking, maneuvering, and circulation area which adds paving or parking spaces.
 8. New parks in non-residential zoning districts.
 9. New construction of non-habitable buildings in commercial, industrial, multiple use zones, or for approved Conditional Uses in residential zones, larger than 1,000 square feet in gross building area. [ORD 4584; June 2012]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Design Review Two. The decision making authority is the Director.
- C. Approval Criteria. [ORD 4365; October 2005] In order to approve a Design Review Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Design Review Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal is consistent with all applicable provisions of Sections 60.05.15. through 60.05.30. (Design Standards).
 5. For additions to or modifications of existing development, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) or can demonstrate that the proposed additions or modifications are moving towards compliance with specific Design Standards if any of the following conditions exist:

40.20.15.2.C.

- a. A physical obstacle such as topography or natural feature exists and prevents the full implementation of the applicable standard; or
- b. The location of existing structural improvements prevent the full implementation of the applicable standard; or
- c. The location of the existing structure to be modified is more than 300 feet from a public street.

If the above listed conditions are found to exist and it is not feasible to locate a proposed addition in such a way that the addition abuts a street, then all applicable design standards except the following must be met:

- d. If in a Multiple Use District, building location, entrances and orientation along streets, and parking lot limitations along streets (Standards 60.05.15.6 and 60.05.20.8)
 - e. If in a Multiple Use or Commercial District, ground floor elevation window requirements (Standard 60.05.15.8).
6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a Design Review Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Design Review Two application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

40.20.15.2.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Design Review Two application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.20.15.

3. Design Review Three.

- A. Threshold. An application for Design Review Three shall be required when an application is subject to applicable design guidelines and one or more of the following thresholds describe the proposal:
1. New construction of more than 50,000 gross square feet of non-residential floor area where the development does not abut any Residential zoning district. [ORD 4397; August 2006] [ORD 4410; December 2006] [ORD 4462; January 2008] [ORD 4584; June 2012]
 2. New construction or addition of more than 30,000 gross square feet of non-residential floor area where the development abuts or is located within any Residential zoning district. [ORD 4410; December 2006] [ORD 4462; January 2008] [ORD 4584; June 2012]
 3. Building additions in Residential, Commercial, or Multiple Use zones more than 30,000 gross square feet of floor area. [ORD 4531; April 2010]
 4. Building additions in industrial zones more than 30,000 gross square feet. [ORD 4531; April 2010]
 5. Projects proposed utilizing the options described in Section 40.20.10.5.
 6. New parks in Residential zoning districts.
 7. A project meeting the Design Review Compliance Letter thresholds which does not meet an applicable design standard(s).
 8. A project meeting the Design Review Two thresholds which does not meet an applicable design standard.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Design Review Three. The decision making authority is the Planning Commission. [ORD 4532; April 2010]

40.20.15.3.

- C. Approval Criteria. [ORD 4365; October 2005] In order to approve a Design Review Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Design Review Three application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. For proposals meeting Design Review Three application thresholds numbers 1 through 6, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines).
 4. For additions to or modifications of existing development, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines) or can demonstrate that the additions or modifications are moving towards compliance with specific Design Guidelines if any of the following conditions exist:
 - a. A physical obstacle such as topography or natural feature exists and prevents the full implementation of the applicable guideline; or
 - b. The location of existing structural improvements prevent the full implementation of the applicable guideline; or
 - c. The location of the existing structure to be modified is more than 300 feet from a public street.

40.20.15.3.C.

5. For DRBCP proposals which involve the phasing of required floor area, the proposed project shall demonstrate how future development of the site, to the minimum development standards established in the Development Code or greater, can be realistically achieved at ultimate build out of the DRBCP. [ORD 4584; June 2012]
6. For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address a combination of standards and guidelines, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is instead subject to the applicable corresponding Design Guideline(s). [ORD 4531; April 2010]
7. For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address Design Guidelines only, the proposal is consistent with the applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines). [ORD 4531; April 2010]
8. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Design Review Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Design Review Three application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Design Review Three application to ensure compliance with the approval criteria.

40.20.15.3.

- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.25. DIRECTOR'S INTERPRETATION**40.25.05. Purpose.**

The purpose of the Director's Interpretation is to address new uses which may come into existence over time that are not addressed specifically in the Code or some of the terms or phrases within the Code which may require further interpretation. The Director's Interpretation is established for resolving Code interpretation issues in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein.

40.25.10. Applicability.

The Director shall have the initial authority and responsibility to interpret all terms, provisions, and requirements of this Code.

40.25.15. Application.

There is a single Director's Interpretation application which is subject to the following requirements.

1. Director's Interpretation.

- A. Threshold. An application for Director's Interpretation shall be required when one or more of the following thresholds apply:
 1. A request that the Director interpret the Development Code in writing.
 2. A request that the Director provide a determination of nonconforming status of a lot, structure, or use in writing.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Director's Interpretation. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Director's Interpretation application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

40.25.15.1.C.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code. [ORD 4584; June 2012]
4. When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code. [ORD 4584; June 2012]
5. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Director's Interpretation shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Director's Interpretation application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Director's Interpretation application to ensure compliance with the approval criteria.
- F. Appeal of Decision. Refer to Section 50.65.

40.25.15.1.

- G. Expiration of a Decision. A Director's Interpretation shall not expire unless superseded by a subsequent Director's Interpretation or a Development Code change.
- H. Extension of a Decision. Because a Director's Interpretation does not expire, extension of a Director's Interpretation is not necessary. If a prior Director's Interpretation is superseded, the prior Director's Interpretation will no longer be in effect and cannot be extended.

40.30. FLEXIBLE AND ZERO YARD SETBACKS**40.30.05. Purpose.**

The purpose of flexible and zero yard setbacks is to encourage flexibility in building design and layout, while providing for open space, adequate light, air, and safety. It is also recognized that a reduction in the setback standards may create compatibility problems for surrounding properties. The following provisions allow flexible setbacks in a manner which is appropriate given the unique character of the property involved and the surrounding area. This Section is carried out by the approval criteria listed herein.

40.30.10. Applicability.

Development on a lot of record in Residential, Commercial, Industrial, and Multiple Use zoning districts may request approval of the flexible or zero setback provisions of this section.

40.30.15. Application. [ORD 4584; June 2012]

There are five (5) Flexible and Zero Yard Setback applications which are as follows: Flexible Setback for Individual Lot With Endorsement; Flexible Setback for Individual Lot Without Endorsement; Flexible Setback for a Proposed Land Division; Zero Side or Zero Rear Yard Setback for a Proposed Land Division in Residential Districts; and Zero Side Yard Setback for a Proposed Land Division in the Commercial, Industrial, or Multiple Use Districts.

1. Flexible Setback for Individual Lot With Endorsement.

- A. Threshold. An application for Flexible Setback for an Individual Lot With Endorsement shall be required when the following threshold applies:
 1. Development on individual residentially zoned lots of record proposes to use flexible setbacks and can demonstrate the affected abutting property owners of record endorsement of the request. [ORD 4473; March 2008]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Flexible Setback for Individual Lot With Endorsement. The decision making authority is the Director.

40.30.15.1.

- C. Approval Criteria. In order to approve a Flexible Setback on Individual Lot With Endorsement application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Flexible Setback on Individual Lot With Endorsement application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The proposal does not violate any recorded Solar Access requirements.
 5. The proposal meets the minimum standards specified in Section 20.05.15.G. of the Development Code. [ORD 4584; June 2012]
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Flexible Setback for Individual Lot With Endorsement shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Flexible Setback for Individual Lot With Endorsement application shall be accompanied by the information required by the application form. [ORD 4584; June 2012]
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Flexible Setback for Individual Lot With Endorsement application to ensure compliance with the approval criteria.

40.30.15.1.

- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.30.15.

2. Flexible Setback for Individual Lot Without Endorsement.

- A. Threshold. An application for Flexible Setback for an Individual Lot Without Endorsement shall be required when the following threshold applies:
1. Development on individual residentially zoned lots of record proposes to use flexible setbacks and cannot demonstrate the affected abutting property owners of record endorsement of the request. [ORD 4473; March 2008]
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Flexible Setback for Individual Lot Without Endorsement. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a Flexible Setback on Individual Lot Without Endorsement application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Flexible Setback on Individual Lot Without Endorsement application.
 2. The application complies with all applicable submittal requirements as specified in Section 50.25.1. and includes all applicable fees. [ORD 4473; March 2008]
 3. The proposal does not violate any recorded Solar Access Permit requirements.
 4. The proposal meets the minimum standards specified in Section 20.05.15.G. of the Development Code. [ORD 4584; June 2012]
 5. If an addition to an existing structure, the proposal is compatible in design, scale and building materials with the existing structure. If a new structure, the proposal is compatible with neighboring development with respect to scale, bulk, lot coverage, density, rooflines, and building materials. [ORD 4473; March 2008]

40.30.15.2.C.

6. All critical facilities and services related to the development have or can be improved to have adequate capacity to serve the proposal at the time of its completion.
7. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more applications that already have been approved or are considered concurrently with the subject proposal. [ORD 4473; March 2008]
8. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Flexible Setback for Individual Lot Without Endorsement shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Flexible Setback for Individual Lot Without Endorsement application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Flexible Setback for Individual Lot Without Endorsement application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.30.15.

3. Flexible Setback for a Proposed Residential Land Division.

- A. Threshold. An application for Flexible Setback for a Proposed Residential Land Division shall be required when the following threshold applies:
1. The property is located within a Residential zoning district and this application is accompanied by a land division application for the subject property.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Flexible Setback for a Proposed Residential Land Division and shall be considered concurrently with the proposed land division. The decision making authority is the Director. [ORD 4473; March 2008]
- C. Approval Criteria. In order to approve a Flexible Setback for a Proposed Residential Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Flexible Setback for a Proposed Residential Land Division application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials. [ORD 4473; March 2008]
 4. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more applications that already have been approved or are considered concurrently with the subject proposal. [ORD 4473; March 2008]

40.30.15.3.C.

5. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
6. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Flexible Setback for a Proposed Residential Land Division shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Flexible Setback for a Proposed Residential Land Division application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Flexible Setback for a Proposed Residential Land Division application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.30.15.

4. Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division.

- A. Threshold. An application for Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division shall be required when the following threshold applies:
1. The property is located within a Residential zoning district and this application is accompanied by a land division application for the subject property.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Flexible Setback for a Proposed Residential Land Division and shall be considered concurrently with the proposed land division. The decision making authority is the Director. [ORD 4473; March 2008]
- C. Approval Criteria. In order to approve a Zero Side Yard or Zero Rear Yard Setback for a Proposed Residential Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Zero Side Yard or Zero Rear Yard Setback for a Proposed Residential Land Division application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The side or rear yard setback on all adjacent lots which abut the proposed zero side or rear setback are either zero feet (0') or ten feet (10') or more.
 4. The zero side or zero rear yard is not abutting a public right-of-way or any access easement.
 5. No portion of a structure or architectural feature shall project over a property line related to the zero side or rear yard setback unless a permanent easement allowing such projection has been granted.

40.30.15.4.C.

6. A four foot (4') non-exclusive maintenance easement appears on the plat within the adjacent side or rear yard setback of the adjacent lot where it abuts the zero setback.
7. Satisfactory deed restrictions are submitted with the preliminary land division which address maintenance requirements for the zero setback wall.
8. Utility easements are provided, when required by a utility provider, along any side, rear, or both property lines except where the zero setback is designated. [ORD 4473; March 2008]
9. The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials. [ORD 4473; March 2008]
10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless applicable provisions are modified by means of one or more applications that already have been approved or are considered concurrently with the subject proposal. [ORD 4473; March 2008]
11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
12. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
[ORD 4404; October 2006]

40.30.15.4.

- D. Submission Requirements. An application for a Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.30.15.

5. Zero Side Yard Setback for a Proposed Non-Residential Land Division.

- A. Threshold. An application for Zero Side Yard Setback for a Proposed Non-Residential Land Division shall be required when the following threshold applies:
1. The property is located within a Commercial, Industrial, or Multiple Use zoning district and is accompanied by a land division application for the subject property.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Zero Side Yard Setback for Proposed Non-Residential Land Division in any Commercial, Industrial, and Multiple Use zoning district and shall be considered concurrently with the proposed land division. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Zero Side Yard Setback for a Proposed Non-Residential Land Division in the Commercial, Industrial, or Multiple Use zoning districts application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Zero Side Yard Setback for a Proposed Non-Residential Land Division application in the Commercial, Industrial, or Multiple Use zoning districts.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The minimum adjacent side yard setback on all adjacent lots which abut the proposed zero setback parcel are either zero feet (0') as well or twenty feet (20') or more.
 4. The zero side yard is not abutting a public right-of-way or any access easement.

40.30.15.5.C.

5. The zero side yard does not abut any Residential district.
6. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered concurrently with the subject proposal.
7. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
8. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Zero Side Yard Setback for a Proposed Non-Residential Land Division shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Zero Side Yard Setback for a Proposed Non-Residential Land Division application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Zero Side Yard Setback for a Proposed Non-Residential Land Division application to ensure compliance with the approval criteria.

40.30.15.5.

- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.32. FOOD CART PODS**40.32.05. Purpose.**

The purpose of food cart pods are to encourage a variety of eating and drinking establishments within specified zoning districts of the City. It is recognized that food cart pods have unique challenges that other businesses may not face due to being an interim use of the property. The following provisions allow food cart pods in a manner which is appropriate and well regulated. This Section is carried out by the approval criteria listed herein.

40.32.10. Applicability.

Development on a lot of record in zoning districts specified in Chapter 20 may request approval of a Food Cart Pod in accordance with the provisions of this section. Exempted from this application are applications which fall under the threshold requirements for Temporary Mobile Sales, Temporary Non-Mobile Sales, Temporary Structure and Temporary Real Estate Office applications.

40.32.15. Application.

There are two (2) Food Cart Pod applications. A Type 1 Food Cart Pod Modification application which permits minor changes to previously approved Food Cart Pods. A Type 2 Food Cart Pod application for new Food Cart Pods or the addition of carts or structures to an approved Food Cart Pod.

1. Food Cart Pod Modification.

- A. Threshold. An application for a Food Cart Pod Modification shall be required when one of the following thresholds applies:
1. Modification to an approved Food Cart Pod site layout or design which does not increase the number of food carts permitted on site.
 2. Addition of amenities to an approved Food Cart Pod, such as but not limited to: tents, awnings, structures, seating, and landscaping.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Food Cart Pod Modification. The decision making authority is the Director.

- C. Approval Criteria. In order to approve a Food Cart Pod Modification application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Food Cart Pod Modification application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal meets the applicable standards specified in Chapter 20 of the Development Code.
 5. The proposal meets the standards specified in Section 60.11 of the Development Code.
 6. There are safe and efficient pedestrian circulation patterns within the boundaries of the development.
 7. No change to the existing grade is proposed.
 8. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Food Cart Pod Modification shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Food Cart Pod Modification application shall be accompanied by the information required by the application form.
- E. Conditions of Approval. All applications for Food Cart Pod Modification shall comply with the following conditions identified below. The decision making authority may impose other conditions on the approval of a Food Cart Pod Modification application to ensure compliance with the approval criteria.

- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.32.15.2

2. Food Cart Pod.

- A. Threshold. An application for a Food Cart Pod shall be required when one of the following thresholds applies:
1. Placement of one or more food carts on private property selling food and/or beverages.
 2. Addition of one or more food carts to an approved Food Cart Pod which increases the total number of carts permitted on the site.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Food Cart Pod. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Food Cart Pod application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Food Cart Pod application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal meets the applicable standards specified in Chapter 20 of the Development Code.
 5. The proposal meets the standards specified in Section 60.11 of the Development Code.
 6. There are safe and efficient pedestrian circulation patterns within the boundaries of the development.

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7. The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation system in a safe, efficient, and direct manner.
 8. Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.
 9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Food Cart Pod shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Food Cart Pod application shall be accompanied by the information required by the application form.
- E. Conditions of Approval. All applications for Food Cart Pods shall comply with the following conditions identified below. The decision making authority may impose other conditions on the approval of a Food Cart Pod application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

[ORD 4662; September 2015]

40.35. HISTORIC REVIEW**40.35.05. Purpose.**

The purpose of Historic Review is to preserve, enhance, and perpetuate landmarks and districts which represent or reflect elements of the City's cultural, social, economic, and architectural history and to promote the use of historic districts and landmarks for the education, pleasure, housing and public welfare of the City's current and future citizens. This Section is carried out by the approval criteria listed herein.

40.35.10. Applicability.

1. The scope of Historic Review shall be limited to the exterior alteration, modification, demolition, and moving of a designated historic landmark and the construction of new structures within a designated historic district.
2. Historic Review approval shall not be required for the following:
 - A. Changes in use.
 - B. Interior remodeling.
 - C. Maintenance or repair of the exterior where any change to the original building materials or physical appearance is conducted in a manner that is consistent with previous approvals. Determination of the original building materials or physical appearance can be made by reviewing a historic photograph, original building plans, or other evidence of the original building features.
3. Nothing in this Code shall be construed to prevent the construction, reconstruction, alteration, or demolition of City designated historic resources which the City Building Official certifies as required by the City's Building Code.
4. Construction of a new structure in a Historic District which is under 120 gross square feet and is not attached to a designated historic structure is exempt from Section 40.35.15.4 (New Construction in a Historic District). [ORD 4697; December 2016]

40.35.15. Application.

There are four (4) Historic Review applications which are as follows: Alteration of a Landmark, Emergency Demolition of a Landmark, Demolition of a Landmark, and New Construction in a Historic District. [ORD 4584; June 2012]

1. Alteration of a Landmark.

- A. Threshold. An application for Alteration of a Landmark shall be required when one or more of the following thresholds apply:
1. Changes to any aspect of the exterior appearance, including, but not limited to, exterior finish materials, architectural detailing, and changes to window and door locations or dimensions. [ORD 4397; August 2006]
 2. Moving a landmark to a new location.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Alteration of a Landmark. The decision making authority is the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve an Alteration of a Landmark application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for an Alteration of a Landmark application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The distinguishing original historic or architectural qualities or character of a building, structure, or site and its environment are being preserved.
 4. Any alteration to buildings, structures, and sites are in keeping with the time period of the original construction.

40.35.15.1.C.

5. Any distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site have been preserved unless said features are a threat to public health and safety or are in violation of building, fire, or access regulations.
6. Deteriorating architectural features will be repaired rather than replaced, wherever possible.
7. New material used for replacement will match the material being replaced in terms of composition, design, color, texture, and other visual qualities.
8. The repair or replacement of missing architectural features is based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence.
9. The design of the proposed addition or alteration does not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, material, and character of the property, neighborhood, or environment.
10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an adjustment, planned unit development, or variance which shall be already approved or considered concurrently with the subject proposal.
11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
12. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.

40.35.15.1.

13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for an Alteration of a Landmark shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Alteration of a Landmark application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of an Alteration of a Landmark application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.35.15.2

2. Emergency Demolition of a Landmark.

- A. Threshold. An application for Emergency Demolition of a Landmark shall be required when the following threshold applies:
1. Demolition of an existing landmark when demolition is required by the Building Official.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Emergency Demolition of a Landmark. The decision making authority is the Director.
- C. Approval Criteria. In order to approve an Emergency Demolition of a Landmark application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for an Emergency Demolition of a Landmark application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The City of Beaverton Building Official has declared, consistent with the Dangerous Buildings Code, the historic building or structure to be an immediate threat to health and safety.
 5. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.35.15.2.

- D. Submission Requirements. An application for an Emergency Demolition of a Landmark shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Emergency Demolition of a Landmark application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of an Emergency Demolition of a Landmark application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.35.15.3

3. Demolition of a Landmark.

- A. Threshold. An application for Demolition of a Landmark shall be required when the following threshold applies:
1. Demolition of an existing landmark.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Demolition of a Landmark. The decision making authority is the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve a Demolition of a Landmark application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Demolition of a Landmark application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The economic, social, environmental, and energy consequences of allowing the demolition outweigh the preservation of the historic landmark.
 4. The applicant has not rejected the highest bona fide offer for sale and relocation of the building. [ORD 4697; December 2016]
 5. If applicable, the historic or architectural significance of the resource is not sufficient to warrant its continued preservation.
 6. If applicable, the physical condition of the building is such that it is not practical to improve its condition to meet applicable building codes.

40.35.15.3.C.

7. If within a Historic District, the loss of the structure will not diminish the overall integrity of the District.
 8. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Demolition of a Landmark shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Demolition of a Landmark application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Demolition of a Landmark application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.35.15.4

4. New Construction in a Historic District.

- A. Threshold. An application for New Construction in a Historic District shall be required when the following threshold applies:
1. Construction of a new structure of more than 120 gross square feet in size in a historic district, which is not attached to a designated historic structure.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for New Construction in a Historic District. The decision making authority is the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve a New Construction in a Historic District application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a New Construction in a Historic District application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. As it relates to existing surroundings and future allowed uses, their location, size, shape, height, and spatial and visual arrangement, the proposed development is compatible with and does not substantially detract from the historic value of the existing Historic District.
 4. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.35.15.4.

- D. Submission Requirements. An application for a New Construction in a Historic District shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The New Construction in a Historic District application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a New Construction in a Historic District application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.40. HOME OCCUPATION

40.40.05. Purpose.

The purpose of the Home Occupation application is to provide recognition of the needs or desires of many people to engage in small scale business ventures at home. It recognizes the potential advantages for reducing commuter travel when people work at home. It is also recognized that such uses, if not carefully regulated, may be incompatible with the purposes of Residential districts. It is the intent of this section that these uses be allowed so long as they are not in violation of the terms of this section and do not alter the residential character of the neighborhood, infringe upon the right of neighboring residents to the peaceful enjoyment of their neighborhood homes, or otherwise be detrimental to the community at large. This Section is carried out by the approval criteria listed herein. [ORD 4397; August 2006]

40.40.10. Applicability.

The provisions of this section apply to all home occupations as defined in Chapter 90 of this Code, except for the following situations:

1. Garage, Yard, or Estate sales from the site that occur for no more than three (3) consecutive days on not more than two (2) occasions during a calendar year.
2. Production of produce or other vegetative agricultural products grown on the premises. The temporary or seasonal sale of produce or other vegetative agricultural products grown on the premises is subject to the provisions of Section 40.80. (Temporary Use).
3. Prohibited home occupation uses are:
 - A. Any use not conducted within a wholly enclosed building.
 - B. Automotive services, Major.
 - C. Automotive services, Minor.
 - D. Junk and Salvage Operations.
 - E. Storage or sale of fireworks.

40.40.10.3.

- F. Any use that consists of the manufacturing, processing, generation, or storage of materials that constitute a fire, explosion, or health hazard as defined by the Building Code, Fire Code, or both.

40.40.15. Application.

There are two (2) Home Occupation applications which are as follows: Home Occupation One and Home Occupation Two.

1. Home Occupation One.

- A. Threshold. An application for Home Occupation One shall be required when one or more of the following thresholds apply:
 - 1. A home occupation is proposed where no outside customers or employees visit the premises.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Home Occupation One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Home Occupation One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 - 1. The proposal satisfies the threshold requirements for a Home Occupation One application.
 - 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 - 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 - 4. There are no outside volunteers or employees who do not reside on the premises. [ORD 4697; December 2016]

40.40.15.1.C.

5. No clients or customers of the proposed home occupation visit the premises for a reason related to the home occupation. [ORD 4697; December 2016]
6. There will be no exterior alteration to the residence. [ORD 4697; December 2016]
7. Excluding regular U. S. Postal Service delivery, the home occupation shall not require more than one (1) trip per day for delivery or pick up per day to the residence between the hours of 8:00 a.m. and 6:00 p.m. There shall be no deliveries between the hours of 6:00 p.m. and 8:00 a.m. [ORD 4697; December 2016]
8. The home occupation is being undertaken only by an occupant of the residence.
9. The proposed home occupation is participating in and is consistent with the City's Business License Program and other agency licenses as appropriate to the proposed use.
10. The on-site operation of the proposed home occupation shall be conducted entirely within the dwelling, a conforming accessory structure, or both. No exterior storage of materials or equipment will occur on the premises. [ORD 4404; October 2006]
11. The proposed home occupation will not change the use classification of the dwelling unit or accessory structure, as determined by the City Building Official applying the State Building Code.
12. The proposed home occupation and associated storage of materials and products shall not occupy more than 700 gross square feet of floor area.
13. The subject property will continue to be used and maintained as a residence and will conform to all requirements of this and other City Codes as they pertain to residential property.

40.40.15.1.C.

14. The home occupation, including deliveries from other businesses, does not include the use of tractor trailers, fork lifts, or similar heavy equipment.
 15. There will be no noise, vibration, smoke, dust, odors, heat or glare at or beyond the property line resulting from the operation of the home occupation.
 16. There will be no exterior storage of vehicles of any kind used for the business except that one (1) commercially licensed vehicle, which is not larger than a 3/4 ton pick-up, passenger van, or other vehicle of similar size, may be parked outside on the subject property provided such parking complies with all parking restrictions.
 17. The proposal will not involve storage or distribution of toxic or flammable materials, spray painting or spray finishing operations, or similar activities that involve toxic or flammable materials which in the judgment of the Fire Marshall pose a health or safety risk to the residence, its occupants or surrounding properties.
 18. There is no signage associated with the proposed home occupation aside from a name plate as allowed by Section 60.40.15. of the Development Code. [ORD 4584; June 2012]
 19. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Home Occupation One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Home Occupation One application shall be accompanied by the information required by the application form. [ORD 4584; June 2012]
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Home Occupation One application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.

40.40.15.1.

- H. Extension of a Decision. Previous approval of Home Occupation
One application shall not be extended.

40.40.15.

2. Home Occupation Two.

- A. Threshold. An application for Home Occupation Two shall be required when one or more of the following thresholds apply:
1. A home occupation is proposed where outside customers or employees visit the premises..
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Home Occupation Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Home Occupation Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Home Occupation Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed home occupation shall a maximum of one (1) volunteer or employee who is not a resident on the premises.
 4. The proposed home occupation shall have no more than 8 daily customers or clients on the premises.
 5. All customer and client visits to the proposed home occupation shall occur only between the hours of 7:00 a.m. and 10:00 p.m.
 6. If on-site parking is provided, a plan for additional parking may be approved if:
 - a. Not more than a total of 4 on-site parking spaces for the combined residential and home occupation uses are proposed.

40.40.15.2.C.7

- b. The parking spaces, driveway, street access, landscaping, storm water drainage, and screening comply with this Code and other city standards.
7. Excluding regular U. S. Postal Service delivery, the home occupation shall not require more than two (2) trips per day for delivery or pick up to the residence between the hours of 8:00 a.m. and 6:00 p.m. There shall be no deliveries or pick ups between the hours of 6:00 p.m. and 8:00 a.m.
 8. The proposed home occupation is being undertaken by an occupant of the residence.
 9. The proposed home occupation is participating in and is consistent with the City's Business License Program and other agency licenses as appropriate to the proposed use.
 10. The on-site operation of the proposed home occupation shall be conducted entirely within the dwelling, a conforming accessory structure, or both. No exterior storage of materials or equipment shall occur on the premises.
 11. The proposed home occupation will not change the use classification of the dwelling unit or accessory structures as determined by the City Building Official applying the State Building Code.
 12. The proposed home occupation and associated storage of materials and products shall not occupy more than 700 gross square feet of floor area.
 13. The subject property will continue to be used and maintained as a residence and will conform to all requirements of this and other City Codes as they pertain to residential property.
 14. The home occupation, including deliveries from other businesses, shall not include the use of tractor trailers, forklifts, or similar heavy equipment. 40.40.15.2.C.

40.40.15.2.C.

15. There shall be no noise, vibration, smoke, dust, odors, heat or glare at or beyond the property line resulting from the operation of the home occupation.
16. There shall be no exterior storage of vehicles of any kind used for the business except that one (1) commercially licensed vehicle, which is not larger than a 3/4 ton pick-up, passenger van, or other vehicle of similar size, may be parked outside on the subject property, provided such parking complies with applicable parking restrictions.
17. The proposal will not involve storage or distribution of toxic or flammable materials, spray painting or spray finishing operations, or similar activities that involve toxic or flammable materials which in the judgment of the Fire Marshall pose a health or safety risk to the residence, its occupants or surrounding properties.
18. There is no signage associated with the proposed home occupation aside from a name plate as allowed by Section 60.40.15. of the Development Code. [ORD 4584; June 2012]
19. Exterior remodeling will not alter the residential character of the building.
20. Excluding required residential parking, adequate off-street parking exists to accommodate vehicular traffic for any employee, customer, or both.
21. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an adjustment, planned unit development, or variance which shall be already approved or considered concurrently with the subject proposal.
22. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.

40.40.15.2.C.

23. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
24. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Home Occupation Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Home Occupation Two application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Home Occupation Two application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Home Occupation Two application shall not be extended.

40.45. LAND DIVISION AND RECONFIGURATION [ORD 4487; August 2008]**40.45.05. Purpose.**

The purpose of the Land Division applications is to establish regulations, procedures, and standards for the division or reconfiguration of the boundaries of land within the City of Beaverton. This Section is carried out by the approval criteria listed herein.

40.45.10. Applicability.

The provisions of this section apply to all subdivisions, partitions, developments involving the dedications of public right-of-way, and the reconfiguration of existing property lines. Code requirements for the vacation of public rights-of-way are in Section 40.75. (Street Vacations).

40.45.15. Application.

There are nine (9) types of applications under this Section, as follows: Property Line Adjustment; Replat One; Replat Two; Preliminary Partition; Preliminary Subdivision; Preliminary Fee Ownership Partition; Preliminary Fee Ownership Subdivision; Final Land Division; and Expedited Land Division. [ORD 4584; June 2012]

1. Property Line Adjustment.

A. Threshold. An application for Property Line Adjustment shall be required when one or more of the following thresholds apply [ORD 4405; October 2006]:

1. The changing of a common boundary of two (2) lots of record where the number of lots or parcels does not change; except a proposal meeting the threshold for a Replat One under Section 40.45.15.2., or Replat Two under Section 40.45.15.3., shall be processed as a Replat and not as a Property Line Adjustment. [ORD 4584; June 2012]
2. More than one Property Line Adjustment application may be processed concurrently, provided the threshold in Section 40.45.15.1.A.1. is met.

