



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

March 3, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Myrtle Creek Plan Amendment
DLCD File Number 004-07



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: March 14, 2008

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Matthew Crall, DLCD Transportation Planner
Lisa Hawley, City of Myrtle Creek

<paa> ya/

PROP **2**

DLCD

Notice of Adoption

In person electronic mailed

DEPT OF

FEB 25 2008

LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

DATE STAMP

**THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**

Jurisdiction: **City of Myrtle Creek**

Local file number: **None**

Date of Adoption: **February 19, 2008**

Date Mailed: **February 22, 2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **October 31, 2007**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Proposed legislative amendments to the City's Comprehensive Plan, and Zoning and Subdivision Ordinances. Adopted amendments essentially the same as proposed in first draft mailed to DLCD on October 31, 2007, except for minor changes noted below.

Does the Adoption differ from proposal? Yes, please explain below.

Minor changes to Zoning Ord. amends: (1) clarify erosion control measures include appropriate state and/or federal permits; (2) update description of downtown core area in Central Business District; (3) move ODOT notice requirements from Site Review to section on application processing procedures; and (4) clarify City Administrator may also impose conds in Site Review process. Minor change to Subd. Ord. amends: (1) delete survey proposal to certify whether utility infrastructure is located within one foot of survey monument.

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

to: **N/A**

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

to: **N/A**

Location:

Acres Involved:

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

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. 004-07 (16513)

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

Douglas County, ODOT, City of Myrtle Creek (water, sewer, fire & police), School District No. 19, and other affected public utilities.

Local Contact: **Lisa Hawley, City of Myrtle Creek** Phone: (541) 863-3171 Extension:
Address: **PO Box 940** Fax Number: (541) 863-6851
City: **Myrtle Creek, OR** Zip: **97470** E-mail Address: **lahawley@co.douglas.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) 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
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 768

AN ORDINANCE AMENDING ORDINANCE NO. 508, THE MYRTLE CREEK ZONING ORDINANCE, ORDINANCE NO. 469, THE MYRTLE CREEK SUBDIVISION ORDINANCE, AND ORDINANCE NO. 513, THE MYRTLE CREEK COMPREHENSIVE PLAN

WHEREAS, the City of Myrtle Creek initiated an amendment to the Myrtle Creek Zoning and Subdivision Ordinances, and the Myrtle Creek Comprehensive Plan; and

WHEREAS, the proposed legislative amendments enhance the land use application process in an efficient and effective manner; and

WHEREAS, the Myrtle Creek Planning Commission conducted a public hearing on the question of amending the Zoning and Subdivision Ordinances and the Comprehensive Plan on December 17, 2007, and provided an opportunity of public participation in the matter; and

WHEREAS, the Planning Commission subsequently forwarded to the City Council a recommendation that the proposed amendments to the Zoning and Subdivision Ordinances and the Comprehensive Plan be adopted by the City Council; and

WHEREAS, the City of Myrtle Creek mailed a Ballot Measure 56 Notice of the proposed legislative amendments to owners of property located within the city limits and Area 1 of the Myrtle Creek Urban Growth Boundary on December 12, 2007, in accordance with ORS 227.18; and

WHEREAS, the City Council conducted a public hearing on the amendments to the Zoning and Subdivision Ordinances and the Comprehensive Plan on January 15, 2008, and provided an opportunity for public participation in the matter and hereby adopts the proposed legislative amendments;

NOW, THEREFORE, the City of Myrtle Creek ordains as follows:

Section 1. Zoning Ordinance, Subdivision Ordinance and Comprehensive Plan Amendments.

The official City of Myrtle Creek Zoning Ordinance, City of Myrtle Creek Subdivision Ordinances, and the City of Myrtle Creek Comprehensive Plan are hereby amended to the extent described in attached Exhibit A [2007 Legislative Amendments to the City of Myrtle Creek Zoning Ordinance, City of Myrtle Creek Subdivision Ordinances, and the City of Myrtle Creek Comprehensive Plan, Adoption Draft dated February 19, 2008].

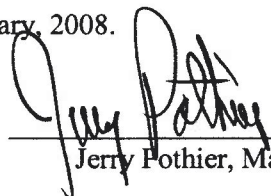
Section 2. Effective Date.

This ordinance shall take effect on the 30th day following its enactment.

PASSED BY CITY COUNCIL UPON ITS FIRST READING this 15th day of January, 2008.

APPROVED BY CITY COUNCIL UPON ITS SECOND READING this 19th day of February, 2008.

APPROVED BY THE MAYOR this 19th day of February, 2008.



Jerry Pothier, Mayor

ATTEST:



Carolyn D. Shields, City Recorder

EXHIBIT A

***2007 LEGISLATIVE
AMENDMENTS TO THE***

***CITY OF MYRTLE CREEK
ZONING ORDINANCE***

&

***CITY OF MYRTLE CREEK
SUBDIVISION ORDINANCE***

&

***CITY OF MYRTLE CREEK
COMPREHENSIVE PLAN***

**Adoption Draft
February 19, 2008**

PLANNING COMMISSION

Workshops: February 27, 2007
March 27, 2007
April 24, 2007
October 23, 2007
Hearing: December 17, 2007

CITY COUNCIL

Hearing & First Reading January 15, 2008
Second Reading February 19, 2008

TABLE OF CONTENTS

Myrtle Creek Zoning Ordinance AmendmentsPage 1

Subdivision Ordinance Amendments.....Page 10

Comprehensive Plan AmendmentsPage 15

Appendix A: Variance Standards of Article VI, Zoning Ordinance

Appendix B: Article VII and Article IX, Zoning Ordinance

LEGEND:

- Deletion** ~~**Deletion**~~ is marked with bold & strikeout function
- Addition** **Addition** is marked within redline, bold & underline
- Comments *Comments are provided in italics*

CITY OF MYRTLE CREEK
2007 LEGISLATIVE AMENDMENTS

ZONING ORDINANCE AMENDMENTS

ARTICLE II DEFINITIONS

1. SECTION 2.03.0 DEFINITIONS

Purpose of Amendments: The City wants to clarify and update several definitions, as well as add some new definitions to the Zoning Ordinance.

APPROVING AUTHORITY: The person or body given authority to decide applications for administrative actions under the provisions of Section 9.03.1 [land use actions] of this ordinance. Whenever the Approving Authority consists of three or more persons, the action taken by such Authority may be exercised by a majority of a quorum. Upon failure of a majority to agree, the matter before the Authority shall be considered denied.

BED AND BREAKFAST: A family dwelling used, in part, to provide temporary lodging for not more than six paying guests at one time, containing not more than two rooms which comprise not more than 20 percent of the total living area of the dwelling and which are used, rented or hired out for sleeping purposes for not more than seven consecutive days to a guest, and where communal kitchen and/or dining facilities may be provided. An accessory use to be carried on within a structure designed for and occupied as a single family dwelling in which no more than three sleeping rooms are provided on a daily or weekly period, not to exceed seven consecutive days, for the use of travelers or transients for a charge or fee. Provision of a morning meal is customary as implied by title.

CONDOMINIUM: An arrangement by which multi-occupancy buildings and residential property is jointly owned and subject to the provisions of ORS 91.500 to 91.671. "Property" or "Condominiums" means the land, whether leasehold or in fee simple and whether contiguous or noncontiguous, all buildings, improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto, which are submitted according to the provisions of ORS 100.005 to 100.910 and 100.990.

DUPLEX: See dwelling, Semi-Detached. DWELLING, TWO-FAMILY definition.

DWELLING: A structure intended for lawful residential purpose and built or placed in accordance with all applicable laws, ordinances, codes and rules, but excluding hotels, and motels, and motor hotels.

DWELLING, MULTIPLE-FAMILY: A building designed for or containing two (2) or more dwelling units, sharing access from a common hall, stair, or balcony. A building designed and used for occupancy by three (3) or more families, all living independently of each other, and having separate housekeeping facilities for each family, with the number of families in residence not exceeding the number of dwelling units provided.

DWELLING, SEMI-DETACHED AND DUPLEX: ~~Two (2) dwelling units attached side to side, each sharing only one (1) common wall with the other, and each unit having separate access.~~

DWELLING, SINGLE-FAMILY ATTACHED: ~~Three (3) or more dwelling units, each of which is separated from the others by one (1) or more unpierced wall(s) from ground to roof with each unit having separate access.~~

DWELLING, SINGLE-FAMILY DETACHED: ~~A dwelling designed for or used exclusively for the occupancy of not more than one family and having no room, wall, or floor in common with other dwelling units. A detached building designed or used exclusively for the occupancy of one family and having housekeeping facilities for only one family (see FAMILY).~~

DWELLING, TWO-FAMILY (DUPLEX): A building designed or used exclusively for the occupancy of two families living independently of each other and having separate housekeeping facilities for each family, and each unit having separate access.

DWELLING UNIT: One or more habitable rooms which are occupied or which are intended or designed to be occupied by one family and its resident domestic employees with housekeeping facilities for sleeping, cooking, and eating.

GUEST HOUSE: ~~An accessory building to a dwelling providing sleeping facilities but no cooking facilities and which building is not rented or leased. A subordinate residential use that is accessory to, and dependent on, an existing primary dwelling located on the same lot or parcel as the guest house. A guest house may either be a separate area located within or attached to the primary dwelling, or a separate structure constructed on site. A guest house is considered to be part of the primary dwelling. It is not intended to be separate or independent from the primary dwelling. Together, the primary dwelling and guest house are considered to be one dwelling unit. Land divisions separating an approved guest house from the primary dwelling shall not be allowed. A guest house may only be occupied by members of the family residing in the primary dwelling or by their non-paying guests. A guest house shall not be offered for rent or other compensation, except as approved through a conditional use permit process. A guest house shall conform to the following standards:~~

a. A guest house shall be permitted in any residential zone where a single family dwelling is listed as a use, as long as the coverage, set back and height standards of the zone can be met. Only one guest house shall be allowed on a lot or parcel.

b. The lot or parcel on which the guest house is located shall be at least 6,000 square feet

c. The guest house shall not exceed a total floor area of 600 square feet of living area. Kitchen facilities in a guest house shall not exceed 100 square feet.

d. The guest house shall either be located within or attached to the primary dwelling, or be no further than 20 feet from the primary dwelling if detached (as measured in a straight line between the closest part of each structure).

e. The guest house shall receive all utilities via extensions of the same service lines as that of the primary dwelling. The guest house shall not have separate utility services from that of the primary dwelling (nor shall it have separate meters) for water, sewer, electric or gas.

MOTEL: An individual building or group of attached or detached buildings on the same lot containing guest units, which building or group is used, or intended to be used, primarily for the temporary lodging and accommodation of transient travelers for a charge or fee of more than six (6) persons for compensation together with conveniently located parking spaces on the same lot. The term includes auto courts, motor lodges and tourist courts.

PARTY: The following persons or entities only, who file a timely statement or request for hearing as provided by general provisions of this ordinance, are hereby defined as a party:

a. The applicant and all owners or contract purchasers of record, as shown in the files of the Douglas County Assessor's office, of the property which is the subject of the application.

b. All property owners of record, as provided in a. above, within 150 feet of the property which is the subject of the application.

c. Any affected unit of local government or state or federal agency which has entered into an agreement with the City to coordinate planning efforts and to receive notices of land use actions.

d. Any other person, or entity whether or not a timely statement or request is made, may be recognized at the hearing if the person or entity is found by the presiding officer to be specially, personally, or adversely affected or aggrieved in the subject matter.

