



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/20/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Pendleton Plan Amendment
DLCD File Number 005-10

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: Monday, January 03, 2011

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: Evan MacKenzie, City of Pendleton
Gloria Gardiner, DLCD Urban Planning Specialist
Grant Young, DLCD Regional Representative
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

DEC 13 2010

LAND CONSERVATION
AND DEVELOPMENT

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 Pendleton**

Local file number: **ZOA10-01 / Ord. 3804**

Date of Adoption: **11/18/2010**

Date Mailed: ~~12/6/2010~~ **12/10/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 07/26/10

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **Zoning Ordinance Text Amendment**

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amendments to City of Pendleton Ordinance No. 3250 (the Zoning Ordinance). Amendments intended to:

- Bring Ordinance into compliance with ORS and OARs (Goals 1 and 2)
- Make Ordinance more consistent with other jurisdictions
- Improve readability, provide clarity, remove redundancy

Does the Adoption differ from proposal? Please select one

Minor edits only.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location:

Acres Involved: **N/A**

Specify Density: Previous: **N/A**

New: **N/A**

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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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...

45-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. 005-10 (18433) [16452]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

No identified impacts to County, State or Federal agencies.

Local Contact: **Evan MacKenzie, Planner**
Address: **500 SW Dorion Ave**
Fax Number: **541-966-0251**

Phone: **541-966-0261** Extension:
City: **Pendleton** Zip: **97801**
E-mail Address: **evan.mackenzie@ci.pendleton.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS [197.615](#) and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light **green paper if available**.
3. **Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:**
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see [ORS 197.615](#)).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see [ORS 197.830 to 197.845](#)).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see [ORS 197.615](#)).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

ORDINANCE N^o 3804

AN ORDINANCE AMENDING ORDINANCE NO. 3250 (THE ZONING ORDINANCE) TO UPDATE FOR CONSISTENCY WITH OREGON REVISED STATUTES (ORS), PROVIDE CLARITY, AND REMOVE REDUNDANCY.

WHEREAS; the City of Pendleton Zoning Ordinance controls all development within the City of Pendleton and its Urban Growth Boundary; and

WHEREAS; the Zoning Ordinance implements the various sections of the Comprehensive Plan relating to development, and;

WHEREAS; the Zoning Ordinance is not consistent with Oregon Revised Statutes and Oregon Administrative Rules, and;

WHEREAS; the Zoning Ordinance does not provide clear and objective language to facilitate interpretation and administration, and;

WHEREAS; City of Pendleton staff has brought the Zoning Ordinance into compliance with Statute and Rule, while at the same time providing clarity and removing redundancy, and;

WHEREAS; adoption of the proposed amendments will not change the amount of land zoned for residential, commercial or industrial uses, and;

WHEREAS; adoption of the proposed amendments will not change or restrict the types of uses permitted outright or conditionally in any City zones, and;

WHEREAS; adoption of the proposed amendments is consistent with the City's responsibility under Goal 1, "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process," and;

WHEREAS; adoption of the proposed amendments is consistent with the City's responsibility under Goal 2, "To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions," and;

WHEREAS; no amendment to the City of Pendleton Comprehensive Plan is warranted, and;

WHEREAS; the proposal is consistent with the standards and criteria for an amendment to the Zoning Ordinance, because it complies with and implements the Comprehensive Plan, including the Transportation System Plan, in a manner consistent with Statute and Rule.

WHEREAS; notice was provided to the general public as set forth in Oregon Revised Statutes and the City of Pendleton Zoning Ordinance, and;

WHEREAS; no changes to permitted or conditional uses was contemplated as part of the proposed amendments; therefore, no "Measure 56" notice was required, and;

WHEREAS; the City of Pendleton Planning Commission held hearings on September 30 and October 21, 2010, and recommended adoption of the proposed amendments based on the findings and conclusions contained in the staff report and those made by the Commission at the hearings; and

WHEREAS; a public hearing was held before the City of Pendleton City Council on November 18, 2010, and all written and oral testimony concerning the matter was received and addressed at the hearing;

NOW, THEREFORE, THE CITY OF PENDLETON ORDAINS AS FOLLOWS:

The City of Pendleton Zoning Ordinance (Ordinance #3250, as amended) is hereby amended as follows:

SECTION 3. DEFINITIONS. The following words and phrases, when used in this Ordinance, shall have the meanings respectively ascribed to them in this section, excepting those instances where the context clearly indicates a different meaning. Words used in the present tense include the future, the singular number includes the plural, and the plural the singular, the word lot includes the word plot. The word shall is mandatory, while the word may is discretionary.

Abutting. Having a common linear boundary.

Access. A way or means of approach to provide physical entrance to a property.

Accessory Structure or Accessory Use. A structure or use incidental and subordinate to the main use of the property and located on the same lot as the main use; such as, but not limited to: private garage, carport, tool or storage shed, playhouse, private recreation facilities, guest house (no cooking facilities), temporary real estate sales office, fence, and satellite dish antennas. Above-ground fuel storage tanks are considered accessory structures, subject to the requirements of this Ordinance and other applicable local and state laws.

Acre. A measure of land area containing 43,560 square feet.

Addition. A structure added to the original structure at some time after the completion of the original.

Aisle. The traveled way by which cars enter and depart parking spaces.

Airport. A place where aircraft can land and take off, usually equipped with hangars, facilities for refueling and repair and various accommodations for passengers.

Airport Elevation. 1493 feet, as determined by the Airport Master Plan.

Airport Hazard. Any structure or vegetation located on or in the vicinity of the airport, or any use of land near said airport, which obstructs the airspace required for the flight of aircraft in landing or takeoff at said airport or is otherwise hazardous to such landing or takeoff of aircraft.

Airport Hazard Subdistrict. A zoning subdistrict designed to protect the airport from hazardous obstructions.

Airport Master Plan. That document adopted by the City Council as a plan for Airport development.

Alley. A service way providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Alteration. Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors or windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another. For purposes of the Historic Conservation Subdistrict, the term alteration shall mean any addition to, removal of, or change in the exterior part of a structure and shall include modification of the surface texture, material, or architectural details of the exterior part of the structure, but shall not include paint color.

Approach, Transitional, Horizontal, and Conical Zones. These zones apply to the area under the approach, transitional, horizontal, an conical surfaces defined on the approach and clear zone within the Airport Master Plan.

Average Slope. A measure of topographical features derived by dividing the change in elevation by the linear distance over which such elevation change occurs.

Awning. A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

Boarding House. A dwelling, or part thereof, in which lodging is provided by the owner or operator to more than two (2) boarders.

Building. A structure built for the support, shelter or enclosure of persons, animals, or property of any kind.

Cabana. A stationary, light weight structure which may be prefabricated or demountable, with two or more walls, used adjacent to and in conjunction with a mobile home, to provide living space meant to be moved with the mobile home.

Carport. A roofed structure, or portion of a building, open on two (2) or more sides, used primarily for the parking and storage of automobiles and other property.

Cemetery. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes; including columbaria, crematories, mausoleums, and mortuaries (when operated in conjunction with and within the boundary of such cemetery).

Central Area Parking District. A group of properties within the downtown Pendleton area as portrayed on Figure 10, that participated in LID #293 which established parking lots in the downtown area. Uses within this district are not required to provide off-street parking as set forth in Section 83 of this Ordinance.

Church. A building or structure, or group of buildings or structures, which by design and construction are primarily intended for the conducting of religious services and accessory uses associated therewith.

City. The City of Pendleton, Oregon.

City Manager. The City's chief administrative officer or authorized agent.

City Park. A recreation area dedicated and preserved public usage.

City Planner. The Director of the Department of Planning and Building; an authorized agent of the City Manager with duty to administer and enforce this Ordinance.

City Standards. Those designs, drawings and specifications of all public improvements adopted by the Public Works Director as authorized by the City ordinance, setting forth the accepted design of such improvements.

Class A Manufactured Housing Subdistrict. A zoning subdistrict identified on Map VI of the Pendleton Comprehensive Plan in which manufactured housing defined by this ordinance as "Class A" may be installed, subject to the requirements of this ordinance.

Class B Manufactured Housing Subdistrict. A zoning subdistrict identified on Map VI of the Pendleton Comprehensive Plan in which manufactured housing defined by this ordinance as "Class A" or "Class B" may be installed, subject to the requirements of this ordinance.

Clear Vision Area. A triangular area on a lot at the intersection of two streets or a street and a railroad, two sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in these regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. (See Sections 116 and 117.)

Clinic. Single or multiple offices for physicians, surgeons, dentists, chiropractors, osteopaths or other members of the healing arts and which may include a dispensary in each such building to handle merchandise of a nature customarily prescribed by occupants in connection with their practices.

Commercial Amusement and Recreation Establishment. An establishment operated for profit and devoted to facilities and equipment for recreation purposes, including bowling alleys, billiard establishments, skating rinks, recreation centers and similar uses whether the use of such establishment is limited to private membership or open to the public upon payment of a fee.

Common or Party Wall. A wall of fire-resistive construction, built to Uniform Building Code standards as a separation between two attached single-family dwelling units.

Conditional Use. Certain land uses which, due to special requirements, unusual character, size or shape, infrequent occurrence, or possible detrimental effects on surrounding property, and for similar reasons, may be allowed by the Planning Commission only as set forth in Article XIX of this Ordinance.

Condominium. A system of separate ownership of attached single-family dwellings in a multiple unit structure, wherein only the interior portion of the dwelling unit itself is owned outright by the occupants, while the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

Cross-Section. A profile of the ground surface perpendicular to a center line.

Day Nursery. Any facility that provides care to six (6) or more children, including children of the provider, regardless of full-time or part-time status.

Demolition. To raze, destroy, dismantle, deface, or in any other manner cause partial or total ruin of an historic site or structure.

De novo. A "new trial" by a different tribunal, typically the result of an appeal.

Density. The number of housing units per gross acre of land within a defined area.

Development. All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes.

Dwelling. A building designed exclusively for residential purposes, including single-family, duplex, and multi-family residences, but not including hotels or motels.

Dwelling, Caretaker or Manager Only. A use accessory to a commercial or industrial facility for a residence for a caretaker or manager which may be allowed with a principal commercial or industrial use on the same property. If a manufactured home, it shall be only of Class A, B, or C.

Dwelling, Duplex. A detached residential building under one ownership that is designed for the occupancy of two (2) families.

Dwelling, Multi-Family. A residential building under one ownership that is designed for the occupancy of three (3) or more families.

Dwelling, Single Family. A detached, conventional manufactured or prefabricated residential dwelling unit designed to be occupied by one family.

Dwelling, Single Family Attached. An attached residential building that contains more than one single family dwelling unit in combination with individual lot ownership.

Dwelling Unit. One or more rooms designed for or occupied by one family.

Erect. To attach, place, alter, construct, reconstruct, or enlarge a principal or accessory building or structure.

Existing Manufactured Home Park or Subdivision. One in which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed is completed before May 1, 1990. The construction of facilities includes, at a minimum, the installation of utilities, construction of streets, and either final site grading or the pouring of concrete pads.

Family. One or more persons related by blood, marriage, legal adoption, or legal guardianship living together in a dwelling unit, together with unrelated individuals up to a total number of occupants that will not exceed that allowed by the Housing Code.

Family Day Care Provider. A person providing care, in the home of the provider, to twelve (12) or fewer children, including children of the provider, regardless of full-time or part-time status. This use shall be treated as a single family dwelling for zoning purposes.

Fence, Sight Obscuring. An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Floor Area. The area within the surrounding walls of a building or portion thereof, exclusive of vent shafts and courts.