40.45.15.1.

- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Property Line Adjustment. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Property Line Adjustment application, the decision making authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Property Line Adjustment.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The Property Line Adjustment does not conflict with any existing City land use approval, public easement, or previous condition of approval applied to the subject property.
 4. An additional lot or parcel is not created.
 5. The Property Line Adjustment is consistent with all applicable provisions of Chapter 20 (Land Uses), unless the applicable provisions are modified by means of one or more applications which shall be already approved or considered concurrently with the Property Line Adjustment.
 6. The proposal is consistent with all applicable provisions of Chapter 60 (Special Regulations).
 7. All critical facilities and services have, or can be improved to have, adequate capacity to serve the reconfigured lots.
 8. The proposal will not eliminate pedestrian or vehicle access to the affected properties.
 9. The proposal does not create a parcel which will have more than one (1) zoning designation.

40.45.15.1.C.

10. The application contains all required submittal materials as specified in Section 50.25.1. of the Development Code.
11. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006] [ORD 4462; January 2008] [ORD 4487; August 2008]

D. Submission Requirements. An application for a Lot Line Adjustment shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Lot Line Adjustment application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Property Line Adjustment application to ensure compliance with the approval criteria. All Property Line Adjustment decisions shall also require that:

1. The Applicant shall provide evidence to the City that a conveyance instrument conforming to the approved Property Line Adjustment has been recorded at Washington County.
2. [ORD 4405; October 2006] The applicant for a Property Line Adjustment shall file a record of survey with the County as required by Oregon Revised Statutes Chapter 92. The record of survey shall be subject to review by the City as part of the Property Line Adjustment application, and shall not be subject to further review under Section 40.45.15.8. (Final Land Division). [ORD 4584; June 2012]

[ORD 4487; August 2008]

F. Appeal of a Decision. Refer to Section 50.60.

40.45.15.1.

- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

2. Replat One. [ORD 4487; August 2008]

A. Threshold. An application for Replat One shall be required when any of the following thresholds apply: [ORD 4584; June 2012]

1. The reconfiguration of lots, parcels, or tracts within a single existing plat that decreases or consolidates the number of lots, parcels, or tracts in the plat; [ORD 4584; June 2012]
2. The creation of a plat for land that has never been part of a previously recorded plat where no new lots or parcels are proposed. [ORD 4584; June 2012]

[ORD 4584; June 2012]

B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Replat involving only the consolidation of lots and not triggering any of the thresholds in Section 40.45.15.3.A.1. through 40.45.15.3.A.3. The decision making authority is the Director. [ORD 4584; June 2012]

C. Approval Criteria. In order to approve a Replat One application, the decision making authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria are satisfied.

1. The application satisfies the threshold requirements for a Replat One. [ORD 4584; June 2012]
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposed Replat does not conflict with any existing City approval, except the City may modify prior approvals through the Replat process to comply with current Code standards and requirements.

40.45.15.2.C.

4. Oversized lots or parcels (“oversized lots”) resulting from the Replat shall have a size and shape that facilitates the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed lots and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot. [ORD 4584; June 2012]
5. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall demonstrate that the resulting land division facilitates the following: [ORD 4584; June 2012]
 - a. Preserves a designated Historic Resource or Significant Natural Resource (Tree, Grove, Riparian Area, Wetland, or similar resource); or,
 - b. Complies with minimum density requirements of the Development Code, provides appropriate lot size transitions adjacent to differently zoned properties, minimizes grading impacts on adjacent properties, and where a street is proposed, provides a standard street cross section with sidewalks. [ORD 4584; June 2012]
6. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall not require further Adjustment or Variance approvals for the Land Division. [ORD 4584; June 2012]
7. If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provides for necessary public improvements for each phase as the project develops.

40.45.15.2.C.

8. The proposal will not eliminate pedestrian, utility service, or vehicle access to the affected properties. [ORD 4584; June 2012]
9. The proposal does not create a parcel or lot which will have more than one (1) zoning designation.
10. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

D. Submission Requirements.

1. An application for a Replat One shall be made by the owner(s) of the subject property or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The Replat One application shall be accompanied by the information required by the application form, and the information required by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference. [ORD 4584; June 2012]

[ORD 4584; June 2012]

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Replat One application to ensure compliance with the approval criteria. [ORD 4584; June 2012]
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90. [ORD 4584; June 2012]
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

3. Replat Two. [ORD 4487; August 2008] [ORD 4584; June 2012]

- A. Threshold. An application for Replat Two shall be required when any of the following thresholds apply:
1. Within an existing plat, new right of way is dedicated to the public or existing right of way is vacated and more than one (1) property is affected by the dedication; provided, however, no public right-of-way shall be vacated without the applicant first obtaining approval under Section 40.75. (Street Vacations);
 2. Within an existing plat, a public easement is conveyed, removed, or modified in such a way that it affects more than one (1) property owner (i.e., multiple properties under different ownership);
 3. The reconfiguration of lots, parcels, or tracts affecting more than one (1) recorded plat, or where the perimeter boundary of a recorded plat would change as a result of the proposed reconfiguration. [ORD 4498; January 2009]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Replat Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Replat Two application, the decision making authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria are satisfied.
1. The application satisfies the threshold requirements for a Replat Two.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed Replat Two does not conflict with any existing City approval, except the City may modify prior approvals through the Replat process to comply with current Code standards and requirements.

40.45.15.3.C.

4. Oversized lots or parcels (“oversized lots”) resulting from the Replat shall have a size and shape that facilitates the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed lots and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot.
5. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall demonstrate that the resulting land division facilitates the following:
 - a. Preserves a designated Historic Resource or Significant Natural Resource (Tree, Grove, Riparian Area, Wetland, or similar resource); or,
 - b. Complies with minimum density requirements of the Development Code, provides appropriate lot size transitions adjacent to differently zoned properties, minimizes grading impacts on adjacent properties, and where a street is proposed, provides a standard street cross section with sidewalks.
6. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall not require further Adjustment or Variance approvals for the Land Division.
7. If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provides for necessary public improvements for each phase as the project develops.
8. The proposal will not eliminate pedestrian, utility service, or vehicle access to the affected properties.
9. The proposal does not create a parcel or lot which will have more than one (1) zoning designation.

40.45.15.3.C.

10. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

D. Submission Requirements.

1. An application for a Replat Two shall be made by the owner(s) of the subject property or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The Replat Two application shall be accompanied by the information required by the application form, and the information required by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
2. The Director may consider and act upon a request to develop a Replat Two in phases. If the Replat Two is to be phased, the applicant shall propose a phasing program in writing at the time of the Replat Two application submittal. The applicant is responsible for providing a time schedule for the final platting of the various phases. In no case shall the total time period for the final platting of all stages be greater than five (5) years without filing a new application.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Replat Two application to ensure compliance with the approval criteria.

F. Appeal of a Decision. Refer to Section 50.60.

40.45.15.3.

- G. Expiration of a Decision. Refer to Section 50.90. Except where a phasing program is approved under 40.45.15.2.D.2, the filing of a Final Land Division application in accordance with Section 40.45.15.7. shall occur within two (2) years of the date of Replat Two approval. For a phased project, the total time period for the filing of a final plat, shall not exceed five (5) years from the date of the City's final Replat Two approval decision. After five (5) years, unless otherwise vested, the Replat Two approval shall expire.
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

4. Preliminary Partition.

- A. Threshold. An application for Preliminary Partition shall be required when the following threshold applies:
1. The creation of up to and including three (3) new parcels from at least one (1) lot of record (parent parcel) in one (1) calendar year. [ORD 4487; August 2008] [ORD 4584; June 2012]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Preliminary Partition. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Preliminary Partition application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Preliminary Partition. If the parent parcel is subject to a pending Legal Lot Determination under Section 40.47., further division of the parent parcel shall not proceed until all of the provisions of Section 40.47.15.1.C. have been met. [ORD 4584; June 2012]
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed partition does not conflict with any existing City approval, except the City may modify prior approvals through the partition process to comply with current Code standards and requirements.

40.45.15.4.C.

4. Oversized parcels (oversized lots) resulting from the Partition shall have a size and shape that facilitates the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed partition and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot. [ORD 4584; June 2012]
5. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall demonstrate that the resulting land division facilitates the following: [ORD 4584; June 2012]
 - a) Preserves a designated Historic Resource or Significant Natural Resource (Tree, Grove, Riparian Area, Wetland, or similar resource); or,
 - b) Complies with minimum density requirements of the Development Code, provides appropriate lot size transitions adjacent to differently zoned properties, minimizes grading impacts on adjacent properties, and where street improvements are proposed, provides a standard street cross section with sidewalks. [ORD 4584; June 2012]
6. Applications that apply the lot area averaging standards of Section 20.05.15.D. do not require further Adjustment or Variance approvals for the Land Division. [ORD 4584; June 2012]
7. The proposal does not create a parcel which will have more than one (1) zoning designation.
8. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4487; August 2008]

40.45.15.4.

- D. Submission Requirements. An application for a Preliminary Partition shall be made by the owner of the subject property or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The application shall be accompanied by the information required by the application form, and by the information required by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference. [ORD 4487; August 2008]
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Preliminary Partition application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90. The filing of a Final Land Division application in accordance with Section 40.45.15.7. shall occur within two (2) years of the date of Preliminary Partition approval. [ORD 4265; October 2003] [ORD 4487; August 2008]
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

5. Preliminary Subdivision.

- A. Threshold. An application for Preliminary Subdivision shall be required when the following threshold applies:
1. The creation of four (4) or more new lots from at least one (1) lot of record in one (1) calendar year. [ORD 4487; August 2008]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Preliminary Subdivision. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Preliminary Subdivision application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Preliminary Subdivision application. If the parent parcel is subject to a pending Legal Lot Determination under Section 40.47., further division of the parent parcel shall not proceed until all of the provisions of Section 40.47.15.1.C. have been met. [ORD 4584; June 2012]
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed development does not conflict with any existing City approval, except the City may modify prior approvals through the subdivision process to comply with current Code standards and requirements.

40.45.15.5.C.

4. Oversized lots resulting from the subdivision shall have a size and shape which will facilitate the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed subdivision and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot. [ORD 4584; June 2012]
5. If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provides for necessary public improvements for each phase as the project develops.
6. Applications that apply the lot area averaging standards of Section 20.05.15.D. shall demonstrate that the resulting land division facilitates the following: [ORD 4584; June 2012]
 - a) Preserves a designated Historic Resource or Significant Natural Resource (Tree, Grove, Riparian Area, Wetland, or similar resource); or,
 - b) Complies with minimum density requirements of the Development Code, provides appropriate lot size transitions adjacent to differently zoned properties, minimizes grading impacts on adjacent properties, and where a street is proposed provides a standard street cross section with sidewalks. [ORD 4584; June 2012]
7. Applications that apply the lot area averaging standards of Section 20.05.15.D. do not require further Adjustment or Variance approvals for the Land Division. [ORD 4584; June 2012]
8. The proposal does not create a lot which will have more than one (1) zoning designation. [ORD 4584; June 2012]

40.45.15.5.C.

9. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4487; August 2008]

D. Submission Requirements.

1. An application for a Preliminary Subdivision shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The Preliminary Subdivision application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
2. The Director may consider and act upon a request to develop a subdivision in phases. If the subdivision is to be phased, the applicant shall propose a phasing program in writing at the time of Preliminary Subdivision application submittal. The applicant is responsible for providing a time schedule for the final platting of the various phases. In no case shall the total time period for the final platting of all stages be greater than five (5) years without filing a new Preliminary Subdivision application.

[ORD 4487; August 2008]

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Preliminary Subdivision application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.

40.45.15.5.

- G. Expiration of a Decision. Refer to Section 50.90. Except where a phasing program is approved under Section 40.45.15.4.C.7., the filing of a Final Land Division application in accordance with Section 40.45.15.7. shall occur within two (2) years of the date of Preliminary Subdivision approval. For a phased project, the total time period for the filing of a final plat, shall not exceed five (5) years from the date of the City's final Preliminary Subdivision Approval decision. After five (5) years, unless otherwise vested, the preliminary approval shall expire. [ORD 4265; October 2003] [ORD 4487; August 2008]
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

6. Preliminary Fee Ownership Partition.

- A. Threshold. An application for Preliminary Fee Ownership Partition shall be required when the following threshold applies:
1. The creation of up to and including three (3) new parcels from at least one (1) lot of record in one (1) calendar year in a Commercial, Industrial or Multiple Use zone, where one or more of the proposed parcels does not meet one or more of the setback, lot coverage, floor area ratio, and/or lot dimension standards of Chapter 20 (Land Uses), as applicable; and where modification to the same standard(s) is not requested through another type of application. [ORD 4265; October 2003] [ORD 4397; August 2006] [ORD 4487; August 2008]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Preliminary Fee Ownership Partition. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Preliminary Fee Ownership Partition application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Preliminary Fee Ownership Partition application. If the parent parcel is subject to a pending Legal Lot Determination under Section 40.47., further division of the parent parcel shall not proceed until all of the provisions of Section 40.47.15.1.C. have been met. [ORD 4584; June 2012]
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

40.45.15.6.C.

3. The proposed development does not conflict with any existing City approval, except the City may modify prior approvals through the Preliminary Fee Ownership Partition process to comply with current Code standards and requirements.
4. The parent parcel shall meet the minimum setback requirements for the applicable zoning district unless the setback is subject to an Adjustment, Variance, Flexible Setback, or Zero Side Yard Setback for a proposed Non-Residential Land Division application which shall be considered concurrently with the subject proposal.
5. The proposal does not create a parcel which will have more than one (1) zoning designation.
6. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4487; August 2008]

- D. Submission Requirements. An application for a Preliminary Fee Ownership Partition shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The application shall be accompanied by the information required by the application form, and by the information required by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference. [ORD 4487; August 2008]
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Preliminary Fee Ownership Partition application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.

40.45.15.6.

- G. Expiration of a Decision. Refer to Section 50.90. The filing of a Final Land Division application shall occur within two (2) years of the date of Preliminary Fee Ownership Partition approval. [ORD 4265; October 2003]

- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

7. Preliminary Fee Ownership Subdivision.

- A. Threshold. An application for Preliminary Fee Ownership Subdivision shall be required when the following threshold applies:
1. The creation of four (4) or more new lots from at least one (1) lot of record in one (1) calendar year in a Commercial, Industrial or Multiple Use zones, where one or more of the proposed lots do not meet the setback, lot coverage, floor area ratio, and/or lot dimension standards of Chapter 20 (Land Uses), as applicable, and where modification to the same standard(s) is not requested through another type of application. [ORD 4265; October 2003] [ORD 4397; August 2006] [ORD 4487; August 2008] [ORD 4584; June 2012]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Preliminary Fee Ownership Subdivision. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Preliminary Fee Ownership Subdivision application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Preliminary Fee Subdivision. If the parent parcel is subject to a pending Legal Lot Determination under Section 40.47., further division of the parent parcel shall not proceed until all of the provisions of Section 40.47.15.1.C. have been met. [ORD 4584; June 2012]
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

40.45.15.7.C.