UTILITY EASEMENT: An easement noted on a subdivision plat or partition plat for the purpose of installing or maintaining public or private utility infrastructure for the provision of water, sewer, storm drains, power, heat or telecommunications to the public. Unless specifically requested by a public or private utility provider, the decision making authority may not require a utility easement except for a utility easement abutting a street. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat. The decision making authority may not place additional restrictions or conditions on a utility easement granted under these provisions.

UTILITY FACILITY: A communication facility or a facility constructed for a public utility, including but not limited to: facilities for generating power on less than 10 acres; new distribution lines (gas-oil-geothermal) with a right-of-way of 50 feet or less width, or new distribution lines for electric transmission with a right-of-way of 100 feet or less width; water intakes, treatment, pumping and distribution; wastewater treatment; rural fire protection facility; utility lines, accessory facilities or structures not limited to an individual end user and not in a public right-of-way which are necessary for public service (electricity, gas, water, telephone, cable); and, equipment for the production, transmission, delivery or conveyance of communications, with or without lines, including towers. These uses may be subject to limitations as specified in the applicable zoning designation. Utility facilities are locationally dependent if they must cross or be located on land to achieve reasonably direct routes or service or to meet unique geographic needs.

ARTICLE III DISTRICT REGULATIONS

1. UPDATE LIST OF USES PERMITTED OR CONDITIONALLY PERMITTED:

Purpose of Amendment: To revise for consistency the dwelling terms for the residential zoning districts and the C-2 zoning district, based upon the modified dwelling definitions proposed under Article II [Definitions].

RESIDENTIAL ZONES (RH, R-1, R-2 & R-3):

Amend the RH zone:

SECTION 3.01.4 PERMITTED USES AND STRUCTURES.

- (1) Dwelling, Single-family/~~detached~~.

SECTION 3.01.5 CONDITIONAL USES AND STRUCTURES.

- (5) — ~~Dwelling, Single-family/attached~~ [delete since same as multiple-family dwelling, which is not permitted in the RH zone].

- (6) — ~~Dwelling, Single-family/Semi-detached~~ [delete since same as duplex dwelling, which is a conditionally permitted use in the RH zone].

Remaining items listed will be renumbered accordingly.

Amend the R-1 zone:

SECTION 3.02.2 PERMITTED USES AND STRUCTURES.

- (1) Dwelling, Single-family/~~detached~~.

SECTION 3.02.3 CONDITIONAL USES AND STRUCTURES.

- (5) — ~~Dwelling, Single-family/attached~~ [delete since same as multiple-family dwelling, which is not permitted in the R-1 zone].

- (6) — ~~Dwelling, Single-family/Semi-detached~~ [delete since same as duplex dwelling, which is a conditionally permitted use in the R-1 zone].

Remaining items listed will be renumbered accordingly.

Amend the R-2 zone:

SECTION 3.03.2 PERMITTED USES AND STRUCTURES.

- (6) — ~~Dwelling, Single-family/attached~~ [delete since same as multiple-family dwelling, which is a permitted use in the R-2 zone].

- (6)(7) Dwelling, Single-family/~~detached~~.

- (8) — ~~Dwelling, Single-family/Semi-detached~~ [delete since same as duplex dwelling, which is a permitted use in the R-2 zone].

Remaining items listed will be renumbered accordingly.

Amend the R-3 zone:

SECTION 3.04.2 PERMITTED USES AND STRUCTURES.

- (7) — ~~Dwelling, Single-family/attached~~ [delete since same as multiple-family dwelling, which is a permitted use in the R-3 zone].

- (7)(8) Dwelling, Single-family/~~detached~~.

- (9) — ~~Dwelling, Single-family/Semi-detached~~ [delete since same as duplex dwelling, which is a permitted use in the R-3 zone].

Remaining items listed will be renumbered accordingly.

COMMERCIAL ZONE (C-2):

Amend the C-2 zone:

SECTION 3.03.2 CONDITIONAL USES AND STRUCTURES.

- (9) Dwelling, Multiple-family; ~~Single-family/attached or semi-detached~~; or Duplex, subject to the dimensional standards of the R-3 District. *[delete since single-family/attached is same as multiple-family dwelling, and single-family/semi-detached is same as duplex dwelling].*

2. UPDATING DEVELOPMENT STANDARDS AND REVIEW CRITERIA

Purpose of Amendment: To allow the City Administrator to conduct the site review for development in the residential, commercial, industrial and public reserves zones. This will provide another means to assist clients in review of applications

Amend RH zone, Section 3.01.9(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for all such development in the R-H District except for projects involving the construction of a single family/detached dwelling located on a single parcel, which will be reviewed by the Planning Department;

Amend the R-1 zone, Section 3.02.6(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the R-2 zone, Section 3.03.6(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the R-3 zone, Section 3.04.6(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the C-1 zone, Section 3.10.5(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee**

Administrator's designee shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the C-2 zone, Section 3.12.5(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the C-3 zone, Section 3.14.5(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and,

Amend the GM zone, Section 3.20.5(1)

- (1) Be reviewed in accordance with the site review criteria contained in Article V. The Planning Department shall conduct the site review for permitted uses that meet all ordinance requirements, whereas the Planning Commission **or City Administrator or the City Administrator's designee** shall conduct the site review for conditional uses, variances and other similar procedures as stipulated in the applicable regulations; and

Amend the SD/CS zone, Section 3.30.3(1) (Yard Requirements) & Section 3.30.4(1)

Section 3.30.3(1)

- (1) The minimum yard requirements and/or bufferyard requirements shall be determined by the Planning Commission **or City Administrator** during the site review process based on the intent and purpose of the SD/CS District Regulations and utilizing the dimensional standards of the underlying district as a guide.

Section 3.30.4(1)

- (1) Be subject to Planning Commission **or City Administrator** approval of the site plan in accordance with the site review criteria contained in Article V and the specific standards for historic site protection contained in Section 5.05.0; and,

ARTICLE IV SUPPLEMENTAL DISTRICT REGULATIONS

1. SECTION 4.03.4(2) – MAXIMUM SIZE STRUCTURE.

Purpose for Amendment: To increase allowable size & height of structures accessory to residential uses.

- (2) An accessory structure shall not exceed one story in height (~~15~~ **20** feet) and shall not contain more than ~~750~~ **1,000** square feet of floor space or cover more than 25% of the lot area, whichever is smaller.

2. SECTION 4.03.4(2)(b) – SIZE OF DETACHED ACCESSORY STRUCTURES EXEMPT FROM BUILDING PERMIT.

Purpose of Amendment: To increase size of exempt accessory structures from 120 square feet to 200 square feet to conform with the Uniform Building Code.

- (b) In accordance with the Uniform Building Code, detached accessory structures with a projected roof area of less than ~~120~~ **200** square feet are exempt from building permit requirements but remain subject to setback requirements and other provisions of this Ordinance.

3. SECTION 4.04.1 FENCE HEIGHT LIMITATIONS.

Purpose of Amendment: To add a new Section (3) to clarify height limit of fences located on perimeter of property along rear or interior side yards. Rear and interior side yards are not addressed specifically in this section of the Ordinance. Remainder of Section will be renumbered accordingly.

(3) Interior Side Yard or Rear Yard.

A fence, wall, railing, or mature hedge erected, placed, or planted in or along the required interior side yard or rear yard shall not exceed a height of six feet or 72 inches above the ground level, except the portion of such fence, wall, railing or mature hedge located 20 feet from the front property line or exterior side property line, complies with the height and open space requirements allowed by Paragraph (1) of this Section.

(3)(4) Exceptions.

- (a) The height limitations of this Section do not apply to fences required by State Law to surround and enclose school grounds, public grounds or other public reserve lands; and,
- (b) The City Administrator may authorize, where appropriate, the erection of fences, walls or hedges exceeding the applicable height limitations set forth in Paragraph (1), ~~and (2)~~ **and (3)** above, but not within the "vision clearance area", to enclose a patio, swimming pool, garden supply, tool compound, or similar living, recreational or storage area or facility and the fences and hedges enclosing it shall be considered as comprising an accessory use. The erection of fences exceeding 72 inches in height and certain walls are regulated by the Building Code and may require a Building Permit.

4. SECTION 4.08.3 EXCEPTIONS FROM PARKING SPACE REQUIREMENTS.

Purpose of Amendment: To update the text description of the "Downtown Core Area" found in Section 4.08.3(2), based upon two legislative zone changes processed and adopted by the City in 1994 and 1998 which expanded the downtown core area to its current boundaries [City Ordinance No. 653, adopted April 19, 1994, and City Ordinance No. 700, adopted January 20, 1998, which were subsequently amended to correct legal descriptions by City Ordinance No. 766, adopted by City Council on February 19, 2008]. The Zoning Ordinance was never updated to reflect the new core area boundaries.

“... The “Downtown Core Area” shall be bounded on the west by Millsite Park and shall include all properties and buildings having frontage on streets within the following described area:

Both sides of Third Avenue from Millsite Park to **Oak Pleasant** Street, **the south side of Fourth Avenue to Third Avenue between the east side of N. Main Street and the west side of Pleasant Street,** the west side of **Oak Pleasant** Street between Third Avenue and First Avenue, both sides of First Avenue from **Oak Pleasant** Street to Millsite Park and the east side of South Main **Avenue Street** from First Avenue south for a distance of 200 feet.

ARTICLE V SITE REVIEW PROCEDURES AND STANDARDS.

1. SECTION 5.01.0 SITE REVIEW PROCEDURE.

Purpose of Amendment: To remove the notice requirements to ODOT listed in Section 5.0.1.0 and insert them in Article IX, Section 9.03.2 “Notice”, for consistency with the updated procedures to Article IX (Administration & Enforcement).

~~To maintain a process for coordinated review of future land use decisions affecting transportation facilities, corridors and sites, the City shall provide notice to ODOT when the following applications for development have been received:~~

~~(a) — Land use applications that require public hearings;~~

~~(b) — Subdivision and partition applications;~~

~~(c) — Developments generating more than 400 trips per day or accessing directly onto a state transportation facility;~~

2. SECTION 5.01.1 SITE REVIEW CRITERIA.

Purpose of Amendment: To amend section for consistency and allow the City Administrator, as well as the Planning Commission, to have in site review determinations the power to impose any or all of the supplemental conditions in Section 5.01.2. [Supplemental Conditions].

Section 5.01.1 Site Review Criteria.

The site review shall be conducted in accordance with the criteria set forth herein. All applications and accompanying site plans shall be reviewed by the City Administrator or the City Administrator’s designee and, when applicable, by the Planning Commission. Any development proposal which deviates from the established criteria shall be referred to the Planning Commission for determination.

The Planning Commission **or the City Administrator** shall have the power to impose any or all of the supplemental conditions set forth in Section 5.01.2 in making their determination.

3. SECTION 5.03.1 STREET STANDARDS.

Purpose of Amendment: To update street light standards to clarify that required street light improvements in the City shall consist of City approved metal poles and lights. Affects Section 5.03.1(5)(c) [Street Improvements]

- (c) Street lights may be required; **street lights requiring new poles shall be installed on City approved metal poles and lights** and shall be served from an underground source of supply unless exception is made because other electrical lines are not underground.

