



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

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Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

01/22/2013

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Beaverton Plan Amendment
DLCD File Number 013-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, February 01, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Leigh Crabtree, City of Beaverton
Gordon Howard, DLCD Urban Planning Specialist
Anne Debbaut, DLCD Regional Representative

<paa> YA



PROF **2**

DLCD

Notice of Adoption

In person electronic mailed

DEPT OF

1/11/2013

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Beaverton**

Local file number: **TA2012-0004**

Date of Adoption: **1/9/2013**

Date Mailed: **1/11/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
LUBA 2012-021 remanded the City's adoption of Ordinance No. 4578 to correct an oversight in the original adoption so as to remove the exemption for Conditional Use - Planned Unit Development review of proposals on parcels under 1/2 acre in size. The City of Beaverton City Council voted to amend Development Code Section 40.15.15.4 regarding requirements for development within the SC-S (Station Community-Sunset) zone. Associated proposals with separate DLCD noticing: ZMA2011-0002, TA2012-0005

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: _____ to: _____

Zone Map Changed from: _____ to: _____

Location: **Barnes Rd, Cedar Hills to Hwy 217; 1S1W02, 1S1W03** Acres Involved: **63**

Specify Density: Previous: **1,899, no max** New: **1,899 to 5,115**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. 013-12 (19515) [17317]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:
ODOT, Metro, Washington County

Local Contact: **Leigh M Crabtree**

Phone: **(503) 526-2458** Extension:

Address: **4755 SW Griffith Dr, POBox4755**

Fax Number: **503-526-3720**

City: **Beaverton**

Zip: **97076-4755**

E-mail Address: **lcrabtree@beavertonoregon.gov**

ORDINANCE NO. 4597

ORDINANCE AMENDING ORDINANCE NO. 2050,
DEVELOPMENT CODE, CHAPTER 40 (APPLICATIONS)
TA 2012-0004 (PLANNED UNIT DEVELOPMENT REVIEW OF
DEVELOPMENT WITHIN SC-S ZONING DISTRICT)

WHEREAS, the Council has considered a city-proposed legislative text amendment to the Beaverton Development Code, Ordinance No. 2050, in response to a Land Use Board of Appeals (LUBA) remand order to require Conditional Use - Planned Unit Development review of development proposals on all parcels in a Station Community-Sunset zoning district even if under one-half acre in size; and

WHEREAS, pursuant to Section 50.50.2-5 of the Development Code, the Beaverton Community and Economic Development Department provided the required public notice for the Text Amendment application; and,

WHEREAS, pursuant to Section 50.50.6 of the Development Code, the Beaverton Community and Economic Development Department on October 23, 2012, published a written staff report and recommendation seven (7) calendar days in advance of the scheduled public hearing before the Beaverton City Council on October 30, 2012; and,

WHEREAS, on October 30, 2012, the City Council conducted a public hearing for TA 2012-0004 and, at the conclusion of the hearing, voted to approve the amendment to the Development Code as proposed in the staff report dated October 23, 2012; and,

WHEREAS, the City Council adopts as to approval criteria the facts and findings proposed in the staff report dated October 23, 2012 and the testimony at the October 30 hearing; now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. The Development Code, Ordinance No. 2050, Chapter 40, Applications, Section 40.15.15.4.A.2., is amended to read as set out in Section 3 of this Ordinance.

Section 2. All Development Code provisions adopted prior to this Ordinance which are not expressly amended or replaced herein shall remain in full force and effect.

Section 3. Development Code Section 40.15.15.4.A.2 is amended to read as follows with new text indicated in highlight and deleted text indicated in strikeout:

40.15.15.4.

2. [ORD 4578; March 2012] Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community - Sunset) zoning district. Sign applications excepted: on a land area greater than 1/2 acre in size."

First reading this 11th day of December, 2012.


Second reading this 8th day of January, 2013.

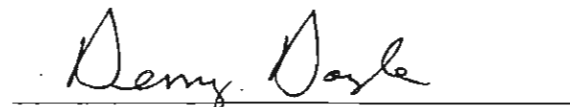
Passed by the Council this 8th day of January, 2013.

Approved by the Mayor this 9th day of January, 2013.

ATTEST:

APPROVED:


CATHY JANSEN, City Recorder


DENNY DOYLE, Mayor



MEMORANDUM
City of Beaverton
Community and Economic Development Department

To: Plan Amendment Specialist, DLCD
From: Leigh Crabtree, Associate Planner
Date: January 11, 2013
Subject: Notice of Adoption for Ordinances 4597, 4598, 4599
LUBA Remand of Ordinance No. 4580

Please find in this packet the DLCD Form 2 Notice of Adoption for City of Beaverton Ordinances 4597, 4598, and 4599 along with the respective Agenda Bills, inclusive of Staff Reports and other supporting documentation.

These Ordinances were passed by Beaverton City Council via Second Reading on January 8, 2013 and signed by Mayor Denny Doyle January 9, 2013.