3. The parent parcel shall meet the minimum setback requirements for the applicable zoning district unless the setback is subject to an Adjustment, Variance, Flexible Setback, or Zero Side Yard Setback for a proposed Non-Residential Land Division application which shall be considered concurrently with the subject proposal.
4. The proposed development does not conflict with any existing City approval, except the City may modify prior approvals through the Preliminary Fee Ownership Subdivision process to comply with current Code standards and requirements.
5. If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provide for necessary public improvements for each phase as the project develops.
6. The proposal does not create a lot which will have more than one (1) zoning designation. [ORD 4584; June 2012]
7. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4487; August 2008]

D. Submission Requirements.

1. An application for a Preliminary Fee Ownership Subdivision shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, where the application is made in conjunction with a Legal Lot Determination under Section 40.47., the City may consider the application even if fewer than all the owners of the existing legal lot or parcel have applied for the approval. The application shall be accompanied by the information required by the application form, the information required by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

40.45.15.7.D.

2. The Director may consider and act upon a request to develop a subdivision in phases. If the subdivision is to be phased, the applicant shall propose a phasing program in writing at the time of Preliminary Fee Ownership Subdivision application submittal. The applicant is responsible for providing a time schedule for the final platting of the various phases. In no case shall the total time period for the final platting of all stages be greater than five (5) years without filing a new Preliminary Fee Ownership Subdivision application.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Preliminary Fee Ownership Subdivision application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90. Except where a phasing program is approved under 40.45.15.6.D.2, the filing of a Final Land Division application in accordance with Section 40.45.15.7. shall occur within two (2) years of the date of Preliminary Fee Ownership Subdivision approval. For a phased project, the total time period for the filing of a final plat, shall not exceed five (5) years from the date of the City's final Preliminary Fee Ownership Subdivision Approval decision. After five (5) years, unless otherwise vested, the preliminary approval shall expire. [ORD 4265; October 2003] [ORD 4487; August 2008]
- H. Extension of a Decision. Refer to Section 50.93.

40.45.15.

8. Final Land Division.

- A. Threshold. An application for Final Land Division shall be required when the following threshold applies:
1. A proposal to finalize a previously approved Preliminary Partition, Preliminary Subdivision, Preliminary Fee Ownership Partition, Preliminary Fee Ownership Subdivision, Replat Two, or Legal Lot Determination, as applicable. [ORD 4487; August 2008] [ORD 4584; June 2012]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Final Land Division, except a Final Land Division shall not be required for a Replat One approval which involves only the consolidation of lots pursuant to Section 40.45.15.2.A.1. The decision making authority is the Director. [ORD 4498; January 2009]
- C. Approval Criteria. In order to approve a Final Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Final Land Division.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The application contains all applicable submittal materials as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The Final Land Division substantially conforms to the previously approved and unexpired Preliminary Partition, Preliminary Subdivision, Preliminary Fee Ownership Partition, Preliminary Fee Ownership Subdivision, or Replat Two. [ORD 4584; June 2012]

40.45.15.8.C.

5. Applications and documents related to the Final Land Division requiring further City approval shall be submitted to the City in the proper sequence.

[ORD 4487; August 2008]

- D. Submission Requirements. An application for a Final Land Division shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. Provided, however, that if the preliminary land division approval was on an application signed by fewer than all the owners of the subject property, as allowed in conjunction with Section 40.47. (Legal Lot Determination), the City may similarly approve a final plat application made by fewer than all the owners of the subject property. The Final Land Division application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Appeal of a Decision. Refer to Section 50.60.
- F. Expiration of a Decision. Refer to Section 50.90.
- G. Extension of a Decision. Refer to Section 50.93.

40.45.15.

9. Expedited Land Division.

An application for and any appeal of an expedited land division shall be subject to the provisions in ORS 197.360 through ORS 197.380.

40.47. LEGAL LOT DETERMINATION [ORD 4487; August 2008]**40.47.05. Purpose.**

The purpose of the Legal Lot Determination is to determine the legal status of lots and subdivisions that were created prior to the enactment of current subdivision regulations or prior to the City annexing a particular property. This section provides criteria for rendering decisions on the legal status of lots and subdivisions consistent with State Statute. This Section is carried out by the approval criteria listed herein.

40.47.15. Application.

There is a single Legal Lot Determination application which is subject to the following requirements.

1. Legal Lot Determination.

- A. Threshold. An application for Legal Lot Determination shall be required when any of the following thresholds apply:
1. The owner of a lot or parcel, or the owner's authorized representative or contract purchaser, has requested the Legal Lot Determination for one or more contiguous lots or parcels under the same ownership.
 2. The owner or contract purchaser of a lot or parcel requests a Legal Lot Determination to validate a unit of land alleged to be improperly created by sale. Under this threshold, fewer than all the owners of a unit of land may apply for a Legal Lot Determination, provided the applicant is the purchaser of an interest in the subject lot or parcel and the purchase occurred prior to January 1, 2007.
 3. The Director requires a Legal Lot Determination be made as a prerequisite to, or concurrently with, the filing of a land use application.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.40. of this Code, shall apply to an application for Legal Lot Determination. The decision making authority is the Director.

40.47.15.1.

- C. Approval Criteria. In determining if the subject lot or parcel is a Legal Lot, the decision making authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The application satisfies the threshold requirements for a Legal Lot Determination.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The unit of land conforms to the lot area and dimensional standards of Chapter 20 (Land Use); except where a unit of land was created by sale prior to January 1, 2007 and was not lawfully established, the Director may deem the unit of land a Legal Lot upon finding:
 - a. The unit of land could have complied with the applicable criteria for creation of a lawful parcel or lot in effect when the unit of land was sold; or
 - b. The City, or County prior to annexation, approved a permit as defined in ORS 215.402 or 227.160 (2) for the construction or placement of a dwelling or other structure on the unit of land after the sale, and such dwelling has all of the features listed in ORS 215.755(1)(a)-(e). [ORD 4659; June 2015]
 4. The application contains all applicable submittal materials as specified in Section 50.25.1. of the Development Code.
 5. Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

40.47.15.1.

- D. Submission Requirements. An application for a Legal Lot Determination shall be made by the owner of the subject property, the owner's authorized agent, or contract purchaser on a form provided by the Director and shall be filed with the Director; provided, however, fewer than all the owners of a unit of land created by sale prior to January 1, 2007, may apply for a Legal Lot Determination. The Legal Lot Determination application shall be accompanied by a sworn statement that the applicant is the purchaser of an interest in the subject lot or parcel and that their interest was represented at the time of their purchase to be that of a discrete lot or parcel but that it appears the discrete lot or parcel may have been improperly created.
- E. Conditions of Approval. The City may impose conditions on the Legal Lot Determination to ensure compliance with applicable Code requirements. For a unit of land created by sale for which the City has made a Legal Lot Determination pursuant to Section 40.47., such unit of land shall not become a lawfully established parcel until the owner of the unit of land records a Final Land Division with Washington County, subject to review by the County Surveyor, and within 90 days after the city makes the Legal Lot Determination. The Final Land Division shall conform to the City's Legal Lot Determination and conditions thereof.
- E. Appeal of a Decision. Refer to Section 50.60.

40.50. LOADING DETERMINATION**40.50.05. Purpose.**

The purpose of a Loading Determination is to establish mechanism to determine or modify the required number of off-street loading spaces, or modify the off-street loading space dimensions in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein.

40.50.10. Applicability.

A Loading Determination may be requested in writing to establish an off-street loading space total for any use not specifically listed in Section 60.25. (Off-Street Loading), establish an off-street loading space total that differs from the listed requirement in Section 60.25., and modify the off-street loading space dimensions listed in Section 60.25. of the Development Code. [ORD 4584; June 2012]

40.50.15. Application.

There is a single Loading Determination application which is subject to the following requirements.

1. Loading Determination.

- A. Threshold. An application for Loading Determination shall be required when one or more of the following thresholds apply:
1. A request that the Director establish, in writing, an off-street loading space total or requirement for any use not listed or substantially similar to a use listed in Section 60.25. (Off-Street Loading) of this Code.
 2. A request to modify the total number of off-street loading spaces from the required number listed in Section 60.25. (Off-Street Loading) of this Code.
 3. A request to modify the dimensions of a required off-street loading space listed in Section 60.25. (Off-Street Loading) of this Code.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Loading Determination. The decision making authority is the Director.

40.50.15.1.

- C. Approval Criteria. In order to approve a Loading Determination application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Loading Determination application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The determination will not create adverse impacts, taking into account the total gross floor area and the hours of operation of the use.
 4. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the site and in connecting with the surrounding circulation system.
 5. The proposal will be able to reasonably accommodate the off-street loading needs of the structure.
 6. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
 7. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.
 8. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.

40.50.15.1.C.

9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Loading Determination shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Loading Determination application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Loading Determination application to ensure compliance with the approval criteria.
- F. Appeal of Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Loading Determination application shall not be extended.

40.55. PARKING DETERMINATION

40.55.05. Purpose.

The purpose of a Parking Determination is to establish required number of parking spaces for uses which do not have a parking ratio requirement listed in the Development Code. The Parking Determination application is established for determining the required number of off-street parking spaces in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein. [ORD 4584; June 2012]

40.55.10. Applicability.

A Parking Determination may be requested in writing to establish a required off-street parking ratio or specific number of off-street parking spaces for a use or uses not specifically listed in Section 60.30. (Off-Street Parking) of this Code, to share required parking spaces, or to determine the existence of excess required parking. [ORD 4365; October 2005] [ORD 4584; June 2012]

40.55.15. Application.

There are three (3) Parking Determination applications which are as follows: Parking Requirement Determination, Shared Parking, and Use of Excess Parking.

1. Parking Requirement Determination.

- A. Threshold. An application for Parking Requirement Determination shall be required when the following threshold applies:
 - 1. A request that the Director establish, in writing, an off-street parking ratio or requirement for a use not listed or substantially similar to a use listed in Section 60.30. (Off-Street Parking) of this Code.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Parking Requirement Determination. The decision making authority is the Director.

40.55.15.1.

- C. Approval Criteria. In order to approve a Parking Requirement Determination application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Parking Requirement Determination application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The determination is consistent with Title 4 of Metro's Regional Transportation Functional Plan. [ORD 4584; June 2012]
 4. The determination will not create adverse impacts, taking into account the total gross floor area, number of employees, potential customer volume, and the hours of operation of the use.
 5. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4404; October 2006]
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Parking Requirement Determination shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Parking Requirement Determination application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Parking Requirement Determination application to ensure compliance with the approval criteria.

40.55.15.1.

- F. Appeal of Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Parking Requirement Determination application shall not be extended.

40.55.15.

2. Shared Parking.

- A. Threshold. An application for Shared Parking shall be required when one or more of the following thresholds apply:
1. The required off-street parking for two or more uses will share required parking spaces.
 2. All or a portion of the required parking will be provided at an off-site location. [ORD 4397; August 2006]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Shared Parking. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Shared Parking application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Shared Parking application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The shared off-street parking is located on any property within 500 feet of the property upon which the use requiring the parking is located, except in Multiple Use zoning districts where the location may be at any distance. [ORD 4706; May 2017]
 4. The location of the shared parking and the site containing the use shall be connected by a hard surface pedestrian pathway. [ORD 4706; May 2017]
 5. If the location of the shared parking and the site containing the use are separated by a street of collector or higher designation, the two locations shall each be within 300 feet of a controlled pedestrian crossing, such as a traffic light, stop-controlled intersection or marked pedestrian crossing

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such as a striped intersection or pedestrian-activated signal. [ORD 4706; May 2017]

6. If multiple properties are involved, the owners of the properties have each agreed to the shared parking by entering into a shared parking agreement. [ORD 4584; June 2012]
7. The time of peak parking demand for the various uses located on the subject properties occur at different times of the day.
8. Adequate parking will be available at all times when the various uses are in operation.
9. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
10. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the site.
11. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Shared Parking shall be made by the owners of the subject properties, or the owners' authorized agents, on a form provided by the Director and shall be filed with the Director. The Shared Parking application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

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- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Shared Parking application to ensure compliance with the approval criteria.
- F. Appeal of Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Shared Parking application shall not be extended.

40.55.15

3. Use of Excess Parking.

- A. Threshold. An application for Use of Excess Parking shall be necessary when one or more of the following thresholds apply:
1. A request to declare required off-street parking is in excess of the need for the use on the subject property.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Use of Excess Parking. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Use of Excess Parking application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Use of Excess Parking application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. Excess parking accounts for a minimum of 20% of the required parking for all uses of the site;
 5. Excess parking has existed for the previous 180 days;
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for Use of Excess Parking shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Use of Excess Parking application shall be accompanied by the information required by

40.55.15.3.

the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Use of Excess Parking application to ensure compliance with the approval criteria.
- F. Appeal of Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Use of Excess Parking application shall not be extended.

40.57. PUBLIC TRANSPORTATION FACILITY [ORD 4332; January 2005]**40.57.05. Purpose.**

The purpose of the Public Transportation Facility application is to establish a process for review of new construction or significant expansion of major transportation facilities. [ORD 4418, February 2007]

40.57.10. Applicability.

1. This Section applies to the construction of public transportation facilities within public rights-of-way for Collectors, Arterials, Principal Arterials, and Freeways and the areas adjacent to the rights of way where physical changes will occur as a result of such construction. [ORD 4418, February 2007]

40.57.15. Application.

There is a single Public Transportation Facility application which is subject to the following requirements.

1. Public Transportation Facility.

- A. Threshold. An application for Public Transportation Facility shall be required for construction or modification of Collectors, Arterials, Principal Arterials, and Freeways when one or more of the following thresholds describe the proposal: [ORD 4418, February 2007]
 1. A new facility will be constructed where no transportation facility existed previously.
 2. The work includes construction activities outside a public right-of-way or easement, including contractor staging areas and stockpiling of materials.
 3. The work involves the acquisition of new right-of-way.
 4. The work includes the construction of transit shelters.

40.57.15.1.

- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Public Transportation Facility. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Public Transportation Facility application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Public Transportation Facility application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal meets all applicable design standards for the classification of the subject road as specified by the *Engineering Design Manual and Standard Drawings* unless the applicable provisions have been modified by the City Engineer by separate process.
 5. The alignment of the new or extended transportation facility is consistent with the general location shown in the Comprehensive Plan Transportation Element.
 6. Any interim improvements have been designed to accommodate future improvement of the facility to ultimate standards.
 7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.57.15.1.

- D. Submission Requirements. An application for a Public Transportation Facility shall be made by the City Engineer or an authorized agent of a public agency with jurisdiction, on a form provided by the Director and shall be filed with the Director. The Public Transportation Facility application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Public Transportation Facility application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.58. SIDEWALK DESIGN MODIFICATION**40.58.05. Purpose.**

The purpose of the Sidewalk Design Modification application is to provide a mechanism whereby the City's street design standards relating to the locations and dimensions of sidewalks or required street landscaping can be modified to address existing conditions and constraints as a specific application. For purposes of this section, sidewalk ramps constructed with or without contiguous sidewalk panels leading to and away from the ramp shall be considered sidewalks. This section is implemented by the approval criteria listed herein.