Fuel Storage Tank (Above-Ground). A tank installed on property for the storage of flammable liquids. Said tanks are a maximum of 6000 gallons in size, are installed so as to not be accessible to the public and are used solely for the fueling of vehicles associated with the main use of the property.

Garage, Private. An accessory building, enclosed on at least three (3) sides, used for the parking and storage of vehicles or recreational equipment owned or used by the occupants of the principal structure.

Garage, Public. A building available for use by the public for the parking or temporary storage of motor vehicles or recreational equipment.

Governmental Structure or Land Use. A building or use being occupied or conducted by a local, state, or federal government agency (excluding City parks and infrastructure improvements located within public rights of way or easements).

Ground Level. The average of the finished ground level at the center of all walls of the building. In case walls are parallel to and within five (5') feet of a sidewalk, the above-ground level should be measured at the sidewalk (see Figure #7).

Health Officer. The Umatilla County Health Officer.

Height of Building. The vertical distance, using mean sea level elevation datum, from the ground level to the highest point of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof (See Figure #7).

Highway Ready. Refers to a recreation vehicle that is on wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Historic Conservation Subdistrict. A City-wide zoning subdistrict designed to ensure public review of actions affecting designated historic sites, structures, and districts as inventoried within the Comprehensive Plan, or designated as such in the future, with the purpose of preserving the City's architectural and cultural heritage.

Historic Preservation District. A relatively compact, definable geographic area possessing an obvious concentration, linkage or continuity of sites, buildings or structures united by past events, architectural styles, construction features or other physical features illustrative of the community's historic development.

Historic Site or Structure. Any historic site or structure, or a geographic area listed on the City of Pendleton Inventory of Historic Buildings, Sites and Districts or recognized as significant by the City of Pendleton Comprehensive Plan and Technical Report.

Historic Resource. A district, site, building, structure, object or natural feature significant in American history, architecture, archeology or culture. It may be of value to the nation as a whole, or important only to the community in which it is located.

Home Occupation. Any activity conducted within a dwelling unit for financial gain or profit; such activity being clearly incidental to the use of the dwelling unit and conducted by persons residing in the unit, on a full-time, year-round basis. A business conducted within a dwelling unit shall be classified as a Home Occupation if it:

1. Employs persons other than residents of the home; or
2. Anticipates more than 2 clients or customers per day will visit the home; or
3. Provides for a sign announcing the business.

Businesses conducted in dwelling units that generate less neighborhood impact than Home Occupations shall be considered a dwelling unit for zoning purposes, provided that such business comply with the criteria of Section 29(B) of this Ordinance. A business conducted within a dwelling unit will not be classified as a Home Occupation if the only business activity conducted at the home is instruction of five or fewer persons at one time and the activity generates less neighborhood activity than does a Home Occupation. (See Article V, Section 29, for regulations.)

Hospital. An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing service on a continuous basis.

Hospital Industrial Subdistrict. A zoning subdistrict designed to ensure the compatible development of light industries on lands within the State of Oregon property in the vicinity of the Eastern Oregon State Hospital and Training Center (See Sections 87-88 of this Ordinance).

Hotel. A building offering transient lodging (there being no cooking facilities in the guest rooms) and additional services such as restaurants, meeting rooms and recreational facilities.

Infrastructure Improvements. Facilities and structures such as streets, curbs, gutters, sidewalks, storm sewers, sanitary sewers, water lines, private utility poles/lines, bridges, traffic control mechanisms, fire hydrants, and other items commonly found within public rights of way or easements. Such improvements shall be considered outright uses within all zones.

Interior Yard. A side or rear yard not abutting upon a public street.

Intermediate Regional Flood. The flood that has a one percent (1%) chance of being equaled or exceeded in any single year.

Junk Yard. Any property devoted wholly or in part to the storage, buying, selling or otherwise handling of or dealing in scrap or waste material.

Kennel. Any place where dogs, cats, or other household pets are trained, boarded, bred, or sold for financial return.

Larger Than Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

Limited Use Development Subdistrict (L-U). A zoning subdistrict designed to accommodate special cases where the timing of land development or the uses allowed on land warrant restriction beyond that provided by the underlying land use designation.

Livestock. Animals of the bovine species, horses, mules, asses, sheep, goats, and swine, or other like animals, but does not include pygmy goats.

Lodging House. A residence wherein lodging is provided for compensation but where meals for guests shall neither be provided nor permitted.

Lot. A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

Lot Area. The total horizontal area within the lot lines of a lot.

Lot, Corner. A lot abutting on two intersecting streets other than an alley, provided that the streets do not intersect at an angle greater than 135 degrees.

Lot Coverage. The percentage of a building lot that is covered by any roofed structure. (See Figure 6).

Lot, Interior. Any lot that abuts a street on only one (1) side.

Lot Line. The property line bounding a lot.

Lot Line, Front. In the case of an interior lot, the lot line separating one lot from a street other than an alley. In the case of a corner lot, the lot line upon which the main entrance to the building faces, or is to face, according to a building permit application. If a property has no structure, and is not the subject of a building permit application, the front lot line shall be the shortest lot line abutting a street other than an alley. (See Figure 2.)

Lot Line, Rear. A lot line which is opposite and most distant from the front lot line, and in the case of an irregular, triangular, or other shaped lot, a line ten (10) feet in length within the lot parallel to and at a maximum distance from the front lot line. (See Figure 2.)

Lot Line, Side. Any lot line not a front or rear lot line. (See Figure 2.)

Lot, Through. A lot fronting upon two (2) streets other than alleys; thus, containing two (2) front yards.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

Manufactured Home. A dwelling unit fabricated in an off-site manufacturing facility, transportable in one or more sections, which is built on a permanent chassis for installation or assembly at the building site, and designed for use with or without a permanent foundation when connected to the required utilities. The four types of manufactured homes (Class A, B, C and D) are defined as meeting all of the appropriate requirements of this Ordinance, as set forth in Article V, Section 31 and 32. Class A, B and C manufactured homes bear a seal certifying that it is built in compliance with the federal Manufactured Housing Construction and Safety Standards Code. Class D manufactured homes were not built in compliance with this code. For flood plain management purposes the term "Manufactured Home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park. Any place where seven (7) or more manufactured homes are located within five hundred (500) feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. (See Section 30 for regulations.)

Manufactured Home Subdivision. A subdivision as defined in the City of Pendleton Subdivision Ordinance and intended to be occupied primarily or exclusively by manufactured homes.

Manufactured Housing Construction and Safety Standards Code. Title VI of the 1974 Housing and Community Development Act (42 U.S.C. 5401 et sequential), as amended (previously known as the federal Mobile Home Construction and Safety Act), rules and regulations adopted thereunder (including information supplied by the home manufacturer) which has been stamped and approved by a Design Approval Primary Inspection Agency, an agent of the U. S. Department of Housing and Urban Development pursuant to HUD rules and regulations and interpretations of said code by the Oregon Department of Commerce; all of which became effective for mobile/manufactured home construction on June 15, 1976.

Mixed Use District. A zoning subdistrict designed to allow for the "master-planning" of relatively large tracts of land in conformance with the Comprehensive Plan. (See Article XIV.)

Motel. A building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connecting rows, with or without cooking facilities.

Motor Home. A portable unit designed to be driven under its own power having sleeping, cooking, and plumbing facilities independent of external utility connections, and designed for use principally as a temporary recreational or vacation residence.

Neighborhood Commercial Use. A use within a residential zone intended to meet the daily convenience shopping or service needs of residents in the immediate area. (See Article V, Section 28, for regulations.)

Nonconforming Structure or Use. A lawful existing structure, use, or vegetative growth at the time this Ordinance or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

Nonprecision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

Obstruction. Any structure, vegetative growth, or other object (mobile or immobile) which exceeds a limiting height set forth in Article XI, Section 69, of this Ordinance.

Off-Street Parking Space, Automobile. A temporary storage area for a motor vehicle that is directly accessible to an access aisle, and which is not located within a dedicated street right of way. (See Sections 119-121 for standards.)

Off-Street Parking Space, Bicycle. A temporary storage area for a bicycle located on private property, whether it be in a rack, locker, or a 25 square foot clear space, or other design approved by the City.

Parking Area, Public. An area, other than a street, used for the temporary parking of four (4) or more automobiles and available for public use whether free, for compensation, or as an accommodation for clients or customers.

Pendleton Landmarks Commission. A Commission formed to administer the provisions of the Historic Conservation Subdistrict. Until such time as a Landmarks Commission is established by Umatilla County, the Pendleton Planning Commission shall serve as Pendleton' Landmarks Commission.

Person. A corporation, company, association, society, firm, partnership, or joint stock company, as well as an individual, a state, and all political subdivisions of a state or any agency or instrumentality thereof.

Planning Commission. The Pendleton City Planning Commission.

Planned Unit Development (PUD). An area of land to be developed as a single entity for a number of dwelling units and may include public or semi-public, commercial or industrial uses.

Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

Prefabricated (Modular) House. A sectional or factory-built single-family dwelling to which wheels may or may not be attached for the purpose of moving it to a home site where it is affixed to the real property on a permanent foundation. A prefabricated house must comply with the requirements for Group 1 occupancies in the current Uniform Building Code prepared by the International Conference of Building Officials and with the requirements for dwellings in the current National Electrical Code as prepared by the National Fire Protection Association.

Preservation. The act or process of applying measures to sustain the existing form, integrity, and material of an historic building, structure or object, and the existing form and vegetation cover of a site. It may include initial stabilization work, where necessary, as well as on-going maintenance of the historic building materials.

Primary Surface. A surface longitudinally centered on the runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

Public or Semi-public Use. An area owned or operated by a public or non-profit organization for the benefit of the public generally. (This does not include landfill sites, garbage dumps, governmental structures and land uses, City parks or infrastructure improvements located within public rights of way or easements.)

Pvgmy Goat. A genetically small, cobby, and compact goat whose body circumference in relation to height and weight is proportionately greater than other breeds of goats; having a maximum height of not exceeding 23 inches for a Doe (female), 24 inches for a Buck (unneutered male), and 27 inches for a Wether (neutered male), with measurement taken at the highest part of

the back at the base of the neck where the shoulder blades almost touch. It does not include Bucks (unneutered males) of more than six months of age.

Ramada. A stationary structure having a roof extending over a mobile home or trailer which may also extend over a patio or parking space for motor vehicles, and is used principally for protection from sun and rain.

Reasonable Direct. A route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.

Recreational Equipment. Boats, boat trailers, travel trailers, pickups campers or coaches (designed to be mounted on automotive vehicles), motor homes, tent trailers, motorcycles, and the like.

Reinforced Pier. At a minimum, a reinforced pier must have a footing adequate to support the weight of the manufactured home under saturated soil conditions. concrete blocks may be used if vertical steel reinforcing rods are placed in the hollows of the blocks and the hollows are filled with concrete or high strength mortar. Dry stacked concrete blocks do not constitute reinforced piers.

Residential Facility. A facility including those licensed by or under the authority of the Department of Human Resources under Oregon Law which provides residential care alone or in conjunction with treatment or training or a combination thereof for six (6) to fifteen (15) individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

Residential Home. A home, including those licensed by or under the authority of the Department of Human Resources under Oregon Law which provides residential care alone or in conjunction with treatment or training or a combination thereof for five (5) or fewer individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

Sanitary Landfills or Solid Waste Disposal Sites. Places or facilities for disposing of refuse on or beneath the land surface.

Solar Energy System. A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components for the distribution of transformed energy.

Solar Skyspace. The space between a solar energy collector and the sun which must be kept free of obstructions that shade the collector to an extent which precludes its cost-effective operation.

