

- ii. The City Manager may decline to accept an application that, on its face, has not completed any one or more of the procedural requirements:
 - (1) Pre-application conference, when required by this Code or as required by the City Manager, pursuant to LOC 50.07.003.1.e;
 - (2) Neighborhood Contact and Notice, when required by LOC 50.07.003.1.f;
 - (3) Payment of the Filing Fee, as required by this section.
 - (4) Failure of the Applicant to sign the application, or when the applicant is not the owner of the subject property, failure of the Owner of the subject property to either sign the application or for the applicant to include the Owner's signed authorization for the applicant to file the application.

Applicant's Response: The application includes the required information and fees. This criterion has been satisfied.

- d. Signature on Application. The applicant shall sign the application. If the applicant is not the owner of the property subject to the development application, the property owner shall authorize the application in writing before the City Manager may accept the application for review. For the purposes of this section, "owner" includes a public body or public agency with authority to exercise the power of eminent domain.

Applicant's Response: The application includes the necessary signatures on the application form. This criterion has been satisfied.

- e. Pre-application Conference
 - i. A pre-application conference with the City Manager is required for minor and major development permit applications, and must be scheduled by the applicant prior to submitting an application for development.
 - ii. A pre-application conference is not required for ministerial applications, but may be scheduled at the request of the applicant or when required by the City Manager.
 - iii. The purpose of the pre-application conference is to discuss the proposal, the applicable criteria and the requirements for completing an application. A copy of an adopted neighborhood plan shall also be provided to the applicant, regardless whether its provisions constitute criteria for the proposed development or not. An applicant may request one or more additional pre-application conferences in order to discuss any changes in the applicable criteria and application requirements that may occur between the date of the pre-application conference and the filing of the development permit application.
 - iv. The development permit application must be filed within one year from the date of the pre-application conference; if the development permit application is not filed within one year, a new pre-application conference is required unless the applicant requests and the City Manager approves a waiver of the additional pre-application conference.

Applicant's Response: The required pre-application meeting was held on May 24, 2012. This criterion has been satisfied.

- f. Neighborhood Contact and Notice Required for Certain Applications. Following a pre-application conference, and prior to submittal of an application, the applicant shall contact and discuss the proposed development with any affected neighborhood for the following development applications:
- A partition, subdivision, or a major development, or
 - Any other development permit if the City Manager deems neighborhood contact to be beneficial.
- i. Purpose. The purpose of neighborhood contact is to identify potential issues or conflicts regarding a proposed application so that they may be addressed prior to filing. This contact is intended result in a better application and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands or denials. The City expects an applicant to take the reasonable concerns and recommendations of the neighborhood into consideration when preparing an application. The City expects the neighborhood association to work with the applicant to provide such input.
- The City recognizes that potential impacts of development, such as storm water runoff, traffic, noise or impacts on natural resources, may affect not only the area immediately surrounding the site of the proposed development, but the neighborhood in which the site is located, and adjacent neighborhoods.

Applicant's Response: The Applicant understands the purpose of the neighborhood contact requirements.

- ii. Selecting Date, Time, and Location of Neighborhood Meeting. In establishing the date, time and location of the meeting with the neighbors and with the neighborhoods:
- (1) Procedure. The applicant shall follow the applicable procedures in subsections (a)(i) and (a)(ii), below.
- (a) Required Organizations
- (i) Recognized Neighborhood Association. Where the proposed development is within the boundaries of a recognized neighborhood association, the applicant shall provide the chair of the neighborhood association in which the site proposed for development is predominately located three alternative meeting options (on three different days, with at least seven days between the first and the last date proposed).
 - (ii) County Citizen Participation Organizations (CPOs). Where the proposed development is within the boundaries of a county-recognized CPO, or equivalent, the applicant shall provide the chair of

the County CPO in which the site proposed for development is predominately located three alternative meeting options (on three different days, with at least seven days between the first and the last date proposed).

(iii) Homeowners Association. Where the proposed development is not within the boundaries of a recognized neighborhood association or County CPO, but is within the boundaries of a homeowners association registered with the Oregon Secretary of State, Corporation Division, the applicant shall provide the chair, president or registered agent of the homeowners association (according to the records of the Oregon Secretary of State) three alternative meeting options (on three different days, with at least seven days between the first and the last date proposed);

(iv) Other. Where the proposed development is not within the boundaries of a recognized neighborhood association, County CPO, or registered homeowners association, the applicant shall provide the neighborhood chair of the recognized neighborhood association closest to the site proposed for development, with the three alternative dates (on three different days, with at least seven days between the first and the last date proposed).

The chair of the recognized neighborhood association or County CPO, or chair, president, or registered agent of the homeowners association, as provided above in (i), (ii) and (iii) of this section, above, shall choose from the three alternatives within seven days of either the date of the applicant mailed the request to establish the date and time of the neighborhood contact meeting or upon personal receipt of the written or oral request, whichever is earlier. If the chair, president, or registered agent, as applicable, fails to select the date and time of the meeting within the 7-day period, the applicant may establish the date and time of the meeting from one of the proposed alternatives.

(b) Date, Time, and Location. Unless approved by the chair of a recognized neighborhood association:

(i) The meeting shall not be held on a legal holiday or the day before, as defined in ORS 187.010 (Sundays and listed holidays are "legal holidays").

- (ii) The meeting shall be scheduled to commence during the evening between 6:00 and 8:00 p.m. not less than 20 days from the date of mailing of the notice.
- (iii) The meeting shall be held at a location open to the public within the boundaries of the association, County CPO, or homeowners association, as applicable under LOC 50.07.003.1.f.ii(1)(a)(i) and (ii), above, in which the proposed development is predominately located or at a public facility within the City of Lake Oswego.
- (iv) If the meeting is held at a private residence or business, it shall be posted at the time of the meeting as the meeting place and shall note that the meeting is open to the public and all interested persons may attend.

Applicant's Response: In accordance with this section, a neighborhood meeting was held on September 22, 2010 to review the development proposal with the neighborhood. This criterion has been satisfied.

- iii. Notice to Neighborhoods, Property Owners and Residents of Neighborhood Meeting
 - (1) The applicant shall contact by letter:
 - (a) All recognized neighborhood associations whose boundaries contain all or part of the site of the proposed development,
 - (b) All recognized neighborhood associations that are adjacent to those neighborhood(s) described in subsection (1)(a) of this section, above, and
 - (c) All property owners within 300 ft. of the site, provided however, if there are less than 50 properties (excluding City-owned properties) within 300 ft. of the boundaries of the site, the notice area pursuant to this subsection shall be expanded, by ten-ft. increments outward from the 300 ft. boundary, until at least 50 properties (excluding City-owned properties) are included in the notice area.
 - (2) The letter shall briefly describe the nature and location of the proposed development, and invite the associations and interested persons to a meeting to discuss the proposal in more detail.
 - (3) On the same date the letters described above are mailed, the applicant shall provide and post notice on the property subject to the proposed application. The notice shall be posted at a location visible from the public right of way. The notice shall state that the site may be subject to a proposed development (e.g. partition, subdivision, major development, or as otherwise required by the City Manager) and shall set forth the name of the applicant and a telephone number where the applicant can be reached for

additional information. The site shall remain posted until the conclusion of the meeting.

Applicant's Response: ***In accordance with this section, notices of the neighborhood meeting were provided to the neighborhoods, property owner and local residents. This criterion has been satisfied.***

- iv. Manner of Providing Letter Notice of Neighborhood Meeting
 - (1) Mailed Notice. The letters required by LOC 50.07.003.1.f.iii(1), above, shall be sent as follows:
 - (a) For recognized neighborhood associations:
 - (i) By certified mail, return receipt requested, to the Chairs of the neighborhood associations, County CPO, or homeowner association, and,
 - (ii) By regular mail to the other officers of the recognized neighborhood associations; and
 - (b) For property owners, by regular mail. The names and mailing addresses or the property owners shall be as shown by the most recent property tax assessment roll.

Applicant's Response: ***Notices of the neighborhood meeting were mailed to the neighborhoods and local residents in the manner prescribed under this section of the City's Code. This criterion has been satisfied.***

- v. Recording the Neighborhood Meeting. The neighborhood associations, the applicant, and any interested person shall have the option of audio-taping the meeting. However, it is not a requirement that the meeting be audio-taped.

Applicant's Response: ***The neighborhood meeting was not recorded.***

- vi. Applicant's Presentation at Neighborhood Meeting. The applicant shall provide details in the neighborhood meeting that convey the appearance (materials and colors), site design, density, natural resources protection areas, arrangement of uses, access and other relevant visual information that would be included in a complete application for the type of development proposed.

Applicant's Response: ***In accordance with this section, the Applicant provided details of the proposed development at the neighborhood meeting was held on September 22, 2010. This criterion has been satisfied.***

- vii. Meeting Minutes / Neighborhood Association Concerns
 - (1) The applicant shall prepare minutes of the neighborhood meeting. The minutes shall contain a record of any verbal comments made at the meeting.
 - (2) The applicant shall send a copy of the written minutes of the neighborhood meeting to the respective neighborhood association

chairs that received notice of the meeting pursuant to LOC 50.07.003.1.f.iii(1)(a) and (b), above, and if applicable, pursuant to LOC 50.07.003.1.f.ii(1)(a)(ii) and (iii), above, the chair of the County CPO, or chair, president, or registered agent of the homeowners association, within 14 days following the meeting.

- (3) Each neighborhood association chair, chair of the County CPO, or chair, president, or registered agent of the homeowners association, as applicable, or representative thereof, shall submit a list of the respective neighborhood's concerns, if any, to the City and the applicant within 14 days following the mailing of the minutes by the applicant to the neighborhood association chair or the chair's designated representative.
- (4) The neighborhood association chairs, chair of the County CPO, or chair, president, or registered agent of the homeowners association, as applicable, shall be allowed to supplement the record with any additional comments regarding the content of the meeting, as long as such comments are filed before the record is closed.

Applicant's Response: Meeting minutes were prepared and are available as part of this application. This criterion has been satisfied.

viii. Applicant's Documents Filed with Application. An application shall not be accepted for filing unless and until the applicant demonstrates compliance with this section by including with the application:

- (1) A copy of the certified letter to the recognized neighborhood associations, County CPO, or homeowners association, with the a copy of return receipt;
- (2) A copy of the letter to officers of the associations and to property owners and residents pursuant to LOC 50.07.003.1.f.iv, above, including an affidavit of mailing and a copy of the mailing list containing the names and addresses of such owners and residents;
- (3) A copy of the required posted notice, along with an affidavit of posting; and
- (4) A copy of the minutes of the meetings, and copies of any written comments from property owners, residents, and neighborhood association members.
- (5) A copy of the materials that were presented at the neighborhood association meeting.

Applicant's Response: In accordance with this section, all the required documents have been files as part of this application. This criterion has been satisfied.

g. Determination of Completeness

- i. The purpose of this subsection (i) and subsections (ii) and (iii), below, is to codify the "120-Day Rule" in ORS 227.178. In the event of a difference in procedure for determining when an application is complete, the provisions

of then ORS 227.178 shall supersede any inconsistent provisions of this subsection (i), and subsections (ii) and (iii), below. This subsection (i), and subsections (ii) and (iii), below, are applicable only to those minor and major development applications that are subject to the requirements of the 120-Day under state law.

The City Manager shall review the application and determine whether it is complete. The City Manager shall mail a written notice of such determination within 30 days of the date of filing of the application. If the City Manager determines that the application is incomplete, the City Manager shall inform the applicant in the written notice of the additional information necessary to make the application complete. The application shall be complete at such time as:

- (1) All of the missing information is submitted,
- (2) Some of the missing information is submitted and written notice from the applicant that no other information will be provided, or
- (3) Written notice from the applicant is submitted that none of the missing information will be provided.

The applicant shall have 180 days to complete the application.

If the City Manager fails to mail notice of the determination within 30 days from the date of filing of an application the application shall be deemed complete on the 31st day following filing of the application for the purposes of the 120 Day Rule.

- ii. When the City Manager determines the application is complete, the City Manager shall inform the applicant of the completeness by mail. A copy of the completeness letter shall also be mailed to the affected neighborhood associations identified in LOC 50.07.003.1.f.iii(1)(a) and (b), above. Within ten days of the mailing of the notice of completeness to the respective neighborhood associations, the chair, or the chair's representative, of any of the noticed neighborhood associations may request a meeting with the City Manager to discuss the application. The purpose of this meeting is to identify issues. No evidence or argument presented at this meeting shall be deemed to be made part of the record; any evidence or argument shall be submitted in the manner required by LOC 50.07.003.3, Public Notice/Opportunity for Public Comment, or LOC 50.07.003.15.b.i, and 50.07.003.4.a, Conduct of the Hearing. If a meeting is requested, the applicant shall be notified of the meeting and invited to attend the meeting.
- iii. A final decision on an application, including resolution of all appeals, shall be rendered within 120 days after the application is deemed complete pursuant to ORS 227.178 (referred to herein as the "120 Day Rule").
- iv. Nothing in this section shall be deemed to be a limitation on the City's ability to render a final decision on a land use application after the expiration of 120 days.

h. Extensions or Continuances

- i. Extension to File Completed Application. The applicant for a major or minor development may request one additional 180 day extension for filing a complete application.

- ii. Extension to Complete Review and Decision on Application. The applicant for a major or minor development may request in writing a specified period of time for a continuance of review of a complete application. A request for an extension or continuance shall be deemed a waiver of the 120 final action deadline contained in ORS 227.178 for the period of the extension or continuance, and for any additional time required for rescheduling or re-noticing review proceedings. The total of all extensions for review of a complete application may not exceed 245 days.

Applicant's Response: The Applicant understands that they may request extension or continuance by submitted a formal request in writing. The request for an extension or continuance will be deemed a waiver of the 120 final action deadline for the period of the extension or continuance, and for any additional time required for rescheduling or re-noticing review proceedings.

- g. Withdrawing an Application. An applicant may withdraw an application at any time prior to adoption of a final City decision on the application. Proceedings on the application shall terminate as of the date of withdrawal. The City Manager may refund all or part of the application fee, depending on how much staff work had been completed at the time of withdrawal.

Applicant's Response: The Applicant acknowledges that the application may withdraw an application at any time prior to adoption of a final City decision on the application.

- j. Modification of Pending Application
 - i. Modifications of a pending application shall be considered under the standards in effect at the time the modification was filed, if the modification:
 - (1) Does not increase the amount of required parking, square footage, or the number of dwelling units; or
 - (2) Does not change the form of a structure.
 - ii. Any modification that does not comply with subsection (i) of this section, above, shall be considered a new application.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant understands that modifications of a pending application will be considered under the standards in effect at the time the modification.

2. Fees and Deposits

- a. The City may charge fees and deposits for applications, plan reviews, inspections, interpretations, appeals, or any other action pursuant to this Code. Such fees shall be established by resolution of the City Council. The City Manager shall review application fees annually and shall recommend proposed fees and fee changes to the Council.

- b. The filing fee requirement shall not apply to appeals filed by the Oregon State Department of Land Conservation and Development or to appeals filed by recognized neighborhood associations entitled to receive notice of a pre-application neighborhood meeting.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant has submitted the appropriate application fees associated with the minor development request.

3. Public Notice/Opportunity for Public Comment. Except as set forth in LOC 50.07.003.3.d below, prior to making a final decision on a minor development permit application, notice of the opportunity to comment upon an application and, if applicable, the date of a public hearing upon the application, shall be given as follows:

- a. Written Notice

- i. Recipients

- (1) Notice to Property Owners. The City Manager shall provide written notice to property owners within 300 ft. of the entire contiguous site for which the application is made. If there are fewer than 50 properties (excluding City-owned properties) within 300 ft. of the site, the notice area shall be expanded by 10-ft. increments outward from the 300 ft. boundary until at least 50 properties (excluding City-owned properties) are included in the notice area. The list shall be compiled from the most recent property tax assessment roll.

Applicant's Response: In accordance with this section, the Applicant understands the final decision on a minor development permit application will be sent to owners of property within 300 feet of the entire contiguous site for which the application is made.