40.58.10. Applicability.

The Sidewalk Design Modification application shall be applicable to all streets in the City.

40.58.15. Application.

There is a single Sidewalk Design Modification application which is subject to the following requirements.

- A. Threshold. An application for Sidewalk Design Modification shall be required when one of the following thresholds applies:
 1. The sidewalk width, planter strip width, or both minimum standards specified in the Engineering Design Manual are proposed to be modified.
 2. The dimensions or locations of street tree wells specified in the Engineering Design Manual are proposed to be modified.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Sidewalk Design Modification. The decision making authority is the Director.

40.58.15.C.

- C. Approval Criteria. In order to approve a Sidewalk Design Modification application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Sidewalk Design Modification application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. One or more of the following criteria are satisfied:
 - a. That there exist local topographic conditions, which would result in any of the following:
 - i. A sidewalk that is located above or below the top surface of a finished curb.
 - ii. A situation in which construction of the Engineering Design Manual standard street cross-section would require a steep slope or retaining wall that would prevent vehicular access to the adjoining property.
 - b. That there exist local physical conditions such as:
 - i. An existing structure prevents the construction of a standard sidewalk.
 - ii. An existing utility device prevents the construction of a standard sidewalk.
 - iii. Rock outcroppings prevent the construction of a standard sidewalk without blasting.
 - c. That there exist environmental conditions such as a Significant Natural Resource Area, Jurisdictional Wetland, Clean Water Services Water Quality Sensitive Area, Clean Water Services required Vegetative Corridor, or Significant Tree Grove.

40.58.15.C.3.

- d. That additional right of way is required to construct the Engineering Design Manual standard and the adjoining property is not controlled by the applicant.
 4. The proposal complies with provisions of Section 60.55.25. (Street and Bicycle and Pedestrian Connection Requirements) and 60.55.30 (Minimum Street Widths).
 5. Applications and documents related to the request, which will require further City approval, have been submitted to the City in the proper sequence.
 6. The proposed Sidewalk Design Modification provides safe and efficient pedestrian circulation in the site vicinity.
- D. Submission Requirements. An application for a Sidewalk Design Modification shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Sidewalk Design Modification application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Sidewalk Design Modification application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.

40.60. SIGN

40.60.05. Purpose.

The purpose for regulating signs is to promote the neat, clean, orderly, and attractive appearance of the community, balance the need of signs with avoiding potential nuisances to nearby properties and conflicts with other signage, ensure safe construction, location, installation, and maintenance of signage, prevent proliferation of signs and sign clutter, and minimize distractions for motorists on public highways and streets. This Section is carried out by the approval criteria listed herein.

40.60.10. Applicability.

1. Unless otherwise authorized by this Code, no person shall erect, install, construct, place, alter, change, relocate, suspend, attach or electronically project any sign, without first obtaining a permit from the City. [ORD 4708; May 2017]
2. Signs exempt from permits and regulation are identified in Section 60.40 of this Code (Sign Regulations). [ORD 4708; May 2017]

40.60.15. Application.

There is a single Sign application which is subject to the following requirements.

1. **Sign.**
 - A. Threshold. An application for Sign permit shall be required when the following threshold applies:
 1. The erection, installation, construction, placement, alteration, relocation, suspension, attachment of any sign.
 - B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for a Sign. The decision making authority is the Director.

40.60.15.1.

- C. Approval Criteria. In order to approve a Sign application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Sign application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The proposed sign is in conformance with all requirements specified in Section 60.40. (Sign Regulations) unless the applicable provision has been subject of a Variance approval.
 5. The proposed sign is in conformance with the vision clearance standards specified in the Engineering Design Manual. [ORD 4397; August 2006]
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Sign shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Sign application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

40.60.15.1.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Sign application to ensure compliance with the approval criteria. In addition to imposing other conditions to ensure compliance with the approval criteria, the decision making authority may also impose the following conditions when applicable:
1. All signs, together with all of their supports, braces, guys and anchors, shall be kept in good repair and be maintained in a safe, neat, clean and attractive condition, free from rust, corrosion, peeling paint or other surface deterioration.
 2. Any sign structure or supports that are no longer in use shall be removed at the time of the structure or supports cease to be used.
 3. Compliance with the conditions of approval shall be met as long as the sign exists on the property.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Sign proposal shall not be extended.

40.65. SOLAR ACCESS**40.65.05. Purpose.**

The purpose of Solar Access is to protect solar access to solar features on lots designated or used as a detached dwelling under some circumstances. It authorizes owners of such lots to apply for an approval that, if granted, prohibits solar features from being shaded by certain future vegetation on and off the permittee's site. This Section is carried out by the approval criteria listed herein.

40.65.10. Applicability.

The Solar Access application shall be applicable to detached dwellings in the City's Standard and Low Density Residential zoning districts.

40.65.15. Application.

There is a single Solar Access application which is subject to the following requirements.

1. Solar Access.

- A. Threshold. An application for Solar Access shall be required when the following threshold applies:
1. Protection of a solar feature from being shaded is requested.
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Solar Access. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Solar Access application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Solar Access application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

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3. Non-exempt vegetation on the applicant's property does not shade the solar feature.
4. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Solar Access shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Solar Access application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Solar Access application to ensure compliance with the approval criteria. In addition to imposing other conditions to ensure compliance with the approval criteria, the decision making authority may also impose the following conditions when applicable:

1. The party to whom the City grants a Solar Access approval shall cause to be recorded: the approval, legal descriptions of the properties affected by the approval, the solar access height limit, and the approved site plan in the office of the Washington County Recorder with the deeds to the properties affected by it, indexed by the names of the owners of the affected properties, and pay the fees for such filing before the approval is effective. [ORD 4584; June 2012]
2. If not in place at the time of the Solar Access approval, the solar feature shall be installed within one (1) year of the approval after which time, unless installation has occurred, the approval shall expire. [ORD 4584; June 2012]

40.65.15.1.E.

3. An owner of property restricted by a Solar Access approval shall be responsible for and pay all costs for keeping non-exempt vegetation from exceeding the solar access height limit. However, vegetation identified as exempt on the approved site plan, vegetation an owner shows was planted in the ground on or before the date an application for a Solar Access approval is filed, and solar friendly vegetation are exempt from the Solar Access approval.

F. Appeal of a Decision. Refer to Section 50.65.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Previous approval of Solar Access proposal shall not be extended.

40.70. Repealed [ORD 4302; June 2004]

40.75. STREET VACATION

40.75.05. Purpose.

The purpose of Street Vacation is to recognize that changes to the City's existing street system are occasionally required. Therefore, the following application has been established to allow limited changes to the City's existing street system without adversely affecting safe and efficient circulation throughout the City. A Street Vacation is a legislative action which is not subject to the 120 day rule of ORS 227.178. This Section is carried out by the approval criteria listed herein.

40.75.10. Applicability.

Alteration to the City's existing streets that involve the vacation of public rights-of-way shall be reviewed by the City Council. [ORD 4462; January 2008]

40.75.15. Application.

There is a single Street Vacation application which is subject to the following requirements.

1. Street Vacation.

- A. Threshold. An application for Street Vacation shall be required when the following threshold applies:
 - 1. Abandonment or otherwise vacation of an existing public transportation right-of-way or public easement that is within the City of Beaverton.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Street Vacation. The decision making authority is the City Council.
- C. Approval Criteria. In order to approve a Street Vacation application, the City Council shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

40.75.15.1.C.

1. The proposal satisfies the threshold requirements for a Street Vacation application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed Street Vacation meets the eligibility provisions of ORS 271.080.
 4. The proposed Street Vacation will not adversely impact street connectivity as identified in the Transportation Element of the Comprehensive Plan.
 5. The proposed Street Vacation will not adversely impact police, fire, and emergency service in the area.
 6. That the vacation of the street will not hinder accessibility to any above ground or underground public facilities.
 7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Street Vacation shall be made by the owner of property abutting the right-of-way or easement, or the owner's authorized agent, the City Council, Mayor, or their designee on a form provided by the Director and shall be filed with the Director. The Street Vacation application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The City Council may impose conditions on the approval of a Street Vacation application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.45.18.B.

40.80. TEMPORARY USE**40.80.05. Purpose.**

The purpose of a Temporary Use application is to recognize that temporary uses serve a useful purpose in the life of the community. Such activity does not mandate application of the requirements relating to permanent activity, but there is the potential of adverse impact on surrounding property created by temporary activity; therefore, specific requirements are necessary. This Section is carried out by the approval criteria listed herein.

40.80.10. Applicability.

Uses and activities that are determined to be temporary in nature shall be subject to the provisions of this section. Except where the use and activity is expressly exempt under this chapter, a Temporary Use permit is to be obtained prior to commencing the use or activity and the decision making authority may impose conditions as necessary to ensure compliance with the approval criteria. [ORD 4587; August 2012]

Exemptions: [ORD 4587; August 2012] No Temporary Use permit is required for non-mobile temporary use if the use or activity:

- a. Is located on property zoned Commercial, Multiple Use, or Industrial where the proposed temporary use or activity is permitted outright by the zone; and
- b. Operates for no more than three consecutive days in a week and for no more than six times in any twelve-month period; and
- c. Is located outside all required vision clearance areas and the first 20 feet of vehicle aisle space as measured from all site entrances and exits to the public right-of-way; and
- d. Has received the property owner's permission; and
- e. Operates only between 7:00 a.m. and 10:00 p.m.; and
- f. Occupies an area that is no more than five parking spaces or 800 square feet of surface area, excluding vehicle drive aisles and minimum off-street parking as required in Section 60.30. and areas required for fire access; OR
- g. Is a Special Event permitted under Chapter 7 of the City Code.

40.80.15. Application.

There are five (5) Temporary Use applications which are as follows: Temporary Mobile Sales, Temporary Non-Mobile Sales, Temporary Structure, Temporary Real Estate Office, and Temporary Displaced Parking. [ORD4757; March 2019]

1. Temporary Mobile Sales.

- A. Threshold. An application for Temporary Mobile Sales shall be required when the following threshold applies:
1. The sale of plants, flowers, books, crafts, produce, beverages, food, and other similar items in a single location for a period that is greater than three hours and less than seven (7) hours per day. [ORD 4513; August 2009] [ORD 4701; January 2017]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Temporary Mobile Sales. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Temporary Mobile Sales application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Temporary Mobile Sales application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The proposal is located entirely within private property in a Commercial, Industrial, or Multiple Use zoning district and the applicant has written permission from the property owner to utilize the subject property for the proposal. [ORD 4584; June 2012]

40.80.15.1.C

5. The applicant has written permission from the City if the proposal is located on a public right-of-way within any of the Regional Center or Town Center zoning districts. [ORD 4584; June 2012]40.80.15.1.C.
6. The proposal will not pose a threat to the public safety or convenience when the temporary use is proposed to be located on a public right-of-way.
7. The use in which the proposed temporary use is engaged is listed as a Permitted use in the specific Commercial or Multiple Use zoning district and complies with all applicable use restrictions of the zone. [ORD 4513; August 2009]
8. The proposal will not be located within the vision clearance area of an intersection as specified in the Engineering Design Manual and Standard Drawings. [ORD 4365; October 2005]
9. The proposal does not involve use of a permanent building.
10. The proposal shall not obstruct or occupy minimum required parking spaces unless it can be demonstrated that the minimum required parking is not being used by the permanent use located on the subject site pursuant to Section 40.55.15.3. (Excess Parking) of the Development Code. [ORD 4513; August 2009] [ORD 4584; June 2012]
11. Safe vehicle and pedestrian circulation is provided consistent with Section 60.55. (Transportation Facilities) of the Development Code. [ORD 4584; June 2012]
12. The proposed hours of operation for the temporary use are allowed in that zoning district and do not require Conditional Use approval. [ORD 4513; August 2009]
13. No more than two other permits for Temporary Use – Mobile Sales have been issued on the same site during the same approval period or portion thereof. [ORD 4513; August 2009] [ORD 4701; January 2017]

40.80.15.1.C

14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.40.80.15.1.

D. Submission Requirements. An application for a Temporary Mobile Sales shall be made by the owner of the proposed temporary use, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Temporary Mobile Sales application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness).

E. Conditions of Approval. All applications for Temporary Use - Mobile Sales shall comply with the following conditions identified below. The decision making authority may impose other conditions on the approval of a Temporary Mobile Sales application to ensure compliance with the approval criteria. [ORD 4513; August 2009]

1. The Temporary Mobile Sales shall obtain a City Business License.
2. Temporary Mobile Sales involving the sale of food products shall be licensed by the appropriate State and/or local agency.
3. All Temporary Mobile Sales activities shall be conducted at the particular location authorized.
4. The Temporary Mobile Sales shall not have hours of operation exceeding seven (7) hours in a twenty four (24) hour period. [ORD 4513; August 2009]
5. Signage shall be permitted for Temporary Mobile Sales consistent with Section 60.40.15.12. of this Code.
6. During operation, the operator of a Temporary Mobile Sales shall maintain a copy of the City approval and present same for inspection upon request by City personnel.

40.80.15.1.E.

7. Suitable receptacles for disposal of trash, as defined by the City of Beaverton Code 4.08.030, must be provided and maintained by the permittee on the site of the temporary use in sufficient numbers, as determined by the Director, to accommodate all trash generated by the Temporary Mobile Sales. The permittee shall be responsible for disposal of accumulated trash and for clean-up of trash generated by the Temporary Mobile Sales. [ORD 4697; December 2016]
 8. All products for sale, structures, and vehicles associated with the Temporary Mobile Use shall be removed daily at the end of the approved time period. [ORD 4701; January 2017]
 9. Tables and chairs available for customer seating shall be limited to area not to exceed eight-feet by eighteen-feet and shall not obstruct or occupy minimum required parking spaces unless it can be demonstrated that the minimum required parking is not being used by the permanent use located on the subject site pursuant to Section 40.55.15.3. (Excess Parking) of this Code. [ORD 4513; August 2009]
 10. The Director may impose conditions necessary to ensure that adequate parking exists and that vehicles entering or exiting the site do not create a safety hazard.
 11. The Director may impose conditions necessary to safeguard the public health and safety and to minimize potential adverse impact created by the Temporary Mobile Sales on the surrounding property and use.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. The use authorized by the decision making authority shall commence, operate, and conclude within one year of the date of approval. After one year, the permit shall expire unless the permit is renewed pursuant to the provisions for Permit Renewal as stated under Section 50.97. [ORD 4513; August 2009]
- H. Extension of a Decision. Previous approvals of Temporary Mobile Sales shall not be extended.

40.80.15.2

2. Temporary Non-Mobile Sales.

- A. Threshold. An application for Temporary Non-Mobile Sales shall be required when the following threshold applies:
1. The sales of holiday vegetation and fireworks, circuses, carnivals, animal rides and use of private property for promotional product sales or service, except where activity is eligible for exemption under Applicability of Section 40.80.10. [ORD4587; August 2012]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Temporary Non-Mobile Sales. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Temporary Non-Mobile Sales application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Temporary Non-Mobile Sales application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The proposal is located entirely within private property in a Commercial, Industrial, or Multiple Use zoning district and the applicant has written permission from the property owner to utilize the subject property for the proposal. [ORD 4584; June 2012]

[ORD4587; August 2012]

40.80.15.2.C.