Solar Skyspace Easement. A right, expressed as an easement, covenant, condition, or other property interest in any deed or other instrument executed by or on behalf of any landowner, which protects the solar skyspace of an actual, proposed, or designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy. The solar skyspace may be described as the three-dimensional space in which obstruction is prohibited or limited, or as the times of day during which direct sunlight to the solar collector may not be obstructed, or as a combination of the two methods. (See Section 118 and Appendix B.)

Solid Waste Transfer Station. A place or facility the principal purpose of which is to provide a place where waste materials are taken from smaller collection vehicles and placed in larger transportation units for movement to disposal areas, such as landfills. Compaction, separation, recycling, and other activity incidental to solid waste management may be done at the station.

Solid Waste Treatment Facilities. A facility designed to change the physical, chemical, or biological character or composition of any solid waste. Does not include landfills or transfer stations.

Standard Industrial Classification Manual (SIC). The latest publication (including supplements) prepared by the Statistical Policy Division, Office of Management and Budget, Executive Office of the President of the United States, and available from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. As used in this Ordinance, the SIC shall constitute the detailed listing and description of uses allowed in the various zoning districts, except where such uses are otherwise defined in this Ordinance.

Start of Construction. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that top story shall be that portion of a building included between the upper surface of the top floor and the ceiling above. If the finished floor level directly above a basement or cellar is more than six (6') feet above ground level, such basement or cellar shall be considered a story.

Street. The entire width between the boundary lines of every dedicated way which provides for public use for the purpose of vehicular and pedestrian traffic and including the terms "road," "highway," "lane," "place," "avenue," "alley," or other similar designations.

Structural Alteration. A change to the supporting members of a structure including the supporting parts of foundations, bearing walls or partitions, columns, beams, girders, or the roof.

Structure. That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground (or which is attached to something having a location on the ground). See also, "infrastructure improvements," which are separately defined.

Subdistrict. An area accurately defined as to boundaries and location on an official zoning map and designed to accommodate special development problems which might occur within any zone. It is used in combination with "underlying" or "parent" use zones.

Temporary Use. A short-term use not normally allowed in a given zoning district, which may be permitted by the City Council, on recommendation of the Planning Commission in accordance with Article XIX, Section 145-146 of this Ordinance.

Townhouse. Two or more attached single-family dwellings, having common "party" walls, but with independent entrances and lot ownership.

Trailer. Any portable unit designed and built to be towed on its chassis, comprised of frame and wheels, and which does not fall within the definition of vacation trailer, mobile home or prefabricated house. This definition includes boat trailers, bunk trailers, portable school rooms, and industrial, commercial or public offices and accessory uses.

Umatilla River Subdistrict. A zoning subdistrict designed to guide development of the lands adjacent to the Umatilla River and its tributaries as they traverse the City. (See Article XVI of this Ordinance).

Uniform Building Code. The Uniform Building Code as adopted by the state of Oregon and the City of Pendleton, a copy of which is on file at the City Hall Building Department.

Use. The purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained.

Vacation Trailer. A vehicle which is (1) built on a single chassis, (2) four hundred square feet (400) or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) primarily designed as temporary living quarters for camping, travel or seasonal use. Duration of use, without compliance with applicable manufactured home regulations for siting, set-up, water, sewer, and electrical hook-ups, shall be limited to twelve months in any thirteen month period. (Amended by Ordinance No. 3576, passed January 1998.)

Vacation Trailer Park. A plot of ground upon which two or more vacation trailers are located, for temporary residential purposes, regardless of whether a charge is made for such accommodation.

Variance. A modification of the provisions of this Ordinance, which modification shall be made by the Planning Commission so as to alleviate a hardship not anticipated by this Ordinance, and which hardship is peculiar to the land for which the variance is requested. (See Sections 138-144 of this Ordinance for regulations.)

Vegetation. Any object of natural floral growth.

Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures.

Wrecking Yard. Any property devoted in whole or in part to the dismantling for salvage, demolition, storage or sale of obsolete or damaged vehicles, trailers, similar items or their parts.

Yard. An open space on a lot which is unobstructed from the ground upward except as otherwise provided in this Ordinance.

Yard, Front. A yard between side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of the building.

Yard, Rear. A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of the main building.

Yard, Side. A yard between the front and rear yards measured horizontally and at right angles to the side lot line from the nearest point of the building.

Zero Lot Line. An interior side or rear lot line that is also the location of a common or "party" wall separating attached single-family dwelling units. (See Figure 4.)

Zone. An area accurately defined as to boundaries and location on an official zoning map and within which area only certain uses of land are permitted and within which other types of land uses are excluded, as set forth in this Ordinance.

SECTION 18. CONDITIONAL USES PERMITTED. In a Medium Density Residential (R-2) zone, the following uses and their accessory uses are permitted when authorized in accordance with the provisions of Sections 131-137 of this Ordinance:

- A. Cemetery;
- B. Church;
- C. Day Nursery, Social Services (SIC Major Group 83);
- D. Dwelling, multi-family, subject to the condition that:
 - (1) Housing development shall not exceed more than ~~15~~18 dwelling units per gross acre;

(2) The primary access shall be via a street that is improved or will be improved to City standards prior to occupancy of any unit, unless otherwise approved by the Planning Commission;

(3) Public facilities and services are available to the site and are deemed adequate by the City to meet the requirements of this use. Any extension or oversizing of sewer/water and/or storm water to serve the development shall be totally at the expense of the developer and consistent with applicable City policies and ordinances;

(4) That a sum be paid (for parks and recreation purposes) in accordance with the Subdivision Ordinance prior to issuance of a building permit;

(5) A site plan (indicating vehicular access and movement, parking, landscaping and fencing or buffering) shall be submitted to and approved by the Planning Commission (subject to the requirements Sections 119-121 of this Ordinance) prior to issuance of a building permit;

(6) An agreement, recorded by the property owner, shall be instituted that will prohibit the parcel of land approved for multi-family use under this section from being further developed or subdivided for purposes of sale or building development.

Lands left undeveloped or in open space shall be maintained by the property owner so as not to conflict with the provisions of Ordinance No. 2422 (Section 16 and other applicable sections);

E. Governmental Structure or land use, public and semi-public use or structures, including, but not limited to: SIC Major Groups 43, 91, 92, 93, 94, 95 and 96;

F. Home Occupation (as provided in Section 29 of this Ordinance);

G. Health Services (SIC Major Group 80);

H. Manufactured Home Park, Manufactured Home Subdivision, Vacation Trailer Parks (Individual Conditional Use permits not required for each unit within approved parks or subdivisions);

I. Neighborhood Commercial, see Article V, Section 28, for details;

J. Schools and Colleges (SIC Major Group 82);

K. Transportation and Communication Facilities (SIC Major Groups 40, 4225, 45, 46, 48, and 49).

(Section 18, as amended by Ordinance No. 3276, passed September 27, 1983; Ordinance No. 3278, passed November 22, 1983; Ordinance No. 3363, passed March 3, 1987; Ordinance No. 3440, passed March 20, 1990; Ordinance No. 3453, passed February 20, 1991; Ordinance No. 3494, passed December 7, 1993; Ordinance No. 3570, passed October 21, 1997; and Ordinance No. 3615, passed January 4, 2000.)

SECTION 23. MISCELLANEOUS LOT PROVISIONS.

A. **Building Lots Must Abut a Street.** No residential, commercial, or industrial building shall be erected on a lot which does not abut at least one street. Where there is a residence constructed, as of the date of this Ordinance, on an interior lot not abutting on a public street, such property shall continue unaffected except that in the case of reconstruction of such a structure, as provided in Section 128 of this Ordinance, nothing more than a single family dwelling and accessory buildings may be constructed upon such interior lot, and then only when easements for ingress and egress are recorded.

B. **Nonconforming Lots of Record.**

(1) In any zoning district in which single family dwellings are permitted, a single family dwelling and accessory buildings may be erected on an single lot of record in existence on the date of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.

(2) This provision shall apply even though such lot fails to meet the requirements for area that are applicable in the zoning district, provided that yard dimensions and requirements other than those applying to area of the lot shall conform to the regulations for the zoning district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Planning Commission.

(3) If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on the date of this Ordinance, and if all or part of the lots do not meet the requirements established for lot areas, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot size requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with a size below the requirements stated in this Ordinance.

C. **Parking, Storage or Use of Recreational Equipment.** No equipment shall be used for living, sleeping or housekeeping purposes, nor connected to utilities, when parked or stored on a residential lot, or in any location not approved for such use.

D. **Parking and Storage of Certain Vehicles.** Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially used property other than in completely enclosed buildings.

SECTION 29. HOME OCCUPATIONS.

A. **Purpose.** It is the purpose of this section to:

(1) Permit residents of the community a broad choice in the use of their homes as a place of livelihood and the production or supplementing of personal/family income;

(2) Protect residential areas from potential adverse impacts of activities defined as home occupations;

(3) Establish criteria and development standards for the use of residential structures or dwelling units for home occupations.

B. General Requirements and Criteria. All Home Occupations shall require a Conditional Use permit, and must comply with the following additional criteria and standards:

(1) Home Occupations shall not occupy more than twenty-five (25%) percent of the total floor area of the residence. In no event shall such occupancy exceed four hundred (400) square feet, nor shall an accessory building for such home occupation exceed four hundred (400) square feet, nor shall the total floor area in the residence and/or accessory building exceed four hundred (400) square feet.

(2) Any occupation which may produce waste products of a quality or quantity not normally associated with residential use shall not qualify as a home occupation.

(3) Home occupations shall comply with all other local, state, or federal regulations pertinent to the activity pursued, and the requirements or permission granted or implied by this section shall not be construed as an exemption from such regulations. Such regulations include building and fire codes enacted to protect the applicant and surrounding property owners from hazardous conditions. State or local officials may inspect home occupations to ensure fire and life safety codes are met.

(4) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any electrical equipment, radio or television receivers off the premises or causes fluctuations in the line voltages off the premises. On-site repair or assembly of vehicles or equipment with internal combustion engines (such as autos, chain saws, boat engines) or of large equipment (such as home appliances) is prohibited.

(5) Home occupation signs shall be flush-mounted on the main residential structure, be unlit, and shall not exceed two (2) square feet in area. Such signs shall be made of nonflashing, nonreflective materials, and the legend shall show only the name of the occupant and the type of occupation. Colors shall be consistent with residential character.

(6) Exterior structural alterations or additions or the use of accessory buildings for home occupations shall be designed and built as to maintain or preserve the residential character of the premises. In no event shall such structural alterations or additions exceed the development standards permitted for structures in the zoning district in which the premises are located.

(7) No materials or commodities shall be delivered to or from the property which are of bulk or quantity to require delivery by a commercial vehicle or trailer, except such vehicles as a UPS, postal service truck, or similar vehicle containing no more than two (2) axles.

(8) Parking of customers', employees', or clients' vehicles shall create no hazard or unusual congestion.

(9) Off-street parking spaces shall not be reduced in size or number, below the minimum required in the district, nor used for any purpose other than parking. Parking of vehicles having three (3) axles or more or pieces of heavy equipment such as construction equipment on the premises or in the public right-of-way in the conduct of the home occupation is prohibited.

(10) When merchandise, materials, or equipment is stored or displayed, such storage shall be entirely within the residential structure, or in an accessory building. In no event shall storage or display be permitted on any exterior portion of the premises.

(11) Employment of more than two (2) persons who are not bona fide residents of the premises is prohibited.

(12) The home occupation shall not be used as a headquarters for the assembly of employees for instructions or other purposes or for the dispatch of employees for work at the other locations.

(13) Clients, employees or customers may visit the site only between the hours of 7:00 a.m. and 8:00 p.m. (including deliveries).