- (2) Notice to Neighborhood Associations. Notice shall also be sent to:
 - (a) Any recognized neighborhood association(s) whose boundaries either contain part or all of the site, and
 - (b) All adjacent recognized neighborhood associations (adjacent recognized neighborhood associations are those associations which share boundaries with the neighborhood(s) identified in subsection (a) of this section, above, and include recognized neighborhood associations that are separated from the neighborhood association(s) identified above by a street or stream).
- (3) Notice to Oregon Department of Transportation and the Affected Railroad Company. Written notice shall be provided to the Oregon Department of Transportation and the affected railroad company if the application indicates that a railroad-highway crossing provides or will provide the only access to land that is the subject of the application.

(4) Notice for Development within the Greenway Management Overlay District. In addition to the notification required above, the City shall notify the Oregon State Department of Transportation by certified mail immediately upon receipt of a complete application for development, change or intensification of use in the Greenway Compatibility Review Boundary area and shall notify the Department of final actions taken on the applications.

- ii. Contents of Notice. The notice required by this section, above, shall:
- (1) Provide a 14 day period for submission of comments prior to the decision;
 - (2) State the place, date and time that comments are due;
 - (3) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised with sufficient specificity to enable the City to respond to the issue;
 - (4) List, by commonly used citation, the applicable criteria for a decision;
 - (5) Set forth the street address or other easily understood geographical reference to the subject property;
 - (6) State that copies of all evidence relied on by the applicant are available for review, and that copies can be obtained at cost; and
 - (7) Include the name and phone number of the City Manager or such other City staff person as may be assigned by the City Manager to review the application.

Applicant's Response: As part of the noticing requirements, there will be a 14 day period for submission of comments prior to the decision. The notice will identify the place, date and time the comments are due.

- e. Notice for Initial Public Hearing
- i. Notice of a public hearing before a hearings body containing the information required below shall be mailed at least twenty days before the initial public hearing as follows:
 - (1) To the applicant;
 - (2) To property owners in the same manner as provided in LOC 50.07.003.a.i(1);
 - (3) To neighborhood associations in the same manner as provided in LOC 50.07.003.a.i(2);
 - (4) To the Oregon Department of Transportation and affected railroad company if the application indicates that a railroad-highway crossing provides or will provide the only access to land that is the subject of the application; and
 - (5) Persons filing comments within any comment period: If the hearing regards an appeal of a City Manager decision on a minor development application, to any person not otherwise required to be notified by this section who submitted comments during the 14 day comment period.

- ii. Nothing in subsection (i), above, shall preclude the City Manager from providing additional public notice as City Manager deems appropriate.
- iii. Except as otherwise provided in subsection (iv), below, the notice shall:
 - (1) Explain the nature of the application and the use or uses which could be authorized;
 - (2) List the applicable criteria from the ordinance and plan that apply to the application at issue;
 - (3) Set forth the street address or other easily understood geographical reference to the subject property;
 - (4) State the date, time and location of the hearing;
 - (5) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the hearings body an opportunity to respond to the issue precludes appeal to the City Council and the Oregon State Land Use Board of Appeals on that issue;
 - (6) Include the name and phone number of the City staff person assigned to the application from whom additional information may be obtained;
 - (7) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - (8) State that a copy of the staff report will be available for inspection at no cost at least ten days prior to the hearing and will be provided at reasonable cost; and
 - (9) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of the hearing.
- iv. In addition to the mailed notice above, notice shall be given by posting upon the subject property in the same manner as required by LOC 50.07.003.3.b, above.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: As part of the noticing requirements, there will be a 14 day period for submission of comments prior to the decision. The notice will identify the place, date and time the comments are due.

4. Hearings

- a. Conduct of the Hearing. The Chair of the hearing body shall conduct the initial evidentiary hearing on a major development application or an appeal of a decision on a minor development as follows:
 - i. The Chair shall open the hearing by stating the general nature of the application, followed by a summary of these procedures.
 - ii. The Chair shall ask whether any member of the hearing body has any potential bias, conflict of interest, or had ex parte contact. "Ex parte contact" is any contact regarding the subject application outside of the public hearing, including a site visit. Ex parte contact does not include

- contact with city staff members. Any member of the hearing body who has bias, a conflict of interest, or has had an ex parte contact shall explain the nature of such bias, conflict or ex parte contact.
- iii. The Chair shall next ask if there is any challenge to a hearing body member's right to consider the application. Unless the challenge is based upon information revealed pursuant to LOC 50.07.003.4.a.xi(2) of this section, below, a challenging party must deliver a written document setting forth the reasons and authority for such challenge to the member challenged and the hearing body chair at least 24 hours prior to the hearing.
 - iv. The Chair shall next call for presentation of the staff report. Staff shall list the applicable substantive criteria and shall explain the reasons behind the City Manager's recommendation or decision, in the case of an appeal.
 - v. The Chair shall state that evidence and testimony must be directed to the applicable criteria described by staff or to other criteria in the Comprehensive Plan or land use regulations which the person believes to apply to the decision. The Chair shall also state that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond precludes appeal to the City Council or LUBA on that issue.
 - vi. The Chair shall call for the applicant's testimony.
 - vii. The Chair shall call for other evidence or testimony in support of the application.
 - viii. The Chair shall call for evidence or testimony in opposition to the application.
 - ix. The Chair shall call for neutral evidence or testimony.
 - vi. The Chair shall call for rebuttal by the applicant. The applicant's rebuttal is limited to responding to testimony previously submitted and shall be based solely on the evidence in the record. If the applicant submits new evidence in aid of rebuttal, the Chair shall allow any person to respond to that evidence, and provide for final rebuttal by the applicant.
 - xi. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the hearing pursuant to paragraph (1), below, or leaving the record open for additional written evidence or testimony pursuant to paragraph (2), below.
 - (1) If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
 - (2) If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the City

for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record for a specific period of time. During this period, any person may submit written testimony raising new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

- (3) A continuance or extension granted pursuant to this section shall be subject to the 120 Day Rule (ORS 227.178), unless the continuance or extension is requested or agreed to by the applicant.
- xii. Unless waived by the applicant, the hearing body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.
- xiii. If no continuance is granted and the record is not left open, or at the conclusion of such continuance or open record period and/or any additional seven day rebuttal period granted to the applicant pursuant to subsection (xii) of this section, above, the Chair shall return the matter to the table for deliberation and decision. The hearing body's deliberations may include questions to or testimony by City staff regarding the criteria, evidence and testimony in the record. The hearing body may also direct questions to any person present. If any person other than City staff is questioned or allowed to make comments during deliberation, the Chair shall allow any other person to respond to such comments.
- xiv. For purposes of this section:
 - (1) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.
 - (2) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

b. Time Limits on Testimony

- i. The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and expeditious manner. The following time limits on testimony shall be observed during a hearing conducted by a hearings body, subject to the right of the Chair, with hearing body consent, to amend or waive the time limits:
 - (1) 20 minutes for the applicant's presentation;
 - (2) Ten minutes for a representative of a recognized neighborhood association, homeowner association, government or government agency, or other incorporated public interest organization;
 - (3) Five minutes for other persons; and
 - (4) Five minutes for rebuttal.

- ii. The time limits set forth in this section shall not include time taken up resolving objections or by questions or response to questions from the hearing body.
 - iii. As a general guideline, if the Chair decides to increase or decrease the time limits for testimony, the chair shall do so in equal proportion for both the appellant and the applicant. The Chair may increase the time limit for rebuttal without increasing other time limits on testimony, however, in cases where the testimony in opposition is so complex or extensive that five minutes would not give the applicant an adequate opportunity to respond to the testimony.
 - iv. Any person in attendance at the hearing may cede his or her time for testimony to a representative or another person and thereby increase that representative's or other person's time for testimony. No person's or other representative's testimony may be increased to greater than ten minutes. No person may cede his or her time to the applicant or the appellant.
- c. Testimony, Exhibits, and Other Evidence
- i. Any person may present testimony at public hearing before a hearing body on a major development application or appeal of a minor development decision.
 - ii. Any person may submit exhibits or written comments prior to or at the public hearing. Written comments or exhibits submitted prior to the public hearing must be received by the City Manager by 5:00 p.m. on the day of the scheduled hearing to be submitted by staff at the hearing. Written comments or exhibits submitted at the hearing must be filed with the recording secretary and placed before the hearing body. Exhibits or written comments that are merely referred to in testimony but which are not placed before the hearings body pursuant to this section shall not become part of the record of the proceedings.
 - iii. The hearing body may take official notice of all adjudicative facts and law which may be judicially noticed pursuant to ORS 40.060 to 40.090, including an ordinance, comprehensive plan, resolution, order, written policy or other enactment of the City of Lake Oswego. Matters officially noticed need not be established by evidence and may be considered by the hearing body in determination of the matter.
- d. Objections. The purpose of the hearing procedures set forth in this Code is to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide a full and impartial hearing on the application or appeal before the hearing body. Any question concerning the proper conduct of a hearing held pursuant to this code may be raised by any person during the proceeding by making an objection. The Chair shall rule on any objection, subject to the right of the hearing body to overturn the Chair's ruling by majority vote.
- e. Preservation of Order. The Chair shall preserve order and decorum, discourage personal attacks, and confine debate to the material issues. The Chair may eject from the hearing any person in attendance who becomes disorderly, abusive or disruptive, or who fails or refuses to obey a ruling of the Chair. The Chair may summon assistance of the Lake Oswego Police to assist in maintaining order.

Applicant's Response: The Applicant acknowledges the hearing procedures regarding preservation of order.

f. Continuances

- i. The hearing body shall continue a public hearing or leave the record open when required to do so pursuant to 50.07.003.4.a.xi.
- ii. The hearing body may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of the 120 Day Rule (ORS 227.178). If the initial evidentiary hearing has not been completed pursuant to LOC 50.07.003.4.a, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the initial evidentiary hearing has been concluded and the hearing body desires a continuance to reopen the record for additional testimony, the continued hearing shall be conducted as provided in subsection (iii), below, of this section. In the later case, the hearing body may limit evidence or testimony to a particular issue or issues, but any person shall be allowed to raise new issues which relate to the new evidence, testimony or criteria for decision making for which the hearing body continued the hearing.
- iii. Except as otherwise provided in subsection (ii), above, of this section, a continued hearing shall be conducted as follows:
 - (1) The Chair shall open the continued hearing.
 - (2) The City Manager shall give a staff report which shall include the reason for the continuance.
 - (3) If applicable, the Chair shall state that testimony at the hearing is limited to addressing the new documents or evidence described by staff and any new issues which relate to such documents or evidence.
 - (4) The Chair shall call for the applicant's testimony.
 - (5) The Chair shall call for testimony from persons in favor of the application.
 - (6) The Chair shall call for testimony from persons opposed to the application.
 - (7) The Chair shall call for testimony from persons neutral on the application.
 - (8) The chair shall call for rebuttal by the applicant.
 - (9) Unless an extension of the record is requested pursuant to LOC 50.07.003.4.a.xi(1), and/or the applicant exercise his or her right to final rebuttal pursuant to LOC 50.07.003.4.a.xii, the Chair shall return the matter to the table for deliberation and decision as described in LOC 50.07.003.4.a.xiii. If an extension of the record is requested and/or the applicant exercises his or her right of final rebuttal, the Chair shall continue deliberation to a time, date and place certain following final closure of the record.
- iv. Notice. No additional notice of a continued hearing is required if the hearing body continues the hearing to a date, time and place certain. If a public hearing must be continued due to lack of a quorum of the hearing

body, no additional notice of the continued hearing is required if all entrances to the hearing location are posted by the time and date of the originally scheduled hearing with a conspicuous written notice setting forth a date, time and place certain for the continued hearing. In all other cases, public notice of a continued hearing shall be given pursuant to LOC 50.07.003.e.

g. Decision of the Hearing Body

- i. At the conclusion of deliberations, the hearing body shall make a preliminary oral decision to approve, approve with conditions pursuant to LOC 50.07.003.5, or deny an application based upon the applicable standards and criteria and the evidence and testimony in the record. The preliminary oral decision is not a final decision. At any time prior to the adoption of the final order pursuant to LOC 50.07.003.4.g.ii of this section, the hearing body may modify or change its decision or choose to reopen the hearing.
- ii. The hearing body shall adopt a final written order either immediately after making its preliminary oral decision or at a public meeting within a reasonable time after making the preliminary oral decision. The final written order shall consist of a brief statement that explains the criteria and standards considered relevant, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria, standards and facts set forth. The order shall also contain or incorporate by reference any conditions of approval deemed necessary or appropriate by the hearing body. A proposed order may be prepared by the City Manager or may be prepared by the prevailing party subject to review and approval of the City Manager. The hearing body shall amend the proposed order if it finds that the proposed order does not accurately articulate the hearing body's decision. Except as provided in subsection (iii) of this section, below, the written order is the final decision on the application and the date of the order for purposes of appeal is the date on which it is adopted by the hearing body.
- iii. In the case of a major development which requires an amendment of the Comprehensive Plan, or the text or map of this Code, the hearing body's order adopted pursuant to subsection (ii) of this section, above, shall be considered a recommendation to Council and not a final decision. The Notice of the hearing body's decision provided pursuant to LOC 50.07.003.4.h shall be modified to note that the decision is a recommendation which will be forwarded to the Council for public hearing and final decision. The Council shall review the recommendation pursuant to LOC 50.07.003.7.f-o, Appeals, except that, for purposes of the appeal hearing in LOC 50.07.003.7.i, Conduct of the Appeal Hearing, the applicant shall proceed with testimony, followed by persons in favor of the application, opponents, and rebuttal by the applicant.
- iv. Motions for reconsideration of either a preliminary decision or final order filed by a party shall not be allowed. The City Manager may recommend reconsideration prior to adoption of the final order if the City Manager, in

consultation with the City Attorney, believes reconsideration is necessary to correct a procedural error that prejudiced a party's substantial rights.

- f. Notice of Decision. Notice of the decision shall be sent to the applicant and to all persons who testified either orally or in writing before the hearing body. The notice of decision shall:
 - i. Include the File number, date and brief summary of the final decision;
 - ii. Include the name and address of the applicant;
 - iii. Include an easily understood geographical reference to the subject property and a map, if applicable;
 - iv. State that a copy of the decision is available for review, and that a copy can be obtained at cost; and
 - v. State that the decision may be appealed by filing a written Notice of Intent to Appeal with the City Recorder within 15 calendar days of the date of the final decision. The notice shall include the requirements for filing a Notice of Intent to Appeal. Contained in LOC 50.07.003.7.d. The name, address and phone number of the City Recorder shall be included in the notice.
- i. Record of Proceedings. The City Manager shall maintain a record of all proceedings on requests processed pursuant to this Code. The record of proceedings leading to approval of a request shall be maintained for a period of time to be determined by the City Manager, which shall not be less than two years from the date of the approval.

5. CONDITIONS ON DEVELOPMENT

- a. The reviewing authority may impose conditions of approval on a major or minor development permit in one or more of the following circumstances:
 - i. The condition is necessary to bring the application into compliance with applicable approval criteria.
 - ii. The condition is required as a condition of approval, construction or implementation by the development standards, the Lake Oswego Code or state statute.
 - iii. The condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. As used in this section, "public services or facilities" includes sewer, water, surface water management, parks, open space, streets, sidewalks, and pathways.
 - iv. The condition is reasonably related to eliminating or mitigating a negative impact on natural features or processes or on the built environment of the neighborhood which is created or contributed to by the proposed development. As used in this section, "natural features or processes" includes tree groves, stream corridors and natural drainage ways, significant tree(s), wetlands, and other natural areas.
 - v. The proposed or exception to a code requirement is based on the preservation of tree(s), and the condition of approval is reasonably related to preserving the tree(s) that is the basis for the variance or exception.

Applicant's Response: The Applicant acknowledges that review authority may impose conditions of approval on a major or minor development permit.