5. The use in which the proposed temporary use is engaged is listed as a Permitted use in the specific Commercial or Multiple Use zoning district and complies with all applicable use restrictions of the zone. [ORD 4513; August 2009]
6. The proposal will not be located within the vision clearance area of an intersection as specified under Section 60.55.50.
7. The proposal does not involve use of a permanent building.
8. The proposal shall not obstruct or occupy permanent required parking spaces unless it can be demonstrated that the permanent required parking is not being used by the permanent use located on the subject site pursuant to Section 40.55.15.3. (Excess Parking) of the Development Code. [ORD 4584; June 2012]
9. The site of the proposal has safe vehicle and pedestrian circulation consistent with Section 60.55. (Transportation Facilities) of the Development Code. [ORD 4584; June 2012]
10. The proposed hours of operation for the temporary use are allowed in that zoning district and do not require Conditional Use approval. [ORD 4513; August 2009]
11. The site of the proposal has adequate parking facilities to accommodate the anticipated needs consistent with Section 60.30. (Off-Street Parking) of the Development Code. [ORD 4584; June 2012]
12. Temporary Non-Mobile Sales has not occurred more than twice on the same site in the same calendar year.
13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.80.15.2.

- D. Submission Requirements. An application for a Temporary Non-Mobile Sales shall be made by the owner of the proposed temporary use, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Temporary Non-Mobile Sales application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness). [ORD 4513; August 2009]
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Temporary Non-Mobile Sales application to ensure compliance with the approval criteria. In addition to imposing other conditions to ensure compliance with the approval criteria, the decision making authority may also impose one or more of the following conditions when appropriate:
1. The Temporary Non-Mobile Sales shall obtain a City Business License.
 2. Temporary Non-Mobile Sales involving the sale of food products shall be licensed by the appropriate State and/or local agency.
 3. Temporary Non-Mobile Sales involving the sale of fireworks shall be licensed by the appropriate State and/or local agency.
 4. All Temporary Non-Mobile Sales activities shall be conducted at the particular authorized location.
 5. Signage shall be permitted for Temporary Non-Mobile Sales consistent with Section 60.40.15.12. of this Code.
 6. During operation, the operator of a Temporary Mobile Sales shall maintain a copy of the City approval and present same for inspection upon request by City personnel.

40.80.15.2.E.

7. Suitable receptacles for disposal of trash as defined by the City of Beaverton Code 4.08.085, subsection C, must be provided and maintained by the permittee on the site of the Temporary Non-Mobile Sales in sufficient numbers, as determined by the Director, to accommodate all trash generated by the Temporary Non-Mobile Sales use. The permittee shall be responsible for disposal of accumulated trash and for clean-up of trash generated by the Temporary Non-Mobile Sales.
 8. The Director may impose conditions necessary to safeguard the public health and safety and to minimize potential adverse impact created by the Temporary Non-Mobile Sales on the surrounding property and use.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. The use authorized by the decision making authority shall commence, operate, and conclude within 45 days of the date of approval.
- H. Extension of a Decision. Approvals of Temporary Non-Mobile Sales shall not be extended.

40.80.15.3

3. Temporary Structure.

- A. Threshold. An application for Temporary Structure shall be required when the following threshold applies:
1. The placement of a temporary mobile structure while development is taking place.
 2. Placement of drop-off station. [ORD4587; August 2012]
 3. A temporary wireless communication facility inclusive of needed equipment shelters and on-site improvements to facilitate continuity in service during initial construction, repair, maintenance, or replacement of permanent equipment. [ORD 4248; May 2003]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Temporary Structure. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Temporary Structure application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Temporary Structure application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The proposal will not be located within the vision clearance area of an intersection as specified under Section 60.55.35. [ORD 4462; January 2008]
 5. Safe vehicle and pedestrian circulation is provided consistent with Section 60.55. (Transportation Facilities) of the Development Code. [ORD 4584; June 2012]

40.80.15.3.C.

6. The site of the proposal has adequate parking facilities to accommodate the anticipated needs of the uses on the site consistent with Section 60.30. (Off-Street Parking) of the Development Code. [ORD 4584; June 2012]
7. The proposal is for an approved development located within the City.
8. The proposal would locate a temporary mobile structure within the boundaries of the subdivision where land is for sale or under development.
9. A construction permit for the permanent development has been issued and has not expired.
10. The Temporary Structure shall be located on the same lot or a lot abutting the activity. If the abutting lot is separately owned, written authorization from the owner must be provided.
11. The Temporary Structure shall not block fire hydrants, storm drains, manholes, catch basins, or other similar infrastructure improvements.
12. No connection of the temporary structure to any water, sanitary or storm sewer utility shall be allowed unless the system(s) are deemed substantially complete by the City.
13. Occupancy for temporary sales trailers or sales offices shall not be allowed until substantial completion of the sanitary sewers is obtained, or portable toilets are available.
14. If the proposal is a drop-off station, the proposal is located in a Commercial, Industrial, or Multiple Use zoning district. [ORD 4584; June 2012]
15. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.80.15.3.

- D. Submission Requirements. An application for a Temporary Structure shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Temporary Structure application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Temporary Structure application to ensure compliance with the approval criteria. In addition to imposing other conditions to ensure compliance with the approval criteria, the decision making authority may also impose the following conditions when applicable:
1. The occupant of the Temporary Structure shall obtain a City Business License.
 2. Signage shall be permitted for a Temporary Structure consistent with Section 60.40.15.12. of this Code.
 3. The Director may impose conditions as are necessary to ensure that adequate parking exists and that vehicles entering or exiting the site do not create a safety hazard.
 4. The Director may impose conditions as are necessary to safeguard the public health and safety and to minimize potential adverse impact created by the temporary use on the surrounding property and use.
 5. The Director may impose conditions as are necessary which establish a duration of time that the Temporary Structure may be located on the subject site.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. The use authorized by the decision making authority shall commence, operate, and conclude within 2 years of the date of approval unless otherwise specified by the Director.
- H. Extension of a Decision. Refer to Section 50.93.

40.80.15.4

4. Temporary Real Estate Office.

- A. Threshold. An application for Temporary Real Estate Office shall be required when the following threshold applies:
1. The use of a dwelling as a Temporary Real Estate Office during the development, lease or sale of lots or structures in a residential subdivision, condominium project, or residential Planned Unit Development.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Temporary Real Estate Office. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Temporary Real Estate Office application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Temporary Real Estate Office application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4265; October 2003]
 4. The applicant, if different from the property owner, has written permission from the property owner to utilize the property for a Temporary Real Estate Office.
 5. The Temporary Real Estate Office is located within the boundaries of the residential development.
 6. The property used for the Temporary Real Estate Office shall not be permanently improved for that purpose.

40.80.15.4.C.

7. The property used for the Temporary Real Estate Office shall be within close proximity to an Arterial or Collector or as acceptable to the City Engineer.
 8. All streets shall be curbed and paved (with a minimum first lift of asphalt or cement concrete) to the property used for the Temporary Real Estate Office.
 9. No connection of the Temporary Real Estate Office to any water, sanitary or storm sewer utility shall be allowed unless the system(s) are deemed substantially complete.
 10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Temporary Real Estate Office shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Temporary Real Estate Office application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Temporary Real Estate Office application to ensure compliance with the approval criteria. In addition to imposing other conditions to ensure compliance with the approval criteria, the decision making authority may also impose the following conditions when applicable:
1. The Temporary Real Estate Office shall obtain a City Business License.
 2. All Temporary Real Estate Office activities shall be conducted at the particular location authorized.
 3. Signage shall be permitted for a Temporary Real Estate Office consistent with Section 60.40.15.12. of this Code.

40.80.15.4.E.

4. The Director may impose conditions as are necessary to ensure that adequate parking exists and that vehicles entering or exiting the site do not create a safety hazard.
5. The Director may impose conditions as are necessary to safeguard the public health and safety and to minimize potential adverse impact created by the Temporary Real Estate Office on the surrounding property and use.
6. The Director may impose conditions as are necessary which establish a duration of time that the Temporary Real Estate Office may be located on the subject site.

F. Appeal of a Decision. Refer to Section 50.60.

G. Expiration of a Decision. The use authorized by the decision making authority shall commence, operate, and conclude within 2 years of the date of approval unless otherwise specified by the Director.

H. Extension of a Decision. Refer to Section 50.93.

[ORD4587; August 2012]

5. Temporary Displaced Parking. [ORD4757; March 2019]

- A. **Threshold.** An application for Temporary Displaced Parking shall be required when the following threshold applies:
1. The placement of temporarily displaced parking due to development activity on private property.
 2. The placement of temporary construction worker parking due to development activity on private property.
- B. **Procedure Type.** The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Temporary Displaced Parking. The decision making authority is the Director.
- C. **Approval Criteria.** In order to approve a Temporary Displaced Parking application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Temporary Displaced Parking application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. The proposal does not utilize on-street parking to provide temporary displaced parking.
 5. The proposed displaced parking is located in an area that has a gravel or impervious surface.
 6. The proposed displaced parking will not increase the quantity, or decrease the quality, of the surface water runoff from the subject site.
 7. The proposed displaced parking will not pose a threat to the public safety or convenience.

40.80.15.5.C

8. The proposal for displaced parking is associated with an approved development application or proposed concurrently with a land use application submittal.
9. The need for the proposed displaced parking is caused by an inability to accommodate parking on the development site due to development activity.
10. The proposed displaced parking will not be located within the vision clearance area of an intersection as specified in the Engineering Design Manual and Standard Drawings.
11. The proposed displaced parking will not occupy or obstruct minimum required parking spaces for another use or site. The following tools may be used to show that minimum parking for another use or site will be maintained:
 - a. An approved Excess Parking determination application through Section 40.55.15.3 of the Development Code, demonstrating that not all of the minimum required parking is being used by the permanent use located on the subject site.
 - b. Information that demonstrates different peak parking demand hours for the uses reliant on the required parking. The proposal shall include sufficient parking to accommodate overlapping periods of use for the duration of the Temporary Displaced Parking use.
12. Safe vehicle and pedestrian circulation is provided consistent with Section 60.55. (Transportation Facilities) of the Development Code.
13. The proposed displaced parking is located within $\frac{1}{4}$ mile of the development activity site or is combined with a transportation access plan that includes private shuttle or one-seat-ride transit access with a maximum service headway of 20 minutes during peak hours and no more than a two (2) mile radius from the use dependent on the parking.

40.80.15.5.C

14. The proposal includes a plan for permitting, monitoring, and enforcing the proper use of the displaced parking.
 15. The number of parking spaces provided meets the minimum required parking for the use(s) being displaced and is no greater than the number of spaces being displaced.
 16. Any displaced ADA parking spaces must be replaced at a one-to-one ratio and meet ADA access requirements.
 17. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. **Submission Requirements.** An application for Temporary Displaced Parking shall be made by the owner of the development creating the need for the displaced parking, the owner's authorized agent, or the owner of the property where the Temporary Displaced Parking will be located, on a form provided by the Director that shall be filed with the Director. The Temporary Displaced Parking application shall be accompanied by the information required by the application form and by Section 50.25. (Application Completeness).
- E. **Conditions of Approval.** All applications for Temporary Use Displaced Parking shall comply with the conditions stated below. The decision making authority may impose additional conditions to ensure compliance with the approval criteria.
1. The Temporary Displaced Parking use shall cease with the issuance of a Certificate of Occupancy for the project that displaced required parking or within one (1) year, whichever is sooner.
 2. Temporary Displaced Parking activities shall be conducted at the particular location(s) authorized and are not transferable to additional or alternative location(s).
 3. The permittee of the Temporary Displaced Parking use shall make a copy of the City approval available for inspection upon request by the City.

40.80.15.5.E

4. Signage shall be permitted for Temporary Displaced Parking consistent with Section 60.40.15.6.

[ORD4757; March 2019]

40.85. TEXT AMENDMENT**40.85.05. Purpose.**

The purpose of a Text Amendment application is to provide a mechanism for legislative amendments to the Development Code. It is recognized that such amendments may be necessary from time to time to reflect changing community conditions, needs, and desires, to fulfill regional obligations, and to address changes in the law. This Section is carried out by the approval criteria listed herein.

40.85.10. Applicability.

The Text Amendment application shall apply to any change to Development Code text or diagrams.

40.85.15. Application.

There is a single Text Amendment application which is subject to the following requirements.

1. Text Amendment.

- A. Threshold. An application for Text Amendment shall be required when the following threshold applies:
 1. Any change to the Development Code, excluding changes to the zoning map.
- B. Procedure Type. The Type 4 procedure, as described in Section 50.50. of this Code, shall apply to an application for Text Amendment. The decision making authority shall be the City Council. [ORD 4532; April 2010] [ORD 4697; December 2016]
- C. Approval Criteria. In order to approve a Text Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 1. The proposal satisfies the threshold requirements for a Text Amendment application.

40.85.15.1.C.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.
 4. The proposed text amendment is consistent with the City's Comprehensive Plan.
 5. The proposed text amendment is consistent with other provisions within the City's Development Code.
 6. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.
 7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for Text Amendment to the City's Development Code shall be initiated by the City Council, Mayor, the Director, or any interested person on a form provided by the Director and shall be filed with the Director. The Text Amendment application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Appeal of a Decision. Refer to Section 50.75.

40.90. TREE PLAN [ORD 4348; May 2005]**40.90.05. Purpose.**

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, Historic Trees, trees within Significant Groves and Significant Natural Resource Areas (SNRAs)), and Community Trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein and implements the SNRA, Significant Grove, Significant Individual Tree, and Historic Tree designations as noted or mapped in Comprehensive Plan Volume III.

40.90.10. Applicability.

Different types of resources require different levels of protection. No Tree Plan is required for the following actions:

1. Removal of up to four (4) Community Trees, or up to 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period. Properties one-half acre or less in size developed with a detached dwelling may remove any number of Community Trees.
2. Removal and pruning of any hazardous, dead, or diseased tree when the tree is identified as such by a certified arborist or by the City Arborist and the removal is required by the City.
3. In the event of an emergency requiring tree removal or pruning prior to the City Arborist's determination, if evidence justifies the emergency removal after the fact, then no tree plan is required for removal.
4. Minor pruning, as defined in Chapter 90.
5. Pruning of trees consistent with the Vision Clearance requirements of the Engineering Design Manual. [ORD 4397; August 2006]
6. Pruning of trees by the utility provider for above ground utility power lines following acceptable arboricultural standards and practices.

40.90.10.