(14) Applicants should be aware of any deed restrictions or covenants in effect in a subdivision. It shall be the sole responsibility of the applicant to research said deed restrictions or covenants and determine if they prohibit or regulate home occupations.

C. Procedure. The City Planner may grant a conditional use permit for a home occupation as follows:

(1) The City shall ascertain whether a home occupation is contemplated by the applicant at the time of the submission of the business license. If such a home occupation is contemplated by the applicant, then the applicant shall be immediately notified of the permit requirements, and the fees in writing.

(2) Upon receipt of business license application for a business to be conducted in a dwelling, the City Planner shall make a determination if the proposed use constitutes a Home Occupation pursuant to this Ordinance. The applicant shall submit sufficient information to the City Planner from which the City Planner can make a determination. The City Planner shall make a determination within 10 working days of the receipt of the business license application. If the City Planner determines that the activity is not a Home Occupation as defined by this Ordinance, the City Planner shall note zoning approval on the business license application. All City Planner determinations are subject to appeal (at no charge) to the Planning Commission pursuant to Section 156 of this Ordinance.

(3) Upon determining that a proposed home business is a Home Occupation, the City Planner shall determine whether to approve a conditional use permit for the business or refer the application to the Planning Commission for a hearing. The applicant shall pay the applicable filing fee set forth in Section 160 of this Ordinance at this time.

(4) Notice to Property Owners. Should the City Planner decide to grant a home occupation permit, notice of the proposed home occupation approval and the proposed findings of fact and conclusions of law shall be mailed within two (2) working days of the City Planner's decision to all owners of property within two hundred fifty (250') feet of the subject property, and comments solicited. If written objections to the proposed home occupation are received within ten (10) days by the City Planner, a public hearing shall be held according to Section 161 of this Ordinance. Upon approval of the City Planner and/or the Planning Commission, the applicant may operate the business unless the permit is denied by a later City decision under this Ordinance. If a public hearing is required, the applicant shall pay the difference between the administrative review with notice fee and the Planning Commission hearing fee set forth in Section 160 of this Ordinance at this time. If no objections to the home occupation are received, the decision shall become final and effective at the end of the ten (10) day period.

(5) There shall be two types of Home Occupation applications:

a) Type I, ministerial applications shall be approved if an applicant can provide proof that all standards contained in Section 29 B are met or can be met through specific non-discretionary conditions of approval.

b) Type III, discretionary Home Occupation permits shall require Conditional Use approval for any Home Occupation that cannot show compliance with all standards contained in Section 29 B.

ARTICLE XVI. PLANNED UNIT DEVELOPMENT SUBDISTRICT (PUD) OVERLAY

SECTION 107. APPEAL TO COUNCIL. Within ten (10) days after the date of decision by the Planning Commission on an application for approval of a preliminary or final development plan or for modification or amendment of any such plan, or on revocation of any such plan, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or any other interested party. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Manager. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of such appeal the Council shall set the time for consideration thereof. The City Manager shall notify the Planning Commission of the receipt of said appeal and of the time set for consideration thereof; and said Commission shall, not less than ten (10) days prior to the date set for the hearing on the appeal, give written notice to the appellant and to any known adverse parties, or to their representatives, of the time and place of the hearing. In considering the appeal, the City Council shall determine whether the proposal conforms to the applicable criteria and standards. They may approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and standards. The decision of the City Council shall be final.

ARTICLE XX. SPECIAL PERMITS

CONDITIONAL USES

SECTION 131. APPLICATION SUBMITTAL AND COMPLETENESS REVIEW. The City of Pendleton provides a consolidated procedure by which an applicant may apply at one time for all land use permits needed for a development project.

A. Application Forms and Checklists

(1) The Director shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions. All applications provided for in this Ordinance shall be made on the application forms prescribed by the City.

(2) The Director shall supply checklists or information sheets for applications, which shall detail the specific information which must be contained in the application, including format and number of copies. Such checklists may be incorporated into the application forms.

B. Application Submittal

1. An application for a Special Permit may be filed by:

A. The owner or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser.

B. The City Council, Planning Commission, City Manager, or the City Manager's designee, as to property owned by the City, including public right of way and easements, or which the City intends to acquire.

C. Public agencies that own the property or have passed a resolution declaring that they intend to exercise their statutory authority to condemn the property.

2. A Text Amendment application may be filed by an interested person, City Council, Mayor, or Director.
3. A Zoning Map Amendment application subject to a Type III-procedure may be filed by the owner or the contract purchaser of the subject property, City Council, Mayor, or Director.
4. A Zoning Map Amendment application subject to a Type IV procedure may be filed only by the City Council, Mayor, City Manager, or the City Manager's designee.

C. Withdrawal of an Application

1. An applicant may withdraw an application at any time before the application is deemed complete.
2. An applicant may withdraw an application previously deemed complete at any time prior to adoption of a final City decision if the Director determines that:
 - A. The owners or contract purchasers or the interest holders in the property consent in writing to withdraw the application.
 - B. No violation of this Code has been identified on the subject property and processing of the application would not correct the identified violation.
3. The City Manager, or his designee may withdraw any City-initiated application at any time.
4. If an application is withdrawn after public notice has been mailed, the Director shall send written notice stating the application has been withdrawn to all persons to whom notice of the application or hearing has been sent. This provision shall not apply to legislative applications that require Citywide mailed notice.
5. Once an application has been withdrawn, the application fees shall be refunded by the following formula:
 - A. Application withdrawn prior to being deemed complete: 85%.
 - B. Application withdrawn prior to publication or distribution of public notice: 50%.
 - C. Application withdrawn after publication or distribution of public notice: no refund.
6. There shall be no refund of fees for an appeal.

D. Classification of Applications

1. An application shall be subject to the procedure type specified in the Code, if any. If the Code does not specify a procedure type for a given application and another procedure is not required by law, the Director shall determine the appropriate procedure based on the following guidelines. Where two or more procedure types could be applied to a particular application, the selected procedure will be the type providing the broadest notice and opportunity to participate.
 - A. A Type I (Ministerial) application is subject to non-discretionary criteria or criteria that require the exercise of professional judgment only about technical issues.
 - B. A Type II (Ministerial) application is subject to criteria that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest.
 - C. A Type III (Quasi-Judicial) application is subject to criteria that require the exercise of substantial discretion and about which there may be broad public interest, although the application applies to a limited number of land owners and properties.
 - D. A Type IV (Legislative) procedure typically involves the adoption, implementation or amendment of policy or law by ordinance. The subject of a Type IV procedure generally applies to a relatively large geographic area containing many property owners.
2. When an applicant submits more than one complete application for a given proposal, where each application addresses a separate set of code requirements and the applications are subject to different procedure types, all of the applications are subject to the procedure type of the application which requires the broadest notice and opportunity to participate. For example, a Type II application will be consolidated with a Type III application for the same proposal on the same site, in which case, the Type II application will be reviewed by the decision making authority of the Type III application. The decision making authority's action on the Type II application will be based on the approval criteria governing the Type II application.

In the event that the completed applications involve applications where the decision making authority is a combination of the Director and the Planning Commission, the decision making authority will be the Planning Commission.

Notwithstanding any other provision and at no cost to the applicant, the Director may choose to combine multiple applications for the same development as a way to increase the efficiency of development review.

3. For applications within the Historic District, the Director shall determine the appropriate decision-making authority between the Façade Committee, the Landmarks Commission and the Planning Commission. Such determination will be based upon the characteristics of the proposal and the associated application, if any.
4. Notwithstanding the Director's determination of procedure type, an applicant may choose to have a Type II application submitted directly to the Planning Commission provided the applicant pays the appropriate fee for the selected procedure type and the Director determines that statutory timelines for reaching a final decision can be satisfied.
5. Notwithstanding any other provision, and at no additional cost to the applicant, the Director may choose to process a Type II application under the Type III procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications pursuant to ORS 227.178.

E. Application Submittal

1. Applications for development permits shall be submitted upon forms supplied by the Director. Partial submittal of applications will not be accepted. All of the following items must be submitted to initiate the completeness review:
 - a) Applications for Type I and Type II actions which do not require a public hearing shall be processed administratively in the order they are received. One copy of the application and all attachments shall be submitted.
 - b) All applications for Type III quasi-judicial actions shall be submitted to the Planning Department no less than 28 days before the next scheduled meeting of the Planning Commission. Ten complete sets of the application and all attachments shall be submitted.
 - c) Any proposal for a Type IV Legislative action to amend the City of Pendleton Comprehensive Plan or any City of Pendleton land use regulation or to adopt a new land use regulation shall be submitted a minimum of 50 days prior to the first evidentiary hearing, consistent with the standards contained in ORS 197.760. Twenty complete sets of the application and all attachments shall be submitted.
 - d) In no instance shall an application be scheduled for a public hearing if local or State notice requirements cannot be met. Applications submitted after applicable deadlines shall be scheduled for the next available hearing date upon determination of completeness.
2. All applications shall provide the following minimum information, unless specifically waived by the Planning Director:
 - 1) Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;
 - 2) Deed, title report or other proof of ownership;
 - 3) Completed checklist provided for each type of application, including all required materials;
 - 4) A narrative summarizing the project, including (but not limited to) such information as: the nature of the structure(s) and/or activities proposed (Residential, Commercial, Industrial, Institutional, Mixed Use, etc.) number of dwellings/employees/students/participants, hours of operation, and any other information to assist staff and the public in understanding the proposal. If negative impacts are anticipated, please identify them and provide a proposal for mitigation.
 - 5) Plans and specifications, drawn to scale, showing the following:
 - a) The actual shape and dimensions of the lot or site to be built upon. Site drawings should be provided at a scale of 1" = 20' or 1" = 40' unless a large site dictates a more appropriate scale, which shall in all cases be consistent with a U.S. Standard Engineer scale.
 - b) The sizes and locations of all structures on the site (existing and proposed), including all setbacks.
 - c) Elevations of any proposed buildings, if part of or relevant to the application.
 - d) The number of dwelling units, if any, that exist on the site or are proposed for construction.
 - e) The relationship of the property to the surrounding area.
 - f) Documentation of the public improvements abutting the site (streets, curb/gutter, sidewalks, etc.).
 - g) Elevation Certificate and/or topographic map prepared by a registered land surveyor to show compliance with floodplain standards, if applicable.
 - h) Any other information deemed necessary by the Planning Director to determine conformance with this Ordinance or compatibility with the general neighborhood or zone.

- 6) Special reports or plans required to demonstrate that the specific proposal and its site constraints comply with applicable codes. These are noted on the application checklist.
- 7) Application narrative to address each applicable approval criteria and standards.
- 8) Any mitigation proposed to address actual or potential negative impacts.
- 9) A Trip Generation study or Traffic Impact Analysis, if deemed necessary pursuant to City of Pendleton Ordinance No. 3481 and/or the City of Pendleton Transportation System Plan.
- 10) Electronic copies of all submittal materials, if possible.
- 11) Payment for the appropriate land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

F. Completeness Review

1. The Director shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within thirty (30) calendar days after the city receives the application submittal.
2. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.
3. Submittal and/or acceptance of the required fees shall not constitute acceptance of a complete application.
4. Failure to provide necessary or relevant information may result in delay or denial of an application.
5. If the application was complete when first submitted or the applicant submits additional information within 180 days of the date the application was first submitted, and a decision has not been issued, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.
6. If an application is incomplete, the Director shall prepare a notice of incompleteness. The notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, to be returned to the Director by the applicant, indicating whether or not the applicant intends to amend or supplement the application.
7. The application will be deemed complete for purposes of this section upon receipt by the city of:
 - a) All of the missing information;
 - b) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - c) Written notice from the applicant that no additional information will be provided.
8. The application will be deemed void if the application has been on file with the city for more than 180 calendar days and the applicant has not met the obligations of subsection 7 above.
9. The City shall take final action on an application for a permit, limited land use decision or zone change consistent with the standards contained in ORS 227.178, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete. The 120 calendar day time limit may be extended pursuant to subsection 10 below or as may otherwise be permitted under State law.
10. The 120 calendar day time line may be extended at the written request of the applicant. The total of all extensions may not exceed 245 calendar days, for a total of 365 days from the date the application is deemed complete.