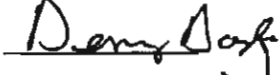
The Ordinances respond to the State of Oregon Land Use Board of Appeals Remand (LUBA 2012-021) of City of Beaverton Ordinance 4580.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Public Hearing to Consider Issues Remanded by LUBA Regarding Ordinance No. 4580 as it Relates to Ordinance No. 4578, Conditional Use – Planned Unit Development Text Amendment, TA 2012-0004

FOR AGENDA OF: 10-30-2012 **BILL NO:** 12216

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CEDD 

DATE SUBMITTED: 10-23-2012

CLEARANCES: City Attorney 
CAO
Planning 

PROCEEDING: PUBLIC HEARING

EXHIBITS: A. Proposed City Zoning, SC-S
B. Proposed Text Amendment
C. Ordinance No. 4580
D. Staff Report dated 10-23-2012

BUDGET IMPACT

EXPENDITURE REQUIRED \$x	AMOUNT BUDGETED \$x	APPROPRIATION REQUIRED \$x
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RECOMMENDED ACTION:

City Council conducts a public hearing to review proposal to amend Section 40.15.15.4 of the Development Code of the City of Beaverton and approves TA 2012-0004.

HISTORICAL PERSPECTIVE:

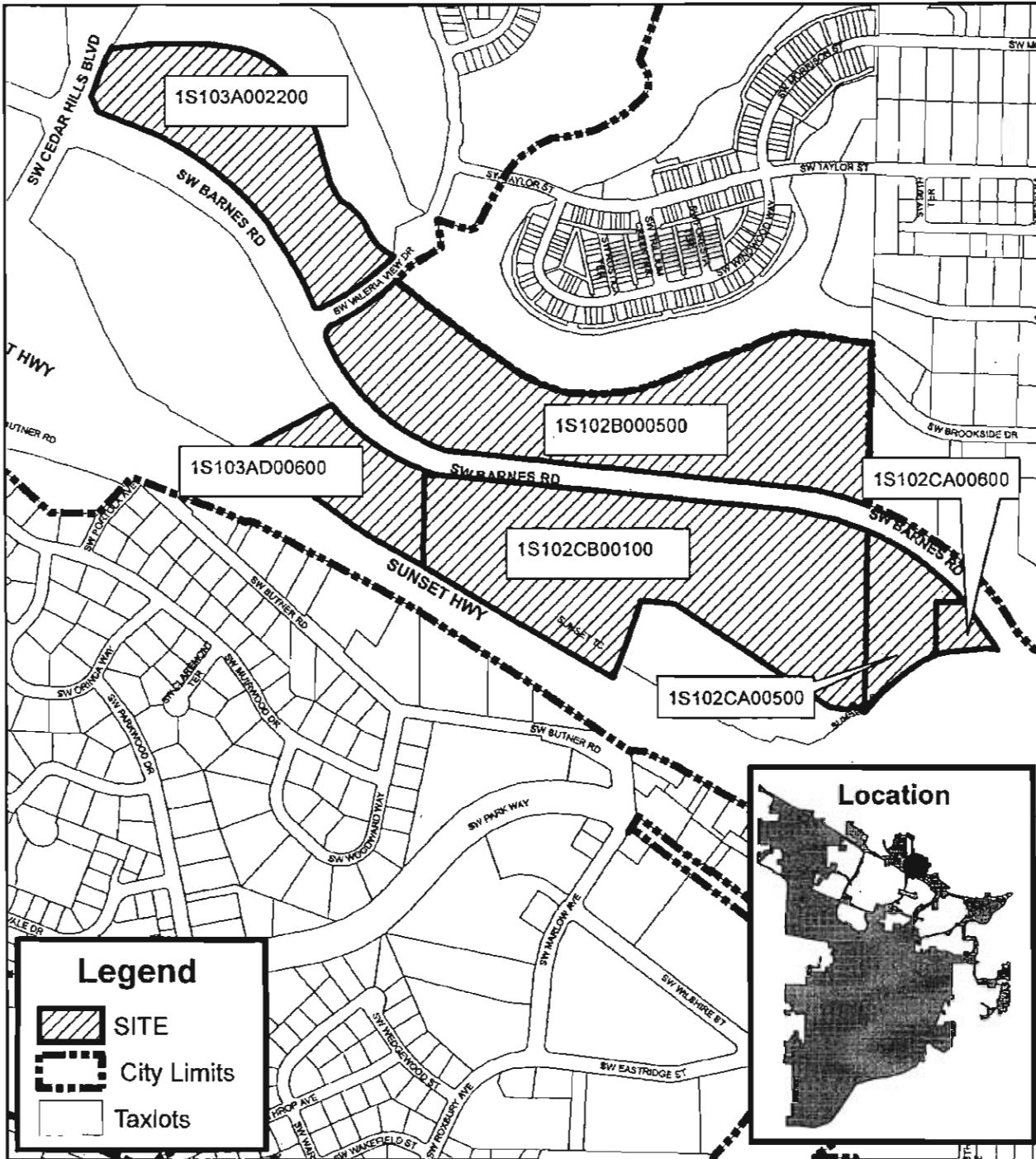
In 2012 the City Council adopted Ordinance No. 4578 to amend the Development Code text as to requirements for development within the Station Community Sunset zoning district and Ordinance No. 4580 to amend the Zoning Map to apply Station Community – Sunset (SC-S) zoning to certain properties. The Council actions followed a Planning Commission public hearing on those text and zoning map amendments. LUBA in its Opinion and Order in Case No. 2012-020 remanded Ordinance No. 4580 (the Zoning Map Amendment) to the City for further consideration of additional text amendments to correct an oversight in the text of Ordinance No. 4578 (the SC-S text amendment). The oversight was the fact that the City adopted an internally inconsistent provision which specified that development proposals within the SC-S zone which involved the development on parcels greater than one-half (1/2) of an acre be required to process the land development proposal as a Planned Unit Development application. This Code provision was listed in the SC-S section of the Code but not in the PUD application section of the Code.