4. SECTION 5.04.6 SOIL EROSIONS AND SEDIMENTATION CONTROL.

Purpose of Amendment: To update Section 5.04.6(3) [Erosion Control Measures] to clarify that erosion control measures for development include obtaining any appropriate state and/or federal erosion control permits.

- (3) Erosion Control Measures

All measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area shall be provided, **which includes obtaining any appropriate state and/or federal erosion control permits**. Specifically, the following protection shall be provided for all disturbed areas: Minimize velocities of water runoff, maximize protection of disturbed areas from storm water runoff, and retain sedimentation within the development site as early as possible following disturbances.....

ARTICLE VI NONCONFORMITIES, EXCEPTIONS AND VARIANCES

Purpose of Amendments: To amend and clarify procedures for processing Minor and Major Variances (Sections 6.03.0 through 6.03.10) -- **See attached Appendix A for proposed changes.**

ARTICLE VIII AMENDMENTS AND ZONE CHANGES

Purpose of Amendments: To update and clarify the process for amendments and zone changes. -- **See attached Appendix B for proposed changes.**

ARTICLE IX ADMINISTRATION AND ENFORCEMENT

Purpose of Amendments: To modify and update public hearing and notice procedures, including the establishment of party status; clarify appeal process for land use actions, including appeals to City Council; clarify types of land use actions (ministerial, administrative or quasi-judicial) and who reviews them. These amendments include major revisions to Article IX. **See attached Appendix B for proposed changes.**

SUBDIVISION ORDINANCE AMENDMENTS

ARTICLE I INTRODUCTORY PROVISIONS

1. SECTION 1.030 DEFINITIONS

Purpose of Amendment: This new definition is derived from revisions to ORS Chapter 92 enacted by the 2005 State Legislature, and new revisions by the 2007 Legislature in HB 2713 (which authorizes utility easements for private utility infrastructure, and also prohibits placement of public or private utility infrastructure within one foot of a survey monument delineated on a subdivision or partition plat).

UTILITY EASEMENT: An easement noted on a subdivision plat or partition plat for the purpose of installing or maintaining public or private utility infrastructure for the provision of water, sewer, storm drains, power, heat or telecommunications to the public. Unless specifically requested by a public or private utility provider, the decision making authority may not require a utility easement except for a utility easement abutting a street. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat. The decision making authority may not place additional restrictions or conditions on a utility easement granted under these provisions.

ARTICLE II TENTATIVE SUBDIVISION PLAN.

1. SECTION 2.070 APPROVAL OF TENTATIVE SUBDIVISION PLAN.

Purpose of Amendment: To update procedures for processing a subdivision application and the timeframe for final action by the City on an application for a subdivision.

Section 2.070.

1. Within 40 days following submission of a tentative plan, the Planning Commission shall conduct a Public Hearing thereon and shall review the plan for completeness and compliance with the Zoning Ordinance and other applicable regulations. Notice and conduct of hearing shall be in accordance with ~~Section 9.040.0~~ **Article IX** of **Zoning** Ordinance No. 508. The Planning Commission may approve a tentative plan as submitted or as it may be modified. ~~The Planning Commission shall take final~~ **Final** action on an application for approval of a tentative **subdivision** plan **shall be taken** within ~~180~~ **120** days after the application is found to be complete, **pursuant to Section 9.03.0(6) of the Zoning Ordinance, unless the 120-day period has been extended by written request of the applicant.**

ARTICLE III SUBDIVISION PLAT

1. SECTION 3.020.14. INFORMATION ON PLAT.

Purpose of Amendment: To provide for the City Administrator to sign approval on final land partition plats, and to make section consistent with Section 3.050 (approval of the plat), which was amended in July 2006. Also, to remove requirement for signature of City Recorder on final plat (which is consistent with other City jurisdictions, who generally only require the signature of the City Administrator/City Manager on final partition plats).

14. A space for the date and signatures of the City Administrator, Planning Commission Chairman, City Council, City Recorder, and County Surveyor.

ARTICLE VII DESIGN STANDARDS

1. SECTION 7.0151.B. SUBDIVISION GENERAL STANDARDS.

Purpose of Amendment: To clarify standards for minimum lot frontage and make section consistent with Section 7.040 (Building Sites), which requires a lot or parcel to front onto a street for a minimum width of 25 feet. This change is for consistency and does not alter the minimum lot width at the building line for newly created lots or parcels.

- B. Each lot shall abut upon a public street **other than an alley for a width of at least twenty-five feet (25')** ~~for the required minimum lot frontage for the zoning district where the lots are located.~~

ARTICLE VIII IMPROVEMENTS

1. SECTION 8.030 IMPROVEMENTS IN SUBDIVISIONS.

Purpose of Amendment: To update street light standards to clarify that required street light improvements in the City shall consist of City approved metal poles and lights. Affects Section 8.030.10 [Street Lights] of the Subdivision Ordinance.

10. Street Lights: Street lights **requiring new poles** shall be installed **with City approved metal poles and lights,** and shall be served from an underground source of supply.

2. SECTION 8.050. PROPERTY LINE ADJUSTMENT.

Purpose of Amendment: Amend procedures for property line adjustments to (1) increase time to process a submitted application from 10 days to 30 days (and be consistent with revisions to Article IX of Zoning Ordinance), (2) require submittal of recorded instrument or deed of conveyance at the time of final survey so that reference to the document can be added to face of final survey; and (3) remove exception for even width adjustment (no longer permitted under ORS 92).

3. Preliminary Approval:
 - A. Within ~~ten~~ **thirty (30)** days of receiving a complete application, the City Administrator shall notify the applicant in writing whether the proposed property line adjustment conforms with the requirements of this Section.
4. Final Approval and Filing Requirements:
 - A. **Within six (6) months from the date of preliminary approval, a deed of conveyance conforming to the approved property line adjustment shall be recorded with the Douglas County Clerk. A property line adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgments.**

~~A.B.~~ Within six (6) months from the date of preliminary approval, the applicant shall submit a survey map which conforms with the requirements of Section 5.025 of this Ordinance, except that the final map shall indicate that it is for a property line adjustment which does not create a new lot or parcel. **If no map is required, the applicant shall submit proof that the requirements of the tentative approval have been met.**

~~B.C.~~ Within ten days of receiving ~~a~~ **the** complete survey map meeting the requirements of this Section **and a copy of the recorded deed of conveyance,** the City Administrator shall indicate final approval by **endorsement upon signing** the map, **if any, or if no map is required, the City Administrator shall advise the applicant in writing that final approval has been granted, and notifying the applicant in writing of the final approval.**

~~C.D.~~ The applicant shall submit the signed survey map **and a copy of the recorded deed of conveyance** to the Douglas County Surveyor, together with any required filing fee. When the map is filed, the County Surveyor shall indicate the filing information on the face of the **final** map.

~~D.E.~~ A property line adjustment shall be effective when the survey map is properly filed **with by** the County Surveyor **and an instrument reference (e.g. Deed instrument or covenant recorded with the County Clerk) is noted on the face of the map.** **If no map is required, then the line adjustment shall be effective when final approval is granted by the City Administrator and an instrument (e.g. Deed and/or covenant) is recorded with the County Clerk.**

5. Exception For Adjustments of ~~Even Width~~ **Greater Than 10 Acres in Size:**

A. The survey and filing requirements of Subsection (4) above, shall not apply to a property line adjustment where ~~the adjusted property line is a distance of even width along the entire common property line, or when~~ the affected lots or parcels contain more than 10 acres before and after the adjustment.

~~B.~~ **A copy of the recorded deed of conveyance, as required by Subsection (4)(a) above, shall be submitted to the City Administrator for final approval of the property line adjustment. The City Administrator shall notify the applicant in writing of the final approval.**

6. ~~Filing of Deed:~~

~~A.~~ **A deed of conveyance conforming to the approved property line adjustment shall be recorded with the Douglas County Clerk. A property line adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgments.**

ARTICLE IX EXCEPTIONS, VARIANCES & ENFORCEMENT

1. SECTION 9.025 APPEAL PROCEDURE.

Purpose of Amendment: To update language for appeals and correct reference to Section 9.04.0 of the Zoning Ordinance for appeals to the City Council. The revised section for appeals is Section 9.05.0 in the Zoning Ordinance.

Section 9.025:

An action or ruling of the Planning Commission pursuant to this ordinance may be appealed by an affected or aggrieved party to the City Council within a specified time period as set forth in Section 2.070 and Section 5.020. Written notice of appeal shall be filed with the City ~~Administrator~~ **Recorder** accompanied by a service charge established by the City of Myrtle Creek's Handbook of Fees and Charges. If the appeal is not filed within the time period stated, the decision of the Planning Commission shall be final and binding on all parties concerned. If the appeal is filed, the City Council shall receive a report and recommendation thereon from the ~~Planning Commission~~ **City Administrator** and shall hold a public hearing on the appeal. Notice and conduct of hearing shall be in accordance with Section ~~9.04.0~~ **9.050** of Zoning Ordinance No. 508, ~~however, the mailing of individual notice shall not be required.~~

2. SECTION 9.035 AMENDMENTS TO PRELIMINARY PLANS & FINAL PLATS.

Purpose of Amendment: To add a new section to the Subdivision Ordinance that will provide a process for amendments to preliminary subdivision or partition plats, or to final plats.

Section 9.035:

1. Definitions

a. "Minor Amendment" means a change which:

- (1) Does not increase the number of lots or parcels created by the subdivision or partition;**
- (2) Does not enlarge the boundaries of subdivided or partitioned area;**
- (3) Does not change the general location or amount of land devoted to a specific land use; or**
- (4) Includes only minor shifting of the established lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces.**

b. "Major Amendment" means any change which is not a minor amendment.

2. Approval of Minor Amendments

A minor amendment to an approved preliminary subdivision or partition plan or to an approved final subdivision plat or final partition plat may be approved by the City Administrator.

3. Approval of Major Amendments

Approval of a major amendment to an approved preliminary subdivision or partition preliminary plan or to an approved final subdivision plat or final partition plat shall be an Administrative Action subject to the provisions of Article IX of the Zoning Ordinance.

COMPREHENSIVE PLAN AMENDMENTS

CHAPTER 11 TRANSPORTATION

Purpose of Amendment: To co-adopt and incorporate by reference the findings and policies adopted by Douglas County to integrate the Interchange Area Management Plan for Exits 103, 106 and 108 as an appendix to the Myrtle Creek Transportation System Plan. A reference to the co-adopted findings and policies will be added to the Comprehensive Plan in Chapter 11, "Transportation", in the "Scope" section listed on page 1.

Background: The Douglas County and City of Myrtle Creek Urban Growth Area Management Agreement (UGMA) identifies that Douglas County has planning jurisdiction in the Tri City portion of the Myrtle Creek Urban Growth Boundary (known as Area 2 of the UGB). Chapter 13 of the Myrtle Creek Comprehensive Plan, under "Policies Applicable to Tri City Only", states that all policies in the Douglas County Comprehensive Plan relating to Tri City have been incorporated into the Myrtle Creek Comprehensive Plan by reference, and are not specifically listed in Chapter 13.