SECTION 131. PURPOSE. ~~In all zones, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this ordinance and their effect on surrounding properties. (Sections 131 to 137 repealed and replaced by Ordinance No. 3706 adopted May 18, 2004, effective for permits applied for on and after June 17, 2004)~~

~~Note: Section 6 of Ordinance 3706 provides: Section 6: Transition. The repeal, replacement, and amendments of this Ordinance apply to applications for Conditional Uses filed on and after the effective date of this ordinance. The law in effect on the day preceding the effective date of this Ordinance shall remain in effect and govern applications for Conditional Uses filed before the effective date of this Ordinance if the application was complete when first submitted or the applicant submits requested additional information within 180 days of the date the application was first submitted.~~

SECTION 132. PUBLIC NOTICE.

A. Time limits for public notices.

1. Type I actions do not require a Notice of Pending Administrative Decision, public hearing, or a Notice of Decision.
2. Type II actions do not require a public hearing. The Director shall issue a decision and provide notice of that decision within 21 days.
3. Type III actions require a public hearing before the Planning Commission. Public notice shall be provided at least 20 days before the first evidentiary hearing, consistent with the standards of ORS 197.763.
4. Type IV actions require public hearings before the Planning Commission and City Council. Public notice shall be provided at least 20 days before the first evidentiary hearing, consistent with the standards of ORS 197.763. Notice shall also be provided to the Department of Land Conservation and Development consistent with ORS 197.610.
5. In no instance shall an application be scheduled for a public hearing if local or State notice requirements cannot be met. Applications submitted after applicable deadlines shall be scheduled for the next available hearing date upon determination of completeness.
6. All Limited Land Use Decisions shall follow the procedure for public notice outlined in ORS 197.195, as amended.

B. Notice of decision (Type II) or hearings (Type III and IV) to affected property owners.

1. All notices governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
 - (A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
 - (B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
2. At the Director's discretion, the notice radius may be increased beyond the minimum required under this ordinance and/or ORS 197.763. Failure of any party to receive notice beyond the minimum radius shall not constitute standing to appeal.

C. The notice provided by the City shall:

- 1) Explain the nature of the application and the proposed use or uses which could be authorized;
- 2) List the applicable criteria from the Ordinance and the 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, when applicable;
- 5) State that failure of an issue to be raised by the close of the record at or following the final evidentiary hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
- 6) Include the name of a City representative to contact and the telephone number where additional information may be obtained;
- 7) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies 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 seven (7) days prior to the hearing and copies 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 hearings.

D. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public at the time notice is provided. Persons other than the applicant may submit documents or evidence:

- 1) in support of the application as late as the hearing itself;
- 2) in opposition to the application
 - a) at the hearing, and
 - b) for at least seven (7) days after the hearing if someone other than the applicant submits documents or evidence in support of the application or a participant at the initial hearing asks before the hearing concludes that the record be kept open.

The applicant and other persons who have participated at the initial hearing may submit documents or evidence

rebutting evidence submitted in opposition to the application:

- 1) at the hearing; and
- 2) for at least seven (7) days after the hearing if a participant at the initial hearing asks before the hearing concludes that the record be kept open.

E. The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

SECTION 132. PLANNING COMMISSION AUTHORITY. ~~The Planning Commission shall have the authority to approve, approve with conditions, disapprove or revoke conditional use permits subject to the provisions of this section. Changes in use, expansion or contraction of site area, or alteration of structure or uses classified as conditional and existing prior to the effective date of this ordinance shall conform to all regulations pertaining to conditional uses.~~

SECTION 133. BURDEN OF PROOF. The specific findings made by the Planning Commission in granting a Special Permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the Permit. If no evidence is produced by the applicant concerning any of the findings, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings relating to approval or denial of an application.

- A. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.
- B. If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.
- C. The applicant shall notify the City Manager within five (5) days from City's receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.
- D. In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.
- E. In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant's right to retain independent counsel in making their own legal appearance upon appeal.
- F. If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to \$500 plus one-half the actual costs over \$500.

SECTION 133. APPLICATION. ~~The property owner or his authorized agent may make an application for a conditional use permit by filing an application, at least 45 days prior to the meeting date the matter is intended to be considered, with the Department of Planning on a form acceptable to the City, which shall include the following information:~~

- ~~A. Name and address of applicant.~~
- ~~B. Statement that the applicant is the owner of the property or is the authorized agent of the owner.~~
- ~~C. Address, legal description and Umatilla County Assessor's map and tax lot number of the property.~~
- ~~D. The application shall include an accurate scale drawing of the site and improvements proposed. The drawing must be adequate to enable the planning commission to determine the conformance of the proposal with the requirements of this ordinance.~~

~~E. A map (Umatilla County Assessor's plat) showing the subject property and surrounding properties.~~

~~F. Statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this ordinance together with any other data pertinent to the findings prerequisite to the granting of a conditional use permit as listed in subsection C of Section 135.~~

~~G. The application shall be accompanied by a non-refundable filing fee in the amount established by Section 160, Filing Fees.~~

SECTION 134. STAFF REPORT.

- A. A staff report shall be prepared for all Type II, Type III and Type IV applications.
- B. The staff report shall address all applicable criteria from the Ordinance and the Plan that apply to the application at issue.
- C. The staff report shall include findings and conclusions showing that each criterion is:
 - 1. Met;
 - 2. Not met;
 - 3. Can be met through a specific condition of approval; or
 - 4. Requires further deliberation from the Commission prior to adoption of findings and a conclusion.
- D. The staff report for Type II applications shall include a decision for approval or denial.
- E. The staff report for Type III and Type IV applications may, at the Director's discretion, include a recommendation for approval or denial based on findings and conclusions in the report.
- F. The staff report shall include all written testimony received a minimum of seven (7) days prior to a hearing. All testimony submitted less than seven days prior to a hearing shall be presented at the hearing.

SECTION 134. PUBLIC HEARINGS. ~~Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Commission at a public hearing. Notice of said hearing shall be given as provided in Section 161.~~

SECTION 135. CONDUCT OF PUBLIC HEARING.

- A. At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:
 - (1) Lists the applicable substantive criteria;
 - (1) Testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection or other criteria in the plan or land use regulations which the person believes to apply to the decision;
 - (2) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised in person or by letter not later than the close of the record or following the final evidentiary hearing on the proposal before the local government. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
 - (3) If a participant at the hearing so requests before the hearing concludes, the record shall be kept open for at least seven (7) days -- unless there is a continuance; and
 - (4) Any party shall be entitled to a continuance of the hearing if persons other than the applicant submit documents or evidence in support of the application supplementing the documents or evidence submitted by the applicant.
- B. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Such an extension shall not be subject to the limitations of ORS 215 and 227.
- C. When the Planning Commission or City Council reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

SECTION 135. ACTION BY THE PLANNING COMMISSION.

A. ~~Within sixty (60) days after the filing of the application, a public hearing shall be held and the Commission shall render its decision. The decision of the Planning Commission shall be final unless appealed to the City Council.~~

B. ~~The Planning Commission may approve, approve with conditions or disapprove the conditional use permit application by the entry of a Planning Commission order, in open meeting, which order shall describe the basis for the decision and state the specific circumstances, findings of fact and evidence presented requiring the application of conditions to the approval.~~

C. ~~Findings of fact. In order to grant any conditional use, the Planning Commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:~~

- (1) ~~The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.~~
- (2) ~~The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.~~
- (3) ~~Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.~~
- (4) ~~In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.~~

~~D. Conditions of approval. In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:~~

- ~~(1) Increasing required lot size, yard dimensions, open spaces or buffer areas.~~
- ~~(2) Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area.~~
- ~~(3) Requiring landscaping and maintenance thereof.~~
- ~~(4) Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress.~~
- ~~(5) Requiring means of pedestrian/bicycle access pathways to serve the property.~~
- ~~(6) Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas.~~
- ~~(7) Limiting size, location and number of signs.~~
- ~~(8) Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property.~~
- ~~(9) Limiting or prohibiting openings in sides of buildings or structures.~~
- ~~(10) Enclosure of storage areas and limitation of outside display and/or storage of merchandise.~~
- ~~(11) Requiring maintenance of grounds.~~
- ~~(12) Regulation of noise, vibration, odors, etc.~~
- ~~(13) Regulation of time for certain activities.~~
- ~~(14) Establishing a time period within which the proposed use shall be developed.~~
- ~~(15) The requirement of a bond for removal of such use within a specified period of time.~~
- ~~(16) Increase the size, type or capacity of any or all utility services, facilities or appurtenances.~~
- ~~(17) Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed.~~
- ~~(18) The Planning Commission may require that an applicant furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards; or an irrevocable consent to participate in an LID for these improvements has been executed.~~
- ~~(19) And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this section.~~

SECTION 136. ENTRY OF ORDER. Where the Planning Commission is of the opinion that a Special Permit shall be granted, it shall, in open public meeting, by a majority of its members in attendance, enter a Planning Commission Order granting the Permit. The order shall include specific findings of fact, conclusions and supportive evidence pertaining to the applicable criteria, and any conditions of approval. The Chairman of, or in the Chairman's absence, the officer presiding over the Planning Commission meeting in which the above described order is enacted, shall forthwith sign the order and cause the same to be filed with the City Recorder. Upon the filing of said order with the City Recorder, the order shall be in full force and effect. An order denying a Permit shall be entered and filed in a like manner, with the necessary findings of fact, where the Planning Commission, based on the standards specified herein, determines that the Permit should not be granted.

SECTION 136.1. BURDEN OF PROOF. The specific findings made by the Planning Commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in subsection C of Section 135, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any conditional use permit application.

SECTION 136.2. ENTRY OF ORDER. Where the Planning Commission is of the opinion that said conditional use permit shall be granted, it shall, in open public meeting, by a majority of its members in attendance, enter a Planning Commission order granting the conditional use permit, which order shall include specific findings of fact, conclusions and supportive evidence pertaining to subsection C of Section 135, and any conditions of approval as authorized by subsection D of Section 135. The chairman of, or in his absence, the officer presiding over the Planning Commission meeting in which the above described order is enacted, shall forthwith sign the order and cause the same to be filed with the City Recorder. Upon the filing of said order with the City Recorder, the order shall be in full force and effect. An order denying a conditional use permit shall be

entered and filed in a like manner, with the necessary findings of fact, where the Planning Commission, based on the standards specified herein, determines that the conditional use permit should not be granted.

SECTION 136.3. TIME LIMITATION. A conditional use permit shall become void two (2) years after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The Planning Commission may extend a use permit for one additional period of two (2) years, subject to the requirements of this ordinance. No more than one such extension may be granted.

SECTION 136.4. APPEAL. The applicant or any party to the proceeding may, within the time period specified in Section 161, after the decision of the Planning Commission is filed with the City Recorder, appeal the same to the City Council in the form prescribed by the City. The appeal procedure shall be as set forth in Section 156, Appeals.

SECTION 136.5. EFFECT. No building or other permit shall be issued in any case where a conditional use permit is required by the terms of this ordinance until after the appeal period after the decision of the Planning Commission is filed with the City Recorder. An appeal from an action of the Planning Commission shall automatically stay the issuance of a building or other permit until such appeal has been completed. In the event the council acts to grant said conditional use permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit.