INFORMATION FOR CONSIDERATION:




This hearing is to consider only the direction provided on remand of Ordinance No. 4580 by the State of Oregon Land Use Board of Appeals in its decision in LUBA 2012-020. The approval criteria for this proposed TA are in Section 40.85.15.1.C of the Development Code of the City of Beaverton.

VICINITY MAP

EXHIBIT A



Legend

-  SITE
-  City Limits
-  Taxlots



**PETERKORT STATION CPA / ZMA 2011-0002
 PROPOSED ZONE & COMP PLAN MAP CHANGE**

**COMMUNITY AND ECONOMIC DEVELOPMENT
 Planning Division**

11/9/11
 Tax Lot #'s
 VARIOUS

Application #
 CPA/ZMA2011-0002




EXHIBIT B

TA2012-0004 Conditional Use – Planned Unit Development Text Amendment

Proposed modifications to the Development Code of the City of Beaverton are included, below. Proposed deletions are ~~struck out~~ and proposed additions and replacements are underlined.

Notes regarding proposed language changes provided in Italic Arial font.

40.15. CONDITIONAL USE

40.15.05. Purpose.

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

40.15.10. Applicability.

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

40.15.15. Application.

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

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

A. Threshold. A Planned Unit Development is an application process which: [ORD 4578; March 2012]

1. May be chosen by the applicant when one or more of the following thresholds apply: [ORD 4578; March 2012]

a. The Planned Unit Development (PUD) may be applied to Commercial, Industrial, Multiple Use, and Residential properties that are 2 acres or greater in size within any City zoning district. [ORD 4584; June 2012]

b. When a land division of 2 acres or greater in size within any City zoning district requires collectively more than 3 of the following land use applications or combination thereof: [ORD 4584; June 2012]

- (1). Minor Adjustment;
- (2). Major Adjustment;
- (3). Flexible Setback; or
- (4). Variance.

[ORD 4578; March 2012]

2. [ORD 4578; March 2012] Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community-Sunset) zoning district. Sign Applications excepted. on a land area greater than 1/4 acre in size.

B. Procedure Type. The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for PUD approval. The decision making authority is the Planning Commission.

C. Approval Criteria. In order to approve a PUD application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a PUD application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal meets the Site Development Requirement for setbacks within the applicable zoning district for the perimeter of the parent parcel unless otherwise provided by Section 60.35.03.
4. The proposal complies with the applicable policies of the Comprehensive Plan.
5. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
6. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.
7. The width of proposed lots or staggering of building setbacks within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.
8. The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15.
9. The proposal provides improved open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15.:
 - a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest and complement the overall site design.

- b. The shape of the open space is such that the length is not more than three (3) times the width the purpose of which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.
 - c. The dedicated land(s) is located to reasonably serve all lots for the development, for which the dedication is required.
 - 10. [ORD 4578; March 2012] For proposals within the SC-S (Station Community-Sunset) zoning district, the requirements identified in Sections 20.20.40.2. and 20.20.40.3. are satisfied.
 - 11. If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. If a phased PUD has been approved, development of the future phases of the PUD shall be filed within five (5) years or the PUD has received an extension approval pursuant to Section 50.93. of the Development Code. However, all PUD phases must commence construction within five (5) years of the date of decision of the PUD. Refer to Section 50.90. [ORD 4584; June 2012]
 - 12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The PUD application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a PUD application to ensure compliance with the approval criteria.
- F. Phasing. If the application proposes to develop the PUD in a single phase, the decision shall expire two (2) years after the date of decision. Refer to Section 50.90.

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

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

EXHIBIT C

ORDINANCE NO. 4580

AN ORDINANCE AMENDING ORDINANCE 2050, THE ZONING MAP TO APPLY THE CITY'S STATION COMMUNITY - SUNSET (SC-S) ZONING DISTRICT TO SIX PARCELS LOCATED NORTH OF HIGHWAY 26, SOUTH OF JOHNSON CREEK, FROM CEDAR HILLS BOULEVARD TO HIGHWAY 217 IN NORTHERN BEAVERTON, ZMA2011-0002