7. Pruning of trees to maintain the minimum 8 foot clearance above a sidewalk.
8. Removal or pruning of the following nuisance tree species anywhere in the city: Lombardy Poplar (*Populus nigra*), and birch (*Betula sp.*). Where Lombardy Poplar or birch trees are part of an approved landscape plan, Design Review approval is required for the removal of the Landscape Trees. [ORD 4584; June 2012]
9. Removal and pruning of the following nuisance tree species in Significant Groves and SNRAs: Norway maple (*Acer platanoides*), Tree-of-Heaven (*Ailanthus altissima*), Golden Chain Tree (*Laburnum watereri*), and English or Common Hawthorn (*Crataegus monogyna*). [ORD 4584; June 2012]
10. Removal of a tree or nonnative vegetation listed as a Nuisance or Prohibited Plant on Metro's Native Plant List or in Clean Water Services' Design and Construction Standards.
11. Within SNRAs and Significant Groves, planting of native vegetation listed on the Metro's Native Plant List or in Clean Water Services' Design and Construction Standards when planted with non-mechanized hand held equipment.
12. Removal of any tree associated with a public street and sidewalk improvement project that meet A. or B. and C: [ORD 4659; June 2015]
 - A. Improvements within an existing public vehicular right-of-way; or
 - B. Improvements to a public vehicular right-of-way in order to meet functional classification standards, such as widening or half-street improvements; and
 - C. The proposed improvements do not exceed the minimum width standards of the Engineering Design Manual.
13. Trails within SNRAs and Significant Groves meeting all of the following:
 - A. Construction must take place between May 1 and October 30 with hand held equipment;
 - B. Trail widths must not exceed 30 inches and trail grade must not exceed 20 percent;
 - C. Trail construction must leave no scars greater than three inches in diameter on live parts of native plants; and
 - D. Trails must be placed outside the top of bank of any stream, river, or pond, and
 - E. Trails must be 100% pervious.

40.90.10.

14. Street Trees are covered by the Beaverton Municipal Code and Section 60.15.15.6.
15. Landscape Trees are covered by Section 40.20. (Design Review) and Section 60.60. (Trees and Vegetation).
16. Enhancement activities conducted by a public agency for the sole purpose of improving the ecological health of forest and water resources.
17. Removal of a tree(s) by the City of Beaverton or Clean Water Services that is within five (5) feet of a section of existing sanitary or storm sewer line that is in need of emergency repair and/or maintenance within a SNRA when no reasonable alternative exists. [ORD 4397; August 2006]

40.90.15. Application.

There are four (4) Tree Plan applications which are as follows: Tree Plan One, Tree Plan Two, Tree Plan Three, and Commercial Timber Harvest.

1. Tree Plan One.

- A. Threshold. An application for Tree Plan One shall be required when none of the actions listed in Section 40.90.10. apply and one or more of the following thresholds apply:
 1. Major pruning of Protected Trees once within a one year period.
 2. Mechanized removal of non-native or invasive vegetation and clearing and grubbing of vegetation within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.
 3. Mechanized re-planting of trees and shrubs, or both, or restoration planting within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services.

40.90.15.1.A.

4. Trails greater than 30 inches in width, or trail grade exceeding 20 percent, trail surfaces less than 100% pervious surface, or any combination thereof within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services that do not result in tree removal.
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Tree Plan One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan One application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
 4. If applicable, pruning is necessary to improve tree health or to eliminate conflicts with vehicles or structures which includes, but is not limited to, underground utilities and street improvements.
 5. If applicable, the removal of vegetation or clearing and grubbing is necessary to accommodate physical development in the area in which the removal is proposed.
 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.90.15.1.

- D. Submission Requirements. An application for a Tree Plan One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan One application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan One application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60. (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan One proposal shall not be extended.

40.90.15.

2. Tree Plan Two

- A. Threshold. An application for Tree Plan Two shall be required when none of the actions listed in Section 40.90.10. apply, none of the thresholds listed in Section 40.90.15.1. apply, and one or more of the following thresholds apply:
1. Removal of five (5) or more Community Trees, or more than 10% of the number of Community Trees on the site, whichever is greater, within a one (1) calendar year period, except as allowed in Section 40.90.10.1. [ORD 4584; June 2012]
 2. Multiple Use zoning district: Removal of up to and including 85% of the total DBH of non-exempt surveyed tree(s) found on the project site within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services. [ORD 4584; June 2012]
 3. Commercial, Residential, or Industrial zoning district: Removal of up to and including 75% of the total DBH of non-exempt surveyed tree(s) found on the project site within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services. [ORD 4584; June 2012]
 4. Removal of a Significant Individual Tree(s).
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Tree Plan Two. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Tree Plan Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Two application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

40.90.15.2.C.

3. If applicable, removal of any tree is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
4. If applicable, removal of any tree is necessary to accommodate physical development where no reasonable alternative exists.
5. If applicable, removal of any tree is necessary because it has become a nuisance by virtue of damage to property or improvements, either public or private, on the subject site or adjacent sites.
6. If applicable, removal is necessary to accomplish public purposes, such as installation of public utilities, street widening, and similar needs, where no reasonable alternative exists without significantly increasing public costs or reducing safety.
7. If applicable, removal of any tree is necessary to enhance the health of the tree, grove, SNRA, or adjacent trees, or to eliminate conflicts with structures or vehicles. [ORD 4584; June 2012]
8. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in a reversal of the original determination that the SNRA or Significant Grove is significant based on criteria used in making the original significance determination.
9. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.
10. The proposal is consistent with all applicable provisions of Section 60.60. (Trees and Vegetation) and Section 60.67. (Significant Natural Resources).

40.90.15.2.C.

11. Grading and contouring of the site is designed to accommodate the proposed use and to mitigate adverse effects on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system. [ORD 4584; June 2012]
12. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006] [ORD 4462; January 2008]

- D. Submission Requirements. An application for a Tree Plan Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Two application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Two application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60. (Trees and Vegetation).
- F. Appeal of a Decision. Refer to Section 50.65.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Previous approval of Tree Plan Two proposal shall not be extended.

40.90.15.

3. Tree Plan Three

- A. Threshold. An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10. or none of the thresholds listed in Section 40.90.15.1. or Section 40.90.15.2. apply and one or more of the following thresholds apply:
1. Multiple Use zoning districts: Removal of greater than 85% of the total DBH of Non-Exempt Surveyed Tree(s) found on the project site within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services. [ORD 4584; June 2012]
 2. Residential, Commercial, and Industrial zoning districts: Removal of greater than 75% of the total DBH of Non-Exempt Surveyed Tree(s) found on the project site within SNRAs, Significant Groves, or Sensitive Areas as defined by Clean Water Services. [ORD 4584; June 2012]
 3. Removal of individual Historic Trees.
 4. Commercial timber harvest of trees which fail to meet the approval criterion specified in Section 40.90.15.4.C.4.
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Tree Plan Three. The decision making authority shall be the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Tree Plan Three application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.

40.90.15.3.C.

3. If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.
4. If applicable, removal is necessary to enhance the health of the grove or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.
5. If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.
6. If applicable, removal is the minimum necessary to accommodate physical development because no reasonable alternative exists for the development at another location on the site and variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.
7. If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site.
8. If applicable, removal is necessary to accomplish a public purpose, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.
9. If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.
10. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.

40.90.15.3.C.

11. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.
12. The proposal is consistent with all applicable provisions of Section 60.60. (Trees and Vegetation) and Section 60.67. (Significant Natural Resources).
13. Grading and contouring of the site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.
14. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
15. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Tree Plan Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Tree Plan Three application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), any other information identified through a Pre-Application Conference, and by a report from a qualified professional.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Tree Plan Three application to ensure compliance with the approval criteria. In addition to the approval criteria, the decision making authority may also impose other conditions of approval to ensure that the proposed tree work meets all requirements listed in Section 60.60. (Trees and Vegetation).

40.90.15.3.

- F. Compliance with Approval. All conditions imposed on an approved Tree Plan Three shall be implemented prior to the removal, pruning, or planting of tree unless otherwise noted in the approval. Compliance with the conditions of approval shall be met as long as the trees exist unless otherwise specified or until modified through a City approval process.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Previous approval of Tree Plan Three proposal shall not be extended.

40.93. TUALATIN HILLS PARK AND RECREATION DISTRICT ANNEXATION WAIVER [ORD 4388; May 2006]

40.93.05. Purpose.

The purpose of this section is to provide for the application of a Tualatin Hills Park and Recreation annexation waiver, which allows a waiver from the requirement to annex property into the Tualatin Hills Park and Recreation District as a condition of approval of any development as specified in Section 60.33 of the Development Code. [ORD 4584; June 2012]

40.93.10. Applicability.

A THPRD annexation waiver may only be requested by the property owner(s) for any development proposed outside of THPRD boundaries who wish to provide their own park and recreation facilities and services rather than annex the site to THPRD.

40.93.15. Application.

There is a single THPRD annexation waiver application which is subject to the following requirements.

- 1. THPRD Annexation Waiver.**
 - A. Threshold. An application for a THPRD annexation waiver shall be required when the following threshold applies:
 - 1. The property proposed for development is not in the Tualatin Hills Park and Recreation District (THPRD) and the applicant wishes to provide park and recreation facilities and services for the development rather than annex the site to THPRD.
 - B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for a THPRD annexation waiver.
 - C. Approval Criteria. In order to approve a THPRD annexation waiver application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

40.93.15.1.C.

1. The proposal satisfies the threshold requirements for a THPRD annexation waiver application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. Detailed plans and documentation demonstrating compliance with Section 60.33.15. Park facilities shall be deemed similar if provided for the projected number of future residents and/or employees of the proposed development at cost, quality and services levels equal to or greater than the minimum set for the core park system in the THPRD Comprehensive Master Plan. Improvements within provided park facilities shall be deemed similar if at least two of the following are provided: a tennis court, a basketball court, a swimming pool, or a children's play structure; and at least one of the following is also provided: a baseball/softball field, a soccer field, or a community/recreation center. Recreation services shall be deemed similar if provided for future residents or employees of the proposed development at cost, quality and service levels equal to or greater than the minimum set for such services in the THPRD Comprehensive Master Plan and is consistent with applicable provisions within an adopted Community Plan. [ORD 4652; February 2015]
4. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

- D. Submission Requirements. An application for a THPRD annexation waiver shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

40.93.15.1.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a THPRD annexation waiver application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.

40.95. VARIANCE**40.95.05. Purpose.**

The purpose of a Variance application is to provide for the consideration of varying from the applicable provisions of the Development Code where it can be shown that, owing to special and unusual circumstances, the literal interpretation of these provisions would cause an undue or unnecessary hardship without a corresponding public benefit. This Section is carried out by the approval criteria listed herein. [ORD 4584; June 2012]

40.95.10. Applicability.

A Variance application may only be requested for those proposals that request a variance of more than fifty percent (50%) from the numerical Site Development Requirements contained in Chapter 20 (Land Uses), Section 60.11 (Food Cart Pod Regulations), or any numerical requirements contained in Section 60.40. (Sign Regulations) and Section 60.55. (Transportation Facilities), excluding Section 60.55.30. [ORD 4584; June 2012] [ORD 4697; December 2016]

40.95.15. Application.

There is a single Variance application which is subject to the following requirements.

1. Variance.

A. Threshold. An application for Variance shall be required when the following threshold applies:

1. A change of more than fifty percent (50%) to the numerical standards specified in the Site Development Requirements contained in Chapter 20 (Land Uses). This threshold does not apply where credits have been earned for height increase through Habitat Friendly Development Practices, as described in Sections 60.12.40.4., .5., .6., and .7.
2. Any change from the numerical requirements contained in Section 60.40. (Sign Regulations).
3. Excluding Section 60.55.30., any change from the numerical requirements contained in Section 60.55. (Transportation Facilities).

40.95.15.1.C

4. A change of more than fifty percent (50%) from the numerical Food Cart Pod standards specified in Section 60.11.10 and 60.11.15 of this Code. [ORD 4662; September 2015]

[ORD 4462; January 2008] [ORD 4498; January 2009]
[ORD 4531; April 2010]

- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Variance. The decision making authority shall be the Planning Commission. [ORD 4532; April 2010]
- C. Approval Criteria. In order to approve a Variance application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied: [ORD 4473; March 2008]
 1. The proposal satisfies the threshold requirements for a Variance application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. Special conditions exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings, or structures in the same zoning district.
 4. Strict interpretation of the provisions of this ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same zoning district under the terms of the Development Code. [ORD 4584; June 2012]
 5. The special conditions and circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute financial hardship or inconvenience.

40.95.15.1.C.

6. If more than one (1) variance is being requested, the cumulative effect of the variances result in a project which is still consistent with the overall purpose of the applicable zone.
7. Any variance granted shall be the minimum variance that will make possible a reasonable use of land, building, and structures.
8. For a proposal for a variance from sign regulations, no variance shall be granted unless it can be shown that there are special circumstances involving size, shape, topography, location or surroundings attached to the property referred to in the application, which do not apply generally to other properties in the same zoning district, and that the granting of the variance will not result in material damage or prejudice to other property in the vicinity and not be detrimental to the public safety and welfare. Variances shall not be granted merely for the convenience of the applicant or for the convenience of regional or national businesses which wish to use a standard sign.
9. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered concurrently with the subject proposal.
10. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
11. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

40.95.15.1.

- D. Submission Requirements. An application for a Variance shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Variance application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Variance application to ensure compliance with the approval criteria. When considering a Variance application to the numerical sign regulations in Section 60.40. (Sign Regulations), the decision making authority shall review all of the existing or proposed signs for the development. The decision making authority may also impose other conditions of approval to require:
1. Removal or alteration of conforming or nonconforming signs to achieve compliance with the standards contained in Section 60.40. (Sign Regulations).
 2. Removal or alteration of conforming or nonconforming signs in order to establish a consistent sign design throughout the development.
 3. Sign permit applications for signs erected without permits or removal of such illegal signs.
- G. Appeal of a Decision. Refer to Section 50.70.
- H. Expiration of a Decision. Refer to Section 50.90.
- I. Extension of a Decision. Refer to Section 50.93.

40.96. WIRELESS FACILITY [ORD 4332; January 2005]**40.96.05. Purpose.**

The purpose of the wireless facility application is to ensure the review and implementation of the regulations for the construction and use of wireless communication facilities in the City of Beaverton. The section is consistent with FCC Declaratory Rulings and current federal laws, and is intended to minimize potential adverse visual, aesthetic, and safety impacts of wireless communication facilities on residential neighborhoods, and on the community as a whole by establishing review standards for the use, placement, and design of wireless communication facilities. This Section is carried out by the approval criteria listed herein. [ORD 4595; February 2013]

40.96.10. Applicability.

The development, installation, and modification of wireless facilities listed in Chapter 20 (Land Uses) for each zoning district shall be subject to the provisions of this section.

40.96.15. Application.

There are three (3) Wireless Facility applications which are as follows: Wireless Facility One, Wireless Facility Two, and Wireless Facility Three.

1. Wireless Facility One.

A. Threshold. An application for Wireless Facility One shall be required when one or more of the following thresholds apply:

1. In any zoning district, replacement of transmission equipment (antennas) or a collocation of a new wireless communication facility on an existing tower that does not constitute a “substantial increase” in size of the tower and is an “eligible facilities request” as defined in Chapter 90 (Definitions).
2. In any zoning district, attachment of a new wireless communication facility to existing or new buildings or structures that are not exclusively used for single-family residential or multi-family residential purposes, and that utilize stealth design.