In December 2006, Douglas County adopted legislative amendments to the Douglas County Comprehensive Plan (Transportation Element) and the Douglas County Transportation System Plan to integrate the Interchange Area Management Plan (IAMP) for I-5 Interchanges 103, 106 and 108. As part of the Myrtle Creek's legislative amendments, the City co-adopts by reference the findings and policies adopted by Douglas County to integrate the IAMP, which primarily affects the Tri City portion of the Myrtle Creek UGB, and the attached exhibit is adopted by reference as Appendix B of the City of Myrtle Creek Transportation System Plan.

Proposed Amendment:

SCOPE.

The integration of transportation systems and land use in planning for Myrtle Creek's anticipated growth can benefit many aspects of life in the Myrtle Creek area. Transportation systems are both a product of and a determining factor in land use. . . .

Policies recognize the need for an in depth study of the Myrtle Creek transportation network as well as specific suggestions for immediate improvement and enhancement of the system. Planning for an integrated transportation system will also reduce energy consumption.

In December 2006, Douglas County adopted legislative amendments to the Douglas County Comprehensive Plan (Transportation Element) and the Douglas County Transportation System Plan to integrate the Interchange Area Management Plan (IAMP) for I-5 Interchanges 103, 106 and 108. Myrtle Creek co-adopts by reference the findings and policies adopted by Douglas County to integrate the IAMP for Exits 103, 106 and 108, which primarily affects the Tri City portion of the Myrtle Creek UGB. The County's legislative amendments for the IAMP are adopted by reference as Appendix B of the City of Myrtle Creek Transportation System Plan.

APPENDIX B

CITY OF MYRTLE CREEK TRANSPORTATION SYSTEM PLAN

The attached findings and policies adopted by Douglas County in December 2006 to integrate the Interchange Area Management Plan for I-5 Exits 103, 106 and 108, which primarily affects the Tri City portion of the Myrtle Creek UGB, are co-adopted by reference by the City of Myrtle Creek and made part of the City of Myrtle Creek Transportation System Plan.

DEC 06 2006

BEFORE THE BOARD OF COMMISSIONERS OF DOUGLAS COUNTY, OREGON

BARBARA E. NIELSEN, COUNTY CLERK

AN ORDINANCE ADOPTING)
AMENDMENTS TO THE DOUGLAS)
COUNTY COMPREHENSIVE PLAN AND)
TRANSPORTATION SYSTEM PLAN)

ORDINANCE NO. 2006-11-02

RECITALS

- A. Amendments to the Douglas County Comprehensive Plan and Transportation System Plan (TSP) are needed in order to update the Comprehensive Plan and integrate and adopt by reference the Interchange Area Management Plan (IAMP) into the TSP; and integrate and adopt by reference the Douglas County Rural Community Inventory, the Douglas County Rural Residential Land Inventory, the Tri City Area Plan updates, the Douglas County Natural Hazard Mitigation Plan (NHMP) and the Douglas County Community Wildfire Protection Plan (CWPP) into the Comprehensive Plan.
- B. On November 16, 2006, the Douglas County Planning Commission held a hearing and recommended that the amendments be adopted by the Board of Commissioners.

THE DOUGLAS COUNTY BOARD OF COMMISSIONERS ORDAIN AS FOLLOWS:


SECTION ONE: The amendments contained and referenced in the yellow attachment titled "Amendments to the Douglas County Comprehensive Plan and the Douglas County Transportation System Plan", Final Draft, dated December 6, 2006, are ADOPTED and by reference made part of this Ordinance.

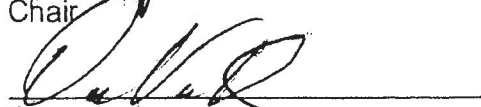
SECTION TWO: The amendments are necessary and appropriate and shall become effective on January 5, 2007.

SECTION THREE: SEVERABILITY; If any provision of this ordinance is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of the ordinance. The ordinance shall be construed as if such invalid provision had never been included.

DATED this 6th day of December, 2006

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, OREGON


Chair


Commissioner

ABSENT

Commissioner

Amendments to the

DOUGLAS COUNTY COMPREHENSIVE PLAN

AND THE DOUGLAS COUNTY

TRANSPORTATION SYSTEM PLAN

FINAL DRAFT
December 6, 2006

Planning Commission
November 16, 2006

Board of Commissioners
December 6, 2006

TABLE OF CONTENTS

1. **Interchange Area Management Plan (IAMP) for Exit 103, 106, 108.**
- Douglas County Comprehensive Plan and TSP.
Page 2 **Amendments to the Transportation System Plan integrating the IAMP for 103, 106, 108.**

2. **Douglas County's Rural Community Inventory.**
- Douglas County Comprehensive Plan - Chapter 15
Page 10 **Amendments to the Comprehensive Plan integrating the Rural Community Inventory.**

3. **Douglas County's Rural Residential Lands Inventory.**
- Douglas County Comprehensive Plan - Chapter 15
Page 15 **Amendments to the Comprehensive Plan integrating the Rural Residential Lands Inventory.**

4. **Tri City Area of the Myrtle Creek UGB Comprehensive Plan Update .**
- Douglas County Comprehensive Plan - Chapter 15
Page 20 **Selected Amendments to the Comprehensive Plan for Tri City.**

5. **Douglas County Natural Hazard Mitigation Plan (NHMP).**
- Douglas County Comprehensive Plan - Chapter 5
Page 23 **Amendments to the Comprehensive Plan integrating the Douglas County Natural Hazard Mitigation Plan (NHMP).**

6. **Douglas County Community Wildfire Protection Plan (CWPP).**
- Douglas County Comprehensive Plan - Chapter 2
Page 26 **Amendments to the Comprehensive Plan integrating the Douglas County Community Wildfire Protection Plan (CWPP).**

KEY

Amendments are identified by both **BOLDING** and UNDERLINING.

Additions to Amendments are identified by both *ITALICIZED* and UNDERLINING.

**1. INTERCHANGE AREA MANAGEMENT
PLAN (IAMP) FOR EXIT 103 - 106 - 108
IN DOUGLAS COUNTY**

1. INTERCHANGE AREA MANAGEMENT PLAN (IAMP) FOR EXIT 103 - 106 - 108 IN DOUGLAS COUNTY.

PURPOSE: Provide interchanges which accommodate land uses and economic opportunity in the IAMP area consistent with the Douglas County Comprehensive Plan and the Douglas County Transportation System Plan.

BACKGROUND: The Southern Douglas County area has been promoted and targeted for new industrial growth by Douglas County and the State of Oregon. I-5 Interchanges 103, 106, and 108 serve the area promoted and targeted for new industrial growth. In addition they provide access to the Myrtle Creek Airport and serve the City of Myrtle Creek and Tri City urban areas to the east, as well as tribal lands, rural and resource land. Through this legislative amendment process, Douglas County will integrate the IAMP into the Douglas County Comprehensive Plan (Chapter 13 - Transportation) and the Douglas County Transportation System Plan (TSP).

AMENDMENT: Amend the Douglas County Comprehensive Plan by modifying the County Transportation System Plan to include by reference the Interchange Area Management Plan ("IAMP") for I-5 Interchanges 103 (Riddle), 106 (Weaver Road), and 108 (Myrtle Creek) and specifically amend the TSP text to include:

PAGE 4-27 IN THE DOUGLAS COUNTY TSP.

INTERCHANGE CHANGE AREA MANAGEMENT PLAN FOR I-5 INTERCHANGE 103, 106, AND 108 IN DOUGLAS COUNTY

The Douglas County Transportation System Plan (TSP) was completed in 2004 and establishes a system of transportation facilities and level of service adequate to meet the County's transportation needs. The Douglas County TSP includes a determination of future transportation needs for road, transit, bicycle, pedestrian, air, water, rail, and pipeline systems; policies and regulations for the implementation of the TSP; and a transportation funding program. The Tri City Urban Unincorporated Circulation Plan (2001) was also considered during the development of the IAMP. This circulation plan is one of three urban unincorporated circulation plans that are part of the Douglas County TSP.

Interchanges 103, 106, and 108 are located along I-5 in Southern Douglas County in an area that has been promoted and targeted for new industrial growth by both

Douglas County and the State of Oregon. They provide important access between I-5 and the communities of Myrtle Creek, Tri City, and Riddle; the Myrtle Creek Airport; and the South Umpqua Industrial Park at Interchange 103. The three interchanges are deficient from a design and operational perspective. At Interchange 103, (also known as "Riddle Bypass" and "Pruner Road"), the overpass bridge is functionally obsolete and driveways and access points are located closer to the ramp terminals than allowed by current standards. Interchange 106, Weaver Road, also has access points too close to the ramp terminals, and the bridge is both functionally obsolete and does not meet vertical clearance standards. In addition, the frontage road at Interchange 106 serving the Myrtle Creek Municipal Airport between I-5 and the South Umpqua River may need to be relocated, and is constrained by proximity to the river's floodway and floodplain. Douglas County has secured funding for the construction of the Weaver Road Bridge at Interchange 106, crossing the South Umpqua River and connecting Tri City to I-5. Funding for the Weaver Road Bridge was earmarked in the federal transportation bill passed by the U.S. Congress in August 2005. Interchange 108, Myrtle Creek, has tight curves at the entrance ramps and deficient acceleration lengths. Its overpass bridge is also functionally obsolete.

The 2025 Future Operations Analysis includes a No-Build and two Build scenarios: Option 1, which assumes improvements to Interchange 103, and Option 2, which includes improvements to Interchange 103 and a new Weaver Road Bridge over the South Umpqua River. The level of service and a comparison of traffic volume demand to intersection capacity (v/c) was determined for the approach ramps for the No-build and the two Build options. In addition, a signal warrant analysis was performed for Interchanges 103 and 106, and the connection of Weaver Road at Old Pacific Highway for Build Option 2. Finally, an intersection analysis was performed for each interchange, using 2025 traffic volumes and traffic and signal/unsignalized assumptions for the No-Build and Build options. Conclusions resulting from this analysis (Build Option 2) are as follows:

The Interchange 103 ramp terminals will operate at LOS F within 20 years unless improvements are made. The planned widening of the bridge and likely signalization of the ramps will allow the intersections to operate at LOS B and C during the PM peak hour.

The ramp merge and diverge areas for all three interchanges will continue to operate at acceptable LOS within the next 20 years.

The intersection of Pruner Road and Old Pacific Highway should be redesigned with a curve between the north and west legs and removal of the stop signs for

these approaches. This would allow for the north-west traffic movements to flow freely. The east and south legs could be combined into one approach with a stop sign.

The Interchange 106 ramp terminals will be able to handle the additional traffic demand resulting from the construction of the Weaver Road Bridge without any improvements. Ramp terminals for Interchange 106 are predicted to operate at an acceptable level of service under stop control with volume to capacity ratios well below the ODOT standards even with construction of the proposed bridge.

The increase in truck volume at Interchange 106 may be problematic due to current deficiencies in the interchange geometry. There may be a need to examine heavy vehicle turning radii to make sure ramp design can accommodate heavy vehicle use when making improvements.

Multiple projects have been identified to address the identified deficiencies at the three interchanges. The 2003 OTIA III legislation includes sufficient funding to pay for bridge replacement and limited modernization for the Interchange 103 bridge. In addition, Douglas County has secured funding for construction of the Weaver Road Bridge at Interchange 106, which will cross the South Umpqua River and connect to Highway 99 in Tri City. Funding for the Weaver Road Bridge was earmarked in the federal transportation bill passed by the U.S. Congress in August 2005. ODOT has also secured OTIA III funds for Interchange 108, the Myrtle Creek Arch Bridge.