SECTION 136.6. VIOLATION OF CONDITIONS. The Planning Commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Section 161. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.

SECTION 136.7. LIMITATION ON NEW APPLICATIONS. In a case where an application is denied by the Planning Commission, or denied by the City Council on appeal from the Planning Commission, unless specifically stated to be without prejudice, it shall not be eligible for resubmittal for a period of one (1) year from the date of said denial unless, in the opinion of the Planning Commission, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.

SECTION 136.8. NOTIFICATION OF ACTION. The City Manager or his designee shall notify the applicant, and all participants at the hearing, for a conditional use permit of the Planning Commission's action within five (5) days after entry of the final order. A copy of said order shall be provided to the applicant, and all participants at the hearing.

SECTION 137. NOTIFICATION OF DECISION. Within five (5) days after a decision has been rendered, the Director shall provide the applicant and any person who provided admissible written or oral testimony with written notice of the decision of the Planning Commission. A copy of the Decision or Final Order shall be provided to the applicant, and shall be available for inspection by interested parties upon request.

SECTION 137. USE PERMIT TO RUN WITH THE LAND. A conditional use permit granted pursuant to the provisions of this section shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this section.

VARIANCES

SECTION 138. RESUBMITTAL OF APPLICATION FOLLOWING DENIAL. An application which has been denied or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, will be rejected for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least 12 months from the date the final city action is made denying the application unless there is substantial change in the facts, a change in the Development Code, or a change in city policy which would change the outcome.

SECTION 138. AUTHORIZATION TO GRANT OR DENY VARIANCES. The Planning Commission shall authorize variances from the requirements of this Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the Ordinance would cause an undue or unnecessary hardship. No variance shall be allowed the use of property for a purpose not authorized within the zone in which the

~~proposed use would be located. In granting a variance, the Planning Commission shall attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or to otherwise achieve the purposes of this Ordinance.~~

SECTION 139. TIME LIMITATION. All Special Permits shall become void two (2) years after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The Planning Commission may extend a Special Permit for one additional period of two (2) years, subject to the requirements of this ordinance. No more than one such extension may be granted.

~~**SECTION 139. CIRCUMSTANCES FOR GRANTING A VARIANCE.** A variance shall be granted only in the event that all of the following circumstances exist:~~

~~A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.~~

~~B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.~~

~~C. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.~~

~~D. The variance requested is the minimum variance which would alleviate the hardship.~~

SECTION 140. EFFECT. No building or other permit shall be issued in any case where a Permit is required by the terms of this ordinance until after the appeal period after the decision of the Planning Commission is filed with the City Recorder. An appeal from an action of the Planning Commission shall automatically stay the issuance of a building or other permit until such appeal has been completed. In the event the council acts to grant said Permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit.

~~**SECTION 140. APPLICATION FOR A VARIANCE.** A property owner may initiate a request for a variance by filing an application with the City Manager using forms prescribed pursuant to Section 157 of this Ordinance. The application shall be accompanied by a site plan drawn to scale showing the condition to be varied and the dimensions and arrangement of proposed development. The Planning Commission may request other drawings or material essential to an understanding of the variance request.~~

SECTION 141. VIOLATION OF CONDITIONS. The Planning Commission, on its own motion, may revoke any Permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Section 132. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a Permit.

~~**SECTION 141. PUBLIC HEARING ON A VARIANCE.** Before the Planning Commission may act on a request for a variance, it shall hold a public hearing. Notice of the hearing shall be given in accordance with the provisions of Section 161 of this Ordinance.~~

SECTION 142. PERMIT TO RUN WITH THE LAND. A Permit granted pursuant to the provisions of this section shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this section.

SECTION 142. NOTIFICATION OF DECISION. Within five (5) days after a decision has been rendered with reference to a request for a variance, the City Manager shall provide the applicant with written notice of the decision of the Planning Commission.

CONDITIONAL USES

SECTION 143. PURPOSE. In all zones, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this ordinance and their effect on surrounding properties. **SECTION 143. TIME LIMIT ON A PERMIT FOR A VARIANCE.** Authorization of a variance shall be void after one (1) year unless substantial

~~construction pursuant thereto has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one (1) year per request.~~
(Section 143, as amended by Ordinance No. 3428, passed May 2, 1989.)

SECTION 144. PLANNING COMMISSION AUTHORITY. The Planning Commission shall have the authority to approve, approve with conditions, disapprove or revoke conditional use permits subject to the provisions of this section. Changes in use, expansion or contraction of site area, or alteration of structure or uses classified as conditional and existing prior to the effective date of this ordinance shall conform to all regulations pertaining to conditional uses.

SECTION 145. APPLICATION FOR A CONDITIONAL USE.

A. Conditional Use applications shall follow the procedure for a "Type III" application contained in Sections 131-142.

B. Findings of fact. In order to grant any conditional use, the Planning Commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

- 1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.**
- 2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.**
- 3. Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.**
- 4. In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.**

C. Conditions of approval. In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

- 1. Increasing required lot size, yard dimensions, open spaces or buffer areas.**
- 2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area.**
- 3. Requiring landscaping and maintenance thereof.**
- 4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress.**
- 5. Requiring means of pedestrian/bicycle access pathways to serve the property.**
- 6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas.**
- 7. Limiting size, location and number of signs.**
- 8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property.**
- 9. Limiting or prohibiting openings in sides of buildings or structures.**
- 10. Enclosure of storage areas and limitation of outside display and/or storage of merchandise.**
- 11. Requiring maintenance of grounds.**
- 12. Regulation of noise, vibration, odors, etc.**
- 13. Regulation of time for certain activities.**
- 14. Establishing a time period within which the proposed use shall be developed.**
- 15. The requirement of a bond for removal of such use within a specified period of time.**
- 16. Increase the size, type or capacity of any or all utility services, facilities or appurtenances.**
- 17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed.**
- 18. The Planning Commission may require that an applicant furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards; or an irrevocable consent to participate in an LID for those improvements has been executed.**
- 19. And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this section.**

TEMPORARY USES

~~**SECTION 145. TEMPORARY USES.** The City Planning Commission shall, upon petition, notice and hearing, recommend to the City Council the granting or denying of a temporary permit to use certain specified property for a purpose not authorized in the zone in which such property is located, subject to such limitations and conditions as are necessary to protect the best interests of the surrounding property or the City as a whole. Such temporary permit may be granted by motion, shall be revocable at the will of the City Council, and subject to such other limitations and conditions as the City Council may impose.~~

VARIANCES

~~**SECTION 146. AUTHORIZATION TO GRANT OR DENY VARIANCES.** The Planning Commission shall authorize variances from the requirements of this Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the Ordinance would cause an undue or unnecessary hardship. No variance shall be allowed the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission shall attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or to otherwise achieve the purposes of this Ordinance.~~

~~**SECTION 146. TEMPORARY USE PERMIT CRITERIA.** The City Planning Commission and City Council shall grant a temporary use permit ONLY upon review of ALL the following criteria:~~

~~A. The impact of the use is minimized with the provision of landscaped buffers and/or fencing abutting residence, adequate off-street parking plan, and safe public access and vehicular movement.~~

~~B. The request is not for more than one (1) year.~~

~~C. It must be unanimously approved by the Planning Commission, or City Council (on appeal) in the event that sixty-six and two-thirds (66 2/3) percent or more of the property owners within one hundred (100) feet of the property in question object in writing, before the closing of the public hearing, to the granting of the Temporary Use Permit.~~

ARTICLE XXI. AMENDMENTS

~~**SECTION 147. CIRCUMSTANCES FOR GRANTING A VARIANCE.** A variance shall be granted only in the event that all of the following circumstances exist:~~

~~A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.~~

~~B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.~~

~~C. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.~~

~~D. The variance requested is the minimum variance which would alleviate the hardship.~~

~~**SECTION 147. AUTHORIZATION TO INITIATE AMENDMENTS.** An amendment to the text of this Ordinance or to a zoning map may be initiated by the City Council, the Planning Commission or by application of the property owner for an amendment by filing an application with the City Manager using forms prescribed pursuant to Section 157 of this Ordinance.~~

~~**SECTION 148. APPLICATION FOR A VARIANCE.** Variance applications shall follow the procedure for a "Type III" application contained in Sections 131-142.~~

~~**SECTION 148. COMPLIANCE WITH COMPREHENSIVE PLAN.** An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Comprehensive Plan text and Comprehensive Land Use Map. Any deviation from this section shall be preceded by an amendment to the Comprehensive Plan Text or to the Comprehensive Land Use Map.~~

~~**SECTION 149. MINOR VARIANCES.**~~

~~A. Authorization to Grant or Deny Minor Variances. The Planning Director may grant a variance to the requirements of this Ordinance where it can be shown that owing to special and unusual circumstances~~

related to a specific lot, strict application of this Ordinance would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Director may attach conditions which are necessary to protect the best interest of the surrounding property or vicinity or otherwise achieve the purposes of this Ordinance.

B. Minor Variances. Variances involving the following may be granted by the Planning Director:

(1) Deviation from setback requirements as follows:

(a) Front Yard: 15% or less.

(b) Side Yard Abutting a Street: 20% or less.

(c) Side and Rear Yards: 40% or less.

(2) Deviation from lot coverage requirements of 5% or less.

(3) Deviation from lot size or building height requirements of 10% or less.

C. Procedure. Minor Variance applications shall follow the procedure for a "Type II" application contained in Sections 131-142.

~~**SECTION 149. PUBLIC HEARING ON AMENDMENTS.** The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures of Section 161 of this Ordinance at its earliest practicable meeting after it is proposed and shall, within forty (40) days after the hearing, recommend to the City Council approval, disapproval or modification of the proposed amendment. After receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing on the proposed amendment and render a final decision within one hundred twenty (120) days after application submittal unless longer review is agreed upon by the City and applicant. Public hearings on amendments encompassing lands of a mobile home park shall be conducted after notification of park tenants at least twenty (20) but no more than forty (40) days prior to the hearing.~~

~~(Section 149, as amended by Ordinance No. 3428, passed May 2, 1989.)~~

~~**SECTION 150A. ZONING MAP.** An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Transportation System Plan. More intense development may be permitted where amendments to this Ordinance include amendments to the performance standards for the facility to allow such intense development. No amendments may allow land uses or levels that are inconsistent with the functional classification of an existing or planned transportation facility.~~

TEMPORARY USES

SECTION 150. TEMPORARY USES. The City Planning Commission shall, upon petition, notice and hearing, recommend to the City Council the granting or denying of a temporary permit to use certain specified property for a purpose not authorized in the zone in which such property is located, subject to such limitations and conditions as are necessary to protect the best interests of the surrounding property or the City as a whole. Such temporary permit may be granted by motion, shall be revocable at the will of the City Council, and subject to such other limitations and conditions as the City Council may impose.

~~**SECTION 150. RECORD OF AMENDMENTS.** The City Recorder shall maintain records of amendments to the text and zoning map of this Ordinance in a form convenient for use by the public.~~

SECTION 151. TEMPORARY USE PERMIT CRITERIA. The City Planning Commission and City Council shall grant a temporary use permit ONLY upon review of ALL the following criteria:

A. The impact of the use is minimized with the provision of landscaped buffers and/or fencing abutting residence, adequate off-street parking plan, and safe public access and vehicular movement.

B. The request is not for more than one (1) year.

C. It must be unanimously approved by the Planning Commission, or City Council (on appeal) in the event that sixty-six and two-thirds (66.66) percent or more of the property owners within one hundred (100) feet of the property in question object in writing, before the closing of the public hearing, to the granting of the Temporary Use Permit.