- b. Conditions of approval contemplated by subsection (a), above, include, but are not limited to:
 - i. Imposition of a development schedule.
 - ii. Requiring reservation or protection of land for open space or to protect significant natural features.
 - iii. Requiring dedication of property, rights-of-way, easements or conservation easements for public facilities such as streets, utilities, pathways, sidewalks, surface water management and street trees, or for protection of tree groves, wetlands, stream corridors or other natural features. Dedications of property or property rights pursuant to this subsection must be based upon findings pursuant to LOC 50.07.003.5.a.iii or 5.a.iv of this section.
 - iv. Requiring on-site and off-site construction of or improvements to public facilities where necessary to ensure adequate capacity and where service demand will be created or increased by the proposed development. The costs of off-site improvements may be pro-rated between the applicant and the City in proportion to the increased service demand which will be created by the project when compared to the demand existing if the project were not constructed.
 - v. Requiring construction and maintenance guarantees to ensure that required public facilities are constructed to and will comply with City standards, regulations or conditions.
 - vi. Requiring modifications in the design or intensity of a proposed development or to require or prohibit certain construction methods.
 - vii. Requiring approval, inspection, or evaluation by another agency, jurisdiction, public utility or consultant.
 - viii. Limiting the number, location or design of street accesses to a proposed development to maintain street capacity, improve safety, or otherwise comply with an approval criterion.
 - ix. Requiring covenants, conditions or restrictions to be recorded against the property.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant understands that the conditions of approval contemplated may include some of the following items.

6. Effect of Decision

- a. Effective Date of a Decision
 - i. Except as provided by subsection (ii) of this section, below, a final decision approving a development permit becomes effective upon expiration of the local appeal period, unless an ordinance amendment is required in order to implement the approval. In the latter case, the approval becomes effective at the time the ordinance becomes effective pursuant to the Lake Oswego

Charter. The filing of an appeal automatically stays the decision until resolution of the appeal by City appellate authorities.

- ii. A final decision of the City Council approving a development permit is effective immediately and is not stayed by appeal to Land Use Board of Appeals (LUBA), unless LUBA so orders pursuant to ORS 197.845

- b. Effect of Decision to Approve. An approved and effective development permit is binding upon the City, the applicant and successors in interest, unless it expires, is amended or is revoked pursuant to this code.

- c. Effect of Denial; Resubmittal
 - i. A final decision denying a development permit is effective immediately.
 - ii. If an application is denied and is not appealed, or the denial is affirmed on appeal, no new application for the same or a substantially similar proposal shall be filed within six months after the date of final denial. A new application shall not be considered "the same or substantially similar" if it can be modified, and is modified, to address the reasons why the original application was denied.

(Ord. 2579, Amended, 03/20/2012)

7. Appeals

- a. Review by Hearing Body. An application for a major development, minor developments in the R-DD zone pursuant to LOC 50.07.003.14a.ii(1), or an appeal of a decision of the City Manager regarding a minor development application shall be decided by a hearing body following a public hearing held pursuant to this Code.

- b. Appeal of Minor Development Decision
 - i. Except for a Residential Infill Design Review preliminary decision pursuant to LOC 50.07.003.14.d.iii(2), a final decision of the City Manager on a minor development application may be appealed to a hearing body by the applicant or any person aggrieved by the decision. An appeal shall be made by filing a written request for a hearing with the City Recorder within 15 calendar days of the date of decision.

For decisions made by the City Manager on historic resources, the applicant or any person aggrieved by the decision may appeal that decision. (If notice of the application was given, the person must have participated in the process leading to the Manager's decision in order to appeal.) The City Manager shall determine if the Development Review Commission or Historic Resources Advisory Board is the appropriate hearing body based upon the nature of the decision appealed, the notice of appeal, and the expertise of the Commission and Board.

- ii. A written request for a hearing shall contain:
 - (1) A reference to the City application number and date of the final decision;
 - (2) A request that a hearing be held on the application;
 - (3) The name, address, and signature of the appellant; and

- (4) A filing fee. The filing fee shall be set by resolution of the City Council, but shall be no more than authorized by state law. The filing fee shall be refunded if the appellant prevails at the hearing or on a subsequent appeal. The filing fee requirement shall not apply to appeals filed by the Oregon State Department of Land Conservation and Development or to appeals filed by recognized neighborhood associations entitled to receive notice of a pre-application neighborhood meeting pursuant to LOC 50.07.003.1.f.iii(1)(a) and (b).
- iii. The City Recorder shall reject the appeal if it is not filed within the 15 day appeal period set forth in subsection (i), above, is not filed in the form required by subsection (ii), above, or does not include the filing fee required by subsection (ii), above. If the City Recorder rejects an appeal, the City Recorder shall so notify the appellant by letter. This letter shall include a brief explanation of the reason why the City Recorder rejects the appeal. A decision of the City Recorder to reject an appeal pursuant to this section is final and is not subject to appeal to the hearing body or the City Council. An appeal rejected pursuant to subsection (ii), above, may be corrected if it is refiled within the 15 day appeal period set forth in subsection (i), above.
- iv. An appeal of a City Manager decision regarding a minor development shall be heard de novo by the hearing body pursuant to LOC 50.07.003.3.e, LOC 50.07.003.4, LOC 50.07.003.15.b.i-ii.

Applicant's Response: The Applicant acknowledges that appeals of a minor development decision may be appealed to a hearing body by the applicant or any person aggrieved by the decision.

- c. Filing an Appeal of a Hearing Body Decision
 - i. A final decision of a hearing body may be appealed to the Lake Oswego City Council by the applicant or any person who appeared before the hearing body either orally or in writing regarding the application. An appeal shall be made by filing a Notice of Intent to Appeal with the City Recorder within 15 calendar days of the date of the hearing body's final decision.
 - ii. A Notice of Intent to Appeal shall be in writing and shall contain:
 - (1) A reference to the City application number and date of the final decision;
 - (2) A statement that demonstrates the appellant is the applicant or appeared either orally or in writing in front of the hearing body;
 - (3) The name, address, and signature of the appellant or the appellant's representative;
 - (4) An appeal fee, if applicable; and
 - (5) A discussion of the specific issues raised for Council's consideration and the specific reasons why the appellant contends that the hearing body decision is incorrect or not in conformance with the applicable criteria. This requirement shall not limit, however, the right of the appellant or other persons appearing at the hearing from raising other issues that were raised before the hearing body.

- iii. The appeal fee shall be set by resolution of the City Council. The appeal fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal.
- iv. The City Recorder shall reject the appeal if it is not filed within the 15 day appeal period set forth in subsection (i), above, is not filed in the form required by subsection (ii), above, or does not include the filing fee required by subsections (ii) and (iii), above. If the City Recorder rejects an appeal, the City Recorder shall so notify the appellant by letter. This letter shall include a brief explanation of the reason why the City Recorder rejects the appeal. A decision of the City Recorder to reject an appeal pursuant to this section is a final City decision as of the date of the letter and is not subject to appeal to a hearings body or the City Council. The appellant shall be allowed to correct a failure to comply with subsections (ii) or (iii), above, if the correction can be made and is made within the 15 day appeal period provided in subsection (i), above.

Applicant's Response: *In accordance with this section, a final decision of a hearing body may be appealed to the Lake Oswego City Council by the applicant or any person who appeared before the hearing body either orally or in writing regarding the application.*

- d. Multiple Appeals; Consolidation
 - i. If more than one person files a Notice of Intent to Appeal a specific hearing body decision, the appeals shall be consolidated into one proceeding. The appeal fee shall be divided equally among the multiple appellants; any amount deposited in excess of the amount determined by the City Recorder to be owed shall be refunded on a pro rata basis.
 - ii. The appellants shall share the appellant's time for testimony equally or may make such other split as they mutually agree, or the appellants may elect to have one person represent all appellants. If appeals are filed by opposing parties (i.e. an applicant for a project and a person opposed to the project), they may be consolidated into one proceeding but shall be heard separately prior to the decision. The Mayor, with Council consent, may decide to alter the time limits for testimony depending on the circumstances.

Applicant's Response: *The Applicant understands that if more than one person files a Notice of Intent to Appeal a specific hearing body decision, the appeals shall be consolidated into one proceeding.*

- e. Withdrawing an Appeal. A Notice of Intent to Appeal may be withdrawn at any time prior to a final decision. Proceedings on the appeal shall terminate as of the date of withdrawal. The City Manager may refund the appeal fee either in full or in part, depending on the amount of staff work expended preparing the appeal for hearing.

Applicant's Response: *In accordance with this section, a Notice of Intent to Appeal may be withdrawn at any time prior to a final decision.*

- f. Preparation of Record and Staff Report; Transcript
 - i. Record of Hearing Body Proceedings. Following receipt of a Notice of Intent to Appeal filed in compliance with LOC 50.07.003.7.b, the City Manager shall prepare a record for Council review containing:
 - (1) All staff reports and memoranda prepared regarding the application that were presented to the hearing body;
 - (2) Minutes of all hearing body proceedings at which the application was considered;
 - (3) All written testimony and all exhibits, maps, documents or other written materials presented to and not rejected by the hearing body during the proceedings on the application; and
 - (4) The final written order of the hearing body.
 - ii. Staff Report. The City Manager shall prepare a staff report on the appeal explaining the basis for the hearing body's decision as relates to the reasons for appeal set forth in the Notice of Intent to Appeal, and such other matters related to the appeal as deemed appropriate. The staff report shall be available for public inspection at least ten days prior to the appeal hearing.
 - iii. Transcript. A verbatim transcript of the hearing body proceedings is not required. Any person who appeared before the hearing body on the application may prepare a certified verbatim transcript of all or part of the hearing body proceedings at that person's own expense. The City Manager may prepare a certified verbatim transcript of all or part of the hearing body proceedings at the City's expense if the City Manager deems a transcript necessary or advisable. A certified transcript prepared pursuant to this subsection shall be considered to be part of the record of the hearing body proceedings, and, if offered, shall be accepted into evidence and considered by the City Council.

- g. Notice of the Appeal Hearing
 - i. Written notice of the appeal hearing before the City Council shall be sent by regular mail no later than 14 days prior to the date of the hearing to the appellant, the applicant if different from the appellant, and all persons who testified either orally or in writing before the hearing body.
 - ii. Notice of the hearing shall:
 - (1) Reference the applicable Planning Department File Number or Numbers;
 - (2) Set forth the street address or other easily understood geographical reference to the subject property;
 - (3) State the date, time and location of the hearing;
 - (4) State that an appeal has been filed, set forth the name of the appellant or appellants and contain a brief description of the reasons for appeal;
 - (5) State that City Council review is confined to the record before the hearing body, that only persons who testified either orally or in writing before the hearing body may testify before the City Council, and that the only issues that may be raised before the council are

issues that were raised before the hearings body with sufficient specificity to enable the hearing body to respond.

- (6) Include the name and phone number of the City staff person assigned to the application from whom additional information may be obtained;
- (7) State that a copy of the decision being appealed, the application, all documents and evidence contained in the record, and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost; and
- (8) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of the hearing.

Applicant's Response: Following the notice of appeal, the Applicant understands that the City Manager will prepare record for the Council and will include all staff reports and memoranda, minutes, written testimony and the final written order.

- h. Scope of Council Review
 - i. Except as provided in subsections (ii) and (iii), below, Council review is limited to the evidence in the record before the hearing body. No new evidence may be presented at the hearing and no person may testify unless that person appeared either orally or in writing before the hearing body. No issue may be raised on appeal to the Council that was not raised before the hearing body with sufficient specificity to enable the hearing body and the parties to respond.
 - ii. The City Council may take official notice of all adjudicative facts and law which may be judicially noticed pursuant to ORS 40.060 to 40.090, including an ordinance, comprehensive plan, resolution, order, written policy or other enactment of the City of Lake Oswego. Matters officially noticed need not be contained within the record and may be considered by the hearing body in determination of the matter.
 - iii. The Council may reopen the record and consider new evidence if such a request is made prior to or at the Council hearing by the appellant or any person who testified before the hearing body, and the requesting party demonstrates:
 - (1) That the hearing body committed a procedural error that prejudiced the requesting party's substantial rights and that reopening the record is the only alternative to remanding the application to the hearing body to correct the error; or
 - (2) That new evidence material to the decision on appeal exists and could not have been presented to the hearing body. A requesting party may only qualify for this exception if he or she demonstrates that the new evidence concerns an unanticipated event which occurred after the close of the hearing before the hearing body. This exception shall be strictly construed by the Council in order to ensure that all relevant evidence and testimony is submitted to the hearing body.

Applicant's Response: In accordance with the appeal procedures, written notice of the appeal hearing before the City Council shall be sent by regular mail no later than 14 days prior to the date of the hearing.

- g. Conduct of the Appeal Hearing Before City Council. The Mayor shall conduct a hearing on appeal pursuant to the requirements of Section 50.07.003.4.a(i-x and xiii), Conduct of the Hearing. For the purposes of this section, "Mayor" includes the Council President or any other Councilor who serves as presiding officer of the Council in the Mayor's absence.

Applicant's Response: The Applicant acknowledges that the council review is limited to the evidence in the record before the hearing body.

- h. Time Limits on Testimony. The provisions of Section 50.07.003.4.b shall be applicable here with the following time frames substituted for those in LOC 50.07.003.4.b.i:
 - i. If the appellant is the applicant:
 - (1) 15 minutes for the applicant's presentation;
 - (2) Ten minutes for a representative of a recognized neighborhood association, homeowner association, government or government agency, or other incorporated public interest organization;
 - (3) Five minutes each for other persons; and
 - (4) Five minutes for the applicant's rebuttal.
 - ii. If the appellant is not the applicant:
 - (1) 15 minutes for the appellant's presentation. If there is more than one appellant, the appellants shall have a total of 15 minutes, unless the time is expanded by the Mayor pursuant to LOC 50.07.003.4.b.iii;
 - (2) 15 minutes for the applicant's presentation, except if the time is expanded by the Mayor pursuant to LOC 50.07.003.4.b.iii;
 - (3) Ten minutes for a representative of a recognized neighborhood association, homeowner association, government or government agency, or other incorporated public interest organization;
 - (4) Five minutes each for other persons; and
 - (5) Five minutes for the applicant's rebuttal.

Applicant's Response: In accordance with this section, the Mayor shall conduct a hearing on appeal.

- k. Presenting Testimony
 - i. Any person who testified either orally or in writing before the hearing body may testify either orally or in writing before the Council on appeal. Such testimony shall be limited to argument regarding issues raised before the hearing body, and shall be based solely upon the record of the proceedings before the hearing body. Enlargements, illustrations, Maps or other exhibits may be submitted as long as they are part of the record or are entirely derived from evidence in the record.
 - ii. Written testimony may be submitted prior to or at the public hearing. Written testimony submitted prior to the public hearing must be received

by the City Recorder by 5:00 p.m. on the day of the scheduled hearing to be submitted by staff at the public hearing. Written testimony submitted at the hearing must be filed with the recording secretary and placed before the City Council. Written comments that are merely referred to in testimony but which are not placed before the hearings body pursuant to this section shall not become part of the record of the proceedings. Written comments that attempt to present new evidence or raise new issues not presented or raised before the hearing body shall be rejected.

Applicant's Response: The Applicant acknowledge to the hearing procedures for presenting testimony.

- i. Objections. The purpose of the hearing procedures is to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide a full and impartial hearing on the application or appeal before the hearing body. Any question concerning the proper conduct of a hearing held pursuant to this code may be raised by any person during the proceeding by making an objection. The Mayor shall rule on any objection, subject to the right of the Council to overturn the Mayor's ruling by majority vote.

Applicant's Response: In accordance with this section, the Applicant acknowledges the hearing procedures regarding objections.