Policy and Design Elements for Interchange 103

The IAMP includes conceptual designs for Interchange 103, but not for Interchanges 106 or 108. Designs for Interchanges 106 and 108 will be developed to work with future planning efforts for the Weaver Road Bridge and any future improvements to I-5 near Interchange 108. The Interchange 108 concepts will integrate with the planning for the Myrtle Creek Arch Bridge, a current Douglas County project.

The planned improvements at Interchange 103 include reconstruction of the bridge to a 3-lane facility and a northbound on-ramp in the northeast quadrant of the interchange. These improvements constitute the “preferred alternative” (see IAMP Section 4.0, Alternatives Considered, Existing Configuration with Modified Ramp). One of two configurations containing these design elements will be implemented, either the Standard and Tight Diamond Interchange (Preferred Alternative, Option 1) or the Diamond Configuration with Two Northbound On-Ramps (Preferred Alternative, Option 2).

Whether a diamond interchange is described as a “standard” diamond or “tight” diamond depends on the distance between the ramp terminals. A standard diamond generally has sufficient separation that left-turn lanes at the ramp terminals do not overlap. With a tight diamond, left turn lanes in opposing directions are often side-by-side on the crossroad. To provide a through lane and a left-turn lane in each direction, a standard diamond requires a bridge three lanes wide, while a tight diamond requires four lanes. Although access spacing would be improved with the tight diamond concept, it still would not meet the 1,320-foot access spacing called for in the OHP. To meet spacing standards, other local access points would need to either be closed, or re-routed to intersecting streets (see IAMP Appendix J., Access Management Plan). The widened bridge allows for new left turn lanes at the ramp terminals reducing traffic delays. It is assumed that signals will be installed at the ramp terminals.

The second option for implementing the preferred alternative includes adding a new northbound on-ramp, identified as the Diamond Configuration with Two Northbound On-Ramps in Section 4.0 of the IAMP. This design option would combine a diamond interchange with a loop ramp for the traffic from the west seeking to go north on I-5. (See IAMP Figure 8). This configuration would retain the advantage by which right turns are made by vehicles from the west seeking to travel north on I-5. It would also allow vehicles from the east to use right turns to access I-5 northbound. This configuration would require a longer span for the bridge carrying the traffic across I-5. However, the need for signalization of the northbound ramp terminals would be delayed by several years.

The configuration that is ultimately chosen will need to meet Oregon Highway Plan access management standards and current Highway Design Manual standards or an exception must be approved as part of a future implementation step. The configuration must also take into account the implications of Measure 37, and the nexus outlined in the Dolan decision pertaining to private property rights.

Access Management Strategy and Access Management Plan

The IAMP includes both an Access Management Strategy and an Access Management Plan. The Access Management Strategy identifies the location and type of approaches and any other necessary improvements to the highway (operations, medians, etc.) within the project area. The Access Management Plan includes the elements of the strategy with the addition of a comprehensive area-wide solution for local access and circulation to minimize use of state highway for local access and circulation and to preserve the functional capacity of the highway. The short-term actions are consistent with the IAMP goals and may be implemented in connection with the Interchange 103 Improvement Project and

will be the responsibility of ODOT. The Access Management Plan includes medium- and long-term actions recommended as land use changes and redevelopment occurs or in concurrence with future roadway improvement projects. Access management considerations include:

In the vicinity of Interchange 103, extending a circulation road along Parcel 4 (McDonald's, T30S R5W 7C TL 800) to provide access to the properties south of Pruner Road when Parcel 3 (T30S R5W 7C TL 900) is developed and a change of use occurs. At this time, driveway Access 4 to Parcel 4 would be closed and a new driveway connecting to the circulation road would be developed on the west side of Parcel 4.

Implementing the redesign of the intersection of Pruner Road and Old Pacific Highway to include a curve between the north and west legs and removal of the stop signs for these approaches. This would allow north-west traffic movements to flow freely. The east and south legs could be combined into one approach with a stop sign.

Working with the ODOT to relocate the intersection of Weaver Road / Aviation Drive further east from Interchange 106 inconjunction with a new Weaver Road bridge.

Closing access to Old Pacific Highway (Highway99) for properties with alternative access points as new development occurs.

An examination of heavy vehicle turning radii to make sure the ramp design can accommodate heavy vehicle use when making improvements in the Weaver Road corridor, including Interchange 106. Modification to the existing ramp terminal geometrics or increasing the bridge width may be necessary to accommodate heavy trucks.

Coordinating with ODOT on general access management actions throughout the planning area, including encouraging redevelopment opportunities that consolidate access points, encouraging the sharing of access points between adjacent properties, providing driveway access via local roads where possible, and minimizing driveway widths.

The strategy and actions in the IAMP are based on existing land uses for each parcel. When a property is developed, redeveloped, or a change-of-use occurs, an application for a permit will be required if access is proposed from the state highway system. At that time, any existing approach and any new proposed

approach will be evaluated. The IAMP will guide ODOT and Douglas County when completing a change-of-use assessment.

The Access Management Strategy and actions presented in the IAMP are intended to improve highway conditions by moving towards meeting the appropriate ODOT access management standards, while at the same time taking into consideration the need to maintain reasonable access to existing properties and addressing safety priorities.

PAGE 4-37 IN THE DOUGLAS COUNTY TSP.

1. Douglas County recognizes the importance of Interstate 5 in the movement of people and goods to and from the region and is committed to protecting the function of interchanges 103, 106, and 108 to provide access to I-5. The function of these interchanges, as defined in the I-5 Interchange 103, 106, 108 Interchange Area Management Plan, is to safely and efficiently accommodate the future traffic demands associated with current rural and urban land uses in the planning area and the expected state and regional growth.
2. The County supports land uses in the vicinity of interchanges 103, 106, and 108 consistent with the adopted improvements in the Interchange Area Management Plan for these interchanges. Consistent with this, the County supports continued agricultural use of land in the Interchange 106 interchange study area, except where identified in the IAMP for expansion of the Myrtle Creek Urban Growth Boundary.
3. Douglas County will coordinate with ODOT in evaluating land use actions that could affect the function of interchanges 103, 106, and 108.
4. Douglas County will coordinate with ODOT prior to amending its transportation system plan or proposing transportation improvements that could affect the function of interchanges 103, 106, 108.

5. Douglas County will not rely on interchanges 103, 106, or 108 for providing additional capacity to support future land use actions in the County that are not consistent with the planned improvements to these interchanges.
6. Consistent with County policies that seek to ensure the balance between land use and transportation, the IAMP contains policies that outline the steps that define ODOT's role in protecting the function of the interchanges. The IAMP also provides policy language that describes under what circumstances the State and County will need to undertake amendments to the IAMP in order to ensure that land use changes do not impact the planned capacity at Interchange 103.
7. If future County initiated changes to the land use designations or uses allowed in the IAMP Planning Area result in the need for additional capacity at the interchange, Douglas County will prepare amendments to the IAMP. Proposed IAMP amendments shall be coordinated with ODOT staff and the revised IAMP and funding plan shall be submitted to the OTC for approval.
8. Douglas County, subject to applicable law, the standards of the Dolan Decision and the limitations of Measure 37, will assist ODOT in achieving the following access management objectives of the IAMP:
 - Encourage redevelopment opportunities that consolidate access points.
 - Encourage sharing of access points between adjacent properties.
 - Use access management spacing standards to the extent possible to offset driveways at proper distances to minimize the number of conflict points between traffic using the driveways and through-traffic.
 - Minimize driveway widths and provide driveway access via local roads where possible.
 - Interconnect traffic signals with adjacent signals to create a coordinated timing system.
9. The IAMP for Exit's 103, 106, and 108 is a part of Douglas County's TSP and by reference adopted as a support document to the Comprehensive Plan.

APPENDIX A

ZONING ORDINANCE AMENDMENTS

**VARIANCE STANDARDS
OF ARTICLE VI**

**ADOPTION DRAFT
FEBRUARY 19, 2008**

PROPOSED AMENDMENTS TO
VARIANCE STANDARDS OF ARTICLE VI 02/19/08

SECTION 6.03.0 VARIANCES.

A variance is an authorized relaxation of the terms of this Ordinance where such variance will not be contrary to the public interest and where conditions exist which are peculiar to the property and which are not the result of the actions of the applicant. A variance shall be permitted, altered or denied as set forth in Section 6.03.1 through 6.03.4.

SECTION 6.03.1 AUTHORIZATION TO GRANT A VARIANCE.

A variance may be authorized only from the requirements for off-street parking and loading, building height, lot area, lot coverage, size of yards and open spaces. The authority to grant a variance does not include authority to approve a development that is designed, arranged or intended for a use not otherwise permitted in the location. A variance may be authorized from a specified provision of this Ordinance upon finding that strict application of the requirement would render the parcel incapable of reasonable economic use.

- (1) Variances may be granted under the requirements of this Ordinance as follows when it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the Ordinance would cause an undue or unnecessary hardship:
 - (a) The Myrtle Creek Planning Commission may grant major variances when part of a quasi-judicial application or an administrative decision appealed to the Commission **or referred by the City Administrator.**
 - (b) Planning Commission review shall be in accordance with Section 9.04.0 through **9.04.3** **9.04.6.**
 - (c) The **City** Administrator or the Administrators designee may grant major variances **and minor variances.**
 - ~~(d) — The City Planner may grant minor variances.~~
- (2) Variances to the requirements of the Special District/Flood Hazard Area shall be in accordance with Section 3.41.7.
- (3) Minor Variances may be requested to the building coverage, setbacks, projections into required yards and structure height development standards for permitted uses in the Residential Zoning Districts.
- (4) Minor Variances may not be requested, nor approved, for lot area and lot width. Minor Variances shall not be requested, nor shall they be approved, to the regulations in Commercial Zoning Districts.

- (5) Major and Minor Variances shall not be requested, nor shall they be approved, to allow a use of land that is not permitted in a zoning district.
- (6) The Planning Commission or City Administrator shall conduct a site review and, in granting a major variance, may impose those conditions set forth in Section 5.01.2, which it finds necessary to protect the best interest of the surrounding property or neighborhood and to otherwise achieve the objectives and purposes of the Comprehensive Plan and other applicable policies of the City.

SECTION 6.03.2 VARIANCE APPROVAL CRITERIA.

- (1) The City may permit and authorize a variance from the requirements of the Ordinance only when there are practical difficulties in the application of the Ordinance. A Major Variance may only be granted by the Planning Commission, the Administrator, or the Administrators designee; and only after all of the following criteria are met. A Minor Variance may be granted ~~by the City Planner~~ only after the criteria in ~~(e)-(g)~~ **(d)-(e)** are met.
 - (a) A hardship is created by exceptional or extraordinary circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to the **lot** size ~~or~~, shape **(legally existing prior to April 2003)**, natural features and topography of the property or **other circumstances over which the applicant has no control the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.** Circumstances of any hardship shall not be a result of actions of applicant, owner, or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.
 - (b) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same zoning district or vicinity.
 - (c) The existing zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.
 - (d) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.
 - ~~(e) The authorization of the variance will not adversely affect the appropriate development of adjoining properties.~~
 - ~~(e)(f)~~ The granting of the variance will not adversely affect the implementation of the Comprehensive Plan or Zoning Ordinance nor will it establish a use, which is not listed in the underlying zone; and shall not be injurious to property in the zoning district or vicinity in which the property is located.
 - ~~(f)(g)~~ The variance is the minimum remedy necessary to alleviate the hardship.