- WHEREAS,** the City Council finds that pursuant to Development Code Sections 50.45.2 through 50.45.14, the City provided notice of the Planning Commission initial hearing to consider this zoning map amendment (ZMA); and
- WHEREAS,** the Planning Commission conducted a public hearing on December 7, 2011, to consider the proposed amendment, the submitted staff report and exhibits, three supplemental memoranda, and written and oral testimony provided at the hearing; and
- WHEREAS,** the Planning Commission after that hearing recommended that the Council adopt the proposed ZMA, as per the Commission's Use Order No. 2274, dated December 15, 2011; and
- WHEREAS,** an appeal of the Planning Commission's recommendation was filed on December 27, 2011; and
- WHEREAS,** the City Council conducted a public hearing on February 7, 2012, to consider an appeal of the Planning Commission's recommendation, the record of the Planning Commission hearing, the submitted staff report and exhibits, one memorandum, written testimony provided from January 31, 2012 through February 7, 2012, revisions to the proposed Development Code text, Peterkort Area Frequently Asked Questions, Peterkort History, Peterkort Fast Facts, Peterkort Community Concerns, and the written and oral testimony submitted at the hearing; and
- WHEREAS,** the Council finds that the criteria for this decision and the findings in support of that criteria are as shown in the staff report of November 30, 2011, a memorandum of December 5, 2011, two memoranda of December 7, 2011, the Planning Commission's Land Use Order No. 2274 of December 15, 2011, the staff report of January 31, 2012, the revised Development Code text, the matters submitted for the record between the time of the Commission's order and the Council hearing on the appeal, and the supplemental findings attached to this Ordinance as Exhibit "B" and incorporated by this reference; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:


- Section 1.** Ordinance No. 2050, the Zoning Map, is amended to designate the properties on Map and Tax Lot 1S102B000500, 1S102CA00500, 1S102CA00600, 1S102CB00100, 1S103A002200 and 1S103AD00600 Station Community - Sunset (SC-S), as shown on Exhibit "A" attached to this Ordinance and incorporated by this reference.

First reading this 28th day of February, 2012.

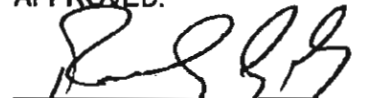
Passed by the Council this 5th day of March, 2012.

Approved by the Mayor this 6th day of March, 2012.

ATTEST:

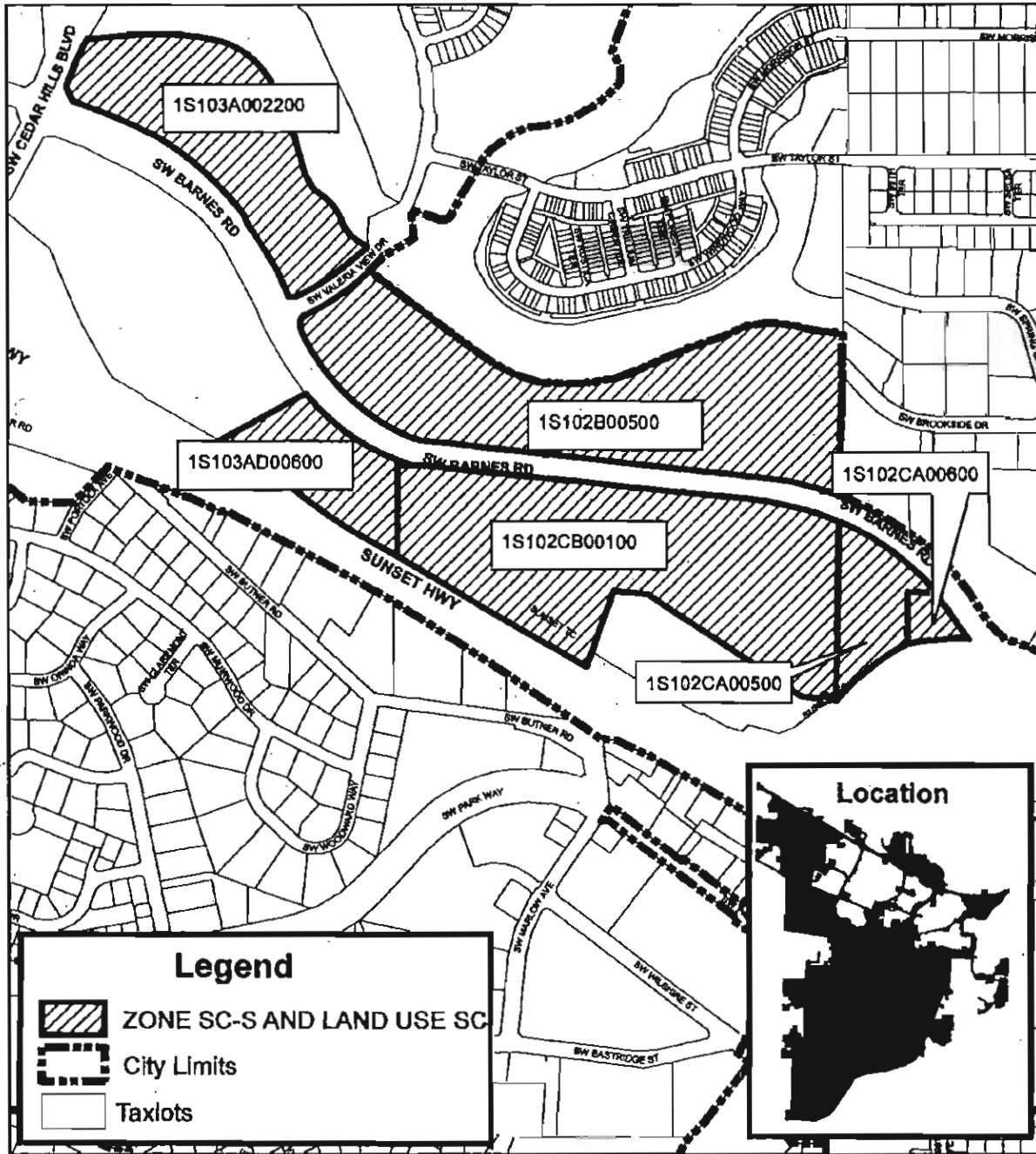

CATHY JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor, by
RANDY EALY, Mayor Pro Tem