- m. Continuances
 - i. The Council may elect to continue a hearing one or more times on its own motion or at the reasonable request of a party. No continuance shall be granted at the request of the applicant unless the applicant waives the 120 Day Rule in writing or on the record. If the hearing has not been completed pursuant to LOC 50.07.003.7.j, the continued hearing shall resume at the point in the proceedings at which the hearing was continued. If the hearing has been concluded and the Council desires a continuance to reopen the hearing for additional testimony, the continued hearing shall be conducted as provided in subsection (ii), below. In the later case, the Council may limit testimony to a particular issue or issues. If the appeal hearing has been concluded and the Mayor has returned the matter to the table for deliberations, the Council may continue deliberations to a date, time and place certain.
 - ii. If an appeal hearing is continued to reopen the record for additional testimony, it shall be conducted as follows:
 - (1) The Mayor shall open the continued hearing.
 - (2) The City Manager shall give a staff report which shall include the reason for the continuance.
 - (3) The Mayor shall call for the appellant's testimony.
 - (4) The Mayor shall call for testimony from persons in favor of the appeal.
 - (5) The Mayor shall call for testimony from persons opposed to the appeal, beginning with the applicant, if the applicant is not the appellant.

- (6) The Mayor shall call for testimony from persons neutral on the appeal.
 - (7) The Mayor shall call for rebuttal by the appellant.
 - (8) The Mayor shall return the matter to the table for deliberation and decision as described in LOC 50.07.003.4.a.xiii.
- iii. Notice. No additional notice of a continued hearing is required if the Council continues a hearing to a date, time and place certain. If a public hearing must be continued due to lack of a quorum of the Council, no additional notice of the continued hearing is required if all entrances to the hearing location are posted by the time and date of the originally scheduled hearing with a conspicuous written notice setting forth a date, time and place certain for the continued hearing. In all other cases, public notice of a continued hearing shall be given pursuant to LOC 50.07.003.7.h.

Applicant's Response: In accordance with this section, the Applicant acknowledges the hearing procedures regarding continuances.

- n. Decision of the Council
- i. At the conclusion of deliberations, the Council shall make a preliminary oral decision. The Council may affirm, reverse or modify the hearing body's decision in whole or in part, or may remand the decision back to the hearing body for additional evidence or consideration. The preliminary oral decision is not a final decision. At any time prior to the adoption of the final order pursuant to subsection (ii), below, the Council may modify its decision based upon the record or choose to reopen the hearing.
 - ii. The Council shall adopt a final written order either immediately after making its preliminary oral decision or at a public meeting within a reasonable time after making the preliminary oral decision. The final written order shall consist of a brief statement that explains the criteria and standards considered relevant, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria, standards and facts set forth. The order shall also contain or incorporate by reference any conditions of approval deemed necessary or appropriate by the Council. A proposed order may be prepared by the City Attorney or may be prepared by the prevailing party subject to review and approval of the City Attorney. The Council shall amend the proposed order if it finds that the proposed order does not accurately articulate the Council's decision. The written order is the final decision on the application and the date of the order for purposes of appeal is the date on which it adopted by the Council.
 - iii. Motions for reconsideration of either a preliminary decision or final order filed by a party shall not be allowed. The City Manager may recommend reconsideration prior to adoption of the final order if the City Manager, in consultation with the City Attorney, believes reconsideration is necessary to correct a procedural error that prejudiced a party's substantial rights.

Applicant's Response: The Applicant understands that the hearing procedures regarding the Council's Decision.

- o. Notice of Decision. Notice of the Council's decision shall be sent by regular mail to the appellant, the applicant if different from the appellant, and to all persons who testified either orally or in writing before the Council. The notice of decision shall:
 - i. Include the File number, date and brief summary of the final decision;
 - ii. Include the name and address of the applicant;
 - iii. Include an easily understood geographical reference to the subject property and a map, if applicable;
 - iv. State that the decision is available for review, and that a copy can be obtained at cost; and
 - v. State that the decision may be appealed by filing a written Notice of Intent to Appeal with the Oregon State Land Use Board of Appeals (LUBA) within 21 days of the date of the final decision. The address and telephone number of the Land Use Board of Appeals shall be included in the notice.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: In accordance with this section, a notice of the Council's decision will be sent by regular mail to the appellant.

8. Remands

- a. Remands from the Council to the Hearing Body
 - i. An order of the City Council remanding an application to a hearing body is a final decision for purposes of appeal to LUBA. If not appealed, all issues resolved by the remand order shall be considered decided and may not be revisited on remand, unless addressing the remanded issues results in amendments to the application which change the criteria or the factual basis on which the Council based its decision regarding an issue or issues not remanded.
 - ii. The hearing body shall issue public notice and hear the application on remand as provided in LOC 50.07.003.16.b.i and ii and LOC 50.07.003.3.e, except that issues shall be limited as provided in subsection.(i), above.
- b. Remands from LUBA to the City Council. When a final decision of the City Council is remanded to the City by the Oregon Land Use Board of Appeals (LUBA), the City Council shall either:
 - i. Hold a hearing on remand if the issue upon which LUBA remanded the decision can be resolved by the City Council without reopening the record for additional evidence. Notice of the hearing on remand shall be given pursuant to LOC 50.07.003.7.h, Notice of the Appeal Hearing, to all persons who testified before the City Council at the public hearing or hearings that led to the decision remanded by LUBA. Instead of the explanation contained in LOC 50.07.003.7.h.ii(4), the notice shall set forth issues on remand that will be considered by the Council. The hearing shall be conducted pursuant to LOC 50.07.003.7.j, Conduct of the Appeal Hearing Before City Council, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City, unless the application is amended on

remand in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded.

- ii. Remand the application to the hearing body if the issue upon which LUBA remanded the decision requires reopening the record for additional evidence. Notice of the hearing on remand shall be given pursuant to LOC 50.07.003.3.e, Notice for Public Hearing, and the hearing shall be conducted pursuant to LOC 50.07.003.4, Hearings, except that the notice of the applicable criteria and the testimony shall be limited to the criterion or criteria or the issue or issues upon which LUBA remanded the decision to the City, unless the application is modified in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded. A decision of the hearing body on remand may be appealed to the City Council pursuant to LOC 50.07.003.7.d, Filing an Appeal of a Hearing Body Decision.

(Ord. 2579, Amended, 03/20/2012)

9. Improvements and Security

- a. **Obligation to Construct Public Facilities; Security; Acceptance of Improvements**
 - i. When an applicant for a development permit has an obligation to construct or improve public facilities imposed as a condition of the permit, the obligation shall be fulfilled prior to the issuance of a permit for building construction on the site unless the City Manager has granted a waiver in writing of this requirement and the applicant has filed with the City Manager an acknowledgment of the obligation. The acknowledgment shall state the nature of the obligation, the time within which the obligation is to be met, identify the property subject to the obligation and contain a security deposit in a form acceptable to the City Manager and in an amount equal to 120% of the cost of fulfilling the obligation as estimated by the City Manager for the year in which fulfillment of the obligation is anticipated. A sufficient performance bond, cash deposit, or letter of credit are acceptable forms of security. Return of the security deposit shall be conditioned upon the applicant carrying out the obligation.
 - ii. As an additional and separate part of the acknowledgment, the applicant shall agree to maintain the public facility for a period of one year following acceptance by the City Manager, to include but not be limited to repair, replacement and all things necessary to insure the operational integrity of the facility, and shall provide the City with security in the amount of ten percent of the cost of the improvement to insure the fulfillment of this obligation.
 - iii. The security shall be forfeited to the City if the applicant does not fulfill the requirements stated in the acknowledgment. The City may use the security to complete the obligation or any part of it. Until the obligation is completed the security shall remain in the custody of the City or shall be placed in an escrow account subject to City control.

- iv. Upon receipt of written notice to the City Manager that the public facility has been completed and is ready for final inspection and acceptance, the City Manager shall within ten calendar days make such inspection. If the City Manager finds the work to be acceptable, there shall promptly be issued a final certificate stating that the work has been completed and is accepted.

(Ord. 2579, Amended, 03/20/2012)

10. Certificate of Occupancy

In order to assure completion of the work in the manner and at the time approved, the premises shall not be used or occupied for the purposes set forth in the permit until the City has issued a Certificate of Occupancy following completion of the work in substantial conformance to the permit. Prior to the final completion of all work, a certificate of occupancy may be issued for a portion of the premises or conditioned upon further work being completed by a date certain.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: ***The Applicant understands that in order to assure completion of the work in the manner and at the time approved, the premises will not be used or occupied for the purposes set forth in the permit until the City has issued a Certificate of Occupancy following completion of the work in substantial conformance to the permit.***

11. Modification of Development Permits

- a. Modification of Approved Permit. For ministerial or minor development permits, modifications to a development permit are classified as the same type of development as the original permit and shall be reviewed under the applicable review criteria for that classification of development, except that the review criteria shall be limited to that criteria that are affected by the requested modification.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: ***The Applicant acknowledges that modifications to a development permit are classified as the same type of development as the original permit and will be reviewed under the applicable review criteria for that classification of development.***

12. Exempt Development

- a. Classification. Exempt Developments include:
 - i. Landscaping or landscape alterations, unless:
 - (1) Such landscaping or alterations would modify or violate a condition of approval of a prior permit. In such instance, the permit shall be processed as a modification of the prior permit;
 - (2) Located within the Greenway Management Overlay District; or

- (3) Located within an RP or RC Overlay District, an RC Protection Area and not exempt from the requirements of the RP or RC District pursuant to LOC 50.05.010.2.b.
 - ii. Normal or emergency repair or maintenance of public or private buildings, structures, or utilities.
 - iii. Construction of a structure that does not require a building permit.
 - iv. Interior remodeling which does not change a structure's occupancy classification or change the structure to a use that does not qualify as a permitted use in the zone.
 - v. Exterior remodeling of a structure that does not require a building permit.
 - vi. Street vacations.
 - vii. Temporary structures and uses listed in LOC 50.03.005 or which are for relief of victims of disaster or in an emergency.
 - viii. Where an awning is the only change to the facade of an existing building, and the awning is funded or partially funded utilizing a financial incentive grant, provided by or obtained through the authority of the City of Lake Oswego or LORA. "Financial incentive" includes a grant, fee waiver, revolving loan, tax abatement, property exchange, or similar financial incentive provided by or secured through the City or LORA.
- b. Development Review. No development permit pursuant to this code is required for exempt development.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant understands that certain types of development are exempt under this section of the code.

14. Minor Development Decisions

- a. Minor Development Classification
 - i. A Minor Development is a development which requires a permit from the City that requires a more discretionary level of review than a ministerial decision. "Minor Development" is intended to include decisions defined as "limited land use decisions" pursuant to ORS 197.015 (12).
 - ii. "Minor Development" includes:
 - (1) In the R-DD zone:
 - (a) Construction of new single-family detached dwellings, duplexes, multi-family dwellings, zero lot line dwellings or exterior modification of a structure containing a nonconforming use that requires a building permit.
 - (b) Expansion or reconstruction that result in a change of use (e.g. from single-family to duplex) or in an expansion of floor area of an existing structure by more than 50%.
 - (c) Any exterior modification of a single-family detached dwelling that reduces setbacks pursuant to LOC 50.08.001.2.b, R-DD Administrative Modification.

- (2) Construction or exterior modification of a detached single-family structure, duplex, zero lot line dwelling or a structure accessory to such structures which:
 - (a) Does not qualify as a ministerial decision pursuant to LOC 50.7.003.13.a.ii.(2)(a)-(h), or
 - (b) Requires one or more variances.
- (3) Involves a determination by the City Manager that a use not expressly permitted in the zone may be allowed pursuant to the considerations contained in LOC 50.03.002.1.f, Authorization for Similar Uses. In such case, the required notice shall include a description of the proposed use and the reasons for the City Manager's determination.
- (4) Involves an improvement to an existing school facility that will increase the capacity of the school facility, generate additional traffic, or generate significant additional noise or other negative impact on the surrounding neighborhood.
- (5) Secondary dwelling units.
- (6) Construction of a structure other than a detached single-family dwelling, duplex, zero lot line dwelling or accessory structure, or an exterior modification of such a structure which does not qualify as a ministerial development pursuant to LOC 50.07.003.13.a.ii(3).
- (7) Lot line adjustments which would increase allowable density on the site.
- (8) Partitions.
- (9) Subdivisions (with or without a Planned Development overlay).
- (10) Review of development phases subject to an ODPS.
- (11) Change of Use or Access/Parking Study. A change of use from one permitted use to another, including from the use assumed in a development review approval that:
 - (a) Changes access requirements pursuant to LOC 50.06.003.1, Access/Access Lanes (Flag Lots), or that will result in the construction of private streets, driveways; or
 - (b) Involves the use of a parking study pursuant to LOC 50.06.002.
- (12) Determining an RC District protection area pursuant to LOC 50.05.010.5.b.
- (13) Construction of a structure described in LOC 50.06.003.4.a.ii, Local Street Connectivity.
- (14) Fill in the floodway or fill in quantities greater than ten cubic yards when located elsewhere in the Flood Management Area, excluding fill for single-family detached dwellings, duplexes, zero lot line dwellings, water dependent uses, or related accessory structures when the fill is located within the floodplain of Oswego Lake, as provided by LOC 50.05.011, Flood Management Area.
- (15) Outright permitted residential dwellings, other than in the R-DD zone, when processed through the Residential Infill Development process (LOC 50.08.007).

- (16) Minor Variances, Hardship Variances, and Reasonable Accommodation Variances.
- (17) Construction of any public or private road, or major transportation or utility facility within a delineated RP District or RC protection area.
- (18) Permitted uses in the PNA zone that are not listed as exempt in LOC 50.07.003.12 or classified as a ministerial use.
- (19) Minor changes to Minor or Major Development Review Permits, pursuant to LOC 50.07.003.11.
- (20) Delineation of an RP District.
- (21) Modification of dimensional standards and setbacks pursuant to LOC 50.05.010.4.b (Sensitive Lands), Modifications to Dimensional Standards and Setbacks of the Underlying Zone, and LOC 50.05.010.6.b.iii, Reduction of RP District.
- (22) Development within the Greenway Management Overlay District that is not classified as ministerial development.
- (23) Expansion of an existing parking lot.

b. Application. Application for a minor development decision shall be made pursuant to LOC 50.07.003.1, Application.

c. Public Notice/Opportunity for Public Comment

- i. Notice shall be provided pursuant to LOC 50.07.003.3, Public Notice/Opportunity for Public Comment.

d. Review and Decision

- i. Review by City Manager. Except for applications for a minor development in the R-DD zone, Major Adjustments in the Lake Grove Village Center Overlay, and appeals of a decision of the City Manager regarding a minor development application, minor development permit applications shall be reviewed and decided by the City Manager. In the alternative, the City Manager may refer a minor development application directly to a hearing body for public hearing and decision pursuant to LOC 50.07.003.4, Hearings.

Minor Development in the R-DD zone and Major Adjustments in the Lake Grove Village Center Overlay shall be reviewed by the Development Review Commission pursuant to LOC 50.07.003.4, Hearings.

Applicant's Response: The Applicant understands that, except as provided by LOC 50.82.005, a minor development permit application will be reviewed and decided by the City Manager. In the alternative, the City Manager may refer a minor development application directly to a hearing body for public hearing and decision pursuant to LOC Articles 50.82 and 50.83.

- ii. Review Criteria for Minor Developments. A minor development shall comply with:

- (1) The requirements of the zone in which it is located;
- (2) The Development Standards applicable to minor developments;

- (3) Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application, as provided for in this Community Development Code (LOC Chapter 50), Streets and Sidewalk Chapter (LOC Chapter 42), and the Tree Cutting Chapter (LOC Chapter 55); and
- (4) Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.