SECTION 6.03.3 VARIANCE CLASSIFICATION.

- (1) A Major Variance is a 50 percent or greater change in the applicable underlying zoning district standard or Ordinance requirement. A Major Variance must be found to comply with Section **6.03.2(A); 6.03.2(1);** and,
 - (a) A Major Variance may be approved by the **City** Administrator, the Administrators designee, or at a public hearing before the Myrtle Creek Planning Commission **in accordance with City Ordinance 509.9.**
 - (b) The application shall include information set forth in Section 9.02.0.

- (2) A Minor Variance is a change in the applicable underlying zoning district standard or requirement not greater than 50 percent of the applicable underlying zoning district standard or Ordinance requirement. **The City Planner City Administrator or the Administrators designee is authorized to process a Minor Variance in accordance with the following conditions. A Minor Variance may be granted only after the criteria in Section 6.03.2(1)(d)-(e) are met.**
 - ~~(a) All owners of record of property within 150 feet of the subject property grant their consent to the variance according to the procedures; and~~
 - ~~(b) The consent form to be presented to each owner must be provided by the City and include the current zoning, standards, and requirements for that being varied.~~
 - ~~(c) The applicant must state the amount of relief requested and include a declaration by the owner that the granting of the variance shall not harm the value and livability of his property.~~

- ~~(3) The City Planner is authorized to grant a Minor Variance with a change in the applicable underlying zoning district standard or requirement not greater than 25 percent of the applicable underlying zoning district standard or Ordinance requirement, in accordance with the following conditions.~~
 - ~~(a) A Minor Variance application must be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property; and~~
 - ~~(b) The consent form to be presented to each owner must be provided by the City and include the applicable underlying zoning district standard or Ordinance requirement.~~
 - ~~(c) The applicant must state the amount of relief requested and include a declaration by the owner that the granting of the variance shall not harm the value and livability of his property.~~

SECTION 6.03.4 CRITERIA FOR GRANTING A SIGN VARIANCE.

No variance for a sign shall be granted by the Myrtle Creek Planning Commission. Signs not otherwise permitted shall be processed under Section 7.01.0 as a Conditional Use.

SECTION 6.03.5 APPLICATION FOR MAJOR VARIANCE AND MINOR VARIANCE.

(Delete section – it is essentially a duplication of Section 6.03.4-8 below)

- ~~(1) A request for a Major or Minor Variance may be initiated by a property owner or the owners authorized agent by filing an application with the City Planner. The applicant shall discuss the proposed Major or Minor Variance and site plans with the City Planner and City Engineer if appropriate, in a pre-application conference prior to submitting an application.~~
- ~~(2) The application shall contain information consistent with Section 9.02.1.~~
- ~~(3) Application for a variance shall be filed with the City Planner on the forms provided at the time of application. The application shall be accompanied by the required fee.~~

SECTION 6.03.6-5 PUBLIC HEARING FOR A VARIANCE.

The Myrtle Creek Planning Commission shall consider the matters listed in Section 6.03.1(1)(a) at a public hearing conducted in accordance with Sections 9.04.0 through ~~9.04.3~~ 9.04.6.

SECTION 6.03.7-6 FINAL DECISION FOR A MAJOR VARIANCE.

- (1) For a Major Variance application submitted concurrent with a Historic Review, Subdivision, Land Partition, or Property Line Adjustment Application, the decision shall be incorporated into the Historic Review, Subdivision, Land Partition, or Property Line Adjustment decision. **The decision shall be written and at a minimum shall identify the property owner, applicant, the date of the decision, the decision and any time frame and conditions to which the decision is subject.** The decision shall be to approve, approve with conditions, or deny the request.
- ~~(2) The decision shall be written and at a minimum shall identify the property owner, applicant, the date of the decision, the decision and any time frame and conditions to which the decision is subject. (Delete and move to (1) above for consistency.)~~
- ~~(2)~~(3) The decision shall become final 12 calendar days after the date the notice of the decision is given. Appeal of the **Major Variance** decision by the Administrator or the Administrators designee shall be in accordance with Section 9.05.0.

SECTION 6.03.8-7 FINAL DECISION FOR A MINOR VARIANCE.

- (1) For a Minor Variance application submitted concurrent with a Historic Review, Subdivision, Land Partition, or Property Line Adjustment Application, the decision shall be incorporated into the Historic Review, Subdivision, Land Partition, or Property Line Adjustment decision. The decision shall be written, and at a minimum, shall identify the property owner, applicant, the date of the decision, the decision and any time frame and conditions to which the decision is subject. The decision shall be to approve, approve with conditions, or deny the request.
- (2) The decision shall become final 12 calendar days after the date the notice of the decision is given. Appeal of a Minor Variance City Planner decision by the Administrator or the Administrators designee shall be ~~de novo and~~ in accordance with Section 9.05.0. ~~All other appeals shall be consistent with Section 9.05.0.~~

SECTION 6.03.10-8 APPLICATION PROCEDURE AND SERVICE CHARGE.

A request for a Major or Minor Variance may be initiated by the property owners or ~~his~~ the owners authorized agent by filing an application with the City upon forms prescribed for the purpose. The applicant shall discuss the proposed Major or Minor Variance and site plans with the City Planner and City Engineer if appropriate, in a pre-application conference prior to submitting an application. The application shall include information set forth in Section 9.02.0 and any drawings or materials essential to the understanding of the proposed use and its relationship to the surroundings. The application shall be accompanied by a service charge, which is non-refundable and identified in the *City of Myrtle Creek Handbook of Fees and Charges*.

SECTION 6.03.11-9 TIME LIMIT ON A VARIANCE APPROVAL.

Authorization of a Variance shall be void after one (1) year unless substantial construction pursuant thereto has taken place. However, the City Administrator or the City Administrator's designee may, in his discretion, extend authorization for an additional one (1) year provided a written request from the applicant is submitted prior to the expiration date.

APPENDIX B

ZONING ORDINANCE AMENDMENTS

**ARTICLE VII (AMENDMENTS
& ZONE CHANGES)**

**ARTICLE IX (ADMINISTRATION
& ENFORCEMENT)**

**ADOPTION DRAFT
FEBRUARY 19, 2008**

PROPOSED AMENDMENTS TO
ARTICLES VIII & IX (02/19/08)

ARTICLE VIII

AMENDMENTS AND ZONE CHANGES

SECTION 8.01.0 AUTHORIZATION TO INITIATE AMENDMENTS.

Whenever public necessity, convenience or general welfare requires amendments to the provisions of this Ordinance, they may be initiated by the City Council, by the Planning Commission or by application of a property owner or his authorized agent.

SECTION 8.02.0 APPLICATION PROCEDURE AND SERVICE CHARGE.

An application for amendment by a property owner or his authorized agent shall contain the information described in Section 9.02.0 and shall be filed with the Planning Department at least **20-30** days prior to the date of hearing upon forms prescribed for the purpose. **If the proposed amendment involves a change to the Comprehensive Plan Text or Map that requires notice to the Department of Land Conservation and Development, the application shall be submitted at least 60 days prior to the date of the hearing.** The application shall be accompanied by a service charge established by the City of Myrtle Creek *Handbook of Fees and Charges*.

SECTION 8.03.0 PUBLIC HEARING ON AMENDMENTS.

- (1) In judging whether or not a zone change or amendment shall be initiated, approved, modified or denied, the Planning Commission shall establish the proposal's appropriateness and desirability or the public convenience or necessity to be served and shall establish compliance with the Comprehensive Plan and other applicable policies of the City by adoption of Findings of Fact. Prior to making a recommendation for approval or denial, the Planning Commission shall conduct a public hearing on the proposed amendment or zone change. **Such public hearing shall be conducted pursuant to the provisions of Article IX, Section 9.04.0 through 9.04.6 of this Ordinance.** In making their recommendation, the Planning Commission may impose any of those conditions set forth in Section 5.01.2 which it finds necessary to carry out the purpose of this Ordinance and to otherwise achieve the objectives of the Comprehensive Plan.
- (2) The Planning Commission findings and recommendation shall be forwarded to the City Council, whereupon the Council shall either grant the amendment or zone change in whole or in part by adoption of findings of fact and by the adoption of an ordinance, or deny the same by appropriate motion and findings of fact. **Such public hearing shall be limited to the record established by the Planning Commission. Notice of the hearing shall be provided only to those parties qualified by the Planning Commission, and the parties shall be given an opportunity to speak at the hearing. At the hearing, or at a subsequent hearing, the Council shall take final action on the decision of the**

Planning Commission. The decision of the Council shall be based on the record of hearing except that the Planning Commission, in the case of a major reclassification or an amendment or zone change initiated by the Planning Commission, may recommend that the City Council conduct a *de novo* hearing prior to final action.

- (3) Notice ~~and conduct~~ of each hearing shall be in accordance with Section ~~9.04.0.~~ **8.03.1.**
- (4) The findings of fact explain the criteria and standards considered relevant to the decision, state the facts relied upon in rendering the decision and explain the justification for the decision based on the Comprehensive Plan and other applicable criteria, standards and facts.
- (5) Records of amendments to the text and map of this Ordinance shall be maintained in a form convenient for use by the public.

ADD NEW "SECTION 8.03.1 NOTICE" to provide timeframe for notices for Planning Commission and City Council on Amendments.

- (1) **At least twenty (20) days prior to the quasi-judicial hearing by the City Planning Commission, notice thereof shall be given as provided in Article IX, Sections 9.03.2 and 9.03.3 of this Ordinance.**
 - a. **Notice for hearings involving quasi-judicial Zone Changes and Comprehensive Plan Amendments shall also be given by publication in a newspaper of general circulation in the area affected at least ten (10) days prior to the date of the hearing.**
- (2) **If the application proposes an exception to a statewide planning goal, such exception shall specifically be noted in the notice.**
- (3) **At least ten (10) days prior to the hearing by the City Council, notice of the City Council public hearing shall be provided to all parties of quasi-judicial decisions.**
- (4) **A notice of the City Council Public hearings involving legislative Zone Changes and Comprehensive Plan amendments shall also be given by publication in a newspaper of general circulation in the area affected at least ten (10) days prior to the date of the hearing.**

SECTION 8.04.0 ADDITIONAL PROCEDURES EFFECTING A ZONE CHANGE.

It is the purpose and intent of Section 8.04.1 through 8.04.3 to provide additional procedures in the matter of effecting a change of zone so that the health, safety and general welfare and environmental amenities of the citizens of the City are ensured as certain development occurs.

SECTION 8.04.1 RESOLUTION OF INTENT TO CHANGE ZONE.

If, from the report and recommendation of the Planning Commission as required by this Ordinance, the City Council determines that the public health, safety, welfare and convenience will be best served by the requested zone change or any portion thereof, the Council may indicate its general approval in principle of the change of zone by the adoption of a "Resolution of Intent to Change the Zone" of said property. This resolution shall include any conditions, stipulations or limitations which the Council may feel necessary to impose in the public interest as a prerequisite to final action.

SECTION 8.04.2 RESOLUTION OF INTENT BINDING.