VICINITY MAP

PROPOSED CITY ZONES AND LAND USE



	PETERKORT CPA/ZMA 2011-0002 PROPOSED ZONE AND LAND USE MAP CHANGE	11/9/11 Tax Lot #'s VARIOUS	N
	COMMUNITY AND ECONOMIC DEVELOPMENT Planning Division	Application # ZMA2011-0002	

EXHIBIT B

Ord. No. 4580

SUPPLEMENTAL FINDINGS ON APPEAL

ZMA2011-0002, ORDINANCE NO. 4580

The matter came before the City Council on February 7, 2012, for public hearing on an appeal of the Planning Commission's Recommendation to Approve ZMA2011-0002 Peterkort Station Community – Sunset Zoning Map Amendment. The Notice of Appeal contends that the amendment does not satisfy the City's Development Code Sections 40.97.15.4.C.3-4. Those Development Code sections state approval criteria for a Discretionary Annexation-Related Zoning Map Amendment, including (at C.4) "consisten[cy] with the Washington County-Beaverton UPAA." In fact this ZMA came before the Planning Commission and the Council as a Legislative Zoning Map Amendment for which the criteria for approval are set out in other Development Code Sections, namely Sections 40.97.15.2.C.1-8. Those criteria include conformance with applicable policies of the City's Comprehensive Plan, which would include the city-county Urban Planning Area Agreement in Plan Chapter 3.15 (discussed below) among other policies

The City Council adopts the following supplemental findings in support of its decision to deny the appeal and to enact the zoning map amendment as further amended at the close of the hearing and as shown in Ordinance 4580.

At the hearing the testimony concerning Comprehensive Plan and Development Code sections cited above, centered instead on the following issues:

State of Oregon, Statewide Planning Goals, Goal 1 Citizen Involvement and Goal 2 Land Use Planning. The Council finds that the review process for this ZMA

included notice mailed 45-days prior to the initial hearing to the chairs of Citizen Participation Organization (CPO) 1, Central Beaverton Neighborhood Association Committee (NAC), and the Beaverton Committee for Citizen Involvement (BCCI). A second notice was mailed 20-days prior to the initial hearing to the chairs of CPO 1, Central Beaverton NAC and BCCI. The Council finds that under the Washington County Comprehensive Framework Plan (Policy 2) and the county Community Development Code (Section 107) a CPO serves a county comprehensive planning function similar to the function of the City BCCI and NACs. The City was entitled under its ORS Chapter 195 coordination agreement with the County to rely upon the County to further communicate with its CPOs regarding this ZMA and other City land use planning proposals and enactments. The Council finds that neither state law nor the City Development Code require a community planning process for a zoning map amendment. The noticing requirements of the City's Development Code have been acknowledged by DLCD to meet Goal 1 and Goal 2.

State of Oregon, Statewide Planning Goals, Goal 12 Transportation. The Council finds that the TPR analysis studied development capacity levels to determine compliance with the rule, namely, whether a land use proposal will affect the transportation system beyond what existing regulations allow, and whether or not mitigation is required. The concurrent text amendment for the SC-S zoning district limits residential and non-residential development to align with Washington County's current regulations. Mitigation through development limitations results in compliance with the TPR.

The Council finds that staff from Washington County, the Oregon Department of Transportation (ODOT), the Oregon Department of Land Conservation and Development (DLCD), Metro, and TriMet were included in review of the ZMA for TPR compliance and that, prior to City's notice to DLCD of this ZMA, all those agencies agreed that the TPR calculations were correct.

The Council finds that the derived development capacity was determined given a number of variables. County regulations do not include a maximum FAR, rather an applicant is to start with the minimum FAR and may propose as much floor area as available within the capacity of the transportation system. County regulations do regulate maximum height except for unlimited height in the Sunset district. County staff directed City staff to calculate capacity from gross acreage. The approach to this TPR analysis was a worst-case scenario, not reasonable worst-case as would be determined from net acreage. Thus the concurrent text amendment sets a maximum FAR based on regulated maximum height over gross acreage. The Council relies on city staff statements that there was no dispute about the maximum numbers and that the County staff had more concern over the minimum residential density requirement.

The Council finds that the difference in horizons and performance measures for the County and the City Transportation System Plans (TSPs) is not relative to this ZMA. The County's TSP horizon is the year 2020 versus the City's TSP horizon year of 2035; this difference in TSP years is not an issue with this proposal, as the City has already shown compliance with TPR by mitigating the significant effect

with development limitations. The City's level of service and performance standards are more stringent than the county's in that potential development levels are less than allowed through the county's standards and are reviewed at the time of a development application.