Applicant's Response: In accordance with this section of the code, a minor development will comply with the requirements of the general commercial (GC) zone, the development standards applicable to minor developments, any applicable condition of approval, and the building design standards.

iii. Final Decision

- (1) City Manager Approve, Condition, or Deny Application. The City Manager shall make a final decision on a minor development application following expiration of the 14 day comment period. The City Manager shall approve, approve with conditions pursuant to LOC 50.07.003.5, or deny the application based upon the applicable criteria and the evidence submitted by the applicant and other interested persons during the comment period. Approval or denial of an application shall be accompanied by written findings that explain the criteria and standards considered relevant to the decision, state the facts relied upon in rendering the decision and explain the justification for the decision based on the criteria, standards and facts set forth. The date of the decision for purposes of appeal is the date on which the City Manager signs the written findings.
- (2) Final RID Application. For development processed through the Residential Infill Design Review Process (LOC 50.08.007), the City Manager's preliminary decision will become final if no written comments are received within the 14 day comment period, and no opportunity for appeal shall exist. In such cases, no additional notice of a final decision will be required. If written comments are received within the 14 day comment period, the City Manager shall then make a Final Decision and provide notice in accordance with subsections (1), above, and (3), below.
- (3) Notice of Final Decision. The City Manager shall send notice of a final decision on a minor development application to the applicant, all persons and neighborhood associations entitled to notice of the application pursuant to LOC 50.07.003.3, Public Notice/Opportunity for Public Comment and any other persons who submitted comments during the comment period. The notice of decision shall:
 - (a) Include the file number, date of the decision, and the name and address of the applicant;

- (b) Include an easily understood geographical description of the property and a map, if applicable;
- (c) Briefly summarize the decision making process and the decision made;
- (d) State that a copy of the decision is available for review, and that a copy can be obtained at cost; and
- (e) State that the decision may be appealed by filing a written request for a hearing before the appropriate hearing body with the City Recorder within 15 calendar days of the date of the final decision. In addition, the notice shall contain the requirements for requesting a hearing pursuant to LOC 50.07.003.7.b. The name, address and phone number of the City Recorder shall be included in the notice.

Applicant's Response: The Applicant understands that the City Manager will make a final decision on a minor development application following expiration of the 14 day comment period. The City Manager will then approve, approve with conditions or deny the application based upon the applicable criteria and the evidence submitted by the applicant and other interested persons during the comment period. Approval or denial of an application will be accompanied by written findings.

The City Manager shall send notice of a final decision on a minor development application to the applicant, all persons and neighborhood associations

- e. Appeal. Minor development determinations are subject to appeal as provided by LOC 50.07.003.7.b, Appeal of a Minor Development Decision, except for Residential Infill Design Review applications that are not appealable.

(Ord. 2579, Amended, 03/20/2012)

17. Expiration of Development Permit

- a. Except as otherwise provided in LOC 50.07.007.4.f, 50.07.005.5, or 50.07.007.3, or other provision of this Code, or as may be specifically stated as a condition of approval of a development permit, any permit issued under this Code shall expire three years following the final decision and effective date of any order constituting or approving the development permit unless:
 - i. If development involves construction of a structure, at least 15% of the structural construction has occurred within three years of the date of final decision; and
 - ii. Development authorized by the permit is commenced and work has reasonably continued to completion of the development.
- b. Upon expiration, no further work on the development or use authorized by the development permit may be undertaken without obtaining a new development permit.

- c. The City Manager shall, in writing grant, a one-year extension to a development permit where the request for the extension is made by written application prior to the expiration of the three-year period.
- d. If the City Manager believes that work on the development has ceased prior to completion, or has otherwise been abandoned, the City Manager may, at any time, require the applicant to demonstrate that the applicant is proceeding with efforts to commence or to continue the development.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant understands that there is an expiration on development permits. Any permit issued under this Code will expire three years unless work has commenced. A one-year extension to a development permit where the request for the extension is made by written application prior to the expiration of the three-year period.

50.07.004 Additional Submission Requirements

This section contains submission and review criteria for the procedures listed below. Where review criteria are important for an understanding of the substantive requirements of a section or limited in size they have been maintained with the substantive provisions.

1. Drainage Standards

- a. Submissions for All Development. For all applicable development or construction, the applicant shall submit information regarding existing drainage systems, storm water runoff under existing and proposed development site conditions, and the effect of site runoff on adjoining properties. Such information includes:
 - i. General Information. Information concerning clearing, grading, vegetation preservation, and drainage improvements.

Applicant's Response: As required, all drainage measures will be designed to meet City standards and specifications by a registered engineer in the State of Oregon. For additional information, please refer to Section 3 – Site Drawings, Drawing Sheet – C4.0 Composite Utility Plan. This criterion has been satisfied.

- ii. Hydraulic Characteristics. When a watercourse is present on the site, information regarding its hydraulic characteristics shall be submitted.

Applicant's Response: The Applicant understands that they are required to submit information regarding existing drainage systems, storm water runoff under existing and proposed development site conditions, and the effect of site runoff on adjoining properties. For additional information, please refer to Section 4 – Appendices, Exhibit T – Storm Water Report and Calculations. This criterion has been satisfied.

- b. Drainage Management Measures. All drainage management measures shall be prepared by a registered engineer to meet City standards and specification. These plans must be approved by the City Engineer.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The proposed development will not incorporate any drainage management measure aside from those identified on the plans.

6. Parks and Natural Areas Master Plan

- a. Master Plan Elements. At a minimum, a Master Plan shall include the plan elements and public involvement processes as follows:
 - i. Plan Elements
 - (1) Plan vision or goals;
 - (2) Design program, including statement of character, proposed uses, and size of facilities;
 - (3) A site plan, including general circulation patterns and approximate access points, methods of public services, and general placement of structures and type of uses;
 - (4) A site inventory and environmental analysis;
 - (5) Identification of opportunities and constraints;
 - (6) A site master plan, including provisions for protecting natural resources, where applicable; and
 - (7) Construction estimating and phasing plan.
 - ii. Public Involvement Elements
 - (1) Development of the Master Plan through a committee approved by the City of Lake Oswego.
 - (2) Public meetings to address the following items:
 - (a) Project introduction;
 - (b) Discussion of site analysis, opportunities, and constraints; and
 - (c) Discussion of design alternatives and selection of a preferred alternative.
 - (3) A study session has been held where members of affected Boards and Commissions have been invited to review the proposal.
- b. Master Plan Procedure. The review of a master plan shall be subject to the following procedure below:
 - i. The public hearing notice shall follow the same requirements in LOC 50.07.003.3.e, Notice for Public Hearing.
 - ii. The Planning Commission shall hold a public hearing to review the master plan application and the Commission shall forward a recommendation to the City Council whether or not a proposed master plan satisfies the criteria below.
 - iii. The City Council shall hold a public hearing to consider the hearing body's recommendations and make the final decision based on the criteria below.

- c. Master Plan Criteria. A master plan presented to the City Council shall be approved if it complies with the following criteria:
 - i. The master plan satisfies applicable regulatory policies of the City Comprehensive Plan;
 - ii. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;
 - iii. The improvements and uses proposed for the site are capable of being served by the existing or planned transportation systems, public facilities and services;
 - iv. The proposed uses will not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding properties as allowed by the respective underlying zone;
 - v. A master plan shall include an analysis of the projected average daily vehicle trips to be generated by the proposed uses to be authorized under the master plan and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the uses; and,
 - vi. The allowed development will be compatible or can be made compatible with the surrounding neighborhood to the extent practicable.

- d. Master Plan Conditions of Approval. In reviewing the master plan, conditions may be imposed that are suitable and necessary to assure compliance with the criteria in this section. These conditions may include, but are not limited to:
 - i. Limiting the manner in which the uses are conducted, by restricting the time an activity may take place and by minimizing such environmental effects as noise, vibration, air pollution, glare and odor;
 - ii. Establishing a special yard, setback, lot area or other lot dimensions;
 - iii. Limiting the height, size or location of a building or other structure;
 - iv. Designating the size, number, location and design of vehicle access points;
 - v. Increasing roadway widths, requiring street dedication, and/or requiring street;
 - vi. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area;
 - vii. Limiting or otherwise designating the number, size, location, height and lighting of signs;
 - viii. Limiting the location and intensity of outdoor lighting, including and shielding necessary;
 - ix. Requiring berming, screening or landscaping and designating standards for its installation and maintenance;
 - x. Designating the size, height, location and materials for fences;
 - xi. Protecting and preserving existing trees, soils, vegetation, water resources, wildlife habitat or other significant natural resources; and
 - xii. On and off-site public improvements including, but not limited to storm water and transportation.

- e. Master Plan Modification

- i. Unless otherwise established through the master plan, modification of an approved master plan shall comply with LOC 50.07.004.6.a and c as applicable to the modification.
- ii. Minor modifications of the master plan may be approved by the City Manager. The criteria set forth in LOC 50.07.003.11 shall be used by the City Manager in determining whether the modification is minor.
- iii. Modifications of the master plan that are not minor modifications shall be processed in the same manner as a master plan (LOC 50.07.004.6.b).

(Ord. 2579, Amended, 03/20/2012; Ord. 2462, Added, 12/19/2006)

Applicant's Response: *There are no parks being proposed as part of the development. However, the proposed development does provide for increased pedestrian connectivity through pedestrian pathway which is identified on the City's plans for the Lake Grove Overlay District. Please refer to Section 3 – Site Drawings, Drawing Sheet – A101 Site Plan for additional information. This criterion has been satisfied.*

7. Park and Open Space Contribution

- a. Application. Development applications shall include a scaled plan which identifies the site's proposed open space.
- b. Identification on Plat or Development Plan. Open space land shall be clearly and accurately depicted on the final plat map or development plan and documented in the development permit record. If not dedicated by plat and the land is to be in public control, the conveyance shall be by document acceptable in form to the City Attorney.

Applicant's Response: *Again, the proposed development includes a pedestrian pathway. Please refer to Section 3 – Site Drawings, Drawing Sheet – A101 Site Plan for additional information. This criterion has been satisfied.*

- c. Priority Open Space Areas. Lands shall be selected by the City for reservation as open space areas in accordance with the following priorities:
 - i. Delineated RP resources;
 - ii. RC District Protection Areas;
 - iii. Proposed Public Open Space including intra-city bike/pedestrian pathways;
 - iv. Woodlands, tree groves;
 - v. Specimen trees;
 - vi. Natural meadows;
 - vii. Topographic variations, such as rock outcrops, cliffs, extreme slopes, riverbanks;
 - viii. Conveniently located areas where recreation opportunities can be created. Examples include trails, nature study sites, picnic areas, or view points;
 - ix. Scenic views and vistas; or
 - vi. Others.

Applicant's Response: The proposed development includes a pedestrian pathway which is identified on the City's plans for the Lake Grove Overlay District. Please refer to Section 3 – Site Drawings, Drawing Sheet – A101 Site Plan for additional information. This criterion has been satisfied.

d. Review and Decision

- i. The decision on whether land is acceptable by the public for control and maintenance for open space purposes is to be made by the City Manager at the City Manager's discretion. Formal acceptance of open space lands shall be by City Council resolution. Lands may be approved by the City to be counted toward meeting the open space requirement that are not acceptable to the City for public control and maintenance.

Applicant's Response: The Applicant understands that the decision on whether the land is acceptable by the public for control and maintenance for park/open space is up to the discretion of the City Manager.

- ii. Final approval of open space boundaries shall be made by the hearing body at the time of the public hearing on the development proposal.

Applicant's Response: The proposed development includes a pedestrian pathway which is identified on the City's plans for the Lake Grove Overlay District. Please refer to Section 3 – Site Drawings, Drawing Sheet – A101 Site Plan for additional information. This criterion has been satisfied.

- e. Granting of Partial Rights to Open Space Lands. Up to 100% of the open space requirements may be met by the granting of partial rights or reservations, such as:
 - i. Scenic or view easements or cross easements, or
 - ii. Imposition of deed restrictions such as tree cutting restrictions in yards or special setback requirements.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: The Applicant acknowledges that up to 100% of the open space requirements may be met by granting partial rights or reservations. The Applicant is amenable to providing easements and or deed restrictions on the proposed pedestrian pathway.

11. Utilities. For all applicable development or construction, the applicant shall submit:
 - a. A scaled utility plan of existing and proposed utilities shall be furnished to the City as part of any major development plan application and shall include at least the following at 1" = 100' scale.
 - b. Easements shall be recorded in the final plat or plan to serve the development and each lot therein.

(Ord. 2579, Amended, 03/20/2012)

Applicants Response: *A conceptual plan illustrating utility provision has been included in the application materials. Please refer to Section 3 – Site Drawings, Drawing Sheet C.5.0 – Composite Utility Plan for further information.*

50.07.006 Overall Development Plan and Schedule

1. Phasing. A minor or major development may be planned and constructed in phases. A separate development permit shall be approved for each phase.

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Added, 03/05/2002)

Applicants Response: *As illustrated on the site plan, the proposed development will be constructed in two phases. The information contained in this development application is intended to satisfy the requirements of Phase I. Please refer to Section 3 – Site Drawings, Drawing Sheet A101 – Site Plan for further information.*

2. Purpose of Overall Development and Schedule. The purpose of the ODPS is to:
 - a. Assure that the proposed development, considered as a whole, will conform to the Comprehensive Plan and Development Standards;
 - b. Assure that individual phases will be properly coordinated with each other and can be designed to meet the Development Standards;
 - c. Provide preliminary approval of the land uses, limit uses permitted within the ODPS, maximum potential intensities or densities, arrangement of uses, open space and resource conservation and provision of public services of the proposed development; and
 - c. Provide the developer a reliable assurance of the City’s expectations for the overall project as a basis for detailed planning and investment.

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Added, 03/05/2002)

Applicants Response: *The purpose for illustrating the two phases at this time is to demonstrate that the individual phases will be properly coordinated with each other and can be designed to meet the Development Standards. Please refer to Section 3 – Site Drawings, Drawing Sheet A101 – Site Plan for further information.*

5. Application
 - a. The application shall be submitted at least 30 days prior to the requested hearing date.
 - b. Upon receipt of the application the City Manager shall review for completeness and shall accept or return with a written list of omissions within seven calendar days of the date of filing. The date of acceptance of the completed application shall be noted on all documents.

- c. Submission Requirements
 - i. Vicinity map.
 - ii. Maps and narrative indicating present use of land, including all natural and man-made features. A survey is not required.
 - iii. Maps and narrative indicating types and location of land uses to be provided including park and open space sites or other reserved land.
 - iv. General layout of streets, utilities and drainage management measures including areas reserved for water improvements.
 - v. General layout or siting of public transit, bicycle and pedestrian circulation.
 - vi. Maps and/or narrative showing off-site improvements necessary to serve the proposed development.
 - vii. An overall schedule of phasing; and the development to occur in each phase.
 - viii. The City Manager may require additional information related to the particular circumstances of an ODPS. All maps except vicinity and detail maps shall be at the same scale.

- d. Application Review. Within seven calendar days after acceptance of the complete application the City Manager shall determine whether the information in the ODPS is adequate to allow the Planning Commission or the Development Review Commission to make the determinations required by LOC 50.07.006.7.a, below. If the information is insufficient the applicant shall be so informed by written notice listing the deficiencies. If the information is adequate the City Manager shall submit a report with comments, recommendations and recommended conditions to the Planning Commission or the Development Review Commission.

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Added, 03/05/2002)

Applicants Response: All of the necessary application materials and submittals have been provided as part of the development application.

- 6. Public Notice/Opportunity for Public Comment. Notice shall be provided pursuant to LOC 50.07.003.3, Public Notice/Opportunity for Public Comment.

(Ord. 2579, Amended, 03/20/2012)

Applicants Response: The Applicant acknowledges that the City will notice the proposed development in accordance with the City community development code.

- 7. Review and Decision

- a. Decision-Making Body
 - i. The appropriate hearing body shall consider the ODPS at a public hearing conducted pursuant to LOC 50.07.003.4, Hearings, and notice shall be given in accordance with LOC 50.07.003.3.e, Notice for Public Hearing.

- ii. The Planning Commission shall approve mixed-use ODPS applications prior to consideration of a related development permit application. The ODPS may be considered concurrently with a zoning application.
 - iii. Single use ODPS applications shall be reviewed and approved by the Development Review Commission.

- b. Review Criteria for ODPS Consideration. The hearing body shall approve the proposed ODPS only if it finds that the plan and schedule will satisfy the requirements of LOC 50.07.003.15.d.ii, Review Criteria for Major Developments, and,
 - i. Provides an overall general site plan which is properly related to and preserves natural features and resources consistent with the provisions of this Code,
 - ii. Provides for land uses and intensities that are consistent with the provisions of the Comprehensive Plan, this Code, and with the planned capacities of public facilities,
 - iii. Provides clear guidance for the specific design and coordination of future phases.