ARTICLE XXII. ADMINISTRATIVE PROVISIONS

SECTION 151. POLICY OF NONDISCRIMINATION. Age, gender/race or physical disability shall not be an adverse consideration in making a land use decision as defined in Oregon Law.

SECTION 152. PROCEDURE. Temporary Use applications shall follow the procedure for a "Type III" application contained in Sections 131-142

SECTION 152. COMPLIANCE WITH ORDINANCE PROVISIONS.

A. A lot may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as this Ordinance permits.

B. No lot area, yard or other open space existing on or after the effective date of this Ordinance shall be reduced below the minimum required for it by this Ordinance.

C. No lot area, yard or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard, or open space for another use.

ARTICLE XXI. AMENDMENTS TO THIS ORDINANCE

SECTION 153. AUTHORIZATION TO INITIATE AMENDMENTS. An amendment to the text of this Ordinance or to a zoning map may be initiated by the City Council, the Planning Commission or by application of the property owner for an amendment by filing an application with the City Manager using forms prescribed pursuant to Section 157 of this Ordinance.

{SECTION 153 repealed by Ordinance No. 3690, passed April 20, 2004}

SECTION 154. COMPLIANCE WITH COMPREHENSIVE PLAN.

A. An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Comprehensive Plan text and Comprehensive Land Use Map. Any deviation from this section shall be preceded by an amendment to the Comprehensive Plan Text or to the Comprehensive Land Use Map.

An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Transportation System Plan. More intense development may be permitted where amendments to this Ordinance include amendments to performance standards for the facility to allow such intense development. No amendments may allow land uses or levels that are inconsistent with the functional classification of an existing or planned transportation facility

SECTION 154. ILLEGAL OCCUPANCY. Any use of a premise or building which deviates from or violates any of the provisions of this Ordinance shall be termed an illegal occupancy and the person or persons responsible therefore shall be subject to the penalties herein provided.

SECTION 155. PUBLIC HEARING ON AMENDMENTS. The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures of Section 161 of this Ordinance at its earliest practicable meeting after it is proposed and shall recommend to the City Council approval, denial or modification of the proposed amendment. After receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing on the proposed amendment and render a final decision within one hundred twenty (120) days after application submittal unless longer review is agreed upon by the City and applicant. Public hearings on amendments encompassing lands of a mobile home park shall be conducted after notification of park tenants at least twenty (20) but no more than forty (40) days prior to the hearing

SECTION 155. CONTRACT PURCHASERS DEEMED OWNERS. A person or persons purchasing property under contract, for the purposes of this Ordinance, shall be deemed to be the owner or owners of the property covered by the contract; the City Planning Commission or the City Council may require satisfactory evidence of such contract of purchase.

SECTION 156. ZONING MAP. An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Transportation System Plan. More intense development may be permitted where amendments to this Ordinance include amendments to the performance standards for the facility to allow such intense development. No amendments may allow land uses or levels that are inconsistent with the functional classification of an existing or planned transportation facility.

SECTION 156. APPEALS.

A. An appeal from a ruling of the City Planner regarding a requirement of this Ordinance may be made only to the Planning Commission by filing a letter of appeal with the City Planner.

B. An action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within seven (7) days after the Planning Commission has mailed its decision. Persons who may file an appeal are: (1) The applicant who initiated the action before the Planning Commission; or (2) Persons who appeared before the Planning Commission orally or in writing. Written notice of the appeal shall be filed with the City Manager. If the appeal is not filed within the seven (7) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation thereon from the Planning Commission and shall hold a public hearing on the appeal. (Section 156, as amended by Ordinance No. 3428, passed May 2, 1989.)

SECTION 157. PROCEDURE. Text and/or map amendment applications shall follow the procedure for a Type IV application contained in Sections 131-142. Map amendments on property(ies) less than two acres in size may, at the discretion of the Director, be processed as a Type III application

SECTION 157. SUBMITTAL, REVIEW TIME TABLE AND BURDEN OF PROOF FOR APPLICATIONS.

A. The City of Pendleton provides a consolidated procedure by which an applicant may apply at one time for all land use permits needed for a development project. All applications provided for in this Ordinance shall be made on forms prescribed by the City. Applications shall be accompanied by plans and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the sizes and locations on the lot of the buildings and other structures, existing and proposed, the existing and intended use of each building, structure or part thereof, the number of families, if any, to be accommodated thereon, the relationship of the property to the surrounding area, and such other information as is needed to determine conformance with this Ordinance. All applications shall be submitted to the Department of Planning and Building no later than twenty (20) days before the Planning Commission meeting at which action is desired. Such applications shall be reviewed and either approved, modified, or disapproved, in writing within forty (40) days after submission, unless a longer period of time can be agreed upon (by the Planning Commission and applicant) to allow for recessing to consider additional information, testimony, or other unforeseen circumstances. Applications involving City Council approval or appeals wholly within the authority and control of the City shall be processed to final action within one hundred twenty (120) days, unless extended on agreement of the applicant and City.

B. Incomplete applications shall be dealt with as set forth in Oregon Law.

C. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.

If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.

The applicant shall notify the City Manager within five (5) days from City's receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.

In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.

In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant's right to retain independent counsel in making their own legal appearance upon appeal.

If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to \$500 plus one-half the actual costs over \$500.

SECTION 158. RECORD OF AMENDMENTS. The City Recorder shall maintain records of amendments to the text and zoning map of this Ordinance in a form convenient for use by the public.

SECTION 158. APPLICABILITY OF ZONING REGULATIONS.

A. Private agreements. The zoning regulations are not intended to abrogate, annul, or impair any easement, covenant or other agreement between parties, except that where the zoning regulations impose a restriction or high standard than that required by such agreement the zoning regulations shall control.

B. The boundaries of the zone are hereby established as shown on the official zoning map of the City of Pendleton, Oregon, which accompanies this Ordinance and is on file in the office of the City Recorder.

C. Unless otherwise shown on the zoning map of the City, the boundaries of the zone are lot lines, center lines of streets and alleys, railroad right-of-way lines or corporate limit lines as they existed at the time of the enactment of this Ordinance. (If a zone boundary as shown on the map divides a lot between zones, the entire lot shall be deemed to be in the zone in which the greater area of the lot is.)

SECTION 159. APPEALS.

- A. An appeal of a ruling by the City Planner regarding a requirement of this Ordinance may be made only to the Planning Commission by filing a letter of appeal with the City Planner within 12 days from the date the written notice of decision was mailed.
- B. An action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within 12 days from the date the written notice of decision was mailed. Persons who may file an appeal are: (1) The applicant who initiated the action before the Planning Commission; or (2) Persons who appeared before the Planning Commission orally or in writing. Written notice of the appeal shall be filed with the City Manager. If the appeal is not filed within the 12 day period, the decision of the Planning Commission shall be final.
 - 1. Appeal of a Type II application shall be heard by the Planning Commission and shall be processed as a Type III application.
 - 2. Appeal of a Planning Commission decision shall be heard by the City Council and shall be processed as a Type III application.
- C. Appeal of a decision from a lower body shall be treated as a "de novo" hearing. The Findings, Conclusions and Decision of the previous trier of fact shall be incorporated into the record and presented as part of the staff report to the body hearing the appeal.

SECTION 159. ZONING OF ANNEXED AREAS. All areas annexed to the City shall be zoned in accordance with the Comprehensive Plan. The Planning Commission and City Council shall review said zoning during the public hearing for the annexation. If the zoning requested does not comply with the Comprehensive Plan, the procedure for Comprehensive Plan amendments must be followed. The zoning of vacated streets shall be accomplished as set forth in this Section.

ARTICLE XXII. ADMINISTRATIVE PROVISIONS

SECTION 160. POLICY OF NONDISCRIMINATION. Age, gender/race or physical disability shall not be an adverse consideration in making a land use decision as defined in Oregon Law.

SECTION 160. FILING FEES. The following fees shall be paid to the City upon filing for an application. Such fees shall not be refundable. Fees shall be doubled if the start of construction occurs prior to application for the permit.

A. Variance	\$ 200.00
B. Conditional Use (Other than Home Occupations)	200.00
C. Amendment (Text and/or Map)	300.00
D. Planned Unit Development	500.00
E. Temporary Use	300.00
F. Appeal (of any Planning Commission action)	200.00
G. Mixed Land Use Development	500.00
H. Parking Lot Permit	65.00
I. Limited Use Development	300.00
J. Home Occupation:	
Administrative Review with Notice	25.00
Planning Commission Hearing	50.00

Local Enterprise Zone Incentive. A business which is precertified by the City as a "qualified business firm," in accordance with the Oregon Enterprise Zone Act, shall not be required to pay the above fees during the time period the business qualifies for the property tax exemption. This local enterprise zone incentive subsection shall automatically terminate on July 1, 2007, and be of no further force nor effect after that date unless extended by action of the City of Pendleton or State of Oregon. (Section 160, as amended by Ordinance No. 3384, passed March 17, 1987; Ordinance No. 3428, passed May 2, 1989; Ordinance No. 3435, passed August 1, 1989; Ordinance No. 3453, passed February 20, 1991; Ordinance No. 3511, passed December 6, 1994; Ordinance No. 3529, passed December 19, 1995; Ordinance No. 3558, passed March 18, 1997; and Ordinance No. 3566, passed August 5, 1997.)

SECTION 161. COMPLIANCE WITH ORDINANCE PROVISIONS.

- A. A lot may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as this Ordinance permits.
- B. No lot area, yard or other open space existing on or after the effective date of this Ordinance shall be reduced below the minimum required for it by this Ordinance.
- C. No lot area, yard or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard, or open space for another use.

SECTION 161. NOTICE AND CONDUCT OF PUBLIC HEARING.

A. Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(1) Within two hundred fifty (250') feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary or where the subject property is outside of urban growth boundary and not within a farm or forest zone; or

(2) Within five hundred (500') feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

B. The notice provided by the City shall:

(1) Explain the nature of the application and the proposed use or uses which could be authorized;

(2) List the applicable criteria from the ordinance and the 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 by the close of the record at or following the final evidentiary hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;

(6) Be mailed at least:

(a) Twenty (20) days before the evidentiary hearing; or

(b) If two (2) or more evidentiary hearings are allowed, ten (10) days before the first evidentiary hearing;

(7) Include the name of a City representative to contact and the telephone number where additional information may be obtained;

(8) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at reasonable cost;

(9) State that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and copies will be provided at reasonable cost; and

(10) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

C. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public at the time notice is provided. Persons other than the applicant may submit documents or evidence: (1) in support of the application -- as late as the hearing itself; (2) in opposition to the application -- (a) at the hearing, and (b) for at least seven (7) days after the hearing if someone other than the applicant submits documents or evidence in support of the application or a participant at the initial hearing asks before the hearing concludes that the record be kept open. The applicant and other persons who have participated at the initial hearing may submit documents or evidence rebutting evidence submitted in opposition to the application; (1) at the hearing; and (2) for at least seven (7) days after the hearing if a participant at the initial hearing asks before the hearing concludes that the record be kept open.

D. Any staff report used at the hearing shall be available at least seven (7) days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of Oregon Law, including ORS 215 or 227.

E. At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(1) Lists the applicable substantive criteria;

(2) Testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection or other criteria in the plan or land use regulations which the person believes to apply to the decision;

(3) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised in person or by letter not later than the close of the record or following the final evidentiary hearing on the proposal before the local government. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;

(4) If a participant at the hearing so requests before the hearing concludes, the record shall be kept open for at least seven (7) days -- unless there is a continuance; and

(5) Any party shall be entitled to a continuance of the hearing if persons other than the applicant submit documents or evidence in support of the application supplementing the documents or evidence submitted by the applicant.