The fulfillment of all conditions, stipulations and limitations contained in the "Resolution of Intent" to effect a change of zone on the part of the applicant, shall make such resolution a binding commitment on the Council.

SECTION 8.04.3 RESOLUTION OF INTENT VOID UPON FAILURE TO COMPLY.

Upon fulfillment of all conditions by the applicant, the Council shall, by ordinance, effect such change of zone. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a "Resolution of Intent" to effect a change of zone, including the time limit placed on the resolution, shall render said resolution null and void, unless an extension is granted by the Council upon recommendation of the Planning Commission. In the event of a change of zone approve by the Council, but not on the basis of a "Resolution of Intent" to effect a change of zone, the Council shall by ordinance effect such change of zone.

SECTION 8.05.0 AMENDMENTS AFFECTING TRANSPORTATION FACILITIES.

(ITEMS RENUMBERED FOR CONSISTENCY)

- (1)A.** A Plan or land use regulation amendment significantly affects a transportation facility if it:
- (a)1.** Changes the functional classification of an existing or planned transportation facility;
 - (b)2.** Changes standards implementing a functional classification system;
 - (c)3.** Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility;
or
 - (d)4.** Would reduce the performance standards of the facility below the minimum acceptable level identified in the Transportation System Plan.

(2)B. Amendments to the comprehensive plan and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and performance standards of the facility identified in the Transportation System Plan.

(a)1. The proposed amendment shall comply with the Statewide Planning Goals and applicable Administrative Rules, which include OAR 660-12, Transportation Planning Rule. The applicant shall certify the proposed land use designations, densities or design standards are consistent with the function, capacity and performance standards for roads identified in the City Transportation System Plan.

(b)2. The applicant shall cite the identified Comprehensive Plan function, capacity and performance standard of the road used for direct access and provide findings that the proposed amendment will be consistent with the City Transportation System Plan;

(c)3. The jurisdiction providing direct access (City, County or ODOT) may require the applicant to submit a Traffic Impact Study (TIS) certified by a Traffic Engineer that supports the findings used to address Section 8.05.0**(B)1.(2)(a)** above.

ARTICLE IX

ADMINISTRATION AND ENFORCEMENT

SECTION 9.01.0 PURPOSE.

The purpose of this Article is to establish procedures for approval of development required by this ordinance, appeals from aggrieved persons and parties, and review of any decision by a higher authority.

SECTION 9.01.1 REVIEW PROCESS.

An application for development required by the City of Myrtle Creek shall be processed by quasi-judicial public hearing or Administrative Action, pursuant to applicable sections of this ordinance. Quasi-judicial hearings shall be held on all applications for a permit or approval required by these regulations, provided that hearings shall not be held in those matters the City Administrator has authority to act upon, unless appealed or referred pursuant to the provisions of this Article.

SECTION 9.01.0 9.01.2 SCOPE AND COMPLIANCE.

This article sets forth the procedures required for obtaining development approvals and Certificates of Occupancy. The powers and duties of City officials and boards are specified herein insofar as administration of this Ordinance is concerned. Actions initiated under this Ordinance shall be consistent with the adopted Comprehensive Plan of the City of Myrtle Creek and with applicable State and Federal laws and regulations as these plans, laws and regulations may now or hereafter provide.

The City Administrator shall be responsible for the coordination of a development application and decision-making procedures and shall approve developments when proper application is made and the proposed development is in compliance with the provisions of this ordinance. Before approving any development the City Administrator shall be provided with information by the applicant sufficient to establish full compliance with the requirements of this ordinance.

- (1) No development, including accessory and temporary uses, may be established or changed; no structure shall be erected, constructed, reconstructed, or altered; and no building used, occupied, or altered with respect to its use after the effective date of this Ordinance except as this Ordinance permits.
- (2) Site alterations, regrading, filling, or clearing of land prior to submission of the plans for development shall be a violation of this Ordinance.
- (3) No lot area, yard, or other open space or off-street parking or loading area which is required by this Ordinance for one use shall be used as a required lot area, yard or other

open space or off-street parking or loading area for another use, except as allowed by Section 4.08.2, Paragraph (1).

- (4) The requirements of this Ordinance apply to the person undertaking a development or the user of a development and to the person's successors in interest. Nothing herein shall relieve any applicant of the additional responsibility of seeking any permit required by any applicable statute, ordinance or regulation in compliance with all of the terms of this Ordinance.

SECTION 9.01.3 WHO MAY APPLY.

(1) An application for development approval may be initiated by one or more of the following:

- (a) The owner(s) of the property which is the subject of the application; or**
- (b) The purchaser(s) of such property who submits a duly executed written land sales contract or copy thereof which has been recorded with the Douglas County Clerk; or**
- (c) A lessee in possession of such property who submits written consent of the owner(s) to make such application; or**
- (d) A person or entity authorized by resolution of the City Council.**

Any of the above may be represented by an agent who submits written authorization by his principal to make such application.

(2) If an applicant submits a letter of withdrawal of an application, the application shall be terminated, the application withdrawn and the file closed without a decision, with no opportunity for refund of the application fee.

SECTION 9.01.4 PRE-APPLICATION CONFERENCE.

An applicant shall meet with a Planning Department staff person in a pre-application conference prior to submitting a request for development approval. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Ordinance, provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, arrange such technical and design assistance as will aid the applicant, and to identify policies and regulations that create opportunities or pose significant constraints for the proposed development.

SECTION 9.02.0 FORMS OF PETITIONS, APPLICATIONS AND APPEALS.

Petitions, applications and appeals provided for in this Ordinance shall be made on forms prescribed by the City. Applications shall contain the information described in Section 9.02.1 below and shall be accompanied by plans and specifications, drawn to scale, showing the actual dimensions of the lot to be built upon, the size and locations on the lot of existing and proposed structures, the intended use of each structure, the number of families, if any, to be accommodated thereon, the relationship of the property to the existing area and such other information as is needed to determine conformance with this Ordinance.

Any land use applications, plan reviews, development permits, public hearings or other proceedings required by this Ordinance may be consolidated to allow at one time for all such required development permits.

SECTION 9.02.1 INFORMATION TO BE SUBMITTED WITH APPLICATION.

An application for development shall consist of the following information, as applicable, plus any other materials that may be required by additional provisions of this Ordinance because of the unique type of development proposed or the area involved.

- (1) A completed application form and the appropriate filing fee.
- (2) Proof that the applicant is the exclusive owner, or that the applicant has the consent of all parties in ownership of the affected property.
- (3) Legal description and street address of the property affected by the application.
- (4) A site plan, sketches and any other explanatory information that may have a bearing on determining the action to be taken or that may be necessary to establish compliance to ordinance requirements and all relevant laws. Plans shall be drawn to scale upon substantial paper and shall be of sufficient clarity to indicate the nature and extent of the work proposed. The following information shall be shown on, or attached to, a site plan:
 - (a) The first sheet of each set of plans shall give the name and address of the property owner, the name and address of the person, engineer or surveyor who prepared the plans, the scale to which the plan is drawn, the north point and the date prepared;
 - (b) The property boundary lines and individual lot lines indicating total acreage and square footage of individual lots;
 - (c) A vicinity map, where appropriate, showing adjacent land and how proposed streets and utilities may be extended to connect to existing streets and utilities;
 - (d) The location width and name of all existing streets, railroads and utility rights-of way or easements;

- (e) The location of existing sewers, water mains, fire hydrants, culverts and other underground facilities within the tract, indicating pipe sizes, grades, manholes and location;
- (f) The location and use of existing and proposed buildings or structures and exterior dimensions where appropriate;
- (g) The location of landscaping, fences (indicating height and material), buffer areas, common property or required open spaces;
- (h) The location, size, type and illumination of existing and proposed signs;
- (i) The location, size and surface treatment of all existing and proposed driveways and pedestrian entrances and exists; the location, total number and dimensions of off-street parking spaces and loading areas; and the drainage plan for all paved surfaces;
- (j) The location of areas subject to flooding as defined in Article III, "Special Flood Hazard Area"; the location of any outstanding natural features; and the topography of the property, existing and proposed, showing the grades, elevations and character of the site as they relate to the improvements and to the adjacent area. Where site topographic surveys are required, they shall be prepared with 2 foot contour intervals for slopes of less than 5%, with 5 foot contour intervals for slopes of 5% to 15%, and with 10 foot contour intervals for slopes of 15% and above, or as is otherwise approved by the City Engineer;
- (k) Where appropriate, architectural perspectives, layout and elevation drawings of proposed structures shall be drawn without exaggeration, except where noted, including locations, area and design of signs and landscaping. The location and description of mechanical roof facilities shall also be shown if subject property is so oriented as to become part of the view from adjacent properties; and
- (l) If the application relates to property scheduled for phased development, the proposed layout of the total projected development shall be indicated and each phase's projected scope and time period indicated to the extent possible.

SECTION 9.03.0 PROCESSING PROCEDURES.

All projects involving the erection of a new building or structure or the enlargement or intensification of use of any existing building or structure shall be reviewed for compliance with this Ordinance and the Comprehensive Plan prior to issuance of a Building Permit, Placement Permit, or Certificate of Plan Check. Except where Planning Commission or City Council approval is required for applications involving a public hearing or where it is necessary for an application to be considered by a body having the power to impose additional conditions or restrictions, the City Administrator may approve an application for development. Decisions of

the City Administrator may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council in accordance with the procedures set forth in Section 9.05.0. Applications shall be processed as follows:

(1) Certificate of Occupancy.

No building or structure shall be used or occupied and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Building Official has issued a Certificate of Occupancy as required by the Building Code.

- (a) No Certificate of Occupancy shall be issued until the premises in question have been inspected, subsequent to issuance of a Building Permit, to verify compliance with the requirements of the Building Code and this Ordinance.

(2) Site Review.

No structure shall be erected, constructed, reconstructed, extended or moved and no land or building shall be occupied or used in whole or in part for any use whatsoever until the owner, tenants, contract purchaser, or authorized agent thereof, has received verification that the building or use complies with all zoning requirements.

At the time of the erection of any new commercial, industrial, or public/semi-public building, or any new multi-family residential development of three dwelling units or more, or at the time of the substantial improvement of more than 50% of the gross floor area or more than 3000 square feet of increased parking area, whichever is greater, of any existing building, a site review shall be conducted. All site plans shall be evaluated subject to the procedures, standards and limitations set forth in Article V. All required applications and accompanying site plans shall be reviewed by the City Administrator or the City Administrator's designee and, when applicable, by the Planning Commission. A Certificate of Plan Check shall be issued by the Planning/Engineering Department upon order of the City Administrator or the City Administrator's designee, Planning Commission or City Council as authorized by the various provisions of this Ordinance.

(3) Variance.

An application for a variance to the specified provisions of this Ordinance shall be made following the procedure detailed in Article VI.

(4) Conditional Use or Temporary Use Permit.

An application for any Conditional Use Permit or Temporary Use Permit required by this Ordinance shall be made following the procedures detailed in Article VII.

(5) Amendments.

Amendments to either the text or maps of this Ordinance shall be made following the procedures detailed in Article VIII.