40.96.15.1.A.

3. In any zoning district, attachment of wireless communications facilities to existing structures, tower structures or pole structures that constitute an “eligible facilities request” as defined in Chapter 90 (Definitions) under federal law. Not permitted on single-family dwellings.
4. In industrial, multiple use, or commercial zoning districts, direct-to-home satellite service having antennas greater than one (1) meter in diameter.
5. In industrial, multiple use, or commercial zoning districts, installation of up to and including two (2) ground or building roof-mounted satellite antennas greater than two meters in size.
6. In any zoning district, installation of one (1) replacement tower on a location containing an existing tower supporting one (1) carrier for the purpose of providing collocation opportunity consistent with previous land use approvals.
7. In any zoning district, attachment of antennas to tower structures or pole structures other than those used for cellular phone service, street lights or traffic signals.
8. In any zoning district, installation of new ground or roof equipment to an existing wireless communication facility or base station.

[ORD 4595; February 2013]

- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Wireless Facility One. The decision making authority is the Director.
- C. Approval Criteria. In order to approve a Wireless Facility One application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 1. The proposal satisfies the threshold requirements for a Wireless Facility One application.

40.96.15.1.C.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
4. The proposal meets all applicable Site Development Requirements of Sections 20.05., 20.10., 20.15., and 20.20. of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance application which shall be already approved or considered concurrently with the subject proposal. [ORD 4584; June 2012]
5. The proposal complies with all applicable provisions in Chapter 60 (Special Regulations).
6. The proposal is an “eligible facilities request” that does not substantially change the physical dimensions of such tower or base station. [ORD 4595; February 2013]
7. The proposal does not conflict with any existing City approval, except the City may modify prior approvals through the WCF process to comply with federal, state and local laws. [ORD 4595; February 2013]
8. The proposal is not on or within any right-of-way. [ORD 4702; January 2017]
9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

40.96.15.1.D

- D. Submission Requirements. An application for a Wireless Facility One shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Wireless Facility One application shall be accompanied by the information required by the application form, by Section 60.70.50 (Required Studies and Information) and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.40.96.15.1.E
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Wireless Facility One application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.60.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.96.15.2

2. Wireless Facility Two.

- A. Threshold. An application for Wireless Facility Two shall be required when one or more of the following thresholds apply:
1. In all industrial zoning districts, construction of a new wireless communication facility tower- proposed to be set back at least fifty (50) feet from abutting residential or multiple use zoning districts.
 2. In residential zoning districts, direct-to-homes satellite service having antennas greater than one (1) meter in diameter.
 3. In industrial zoning districts, attachment of a wireless communication facility to an existing or new building or structure, other than an existing tower or base station, not utilizing stealth design.
 4. In industrial, multiple use, or commercial zoning districts, installation of three (3) and up to five (5) ground or building roof-mounted satellite antennas greater than two (2) meters in size.
 5. In any zoning district, the collocation of a new wireless communication facility on an existing tower which the size of the tower constitutes as a “substantial increase” as defined in Chapter 90 of this Code
 6. In any zoning district, installation of wireless communication facilities on streetlights or utility poles within the right-of-way of designated Freeways and Arterial streets. [ORD 4702; January 2017]
- B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Wireless Facility Two. The decision making authority is the Director.

40.96.15.2.C

C. Approval Criteria. In order to approve a Wireless Facility Two application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Wireless Facility Two application.
2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
4. The proposal will not obstruct any existing or approved vehicular, pedestrian, or bicycle connection identified in the Comprehensive Plan.
5. That the development has been designed to, where possible, incorporate and preserve existing trees and vegetation of significant size and species.
6. That grading of the site shall take place with particular attention to minimizing the possible adverse effect of grading on the natural vegetation and physical appearance of the site.
7. That the quality, location, size and aesthetic design of walls, fences, berms, hedges, screen planting and landscape areas have minimal adverse effect on existing or approved abutting land uses.
8. All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.

40.96.15.2.C.

9. The proposal is consistent with all applicable Site Development Requirements of Sections 20.05., 20.10., 20.15., and 20.20. of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered concurrently with the subject proposal. [ORD 4584; June 2012]
10. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
11. The proposal does not conflict with any existing City approval, except the City may modify prior approvals through the WCF process to comply with federal laws. [ORD 4595; February 2013]
12. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
13. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Wireless Facility Two shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Wireless Facility Two application shall be accompanied by the information required by the application form, by Section 60.70.50 (Required Studies and Information) and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference. [ORD 4702; January 2017]

40.96.15.2.E

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Wireless Facility Two application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.96.15.3

3. Wireless Facility Three.

- A. Threshold. An application for Wireless Facility Three shall be required when the following threshold applies:
1. In all zoning districts, except industrial, construction of a wireless communication facility tower.
 2. In Industrial zoning districts, construction of a wireless communication facility tower proposed to be set back less than fifty (50) feet from abutting residential, or multiple use zoning districts.
 3. In any zoning districts except Industrial, attachment of a new wireless communication facility to an existing or new building or structure that does not utilize stealth design.
 4. In industrial, multiple use, or commercial zoning districts, more than five (5) satellite antennas greater than two (2) meters in diameter on one (1) lot.
 5. In any zoning district, installation of wireless communication facilities on streetlights or utility poles within or adjacent to the right-of-way of designated Collector Streets, Neighborhood Route Streets or Local Streets. [ORD 4702; January 2017]
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Wireless Facility Three. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a Wireless Facility Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Wireless Facility Three application.

40.96.15.3.C.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. In relationship to the existing surroundings and future allowed uses, the location, size, shape, height, spatial and visual arrangement of the use and structure is compatible.
4. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
5. The proposal will not obstruct any existing or approved vehicular, pedestrian, or bicycle connection identified in the Comprehensive Plan.
6. That the development has been designed to, where possible, incorporate and preserve existing trees and vegetation of significant size and species.
7. That grading of the site shall take place with particular attention to minimizing the possible adverse effect of grading on the natural vegetation and physical appearance of the site.
8. That the quality, location, size and aesthetic design of walls, fences, berms, hedges, screen planting and landscape areas have minimal adverse effect on existing or approved abutting land uses.
9. All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.
10. The proposal is consistent with all applicable Site Development Requirements of Sections 20.05., 20.10., 20.15., and 20.20. of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered concurrently with the subject proposal. [ORD 4584; June 2012]

40.96.15.3.C.

11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
12. The proposal does not conflict with any existing City approval, except the City may modify prior approvals through the WCF process to comply with federal, laws. [ORD 4595; February 2013]
13. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for a Wireless Facility Three shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Wireless Facility Three application shall be accompanied by the information required by the application form, by Section 60.70.50 (Required Studies and Information) and by Section 50.25. (Application Completeness) and any other information identified through a Pre-Application Conference.
- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Wireless Facility Three application to ensure compliance with the approval criteria.
- F. Appeal of a Decision. Refer to Section 50.70.
- G. Expiration of a Decision. Refer to Section 50.90.
- H. Extension of a Decision. Refer to Section 50.93.

40.97. ZONING MAP AMENDMENT

40.97.05. Purpose.

The purpose of a Zoning Map Amendment application is to provide for the consideration of legislative and quasi-judicial amendments to the zoning map. Legislative amendments to the zoning map are amendments of generally large size, diversity of ownership or of interest to a large geographic area. Quasi-judicial amendments to the zoning map are amendments that are generally small in size, single ownership or affect only a relatively small geographic area. Annexation related amendments to the zoning map are those amendments, whether legislative or quasi-judicial, which are associated with land being annexed into the City. It is recognized that such amendments may be necessary from time to time to reflect changing community conditions, needs, and desires. This Section is carried out by the approval criteria listed herein.

40.97.10. Applicability.

The provisions of this section shall apply to a change of the zoning designation for parcels of land within the City.

40.97.15. Application.

There are four (4) Zoning Map Amendment applications which are as follows: Quasi-Judicial Zoning Map Amendment, Legislative Zoning Map Amendment, Non-Discretionary Annexation Related Zoning Map Amendment and Discretionary Annexation Related Zoning Map Amendment. The Director shall determine if a zone change is quasi-judicial or legislative. For annexation related zone change applications, the Director shall determine if the applications are discretionary or non-discretionary.

1. Quasi-Judicial Zoning Map Amendment.

A. Threshold. An application for Quasi-Judicial Zoning Map Amendment shall be required when the following threshold applies:

1. The change of zoning designation for a specific property or limited number of specific properties.

40.97.15.1.

- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Quasi-Judicial Zoning Map Amendment. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a Quasi-Judicial Zoning Map Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Quasi-Judicial Zoning Map Amendment application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal conforms with applicable policies of the City's Comprehensive Plan.

[ORD 4462; January 2008]

4. All critical facilities and services are available or can be made available to an adequate capacity to serve the site and uses allowed by the proposed zoning designation.
5. Essential facilities and services are available or can be made available to serve the site and uses allowed by the proposed zoning designation.
6. The proposal is or can be made to be consistent with all applicable provisions of Chapter 20 (Land Uses).

[ORD 4584; June 2012]

40.97.15.1.C.

7. The proposal shall include a Traffic Impact Analysis that meets the requirements of Section 60.55.20. The analysis shall demonstrate that development allowed under the proposed zoning can meet the requirements of Sections 60.55.10.1, 60.55.10.2, 60.55.10.3, and 60.55.10.7. The analysis shall identify the traffic impacts from the range of uses allowed under the proposed zoning and demonstrate that these impacts can be reasonably mitigated at the time of development. [ORD 4302; May 2004]
8. As an alternative to Section 40.97.15.1.C.7, the applicant may provide evidence that the potential traffic impacts from development under the proposed zoning are no greater than potential impacts from development under existing zoning. [ORD 4302; June 2004]

[ORD 4584; June 2012]

9. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4404; October 2006]

- D. Submission Requirements. An application for Quasi-Judicial Zoning Map Amendment to the City's zoning map shall be made by the owner of the subject property, or the owner's authorized agent, the City Council, Mayor, or their designee on a form provided by the Director. All Quasi-Judicial Zoning Map Amendment applications shall be filed with the Director and shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.
- E. Appeal of a Decision. Refer to Section 50.70.

40.97.15.

2. Legislative Zoning Map Amendment.

- A. Threshold. An application for Legislative Zoning Map Amendment shall be required when the following threshold applies:
1. The change of zoning designation for a large number of properties.
- B. Procedure Type. The Type 4 procedure, as described in Section 50.50. of this Code, shall apply to an application for Legislative Zoning Map Amendment. The decision making authority is the City Council. [ORD 4697; December 2016]
- C. Approval Criteria. In order to approve a Legislative Zoning Map Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Legislative Zoning Map Amendment application.
 2. The proposal conforms with applicable policies of the City's Comprehensive Plan.
 3. All critical facilities and services are available or can be made available to an adequate capacity to serve the site and uses allowed by the proposed zoning designation.
 4. Essential facilities and services are available or can be made available to serve the site and uses allowed by the proposed zoning designation.
 5. The proposal is or can be made to be consistent with all applicable provisions of Chapter 20 (Land Uses).

40.97.15.2.C.

6. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.
7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

[ORD 4659; June 2015]

- D. Submission Requirements. An application for Legislative Zoning Map Amendment to the City's zoning map may only be initiated by the City Council, Mayor, or their designee. All Legislative Zoning Map Amendment applications shall be filed with the Director and shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness).
- E. Appeal of a Decision. Refer to Section 50.75.

40.97.15.

3. Non-Discretionary Annexation Related Zoning Map Amendment.

- A. Threshold. An application for Annexation Related Zoning Map Amendment shall be required when one or more of the following thresholds apply:
1. The change of zoning to a City zoning designation as a result of annexation of land into the City.
 2. Table 1 in Section 1.5.2. in the Comprehensive Plan provides a list of corresponding county - city zoning designations and is specific as to the City zoning designation to be applied to the parcel being annexed. In cases where zoning of an annexed parcel is determined by reference to this table, the decision as to which zone shall be applied does not allow for discretion. [ORD 4759; March 2019]
- B. Procedure Type. The Type 1 procedure, as described in Section 50.35. of this Code, shall apply to an application for Non-Discretionary Annexation Related Zoning Map Amendment to the City's zoning map. The decision making authority is the City Council.
- C. Approval Criteria. In order to approve a Non-Discretionary Annexation Related Zoning Map Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Non-Discretionary Annexation Related Zoning Map Amendment application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. The proposal includes all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code. [ORD 4759; March 2019]

40.97.15.3.C.

4. The proposed zoning designation is consistent with the corresponding County zoning as specified within Table 1 in Section 1.5.2. within the city's Comprehensive Plan. [ORD 4759; March 2019]
5. Applications and documents related to the request, which will require further City approval, have been submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Non-Discretionary Annexation Related Zoning Map Amendment may be initiated by the City pursuant to Section 10.40. after:

1. The adoption of a resolution by the City Council directing initiation of an annexation process for the subject property;
2. The submittal of a valid annexation petition; or
3. The submittal of an executed annexation agreement. [ORD 4265; October 2003] [ORD 4462; January 2008]

40.97.15.

4. Discretionary Annexation Related Zoning Map Amendment.

- A. Threshold. An application for Discretionary Annexation Related Zoning Map Amendment shall be required when the following threshold applies:
1. The change of zoning to a City zoning designation as a result of annexation of land into the City consistent with 10.40.3.B. [ORD 4759; March 2019]
- B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for Discretionary Annexation Related Zoning Map Amendment to the City's zoning map. The decision making authority is the Planning Commission.
- C. Approval Criteria. In order to approve a Discretionary Annexation Related Zoning Map Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that the following criteria are satisfied:
1. The proposal satisfies the threshold requirements for a Discretionary Annexation Related Zoning Map Amendment application.
 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
 3. In applying the most appropriate zoning, the decision-making authority shall use the relevant criteria below. [ORD 4759; March 2019]
 - a. If the property is or properties are subject to a Beaverton-approved Community Plan, Neighborhood Plan, or Concept Plan wherein the zoning is specified, the decision-making authority shall apply the specified zoning district or districts.
 - b. If the Washington County designation is Institutional, the decision-making authority shall at

40.97.15.4.C.

its discretion consider one or more of the following criteria in applying a Beaverton zoning district:

- i. Existing or planned use of the property.
 - ii. Zoning allowed in the most appropriate Beaverton Comprehensive Plan designation.
 - ii. Zoning on adjacent properties.
 - iv. Uses on adjacent properties.
- c. If neither Section 40.97.15.C.3. a. nor b. apply, the decision-making authority shall consider the following criteria:
- i. City zoning districts allowed by the City Comprehensive Plan designation to be applied to the property or properties.
 - ii. How closely the proposed City zone corresponds to the County designation in allowed uses; minimum and/or maximum density; and/or floor-area ratio minimum and/or maximums.
 - iii. Other relevant County and City zone/designation purpose statements or site development standards as determined by the decision-making body.
4. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a Discretionary Annexation Related Zoning Map Amendment shall be made by the submittal of a valid annexation petition or an executed annexation agreement. [ORD 4265; October 2003]
- E. Appeal of a Decision. Refer to Section 50.70.