F. ~~Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Such an extension shall not be subject to the limitations of ORS 215 and 227.~~

G. ~~When the Planning Commission, or City Council reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.~~

H. ~~The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.~~

SECTION 162. ILLEGAL OCCUPANCY. Any use of a premise or building which deviates from or violates any of the provisions of this Ordinance shall be termed an illegal occupancy and the person or persons responsible therefore shall be subject to the penalties herein provided.

~~**SECTION 162. DUTY OF ENFORCEMENT.** It shall be the duty of the City Manager to see that this Ordinance is enforced. No permit for the construction or alteration of any building or part thereof shall be issued unless the plans, specifications and intended use of such building conform in all respects with the provisions of this Ordinance.~~

~~All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size, the use, and location of existing buildings and buildings to be erected, and such other information as may be necessary to provide for the enforcement of this Ordinance. Except that those applications for maintenance, requiring building permits, shall provide such information as may be deemed necessary by the City for the enforcement of this Ordinance. A copy of such application and plats shall be kept on file in the records of the City of Pendleton.~~

~~The provisions of this Ordinance shall be deemed minimum requirements for the preservation of the public safety, health, convenience, comfort, prosperity and general welfare of the people of the City of Pendleton.~~

SECTION 163. CONTRACT PURCHASERS DEEMED OWNERS. A person or persons purchasing property under contract, for the purposes of this Ordinance, shall be deemed to be the owner or owners of the property covered by the contract; the City Planning Commission or the City Council may require satisfactory evidence of such contract of purchase.

~~**SECTION 163. AGREEMENTS FOR CONDITIONAL APPROVALS.** Conditions imposed upon rezoning approvals, discretionary permits, or any other authorizations to applicants pursuant to this Ordinance, may be incorporated into an agreement which shall be binding on the applicant and the applicant's successors, heirs and assigns as a continuing obligation running with the property which is the subject of such authorization. The Mayor and City Recorder are hereby authorized to execute such agreements when approved by the Planning Commission in the case of discretionary permits, or by the City Council in the case of rezoning ordinances, appeals on discretionary permits, or other authorizations requiring Council action.~~

SECTION 164. CONSENT TO ANNEXATION REQUIRED.

Any land use action on land inside the Pendleton Urban Growth Boundary but not inside the Pendleton city limits shall carry, as a condition of approval, that:

- B) if the property abuts the City limits of the City of Pendleton, property owner shall provide a consent to the City for annexation; or
- C) if the property is inside the Urban Growth Boundary but does not abut the City limits of the City of Pendleton, property owner shall provide a consent to the City for annexation at such time as the property does abut the city limits.

~~**SECTION 164. INTERPRETATION.** Where the conditions imposed by any provision of this Ordinance are less restrictive than comparable conditions imposed by any other provisions of this Ordinance or of any other ordinance, the provisions which are more restrictive shall govern.~~

SECTION 165. APPLICABILITY OF ZONING REGULATIONS.

A. Private agreements. The zoning regulations are not intended to abrogate, annul, or impair any easement, covenant or other agreement between parties, except that where the zoning regulations impose a restriction or higher standard than that required by such agreement the zoning regulations shall control.

B. The boundaries of the zone are hereby established as shown on the official zoning map of the City of Pendleton, Oregon, which accompanies this Ordinance and is on file in the office of the City Recorder.

C. Unless otherwise shown on the zoning map of the City, the boundaries of the zone are lot lines, center lines of streets and alleys, railroad right-of-way lines or corporate limit lines as they existed at the time of the enactment of

this Ordinance. (If a zone boundary as shown on the map divides a lot between zones, the entire lot shall be deemed to be in the zone in which the greater area of the lot is.)

SECTION 165. SEVERABILITY. The sections of this Ordinance are severable. The validity of a section shall not affect the validity of the remaining sections.

SECTION 166. ZONING OF ANNEXED AREAS. All areas annexed to the City shall be zoned in accordance with the Comprehensive Plan. The Planning Commission and City Council shall review said zoning during the public hearing for the annexation. If the zoning requested does not comply with the Comprehensive Plan, the procedure for Comprehensive Plan amendments must be followed. The zoning of vacated streets shall be accomplished as set forth in this Section.

~~**SECTION 166. UNLAWFUL CONSTRUCTION OR USE A NUISANCE.** The location, erection, construction, maintenance, repair, alteration or use of a building or other structure, or the subdivision, other partitioning, or use of land, in violation of the terms of this Ordinance is hereby declared to be a nuisance, under the provisions of Ordinance No. 2422 (Nuisance Ordinance).~~

SECTION 167. DUTY OF ENFORCEMENT. It shall be the duty of the City Manager to see that this Ordinance is enforced. No permit for the construction or alteration of any building or part thereof shall be issued unless the plans, specifications and intended use of such building conform in all respects with the provisions of this Ordinance.

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size, the use, and location of existing buildings and buildings to be erected, and such other information as may be necessary to provide for the enforcement of this Ordinance. Except that those applications for maintenance, requiring building permits, shall provide such information as may be deemed necessary by the City for the enforcement of this Ordinance. A copy of such application and plats shall be kept on file in the records of the City of Pendleton.

The provisions of this Ordinance shall be deemed minimum requirements for the preservation of the public safety, health, convenience, comfort, prosperity and general welfare of the people of the City of Pendleton.

~~**SECTION 167. REMEDIES FOR UNLAWFUL STRUCTURES.** In case a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered or used, or any land is, or is proposed to be, used in violation of this Ordinance, the City Council or any person whose interest in real property in the City is, or may be affected by the violation, may, in addition to other remedies provided by law, institute proceedings for an injunction, mandamus, abatement, or other appropriate action or suit to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.~~

SECTION 168. AGREEMENTS FOR CONDITIONAL APPROVALS. Conditions imposed upon rezoning approvals, discretionary permits, or any other authorizations to applicants pursuant to this Ordinance, may be incorporated into an agreement which shall be binding on the applicant and the applicant's successors, heirs and assigns as a continuing obligation running with the property which is the subject of such authorization. The Mayor and City Recorder are hereby authorized to execute such agreements when approved by the Planning Commission in the case of discretionary permits, or by the City Council in the case of rezoning ordinances, appeals on discretionary permits, or other authorizations requiring Council action.

SECTION 168. VIOLATIONS AND PENALTIES.

~~A.—A violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.~~

~~B.—Every full day during which an activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.~~

~~C.—Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel.~~

~~D.—Confiscation.—Any building or structure erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, demolished, equipped, used, occupied or maintained in violation of this Ordinance may be confiscated by the City and, may be disposed of as provided by applicable State law or City ordinance.~~

~~E.—Additional Remedies:~~

~~(1) In addition to the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a fee due under this Ordinance and to enforce collection of the judgment by execution.~~

~~(2) The City may seek an injunction to prohibit a person from erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, demolishing, equipping, using, occupying or maintaining any building or structure without complying with this Ordinance.~~

~~(3) In an action authorized by this Section, if the City prevails, it shall recover reasonable attorney's fees to be set by the Court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.~~

~~(4) Whenever a fee required by this Ordinance is not paid when due, the City Recorder shall add as a penalty to the fee an amount equal to ten (10%) percent of the fee for each month or part thereof during which the fee and accumulated penalty amounts remain unpaid. The total amount of penalties shall not exceed one hundred (100%) percent of the original fee.~~

SECTION 169. INTERPRETATION. Where the conditions imposed by any provision of this Ordinance are less restrictive than comparable conditions imposed by any other provisions of this Ordinance or of any other ordinance, the provisions which are more restrictive shall govern.

SECTION 169. REPEAL. Ordinances No 2422 (Section 16C), 2484, 2675, 2748, 2826, 2893, 2935, 2936, 2953, 2962, 3006, 3008 (Section 16) and 3156 (Section 17) are repealed.

SECTION 170. SEVERABILITY. The sections of this Ordinance are severable. The validity of a section shall not affect the validity of the remaining sections.

SECTION 171. UNLAWFUL CONSTRUCTION OR USE A NUISANCE. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure, or the subdivision, other partitioning, or use of land, in violation of the terms of this Ordinance is hereby declared to be a nuisance, under the provisions of Ordinance No. 2422 (Nuisance Ordinance).

SECTION 172. REMEDIES FOR UNLAWFUL STRUCTURES. In case a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered or used, or any land is, or is proposed to be, used in violation of this Ordinance, the City Council or any person whose interest in real property in the City is, or may be affected by the violation, may, in addition to other remedies provided by law, institute proceedings for an injunction, mandamus, abatement, or other appropriate action or suit to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

SECTION 173. VIOLATIONS AND PENALTIES.

A. A violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.

B. Every full day during which an activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.

C. Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel.

D. Confiscation. Any building or structure erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, demolished, equipped, used, occupied or maintained in violation of this Ordinance may be confiscated by the City and, may be disposed of as provided by applicable State law or City ordinance.

E. Additional Remedies.

(1) In addition to the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a fee due under this Ordinance and to enforce collection of the judgment by execution.

(2) The City may seek an injunction to prohibit a person from erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, demolishing, equipping, using, occupying or maintaining any building or structure without complying with this Ordinance.

(3) In an action authorized by this Section, if the City prevails, it shall recover reasonable attorney's fees to be set by the Court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.

(4) Whenever a fee required by this Ordinance is not paid when due, the City Recorder shall add as a penalty to the fee an amount equal to ten (10%) percent of the fee for each month or part thereof during which the fee and accumulated penalty amounts remain unpaid. The total amount of penalties shall not exceed one hundred (100%) percent of the original fee.

SECTION 174¹. FILING FEES. The following fees shall be paid to the City upon filing for an application. Such fees shall not be refundable. Fees shall be doubled if the start of construction occurs prior to application for the permit.


A. Variance	\$ 200.00
B. Conditional Use (Other than Home Occupations)	200.00
C. Amendment (Text and/or Map)	300.00
D. Planned Unit Development	500.00
E. Temporary Use	300.00
F. Appeal (of any Planning Commission action)	200.00
G. Mixed Land Use Development	500.00
H. Parking Lot Permit	65.00
I. Limited Use Development	300.00
J. Home Occupation:	
Administrative Review with Notice	25.00
Planning Commission Hearing	50.00

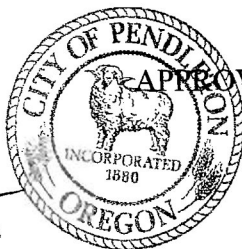
Local Enterprise Zone Incentive. A business which is precertified by the City as a "qualified business firm," in accordance with the Oregon Enterprise Zone Act, shall not be required to pay the above fees during the time period the business qualifies for the property tax exemption. This local enterprise zone incentive subsection shall automatically terminate on July 1, 2007, and be of no further force nor effect after that date unless extended by action of the City of Pendleton or State of Oregon.

[SECTIONS 170-175 Reserved for Expansion.]


PASSED by the City Council and approved by the Mayor November 16, 2010.

ATTEST:

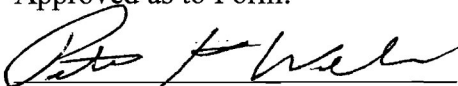

Andrea Denton, City Recorder



APPROVED:


Phillip W. Houk
Mayor

Approved as to Form:


Peter H. Wells, City Attorney

¹ This section was renumbered from 160 to 174 by ordinance 3804

City of Pendleton
Planning Dept
20 SW Dorion
Pendleton, OR 97801



Attn: Plan Amendment Specialist
DLCD
635 Capitol St NE, Suite 150
Salem, OR 97301-2540