Metro, Urban Growth Management Functional Plan, Title 1. The Council finds that in the 1990's with adoption of the 2040 Plan, Metro allocated jobs and dwelling units among regional jurisdictions. Many jurisdictions applied higher densities within Station Areas and Town Centers. These design types applied a certain number of people per acre in a mix of jobs and housing, with no prescribed ratio of jobs to housing. Washington County for its part found it necessary to add housing density and applied its highest residential density zoning to the area around the Sunset Transit Center. Metro accepted the county's planning for this Station Area.

Comprehensive Plan Chapter 3.15, Urban Planning Area Agreement (UPAA) The Council finds that determining the most closely approximate zoning initially relied on land use analysis of the county CDC in comparison to the City's Development Code and available City zoning districts. This analysis included specific attention to minimum densities with calculations under County zoning based on gross acreage, per the direction of County staff. The Council finds that the concurrent text amendment results in a 'net zero' translation in density from County zoning to City zoning through the carry-over of County minimum residential density requirements over the Station Community – Sunset (SC-S)

zoning district. By requiring a specific minimum residential dwelling unit count over the parcels proposed for application of SC-S zoning, the City is ensuring a mix of uses over the subject parcels.

The appellant and others suggested City zoning districts that they contend are the "most closely approximate" to county zoning. The Council finds that in order to satisfy the minimum density requirements under county zoning, the City would have to modify the text of those other City zoning districts and thus affect properties throughout the City now within those zoning districts. For example, use of the City's Station Community – High Density Residential (SC-HDR) zoning district in place of the proposed SC-S zoning district would require a doubling of the residential dwelling unit requirement for the SC-HDR zone. The City instead chose to modify the SC-S zone in order to approximate existing County land use regulations and as no other existing city zoning district matches the density or intensity of the county zone.

The Council finds that the SC-S zoning district is a multiple-use zoning district and, as amended, requires 1,899 dwelling units residential and allows for other uses. The SC-S zoning district will not require residential development at or near the Sunset Transit Center, however, the SC-S zoning district does allow for dense multiple-use development around the Sunset Transit Center that is transit supportive.

Other Contentions. The appeal contends that the proposals did not satisfy Titles 1, 6, 7 and 12 of Metro's *Urban Growth Management Functional Plan*,

Chapters 3, 5, 6, and 9 of the *Comprehensive Plan for the City of Beaverton*, and Section 40.97.15.4.C. of the *Development Code of the City of Beaverton*. In response the Council cites the supplemental findings for Ordinance No. 4578, the supplemental findings for this Ordinance No. 4580, and the findings provided in the Staff Report to City Council dated January 31, 2012 as adequately addressing the appellant's argument with regard to each of those UGMFP Titles and Comprehensive Plan Chapters.

EXHIBIT D



STAFF REPORT

HEARING DATE: October 30, 2012

TO: City Council

STAFF: William J. Schelderich, Assistant City Attorney *WJS*
Steven A. Sparks, AICP, Principal Planner *SS*
Leigh M Crabtree, Associate Planner *LMC*

PROPOSAL: **TA2012-0004 Text Amendment to Development Code Section 40.15.15.4. Conditional Use - PUD, Land Use Board of Appeals Remand of Ordinance 4580**