- c. Content of the Approved Final Overall Development Plan and Schedule. The approved overall Development Plan and Schedule shall consist of the following documents:
 - i. A site plan showing location and type of all approved land uses, approximate acreage and approximate number of units or square footage of uses.
 - ii. A general utility plan showing streets, utilities, drainage management measures, bike and pedestrian ways and transit locations.
 - iii. A statement acknowledging need for off-site improvements as required.
 - (1) A schedule of the overall phasing and development to occur within each phase.

These documents shall be prepared subsequent to hearing body approval and shall be approved by the City Manager. If the City Manager finds that the final submittal does not accurately reflect the hearing body action, then the documents shall be returned to the hearing body for approval.

Upon approval, the documents will be stamped "Approved Final Plan" and filed in the ODPS project file.

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Added, 03/05/2002)

Applicants Response: The Applicant acknowledges that the City will review and issue a decision in accordance with the City community development code.

- 8. Changes to the Overall Development Plan and Schedule. The City Manager shall have the authority to approve minor changes to the ODPS, including the transfer of densities within the project as a whole, which do not change the overall land uses, densities, amount of

open space, decrease public facility capacities or affect the relationship of the development to adjacent land uses. Any other changes must be processed as a new application pursuant to this Article.

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Added, 03/05/2002)

Applicants Response: *Approval of any changes in the overall development plan and schedule will be at the discretion of the City Manager.*

50.08: ADJUSTMENTS, ALTERNATIVES, AND VARIANCES

50.08.001 Adjustments

3. Minor Adjustments. Minor adjustments are available to provide flexibility in circumstances where application of the Lake Grove Village District overlay code results in the inability to meet all applicable quantitative code requirements. A project may involve one or more Minor Adjustments. The following Lake Grove Village Center overlay district code standards involving quantitative requirements may be adjusted by 20% or four ft., whichever is less:
 - ii. LOC 50.05.007.4.e, Streetfront Environment standards, (i) Build-to Line and (ii) Minimum Street Frontage.

Applicant's Response: *In accordance with the City's code, the minimum street frontage standards are set forth in the table 50.05.30 5 B. Within the General Commercial Zone, the minimum street frontage is 75%. However, this may be further reduced when there is shared access, as is the case with this site.*

The property currently maintains 180 feet of frontage along the front lot line adjacent to Douglas Way. Based on the proposed site plan, the building contains approximately 100.5 linear feet meeting the build-to requirements along Douglas Way. Based on the calculations, the minimum street frontage storefront is 55.8%, which is less than the minimum requirement. However, the code allows for exceptions to the minimum street frontage requirements, provided certain features are provided on site.

The proposed site plan provides a 21 driveway as well as a continuous 15' wide pedestrian connection through the site. According to the exceptions, the minimum frontage is 60%, however this may be reduced to the degree necessary when these features are present. For additional information, please refer to Section 3 – Site Drawings, Drawing Sheet A101 - Site Plan. This criterion has been satisfied.

- b. Site Planning Standards
 - i. LOC 50.05.007.6.k.viii.(5), Landscape Requirements: Parking Facility Edge Requirements, and

Applicant's Response: *The Applicant will be requesting four major adjustments to the parking edge and/or parking bay landscape requirements: 1) elimination of Parking*

Landscaped Edge Width requirement along South Façade; 2) reduction in the Parking Landscaped Edge Width requirement along the Pedestrian Walkway, 3) reduction in the Parking Island Planter Width requirement and elimination of Shade Tree in the south parking area island, 4) elimination of trees in the planters along a portion the phase 2 parking area (and use of grasscrete rather than low landscaping) and 5) reduction in the percentage of glass along the storefront. This would be considered a major adjustment (see below).

(Ord. 2579, Amended, 03/20/2012)

4. Major Adjustments. Major adjustments are available to any eligible standards, as listed in LOC 50.08.006.2.a, including Minor Adjustments which exceed the quantitative minor adjustment threshold.

(Ord. 2579, Amended, 03/20/2012)

Applicant's Response: Parking Facility Edge Landscaping- *"The parking facilities shall be separated from a driveway, sidewalk, or pathway by a minimum 5-foot wide landscaped area" and "from the exterior wall of a structure by a minimum of a 10' buffer." The Applicant will be requesting an adjustment to eliminate the parking edge landscaping separation requirement. Current plans illustrate the parking area abutting the sidewalk. The Applicant will also be requesting an adjustment to reduce the planter strip width along the edges of the Pedestrian Link from five feet to three feet. Current plans illustrate three foot wide landscaped areas.*

Parking Bay- *With the exception of a planter strip along the west end of the parking bay on the south side of the building, planter strips are proposed at appropriate widths within the parking areas. The Applicant will be requesting an adjustment to reduce the planter strip width at this island location. Current plans illustrate two foot wide landscaped areas.*

Trees/Landscaping within Islands - *Trees, shrubs and groundcovers are located within each of the landscape islands throughout the project. However, in three locations, the planting of trees is problematic due plant widths and operational issues associated with the parking areas. The Applicant will be requesting an adjustment to eliminate the shade tree and shrubs landscaping within three of the landscape planters. Current plans illustrate shrubs in the southwest parking bay planter and the two planters along the east side contain grasscrete and ground cover.*

Storefront - *The standard requires a minimum of 80% (linear measurement) of the north façade be designed with display windows and entry features. The Applicant will be requesting a reduction from 80% to 74% for display windows*

5. Adjustment Approval Criteria

- a. Criteria for Minor and Major Adjustments. Except as provided in subsection (b), below, both Minor Adjustments and Major Adjustments applications shall satisfy all of the following criteria:
 - i. Granting the adjustment results in a site plan or building design that equally or better meets the purpose of the standard(s) being adjusted.

Applicant's Response: Each of the requested adjustments is discussed below:

- 1) ***Parking Facility Edge: Southern façade - Parking facilities will be separated from the exterior wall of a structure by a minimum of a ten ft. buffer which may include a pedestrian pathway and/or landscaped strip. This requirement is not met at the south wall of the building. More than half of the south façade has 11' or more separation from the drive aisle, but 2 sections are separated from the drive aisle by 6' of sidewalk connecting the back door of the facility to the pedestrian walkway and the entrance section of parking. The intent of the standard is to soften the transition from parking lot to building - horizontal hardscape to hard vertical surface. The proposed design incorporates alcoves of plantings that create a transition space between the building and drive aisle with more visual interest and depth than a constant 10' and 12' separation would (24" is the minimum depth required for sidewall plane changes).***
- 2) ***Parking Facility Edge: Pedestrian Link - The parking facilities shall be separated from a driveway, sidewalk, or pathway by a minimum 5-foot wide landscaped area. This requirement is not met at the edge of the Pedestrian Link. The City of Lake Oswego requested a 12' wide concrete sidewalk incorporating the required green space into the 12' width. The current design shows a 3' wide planting area on each side of the Pedestrian Link. Although the concrete portion of the Pedestrian Link could be reduced to accommodate the 5' planters, the proposed design and 12' width provide a stronger visual connection between Hallmark Drive and the gathering space by the edge of the School's property.***
- 3) ***Parking Bay: Island – Between or at the end of each parking bay shall be a 5' curbed planter with one shade tree. This requirement is not met at the end of one parking bay. A 2' planter with "Blue lyme grass" is proposed instead at one location. The purpose of the standard is to disperse the required landscaping throughout the site. Providing the pedestrian connection through the center of the shared parking lot already breaks up the hard surfaced expanse of parking, but also uses significant square footage and requires the applicant to maximize parking opportunities in other locations. Generally, the intent of the standard is fulfilled through the overall site plan.***
- 4) ***Trees/Landscaping within Islands – The standard requires one shade tree to be planted with in the parking lot landscape islands. However, in order to accommodate truck traffic maneuvering through a portion of the site, the Applicant is requesting that this requirement be eliminated for***

two of the islands on the east side of the parking area. As an alternative, the Applicant is proposed grasscrete with ground cover to soften the parking areas and allow continued truck maneuvering. Refer to Exhibits AA5, AA6 and AA7 for further details.

- 5) *Storefront - The standard requires a minimum of 80% (linear measurement) of the north façade be designed with display windows and entry features. The proposed design has windows meeting the criteria for display windows (window sill between 12" and 30" and allowing views of activity within the building) on 74% of the north façade. The purpose of the standard is to create an open façade and engage the public with the activity within the building. At 74%, the north face of this veterinary hospital is still very open. The building design was heavily influenced by the effort to locate activities appropriate for public interaction along this glazed side of the building. Rehab and the water treadmill, doctors' workstations and a portion of the lobby, including the main entrance are located on the public way as a conscious decision to engage the hospital with the public.*
- ii. The property has special circumstances or conditions involving site configuration, natural or topographic features, existing improvements, or relationships to abutting or adjacent properties which would result in the inability of the applicant to comply if the standards were applied to the property without an adjustment

Applicant's Response: *Each of the requested adjustments is discussed below:*

Parking Facility Edge and Parking Bays— The required pedestrian path displaces the ability to both provide the necessary landscape features and meet the City's parking requirements.

Trees/Landscaping within Selected Parking Islands – The required trees/landscaping would displace parking and/or preclude truck maneuvering with the parking area.

Storefront – There are two reasons why the building design does not fully meet the standard; some of the frontage is needed for an electrical room which is not appropriate for display windows and the style of the building does not work with wall to wall glazing. Utility connections at Douglas Way (and only one frontage) logically move toward a service space on the front of the building, which removes 8 feet from the frontage available for storefront windows. The storefront percentage is also lower than required due to design requirements based on style in the LGVC Overlay. Namely, the allowed styles do not lend themselves to "strip" openings and an additional amount of wall area is required to provide windows in keeping with the Italianate style (and rustic material palette).

- iii. The adjustment is the minimum necessary to alleviate the inability to comply with the applicable standards.

Applicant's Response: *Each of the requested adjustments is discussed below:*

Parking Facility Edge: Southern façade – *The majority of the south façade is in compliance with the standard. The 43' of façade located closer to the drive aisle is still separated by the width of the sidewalk and not directly adjacent to the parking area.*

Parking Facility Edge: Pedestrian Link– *The planters are not eliminated completely, but reduced only to the degree necessary to provide sufficient space for the parking stalls. The width is being reduced to three feet.*

Parking Bay: Island – *In the specific location, the planter is not eliminated completely, but reduced only to the degree necessary to provide sufficient space for the parking stalls. The width is being reduced to roughly two feet.*

Trees/Landscaping within Selected Parking Islands – *The adjustment is necessary in order to accommodate the narrower planter island and/or maintain unencumbered truck access for adjoining property owner. Refer to Exhibits AA7 for further details.*

Storefront - *Again, at 74%, the north façade is still very open and every effort has been made to maximize the interaction of the hospital and its activities with Douglas Way. An additional 5'-6" linear feet of window is located at the west side of the frontage, but the sill is at 7' and does not allow views into the building because it is an electrical room.*

- iv. The adjustment will not adversely affect existing physical and natural systems such as traffic, access, circulation, connectivity, drainage, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development fully met the standards of the overlay district; and

Applicant's Response: *Each of the requested adjustments is discussed below:*

Parking Facility Edge and Parking Bays – *This adjustment is entirely contained within the site and will not adversely affect any existing systems.*

Trees/Landscaping within Selected Parking Islands – *This adjustment is entirely contained within the site and will not adversely affect any existing systems.*

Storefront– *This adjustment is entirely contained within the site and will not adversely affect any existing systems.*

- v. Any significant impacts resulting from the adjustment are mitigated to the extent practical through building or site design features on the site.

Applicant's Response: *Each of the requested adjustments is discussed below:*

Parking Facility Edge: Southern façade – *The building itself is only one story on the south façade and the exterior building material is natural cedar siding. So the pedestrians walking along the sidewalk in this location have a drive aisle on one side, but a warm vertical surface on the other. It's not as soft as plantings would be along the full length of the façade but it's also not a hard, cold exterior to begin with. Also the alcoves with plantings provide texture and relief at the 2 doorways (employee entrance - west - and service entrance - center of the south façade).*

Parking Facility Edge: Pedestrian Link– *The three foot planters are filled with Blue Lyme Grass. The uniform and linear nature of the plant selection and planter shape will serve to outline and enhance the visual continuity of the Pedestrian Link.*

Parking Bay: Island – *The planter is located on the west end of the parking area south of the building. There are many trees within the vicinity so the impact of the reduced planter area is minimal. The 2' planter is close to the 2 existing, fully mature trees and a concentrated landscaped area on the west property line. This standard would be crucial to a large parking lot, but this project has a relatively small parking area, surrounded and bisected by significant plantings.*

Trees/Landscaping within Selected Parking Islands – *The required parking lot islands will be present; however, they will not contain any shade trees or shrub plantings in order to allow trucks to continue to maneuver through the site. To mitigate for the absence of landscape trees and shrubs, grasscrete will be installed along with hardy ground cover. This will maintain a pervious surface and still accommodate truck maneuvering in this area. A feature planting is also planned for the area adjacent to the planting island in order to break up the visual monotony of the existing tree line. Refer to Exhibits AA5 for further details.*

Storefront - *Although the display windows do not fully meet the standard, the other entry features such as canopies and entry overhangs exceed the standard at 94% of the building frontage. There are no significant impacts resulting from this adjustment.*

- b. Additional Criteria for Major Adjustments. Major adjustments shall either:
 - i. Satisfy the following additional criteria, in addition to all of the criteria in subsection (a), above: The applicant shall demonstrate through an alternatives analysis how a site plan or building design cannot reasonably be proposed, which complies with all applicable Lake Grove Village Center Overlay District standards; or

Applicant's Response: *Refer to Section 4 - Exhibits, Exhibit BB - Alternative Analysis for more information.*

- c. Review Authority Consideration. When applying the above approval criteria, the review authority shall consider the following:
- i. To the extent practicable, standards for landscaping and buffering at the perimeter of a site and setback requirements adjacent to R-7.5 and R-10 zones shall have the highest priority for retention.
 - ii. Site planning standards for internal landscaping and other internal dimensional standards shall be considered for adjustment prior to any adjustment of perimeter landscaping and buffering standards.
 - iii. For a Major Adjustment, the thoroughness of alternative designs and overlay district code analysis presented. Priority consideration shall be given in the alternatives analysis to achieve designs which eliminate the need for Major Adjustment.

(Ord. 2579, Amended, 03/20/2012; Ord. 2455, Add, 04/01/2008)

Applicant's Response: *Adjustments requested are internal to the site. Perimeter dimensional standards have been met. The site is not located adjacent to R-7.5 or R-10.*

Chapter 55 Trees

Article 55.02 Tree Removal.

55.02.010 Purpose.

The purpose of this chapter is to regulate the removal of trees and prescribe preventative protection measures to avoid damage to trees during site development in order to preserve the wooded character of the City of Lake Oswego and to protect trees as a natural resource of the City.

(Ord. 2221, Amended, 01/18/2000)

Applicants Response: *The Applicant understands the purpose of this chapter which is to regulate the removal of trees and prescribe preventative protection measures to avoid damage to trees during site development.*

55.02.020 Definitions.

Arborist means a person who has met the criteria for certification from the International Society of Arboriculture and maintains his or her accreditation.

Caliper Inch refers to a manner of expressing the diameter inches of a tree as calculated by measuring the tree's circumference and dividing by Pi (approximately 3.14159). Specially calibrated "diameter tapes" or "calipers" are used to determine caliper inches.

City Manager means the City Manager or the City Manager's designee.

Dead Tree means a tree is lifeless. Such evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

Diameter at breast height or DBH means the diameter of the trunk, at its maximum cross section, measured 54 inches (4-1/2 feet) above mean ground level at the base of the trunk.

Dripline means an imaginary vertical line extending downward from the outermost tips of a tree's branches to the ground.

Invasive Tree Species means a tree species listed on the Invasive Tree Species List on file with the Planning Department. The Invasive Tree Species List shall include:

- a. Tree species listed by resolution of the City Council; and
- b. Tree species added by the City Manager from time to time, upon finding that the tree species has been introduced to locations outside of its native range, the tree species has spread and now persists over large areas, and the tree species negatively impacts natural ecosystems by displacing native species, reducing biological diversity and interfering with natural succession.