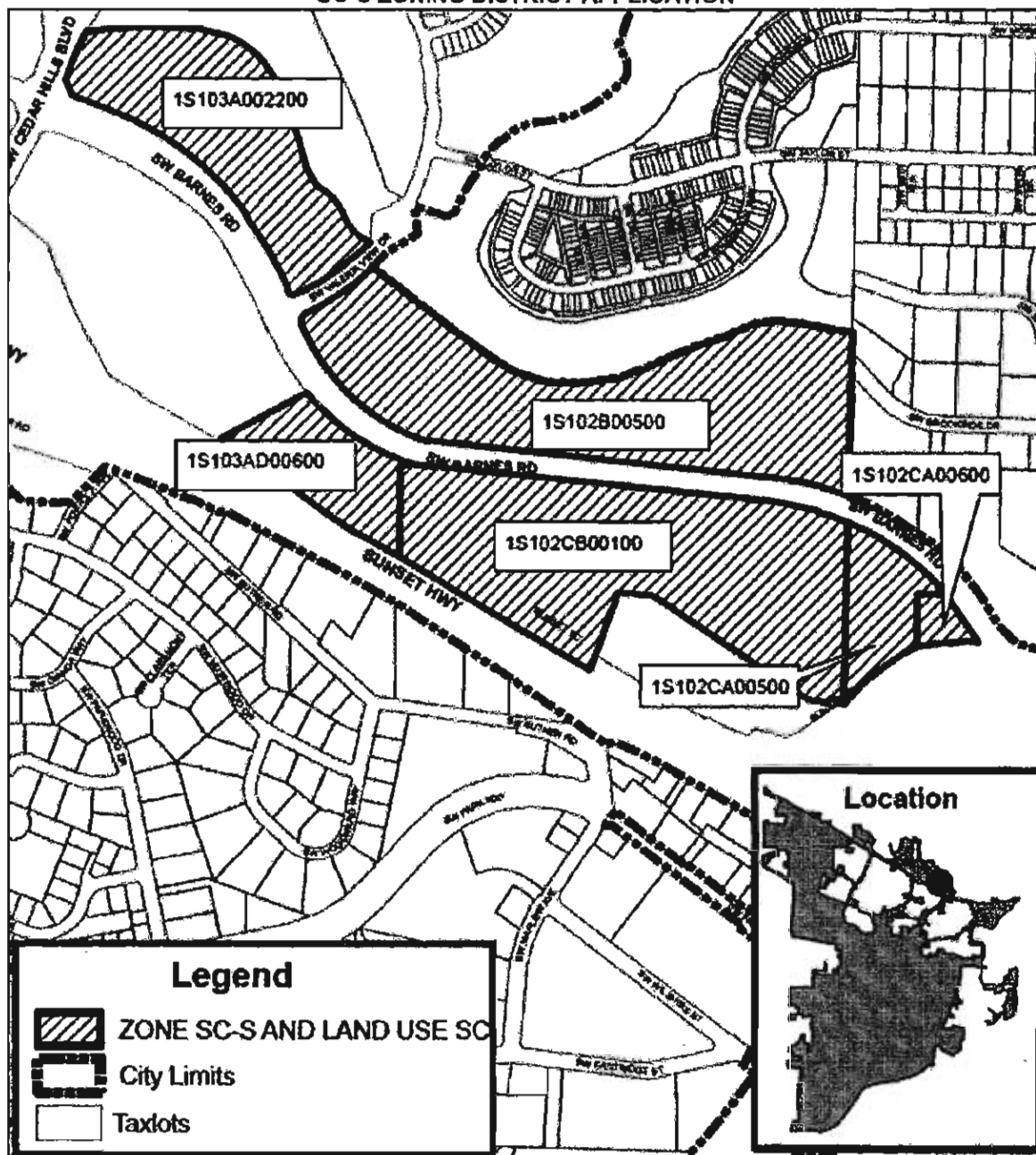
SUMMARY: An appeal of City Council's adoption of Ordinance Number 4580 was filed with the State of Oregon Land Use Board of Appeals (LUBA). On August 22, 2012 LUBA remanded a portion of Ord. No. 4580. LUBA has directed the City to correct an oversight in the original adoption of Ordinance 4578 so as to remove the exemption for Conditional Use - Planned Unit Development review of proposals on parcels under one-half acre in size.

APPLICANT: City of Beaverton

DECISION CRITERIA: The Text Amendment will be reviewed per the provisions of Development Code Sections 50.85 through 50.88. Approval Criteria for the TA are listed in Section 40.85.15.1.C of the Development Code; review of the application in light of the LUBA remand is limited to criterion 40.85.15.1.C.

RECOMMENDATION: **APPROVAL of TA2012-0004 (Text Amendment to Development Code Section 40.15.15.4. Conditional Use - Planned Unit Development), with no associated conditions of approval.**

ORDINANCE No. 4580, ZMA2011-0002
PROPOSED CITY OF BEAVERTON
SC-S ZONING DISTRICT APPLICATION



BACKGROUND

LUBA 2012-020 REMAND of Ordinance No. 4578 and Ordinance No. 4580 TA2012-0004, Text Amendment to Development Code Section 40.15.15.4. Conditional Use – Planned Unit Development

Through the City Council appeal hearing process in February related to Ordinance No. 4578, TA2011-0003, the City Council amended section 20.20.40.1 to remove a proposed exemption for properties less than one-half acre in size. The City failed to amend the corresponding threshold for a Conditional Use – Planned Unit Development (CU-PUD) application of BDC 40.15.15.4(A)(2).

LUBA in its decision in Case No. 2012-020 directed that the city amend Development Code Section 40.15.15.4(A)(2) to eliminate any consideration of a development or land division application in the SC-S zone that is not submitted in the form of a Conditional Use – Planned Unit Development (CU-PUD) application no matter what the size of the property in question. This direction eliminates any "half acre exception" to the CU-PUD submittal requirement.

Concurrent with the remand of Ordinance No. 4580, ZMA2011-0002, the City has applied for the subject text amendment, TA2012-0004, to correct the oversight by removing the one-half acre exemption for Conditional Use – Planned Unit Development (CU-PUD) review of development in the SC-S zoning district. With this amendment, the City can assure that the SC-S zoning district is more closely approximate to the County's zoning designations than the SC-HDR zoning district with regard to residential density.

TABLE OF CONTENTS

	<u>PAGE</u>
BACKGROUND	SR 3
ATTACHMENTS	
A Analysis and Findings related to Remand of Ord. Nos. 4580 and 4578 TA2012-0004, Text Amendment to Development Code Section 40.15.15.4. Conditional Use – Planned Unit Development	TA 1
Analysis and Findings	TA 1
Conclusion	TA 1
EXHIBITS	
1 City Zoning Districts Applied through Ordinance No. 4580	SR 2
2 Proposed Text Amendment Language	

ANALYSIS AND FINDINGS
On REMAND of Ordinance No. 4580 and Ordinance No. 4578
TA2012-0004, Text Amendment to Development Code Section 40.15.15.4.
Conditional Use – Planned Unit Development

Staff presents, below, responses to approval criterion 40.85.15.1.C.5. relevant to the Opinion and Order of the Land use Board of Appeals case file 2012-020 dated August 22, 2012.

Section 40.85.15.1.C. of the *Development Code of the City of Beaverton*

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

5. **The proposed text amendment is consistent with other provisions within the City’s Development Code.”**

During the process of the City Council appeal hearing on February 7, 2012, the City Council directed staff to modify section 20.20.40.1. The modification removed, “for development of a parcel equal to or greater than 1/2 acre in size,” from the end of the proposed section. The language for Section 20.20.40.1, adopted through Ordinance No. 4578 is:

As to any and all property within the SC-S zoning district, approval of a Conditional Use Permit - PUD (Planned Unit Development), pursuant to Section 40.15.15.4 of the Development Code, shall be required prior to, or concurrent with, any land division or other land use approval(s) for the same property or any portion of the same property.

Ordinance No. 4578 left unchanged the following threshold for a Planned Unit Development (PUD) application, Section 40.15.15.A.2:

Is required when development is proposed within the SC-S (Station Community – Sunset) zoning district on a land area greater than 1/2 acre in size.

This oversight in the adoption of Ordinance No. 4578 created an inconsistency in the Development Code that needs to be reconciled. This Text Amendment application, TA2012-0004, proposes modifications that align Section 40.15.15.A.2 with Section 20.20.40.1, including removal of the phrase, “on a land area greater than ½ acre in size.” The resulting proposed text is:

Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community-Sunset) zoning district. Sign Applications excepted.

The City Council finds that the proposed text satisfies LUBA’s direction and provides consistency with other provisions within the City’s Development Code.

Conclusion. The Council finds that, for the reasons identified in the staff report of October 23, 2012 the proposed Text Amendment satisfies the criterion for consistency with other provisions within the City’s Development Code and answers the direction in remand of LUBA’s Opinion and Order, case number 2012-020.

EXHIBIT D2

TA2012-0004 Conditional Use – Planned Unit Development Text Amendment

Proposed modifications to the Development Code of the City of Beaverton are included, below. Proposed deletions are ~~struck out~~ and proposed additions and replacements are underlined.

Notes regarding proposed language changes provided in italic Arial font.

40.15. CONDITIONAL USE

40.15.05. Purpose.

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

40.15.10. Applicability.

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

40.15.15. Application.

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

...

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

A. **Threshold.** A Planned Unit Development is an application process which: [ORD 4578; March 2012]

1. May be chosen by the applicant when one or more of the following thresholds apply: [ORD 4578; March 2012]

a. The Planned Unit Development (PUD) may be applied to Commercial, Industrial, Multiple Use, and Residential properties that are 2 acres or greater in size within any City zoning district. [ORD 4584; June 2012]

b. When a land division of 2 acres or greater in size within any City zoning district requires collectively more than 3 of the following land use applications or combination thereof: [ORD 4584; June 2012]

- (1). Minor Adjustment;
- (2). Major Adjustment;
- (3). Flexible Setback; or
- (4). Variance.

[ORD 4578; March 2012]

2. [ORD 4578; March 2012] Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community-Sunset) zoning district. Sign Applications excepted. on a land area greater than 1/2 acre in size.

B. **Procedure Type.** The Type 3 procedure, as described in Section 50.45. of this Code, shall apply to an application for PUD approval. The decision making authority is the Planning Commission.

C. **Approval Criteria.** In order to approve a PUD application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a PUD application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.
3. The proposal meets the Site Development Requirement for setbacks within the applicable zoning district for the perimeter of the parent parcel unless otherwise provided by Section 60.35.03.
4. The proposal complies with the applicable policies of the Comprehensive Plan.
5. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.
6. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.
7. The width of proposed lots or staggering of building setbacks within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.
8. The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15.
9. The proposal provides improved open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15.:
 - a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest and complement the overall site design.

- b. The shape of the open space is such that the length is not more than three (3) times the width the purpose of which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.
 - c. The dedicated land(s) is located to reasonably serve all lots for the development, for which the dedication is required.
- 10. [ORD 4578; March 2012] For proposals within the SC-S (Station Community-Sunset) zoning district, the requirements identified in Sections 20.20.40.2. and 20.20.40.3. are satisfied.
 - 11. If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. If a phased PUD has been approved, development of the future phases of the PUD shall be filed within five (5) years or the PUD has received an extension approval pursuant to Section 50.93. of the Development Code. However, all PUD phases must commence construction within five (5) years of the date of decision of the PUD. Refer to Section 50.90. [ORD 4584; June 2012]
 - 12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The PUD application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

- E. Conditions of Approval. The decision making authority may impose conditions on the approval of a PUD application to ensure compliance with the approval criteria.
- F. Phasing. If the application proposes to develop the PUD in a single phase, the decision shall expire two (2) years after the date of decision. Refer to Section 50.90.

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

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

Beaverton

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