Person means any individual or legal entity.

Removal means to cut down a tree or remove all or 50% or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. "Removal" includes but is not limited to topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. "Removal" does not include normal trimming or pruning of trees.

Single-family dwelling for the purpose of this chapter means any of the following: a detached home, a townhouse or rowhouse, a zero-lot line dwelling, duplex, or a condominium unit where the tree cutting permit relates to a tree located in the private yard of such a unit.

Topping means the severe cutting back of a tree's limbs to stubs three inches or larger in diameter within the tree's crown to such a degree so as to remove the natural canopy and disfigure the tree.

Tree means any woody plant having a trunk five caliper inches or larger in diameter at breast height (DBH). If a tree splits into multiple trunks above ground, but below 4.5 feet, the trunk is measured at its most narrow point beneath the split, and is considered one tree. If the tree splits into multiple trunks below ground, each trunk shall be considered one tree. For the purposes of this chapter, English laurel, Portuguese laurel, photinia, arborvitae, poison oak, and English ivy shall not be considered a "tree."

Tree Cutting Permit means written authorization from the City for a tree removal to proceed as described in an application, such authorization having been given in accordance with this chapter.

Tree Protection Zone means the area reserved around a tree or group of trees in which no grading, access, stockpiling or other construction activity shall occur as determined by the City manager to be appropriate based on review of the tree and site conditions.

(Ord. 2576, Amended, 11/15/2011; Ord. 2221, Amended, 01/18/2000; Ord. 2097, Amended, 12/20/1994; Ord. 2059, Sec. 1, 06/16/1992; Ord. 1631, Sec. 1, 07/20/1976; Ord. 1429, Sec. 1, 05/18/1971)

Applicants Response: In accordance with this section of the City community development code, the Applicant acknowledges the definitions associated with this chapter.

55.02.030 Prohibited Activities.

1. No person shall remove a tree without first obtaining a tree cutting permit from the City pursuant to this Chapter.
2. No person shall top a tree without first obtaining a topping permit from the City pursuant to this Chapter.
3. No person who is required to install or maintain tree protection measures per LOC Article 55.08 shall do any development activities including, but not limited to clearing, grading, excavation or demolition work on a property or site which requires ministerial, minor or major development approval without approved tree protection measures properly installed and maintained pursuant to this Chapter.

(Ord. No. 1429, Sec. 1; 05-18-71. Ord. No. 2059, Sec. 1; 06-16-92. Ord. No. 2097, Amended, 12-20-94) (Ord. 2221, Amended, 01/18/2000)

Applicants Response: The Applicant understands no person will remove a tree without first obtaining a tree cutting permit from the City.

55.02.035 Tree Removal in Conjunction with Major or Minor Development Permit.

1. If a Major or Minor Development Permit applied for pursuant to LOC 50.07.003.15 or 50.07.003.14, respectively, would require or result in tree removal and/or a tree cutting permit as defined in this Chapter, compliance with LOC 55.02.080 shall be a criterion of approval of such development permit. Tree removals in conjunction with a Major or Minor

Development Permit shall be considered in conjunction with such permit and shall be subject to the application, notice, hearing and appeal procedures applicable to the proposed Major or Minor Development pursuant to LOC 50.07.003.3.e, 50.07.003.7.a, 50.07.003.15.b, and 50.07.003.7. The required Notice for Major or Minor Developments that would require or result in tree removals shall include a site plan indicating the location of any trees proposed for removal on the subject site. The proposed trees shall also be flagged with yellow flagging tape on site. Such flagging shall be maintained until a final decision on the proposal is rendered. The remaining, notice, hearing and appeal procedures in LOC Chapter 55 shall not apply to tree removals considered in conjunction with a Major or Minor Development request. Subsequent tree removals that have not been reviewed through either Major or Minor Development procedures shall be reviewed as provided in this Chapter.

2. Once a final decision has been rendered on the Major or Minor Development Permit, trees that have been approved for removal as part of that decision shall be subject to the verification permit process. Applications for verifications shall be made on the application forms as prescribed by the City Manager and be accompanied by an application fee as established by resolution of the City Council. The purpose of the verification process is to ensure that the trees approved for removal are properly identified for removal in the field and that the trees that were not approved for removal are not inadvertently removed. Removal of trees in violation of such land use approval will be considered a violation of this Chapter. The criteria contained in LOC 55.02.080 shall not apply to verification applications for tree cutting permits.
3. If a tree proposed to be removed has been specifically required to be preserved or protected as a condition of approval of a land use action pursuant to the Lake Oswego Community Development Code, the tree removal application shall be processed as a modification to that land use action and shall be reviewed subject to the criteria of LOC 55.02.080 by the body responsible for reviewing such land use actions. Such modification procedure shall not be required in cases of an emergency as provided in LOC 55.02.042(3), or when the tree is dead as provided in LOC 55.02.080(1) or is a hazard as provided in LOC 55.02.080(2).

(Ord. 2579, Amended, 03/20/2012; Ord. 2316, Amended, 03/05/2002; Ord. 2221, Amended, 01/18/2000; Ord. 2097, Enacted, 12/20/1994)

Applicants Response: The Applicant acknowledges that tree removals in conjunction with a Minor Development Permit will be considered in conjunction with the application.

55.02.042 Permit Classifications and Review Procedures.

A person who desires to remove a tree shall first apply for and receive one of the following tree cutting permits before tree removal occurs:

1. Type 1 Permit is required for:
 - a. A property that is located in a residential zone and is occupied by a single-family dwelling;

- b. Removal of up to two trees, 10-inch caliper or less per tree at DBH within a calendar year; and
- c. A tree that is not:
 - i. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code;
 - ii. Located within an area or parcel that has been placed on the Historic Landmark Designation List pursuant to LOC 50.06.009;
 - iii. A Heritage Tree per LOC Article 55.06;
 - iv. Located within an RC or RP sensitive land overlay district;
 - v. Located within the Willamette River Greenway (WRG) overlay district;
 - vi. Located within the 25-foot Oswego Lake Special Setback;
 - vii. Located on property owned by the City of Lake Oswego or dedicated to the public, including parks, open space and public rights-of-way.

Type I permits shall be issued without further review upon application and demonstration by the applicant that the request qualifies as a Type I permit pursuant to this subsection.

Applicants Response: Tree within the proposed development, if removed independently, would require a Type II Permit.

2. Type II Permit:

- a. A Type II permit is required prior to any tree removal application that does not qualify in issuance as a Type I permit, Dead Tree Removal Permit, Hazard Tree Removal Permit, Emergency Permit, Verification Permit, Topping Permit, or Invasive Tree Species Removal Permit as described in this section.
- b. Type II permits shall be reviewed and approved by the City Manager pursuant to LOC 55.02.080 (approval criteria) and 55.02.082 (notice requirements).

Applicants Response: Tree removal associated with the proposed development would require a Type II Permit.

3. Dead Tree Removal Permit:

- a. The City shall issue a tree cutting permit for a dead tree, except as provided by subsection (3)(b) of this section, if the applicant demonstrates that a tree is dead and warrants removal.
- b. In order to provide for wildlife habitat and natural processes, the City Manager may require the retention of a dead tree. Dead trees shall not be removed if located in wetlands, RC Protection Areas (LOC 50.05.010.5.b), stream corridors, parks or open space areas required to be preserved as a condition of development approval, unless the tree presents a potential hazard to persons or property.

Applicants Response: *To the Applicants knowledge, none of the tree proposed removal would be classified a dead trees.*

4. Hazard Tree Removal Permit: The City shall issue a tree cutting permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.
 - a. A hazard tree is a tree that is cracked, split, leaning or physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within a public right of way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.
 - b. The City may require the applicant to submit an arborist's report confirming the hazard potential of the tree along with an analysis of alternative methods to alleviate the hazard without removal, and submit a completed hazard evaluation form as provided by the City.

Applicants Response: *To the Applicants knowledge, none of the tree proposed removal would be classified as hazard trees.*

4. Emergency Permit:
 - a. If the condition of a tree presents an immediate danger of collapse, and represents a clear and present hazard to persons or property, an emergency tree cutting permit may be issued and the payment of a fee may be waived. For the purposes of this subsection, "immediate danger of collapse" means that the tree is already leaning, with the surrounding soil heaving, and there is a significant likelihood that the tree will topple or otherwise fail and cause damage before a tree cutting permit could be obtained through the non-emergency process. "Immediate danger of collapse" does not include hazardous conditions that can be alleviated by pruning or treatment.
 - b. Emergency tree cutting permits must be approved by the City Manager. If an emergency situation arises at a time when the City Manager is unavailable, and such emergency creates a significant likelihood that the tree will topple or otherwise fail before such official becomes available, the owner of the tree shall, if practical and reasonable, first notify the City Tree Hotline phone number and state the address where the tree is being removed, the company performing the removal, along with the property owner's name, address, and telephone number. The owner shall photograph the tree showing emergency conditions and then may proceed with removal of the tree to the extent necessary to avoid the immediate hazard. Within seven days of such removal, the owner of the tree shall apply for a retroactive emergency tree cutting permit and shall submit with the application, evidence to demonstrate the emergency nature of the tree.

- c. The city may require the application to hire an arborist to review the evidence to ascertain whether the tree presented an immediate danger of collapse. The person or entity performing the removal shall not be eligible to provide this review. If the evidence shows that the tree did not satisfy the emergency tree removal standards set forth in this chapter, the application shall be denied and the owner of the tree shall be subject to penalties pursuant to LOC 55.02.130 and the mitigation requirements of LOC 55.02.084.
6. Invasive Tree Species Removal Permit: The City may issue a tree cutting permit for a tree that is on the Invasive Tree Species List upon the applicant's compliance with the requirements of LOC 55.02.050(1)(a).

Applicants Response: As necessary and at the direction of the City, invasive tree species will be removed.

7. Verification Permit:

- a. If a site has received development approval through a Major or Minor Development Process, then a Verification Permit shall be issued for those trees approved for removal through that process. To obtain a verification permit, an applicant must clearly identify in the field the trees to be removed by tying yellow tagging tape around each tree and submitting a site plan indicating the location of the requested trees. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application. The City Manager will then verify that the requested trees match the site plan approved through the Major or Minor Development Process. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the original development permit.
- b. Any tree not approved for removal through the original Major or Minor Development review process shall not be approved as part of the verification permit process, unless the subject tree is located within an approved building footprint, public/private utility or improvement area, and no feasible alternative exists to preserve the tree. In such cases, the City may allow the tree to be removed without a Type II tree cutting permit process; however, the mitigation requirements of LOC 55.02.084 shall still apply.
- c. Verification permits shall be issued upon application and demonstration by the applicant that the request complies with this section. Verification permits shall not be issued prior to the issuance of a building permit for the subject property without prior authorization by the City Manager.

Applicants Response: Once receiving minor development approval, the Applicant will be required to submit a verification permit.

8. Topping Permit:

- a. A topping permit may be issued only if the following apply:
 - i. A utility, public agency, or other person who routinely tops trees in furtherance of public safety, may apply for a topping permit pursuant to this section based upon an arborist or forester report establishing a methodology for topping in compliance with this subsection.
 - ii. Trees under utility wires may be topped only where other pruning practices are impractical.
- b. The City, in granting approval for tree removal in an open space or undeveloped area, may allow a tree to be topped to a designated height in order to maintain a "snag" for wildlife habitat.
- c. A tree cutting permit obtained for tree removal shall not authorize topping unless said tree cutting permit specifically authorizes such action.

(Ord. 2579, Amended, 03/20/2012; Ord. 2576, Amended, 11/15/2011; Ord. 2316, Amended, 03/05/2002; Ord. 2260, Amended, 09/05/2000; Ord. 2221, Amended, 01/18/2000; Ord. 2097, Enacted, 12/20/1994)

Applicants Response: *The proposed development is being reviewed through a Minor Development Permit and does not require a topping permit.*

55.02.050 Application for Permits.

1. An application for a tree cutting permit shall be made upon forms prescribed by the City.
 - a. Invasive Tree Species Removal Permit. An application for an Invasive Tree Species Removal Permit shall contain:
 - i. Photograph(s) that positively identify the tree species;
 - ii. The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property;
 - iii. Information as to whether the tree is located in a public right-of-way, is within a Resource Conservation or Resource Protection Overlay District, or is part of an approved landscape or mitigation plan;
 - iv. A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing proposed planting of any new trees to replace the invasive trees to be removed; and
 - v. Any other information reasonably required by the City.
 - b. Other Tree Removal Permits. An application for a tree cutting permit that is not for an Invasive Tree Species Removal Permit shall contain:
 - i. The number, DBH, species and location of the trees proposed to be cut on a site plan of the property;
 - ii. The anticipated date of removal;
 - iii. A statement of the reason for removal;
 - iv. A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing any proposed landscaping or planting of any new trees to replace the trees to be removed; and

- v. Any other information reasonably required by the City.
2. The applicant shall have the burden of proving that his or her application complies with the criteria for approval of the applicable class of permit.
 3. Misrepresentation of any fact necessary for the City's determination for granting a tree cutting permit shall invalidate the permit. The City may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may relate to matters including, without limitation, tree size, location, health or hazard condition, and owner's authorized signature.

(Ord. 2576, Amended, 11/15/2011; Ord. 2221, Amended, 01/18/2000; Ord. 2097, Amended, 12/20/1994; Ord. 2059, Sec. 1, 06/16/1992; Ord. 1631, Sec. 2, 07/20/1976; Ord. 1429, Sec. 1, 05/18/1971)

Applicants Response: *The required application for Tree Removal/Verification is contained in the Arborist Report. Refer to Section 4 – Appendices, Appendix P – Arborist Report for additional information.*

55.02.060 Fees.

An application for a tree cutting permit shall be accompanied by a filing fee as established by resolution of the City Council.

(Ord. No. 1429, Sec. 1; 05-18-71. Ord. No. 2059, Sec. 1; 06-16-92.) (Ord. 2221, Amended, 01/18/2000)

Applicants Response: *As necessary, the required fees for tree cutting will be provided with the application.*

55.02.080 Criteria for Issuance of Type II Tree Cutting Permits.

An applicant for a Type II tree cutting permit shall demonstrate that the following criteria are satisfied. The City Manager may require an arborist's report to substantiate the criteria for a permit.

1. The tree is proposed for removal for landscaping purposes or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application;
2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and
3. Removal of the tree will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood. The City may grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures or

alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.

4. Removal of the tree is not for the sole purpose of providing or enhancing views.
5. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the permit.

(Ord. No. 2097, Amended, 12/20/94) (Ord. 2260, Amended, 09/05/2000; Ord. 2221, Amended, 01/18/2000)

Applicants Response: In accordance with this section of the City community development code, tree identified for removal are necessary in order to construct the proposed development. The removal will not result in any adverse impacts.

55.02.082 Staff Decision and Notice Requirements for Type II Permits.

1. An applicant for a Type II tree cutting permit shall:
 - a. Complete a written notice form to be mailed by the City via regular mail to the neighborhood association whose boundaries include the proposed tree removal site;
 - b. Complete a written certification that the property will be posted and the trees will be marked pursuant to this section;
 - c. Within 24 hours of applying for a tree cutting permit, post a public notice sign of a pending tree cutting permit as provided by the City on the subject property in a location which is clearly visible and readable to vehicles traveling on a public street and to pedestrians walking or biking by the property. The public notice sign shall state that a tree cutting permit is pending for trees on the property marked by yellow plastic tagging tape, include the date of posting and the pending permit number as assigned by the City Manager, and state that city staff will consider any comments on the pending permit that are received within fourteen days of the date of posting;
 - d. Mark each tree proposed to be removed by tying or attaching a yellow plastic tagging tape to the tree at 4.5 feet above mean ground level at the base of the trunk, on the same day that the property is posted; and
 - e. Maintain the posting and marking for fourteen consecutive days.
2. Within two business days of the close of the fourteen day comment period, city staff shall make a tentative decision approving the permit or shall deny the permit.
4. If a permit is tentatively approved, staff shall immediately post a yellow sign stating the tentative approval and also stating the method and deadline for requesting the hearing pursuant to LOC 55.02.085. The applicant shall maintain the posting of this sign, together with the tree marking, for at least 14 consecutive days. If no request for a hearing is received meeting the requirements of LOC 55.02.085, the approval of the permit shall be final.

5. If the applicant appeals the denial of a permit, or appeals conditions imposed on a tentatively approved permit, city staff shall immediately post a red sign stating the appeal, and the time and date of the appeal hearing. The applicant shall maintain the posting of this sign and the tree marking, until the date of the hearing.
5. Failure to install or maintain the required notice and marking may result in denial or delay in issuance of the permit or revocation of an approved permit.

(Ord. 2260, Amended, 09/05/2000; Ord. 2221, Add, 01/18/2000)

Applicants Response: The application for tree removal is being reviewed in conjunction with a minor development request.

55.02.084 Mitigation Required. Revised 12/11

1. An applicant shall provide mitigation for any tree permitted for removal, with the exception of the following:
 - a. Dead trees;
 - b. Hazard trees;
 - c. Trees that are 10 inches or less in diameter removed from developed single-family lot;
 - d. Invasive Tree Species, except as provided in subsection (2) of this section.
2. Mitigation for Invasive Tree Species removal is required when:
 - a. The removal is from a public right-of-way;
 - b. The removal is from a Resource Conservation or Resource Protection Overlay District; or
 - c. The tree was planted as part of a previously approved landscape or mitigation plan.
3. The mitigation requirement shall be satisfied as follows:
 - a. Replanting on Site. The applicant shall plant, for each tree removed:
 - i. Invasive Tree Species Removal Permit: Removal from a public right-of-way or from an approved landscape plan, either a minimum two-inch caliper deciduous tree or a six- to eight-foot-tall evergreen tree for each tree removed. Removal from a Resource Conservation or Resource Protection Overlay District, either a minimum one-half-inch caliper deciduous tree or a minimum two-foot-tall evergreen tree.
 - ii. Other Tree Cutting Permits: Either a minimum two-inch caliper deciduous tree or a six- to eight-foot-tall evergreen tree for each tree removed.

The tree shall be planted according to the specifications in the City Tree Planting and Maintenance Guidelines as approved by the City Council.

- b. Replanting off Site. If in the City's determination there is insufficient available space on the subject property, the replanting required in subsection (1) of this section shall occur on other property in the applicant's ownership or control within the City, in an open space tract that is part of the same subdivision, or in a City owned or dedicated open space or park. Such mitigation planting is subject to the approval of the authorized property owners. If planting on City owned or dedicated property, the City may specify the species and size of the tree. Nothing in this section shall be construed as an obligation of the City to allow trees to be planted on City owned or dedicated property.
- c. Payment in Lieu of Planting. If in the City's determination no feasible alternative exists to plant the required mitigation, the applicant shall pay into the tree fund an amount as established by resolution of the City Council.

(Ord. 2576, Amended, 11/15/2011; Ord. 2260, Amended, 09/05/2000; Ord. 2221, Add, 01/18/2000)

Applicants Response: Based on the Arborist Report, a total of eight regulated trees will need to be removed. The loss of these eight trees will be mitigated through the planting of 20 tree of 3 inch caliper. Refer to Section 4 – Appendices, Appendix P – Arborist Report for additional information.

55.02.085 Request for Public Hearing on a Type II Tree Cutting Permit.

1. Any person may request a hearing on a Type II tree cutting permit by filing a written Request for Hearing, along with the applicable hearing fee as established by resolution of the City Council with the City Recorder, within fourteen days of the date the notice of tentative decision was posted pursuant to LOC 55.02.082. Failure to file within the fourteen day period shall preclude such a request.
2. An applicant for a tree cutting permit may appeal denial of a permit or conditions imposed on an approved permit by filing a written notice of intent to appeal, along with the applicable filing fee as established by resolution of the City Council, with the City Recorder within fourteen days of the date of decision on the permit.
3. Requests for hearing and appeals shall be heard by the Community Forestry Commission if the tree removal is proposed only for landscaping purposes as authorized by LOC 55.02.080(1). Requests for hearing and appeals on any tree removal proposed in order to construct development as authorized by LOC 55.02.080(1) shall be heard by the Development Review Commission. The appropriate Commission (referred to herein as "the hearings body") shall hold a public hearing on the request or appeal. The City shall send written notice of the hearing to the applicant, the person requesting the hearing if different from the applicant, and to the recognized Neighborhood Association for the area in which the subject property is located. The written notice shall be sent at least ten days in advance of the hearing.

4. The hearings body shall hear testimony from the applicant, followed by those in favor of the application, those opposed to the application (beginning with the person who requested the hearing if different from the applicant), and concluding with rebuttal by the applicant. Any person may testify before the hearings body. Following the close of the public testimony, the hearings body shall determine, based upon the evidence and testimony in the record, whether or not the application complies with the criteria contained in LOC 55.02.080. The findings, conclusions, and order shall contain the hearings body's reasons for approving, denying or modifying the permit.

5. A decision of the hearings body shall not become final for ten days from the date of adoption of written findings. Any person who appeared before the hearings body either orally or in writing may appeal the decision of the hearings body to the City Council by filing a written notice of intent to appeal, along with an appeal fee as established by resolution of the Council, with the City Recorder within ten days of the date of adoption of the hearings body's written findings, conclusions and order. The findings, conclusions, and order and minutes of the hearings body's meeting, along with any written staff reports or testimony shall be forwarded to the City Council. Written notice of the appeal hearing shall be sent at least ten days in advance of the Council hearing to those persons who appeared before the hearings body. The hearing before the City Council shall be on the record established before the hearings body and only persons who appeared before the hearings body orally or in writing may testify. The appellant shall testify first, followed by persons in favor of the appeal, persons in opposition to the appeal (beginning with the applicant if different from the appellant), and concluding with rebuttal by the appellant. The Council's hearing and decision shall otherwise comply with subsection (4) of this section. The decision of the Council shall be final.

(Ord. No. 2097, Enacted, 12/20/94) (Ord. 2458, Amended, 05/16/2006; Ord. 2260, Amended, 09/05/2000; Ord. 2221, Amended, 01/18/2000)

Applicants Response: The Applicant understands that any person may file a request for a public hearing on a Type II tree cutting permit.

55.02.092 Expiration of Tree Cutting Permits.

1. An Invasive Tree Species Removal Permit shall have no expiration date.

2. A properly issued tree cutting permit, other than an Invasive Tree Species Removal Permit, shall remain valid for no more than 60 days from the date of issuance or date of final decision by a hearing body, if applicable. A 60-day extension shall be automatically granted by the City Manager if requested in writing before the expiration of the permit. No additional extensions beyond the first extension shall be granted. Permits that have lapsed are deemed void. Trees removed after a tree cutting permit has expired shall be considered a violation of this chapter.

(Ord. 2576, Amended, 11/15/2011; Ord. 2260, Amended, 09/05/2000; Ord. 2221, Add, 01/18/2000)

Applicants Response: The Applicant acknowledges that an Invasive Tree Species Removal Permit shall have no expiration. A regular tree cutting permit will remain valid for

no more than 60 days from the date of issuance or date of final decision by a hearing body.

55.02.094 Conditions of Approval for Tree Cutting Permits.

1. The City may impose conditions of approval on any tree cutting permit if the condition is reasonably related to preventing, eliminating or mitigating a negative impact or potential impact on natural features or processes or on the built environment of the neighborhood which is as created or contributed to by the approved tree removal.
2. Conditions of approval may include, but are not limited to:
 - a. Cutting a tree or stump flush with the grade instead of grinding or fully removing a stump;
 - b. Requiring modifications in the location, design or intensity of a development or activities on a site or to require or prohibit certain construction methods;
 - c. Requiring vegetation not requiring a tree removal permit to remain in place or be planted;
 - d. Requiring the removal of injurious vegetation (English Ivy) from other trees on the property.

(Ord. 2221, Add, 01/18/2000)

Applicants Response: In accordance with this section, the Applicant understands that City may impose conditions of approval on any tree cutting permit.

55.02.125 Evidence of Violation.

1. If a tree is removed without a tree cutting permit, a violation shall be determined by measuring the stump. A stump that is 7 caliper inches or more in diameter shall be considered prima facie evidence of a violation of this chapter.
2. Removal of the stump of a tree removed without a tree cutting permit prior to the determination provided in subsection 1 of this section is a violation of this chapter.
3. Proof of violation of this chapter shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible person.
4. Tree removal or topping caused by natural weather conditions shall not be deemed a violation of this chapter and shall be exempt from all penalties set forth in LOC 55.02.130.

(Ord. No. 2059, Sec. 1; 06-16-92. Ord. No. 2097, Amended, 12/20/94) (Ord. 2221, Amended, 01/18/2000)

Applicants Response: *The Applicant understands that a violation of any provision of this chapter will be a civil violation.*

55.02.130 Penalties

1. **Civil Violation.** A violation of any provision of this chapter, or the breach of any condition of a permit granted under this chapter shall be a civil violation as defined by LOC 34.04.105, enforceable pursuant to LOC Article 34.04. The unlawful removal of each individual tree shall be a separate offense hereunder. Failure to comply with the provisions of this chapter or a condition of approval shall be a separate offense each day the failure to comply continues. The violation shall be punishable by a fine set forth by the municipal court and the enforcement fee and restoration requirements as set forth in LOC 55.02.130(3) and (4).
2. **Nuisance Abatement.** The removal of a tree in violation of this chapter is hereby declared to be a public nuisance, and may be abated by appropriate proceedings pursuant to LOC Article 34.08.
3. **Enforcement Fee.** A person who removes a tree without first obtaining a tree cutting permit from the City pursuant to this chapter, removes a tree in violation of an approved tree cutting permit, or violates a condition of an approved tree cutting permit shall pay an enforcement fee to the City in an amount as established by resolution of the City Council.
4. **Restoration.**
 - a. A person who removes a tree without first obtaining a required tree cutting permit from the City pursuant to this chapter, removes a tree in violation of an approved tree cutting permit, or violates a condition of such a permit shall pay into the City's Tree Fund a standard fee per caliper inch for the total number of caliper inches of the tree removed in violation of this Chapter in an amount as established by resolution of the City Council.
 - b. The City may require the person to pay into the City's Tree Fund an increased fee per caliper inch for the total number of caliper inches of the tree removed in violation of this Chapter in an amount as established by resolution of the City Council or the value of the tree as determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal," an official publication of the International Society of Arboriculture, whichever is greater, if any of the following apply:
 - i. The person has committed a previous violation of a provision of this chapter, or
 - ii. Tree protection measures as required by LOC Article 55.08 were not installed or maintained, or
 - iii. The tree removed was any of the following:
 - (A) 36 caliper inches in diameter or greater,
 - (B) A heritage tree, per LOC Article 55.06,

- (C) Expressly protected or required to be preserved as a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code,
 - (D) Located within the Willamette River Greenway per LOC 50.05.009,
 - (E) Part of a Resource Conservation (RC) or Resource Protection (RP) area, per LOC 50.05.010,
 - (F) Located on public right-of-way, City-owned or dedicated property, a public or private open space area or conservation easement.
5. Injunction. Upon request of the City Manager or direction from Council, the City Attorney may institute appropriate action in any court to enjoin the removal of trees in violation of this chapter.
 6. Loss of City Privileges.
 - a. A person hired to perform tree removal within the City, upon request shall provide evidence to the City Manager that he or she possess a valid license to conduct business in Lake Oswego. The person is subject to business license revocation pursuant to LOC 20.02.085 if the person violates any provision of this chapter.
 - b. Any arborist, builder, landscaper, contractor, or tree service that has performed any tree removal in violation of this chapter or submitted a falsified report for the criteria required in this chapter, shall not be considered a responsible bidder for any City contracts for a period of two years from the date of violation or report.
 7. Arborist Report and Required Treatment. Upon request by the City, a person who violates any provision of this chapter shall submit a report prepared by an arborist to evaluate the damage to a tree and/or make recommendations to remedy the violation. The City upon evaluating these recommendations may, at the City's discretion, require that the recommended measures be implemented.
 8. Cumulative Remedies. The rights, remedies, and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

(Ord. 2579, Amended, 03/20/2012; Ord. 2576, Amended, 11/15/2011; Ord. 2316, Amended, 03/05/2002; Ord. 2260, Amended, 09/05/2000; Ord. 2231, Amended, 03/21/2000, Editorial correction - Paragraph 1 - word "tree removal" changed to "violation"; Ord. 2221, Amended, 01/18/2000; Ord. 2097, Amended, 12/20/1994; Ord. 2059, Sec. 1, 06/16/1992; Ord. 1880, Sec. 1, 02/07/1984; Ord. 1429, Sec. 1, 05/18/1971)

Applicants Response: *The Applicant understands that a violation of any provision of this chapter will be a civil violation.*

55.08 Tree Protection.

55.08.010 Applicability.

This article is applicable to any ministerial, minor, or major development.

(Ord. 2221, Add, 01/18/2000)

Applicants Response: *The Applicant understands that tree protection standards are applicable to any ministerial, minor, or major development.*

55.08.020 Tree Protection Plan Required.

1. A Tree Protection Plan approved by the City Manager shall be required prior to conducting any development activities including, but not limited to clearing, grading, excavation, or demolition work on a property or site, which requires ministerial, minor, or major development approval.
2. In order to obtain approval of a Tree Protection Plan; an applicant shall submit a plan to the City, which clearly depicts all trees to be preserved on the site. The plan must be drawn to scale and include the following:
 - a. Location, species, and diameter of each tree on site and within 15 feet of the site;
 - b. Location of the drip line of each tree;
 - c. Location of existing and proposed roads, water, sanitary and storm sewer, irrigation, and other utility lines/facilities and easements;
 - d. Location of dry wells and soakage trenches;
 - e. Location of proposed and existing structures;
 - f. Grade change or cut and fill during or after construction;
 - g. Existing and proposed impervious surfaces;
 - h. Identification of a contact person and/or arborist who will be responsible for implementing and maintaining the approved tree protection plan; and
 - i. Location and type of tree protection measures to be installed per LOC 55.08.030.
3. For minor or major development, the Tree Preservation Plan shall be prepared by an arborist and shall include an inventory of all trees on site, their health or hazard condition, and recommendations for treatment for each tree.

(Ord. 2221, Add, 01/18/2000)

Applicants Response: *In accordance with this section of the code, a tree protection plan has been prepared. Refer to Section 4 – Appendices, Appendix P – Arborist Report for additional information.*

55.08.030 Tree Protection Measures Required.

1. Except as otherwise determined by the City Manager, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to clearing, grading, excavation or demolition work, and shall be removed only after completion of all construction activity, including landscaping and irrigation installation.
2. Chain link fencing, a minimum of 6 feet tall with steel posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or dripline, whichever is

greater, and at the boundary of any open space tracts or conservation easements that abut the parcel being developed.

3. The fencing shall be flush with the initial undisturbed grade.
4. Approved signs shall be attached to the chain link fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and arborist for the project.
5. No construction activity shall occur within the tree protection zone, including, but not limited to dumping or storage of materials such as building supplies, soil, waste items, or parked vehicles or equipment.
6. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.
7. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the City Manager.

(Ord. 2221, Add, 01/18/2000)

Applicants Response: ***Appropriate tree protection measure are required to be implemented prior to any ground disturbance activities occur. Refer to Section 4 – Appendices, Appendix P – Arborist Report for additional information.***

55.08.040 Inspection.

The applicant shall not proceed with any construction activity, except installation of erosion control measures, until the City has inspected and approved the installation of the required tree protection measures and a building and/or grading permit has been issued by the City.

(Ord. 2221, Add, 01/18/2000)

Applicants Response: ***In accordance with this section of the code, no construction activity, except installation of erosion control measures, will occur until the City has inspected and approved the installation of the required tree protection measures and a building and/or grading permit has been issued by the City.***