- (a) All map amendments shall be consistent with the **applicable statewide planning goals, state statutes and administrative rules, and the** goals and policies of the City of Myrtle Creek Comprehensive Plan; and

- (b) A petition for an amendment to the text of this Ordinance may be submitted to the Planning Commission by any interested party. The petition shall state in particular the Article, Section, Subsection and Paragraph sought to be amended. The petition shall contain the language of the proposed amendment and shall recite the reasons for such proposed change in the text. If, upon consideration of the petition, the Planning Commission determines that the public health, safety and welfare may best be served by the requested change in the text, the Commission shall recommend the amendment to the City Council **for consideration. Such proposed text amendment shall be processed in accordance with the provisions of Article VIII of this Ordinance.**
- (6) **Final Action on Application.**
 Except as provided for in subsections (a) and (b) below, final action on administrative and quasi-judicial applications processed pursuant to this Section, **including any appeals to the City Council,** shall occur not later than 120 days following receipt of a complete application.
- (a) The 120-day period set forth in Section (6), above, may be extended for a reasonable period of time at the **written** request of the applicant. **Pursuant to the provisions of ORS 227.178, the total of all extensions on the 120-day period may not exceed 245 days.**
- (b) The 120-day period set forth in Section (6), above, does not apply to amendments of the Comprehensive Plan or Zoning Ordinance which have been forwarded to the Department of Land Conservation and Development pursuant to ORS 197.610.
- (7) If the City does not take final action on an application which is subject to the requirements of this Section within 120 days after the application was deemed complete, the applicant may apply in the Douglas County circuit court for a writ of mandamus to compel the City to either approve the application or show that the approval would violate the Comprehensive Plan or local land use regulations.

SECTION 9.03.1 LAND USE ACTIONS.

- (1) **Ministerial Actions. The City Administrator shall have the authority to review the following applications as Ministerial actions, and shall follow the procedures provided by this Ordinance to accomplish such review.**
- (a) **Issuance of building permits and manufactured home placement permits.**
- (b) **Issuance of sign permits.**
- (c) **Property Line Adjustments.**

(2) Administrative Actions. The City Administrator shall have the authority to review the following applications as Administrative Actions, and shall follow the procedures provided by this Ordinance to accomplish such review. The following applications shall be processed as Administrative Actions:

- (a) Conditional Use Permit**
- (b) Major and Minor Variances**
- (c) Land Partition**
- (d) Site Review (when processed Administratively)**
- (e) Temporary Use Permits (Section 7.02.2(1))**
- (f) Approval of Major Amendments**

(3) Quasi-Judicial Actions. Within forty-five (45) days after accepting a completed application for Quasi-Judicial action pursuant to this section of this Ordinance, the City Administrator shall act upon, or cause a hearing to be held upon, the application, unless such time limitation is extended with the consent of the applicant. The following matters shall be heard by the Planning Commission, pursuant to the procedures established in this Article:

- (a) Zone Change**
- (b) Planned Unit Development**
- (c) Subdivision preliminary Plat**
- (d) Mobile Home Park preliminary plan review**
- (e) Comprehensive Plan Map Amendment**
- (f) Review of Historic Structures or Sites Alteration or Demolition (as the Historic Resources Review Committee)**
- (g) Site Review (not reviewed by City Administrator)**
- (h) Temporary Use Permits (Section 7.02.2(2))**
- (i) Appeal of a decision by the City Administrator**

(j) Matters referred to the Commission by the City Administrator or City Council

(k) Interpretations of this Ordinance requested by the City Administrator

SECTION 9.03.2 9.04.2 NOTICE OF HEARING.

- (1) Notice **for a quasi-judicial public hearing or an Administrative Action** shall be given to neighboring property owners by mailing of written notice not less than 20 days prior to the date of **the public hearing or the date of the Administrative decision** to all owners of record of real property, any portion of which is located within 150 feet of the boundaries of the property that is the subject of the application or appeal. For this purpose, the names and addresses of the owners as they are shown in the records of the Douglas County Assessor shall be used.
- (2) Notice **for a quasi-judicial public hearing or an Administrative Action** shall be given to the applicant or appellant and any other person who makes a written request for notice by mailing to such persons written notice not later than 20 days in advance of the **public hearing or the date of the Administrative decision.**
- (3) If the proposed Zoning Map Amendment (Zone Change) (a) has been initiated by the Planning Commission or City Council, **and** (b) is declared by the City Council to be a major re-classification, **and (c) consists of a minimum of 10 acres,** the mailing of individual notice required by paragraph (1) is not required, however, notice of hearing shall be published **in a newspaper of general circulation in the City at least 10 days prior to the date of the hearing as set forth in paragraph (1).** Additional means of informing the public, as may be specified by the Council, shall be observed.

Delete Section (4) below and move to new section "Contents of Notice" [Section 9.03.3], and renumber remaining section accordingly.

~~(4) The notice of hearing shall contain the following information:~~

- ~~(a) The name and mailing address of the applicant.~~**
- ~~(b) The nature of the application and the proposed use or uses which could be authorized.~~**
- ~~(c) The applicable criteria from the Comprehensive Plan and Zoning Ordinance which will be applied to the decision.~~**
- ~~(d) The address and geographic location of the subject property.~~**
- ~~(e) The time, date and location of the hearing.~~**

- ~~(f) — A statement that failure of an issue to be raised in the hearing, either in person or by letter, or failure to provide sufficient specificity to an issue, may preclude the filing of an appeal to the Land Use Board of Appeals on that issue.~~
- ~~(g) — A statement that a copy of the application, together with all documents and evidence submitted by the applicant, are available for inspection in the Myrtle Creek Planning Department.~~
- ~~(h) — A statement that a copy of the official staff report will be available for inspection in the Planning Department not less than seven days prior to the hearing.~~
- ~~(i) — A general explanation of the requirements for submission of testimony and the procedure for conducting the hearing.~~
- ~~(j) — The name and telephone number of the City representative to contact for further information.~~
- ~~(k) — The requirements and limitations for appeal, including appeal to the Land Use Board of Appeals (LUBA).~~

~~(4)(5)~~ Notice shall be given to affected Neighborhood or Community Organizations.

~~(5)(6)~~ Notice of applications within the Urban Growth Area shall be given to the Douglas County Planning Department.

~~(6)(7)~~ If the proposed Zone Change includes all or part of a mobile home or manufactured dwelling park, written notice shall be given by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. Applicant shall be required to pay for mailing costs.

For notice consistency: move here from Site Review, Article V, Section 5.01.0, and delete from Section 5.01.0:

(7) To maintain a process for coordinated review of future land use decisions affecting transportation facilities, corridors and sites, the City shall provide notice to ODOT when the following applications for development have been received:

- (a) Land use applications that require public hearings;**
- (b) Subdivision and partition applications;**
- (c) Developments generating more than 400 trips per day or accessing directly onto a state transportation facility;**

SECTION 9.03.3 9.04.2 CONTENTS OF NOTICE.

- (1) **The notice for an Administrative Action shall contain the following information:**
 - (a) **The location, file number and title of the file containing the request and the date such notice was sent.**
 - (b) **The name and mailing address of the applicant.**
 - (c) **The nature of the application and the proposed use or uses which could be authorized.**
 - (d) **The applicable criteria from the Comprehensive Plan and Zoning Ordinance which will be applied to the decision.**
 - (e) **The address and geographic location of the subject property.**
 - (f) **The deadline for filing comments on the request.**
 - (g) **A statement that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker an opportunity to respond to the issue.**
 - (h) **A statement that a copy of the application, together with all documents and evidence submitted by or on behalf of the applicant, and applicable criteria, are available for inspection at no cost in the Myrtle Creek Planning Department and will be provided at reasonable cost.**
 - (i) **The name and telephone number of the City representatie to contact for further information.**
- (2) The notice of **a quasi-judicial public** hearing shall contain the following information:
 - (a) **The location, file number and title of the file containing the request and the date such notice was sent.**
 - (b) The name and mailing address of the applicant.
 - (c) The nature of the application and the proposed use or uses which could be authorized.
 - (d) The applicable criteria from the Comprehensive Plan and Zoning Ordinance which will be applied to the decision.

- (e) The address and geographic location of the subject property.
- (f) **The deadline for filing comments on the request.**
- (g) The date, time, and location of the hearing.
- (h) A statement that failure of an issue to be raised in the hearing, either in person or by letter, or failure to provide **statements or evidence with sufficient specificity to afford the decision maker an opportunity to respond to the issue sufficient specificity to an issue, may precludes the filing of an** appeal to the Land Use Board of Appeals **based** on that issue.
- (i) A statement that a copy of the application, together with all documents and evidence submitted by **or on behalf of** the applicant, **and applicable criteria**, are available for inspection **at no cost** in the Myrtle Creek Planning Department **and will be provided at reasonable cost.**
- (j) A statement that a copy of the official staff report will be available for inspection **at no cost** in the Planning Department not less than seven days prior to the hearing **and will be provided at reasonable cost.**
- (k) A general explanation of the requirements for submission of testimony and the procedure for conducting the hearing.
- (l) The name and telephone number of the City representative to contact for further information.
- (m) The requirements and limitations for appeal, including appeal to the Land Use Board of Appeals (LUBA).

SECTION 9.03.4 MINISTERIAL ACTIONS OF THE CITY ADMINISTRATOR.

- (1) **Within 30 days after accepting an application for a ministerial action the City Administrator or the Administrators Designee shall take action on or cause a hearing to be held on the application unless such time limitation is extended with the consent of the applicant.**

The City Administrator or the Administrators Designee shall not accept applications which he/she deems cannot be acted upon initially in a rational manner within 30 days of receipt unless the applicant consents to a longer period for action.

- (2) **Within such 30 day period, the City Administrator or the Administrators Designee shall issue the permit or approval, or advise the applicant that the application has been denied.**

- (3) Ministerial actions are effective on the date of the decision of the City Administrator.

SECTION 9.03.5 ADMINISTRATIVE ACTIONS OF THE CITY ADMINISTRATOR.

- (1) Within 45 days after accepting an application for an Administrative Action pursuant to Section 9.03.1(2) of this Ordinance, the City Administrator or the Administrators Designee shall take action on, or cause a hearing to be held on, the application unless such time limitation is extended with the consent of the applicant.

The City Administrator or the Administrators Designee shall not accept applications which he/she deems cannot be acted upon initially in a rational manner within 45 days of receipt unless the applicant consents to a longer period for action.

- (2) Within such 45 day period, the City Administrator or the Administrators Designee shall:

- (a) Publish or otherwise give notice pursuant to Sections 9.03.2 and 9.03.3.
- (b) Prepare findings of fact and conclusions of law.
- (c) Decide to approve or deny the request. Approvals may include conditions considered necessary to assure conformance with the Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance and applicable criteria.

- (3) The notice of an administrative decision shall be filed in the records of the City Administrator and also mailed to the applicant, to those persons who are entitled to notice pursuant to Section 9.03.2, and to others who participated in the process.

- (4) The notice of an administrative decision shall contain:

- (a) a statement that copy of the application, all documents and evidence submitted by or on behalf of the applicant, and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
- (b) a statement that the decision will not become final until the period for filing an appeal has expired;
- (c) a statement that any person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830; and
- (d) Notice that any persons who are entitled to written notice (pursuant to Section 9.03.2) or who are adversely affected or aggrieved by the decision may appeal the decision within twelve (12) days from the date the written notice of decision was mailed by filing a timely written statement with the City Administrator.

- (5) If the application does not meet the criteria or if written objections are received, or if the applicant or the City Administrator so desires for any reason, the City Administrator may schedule any application made under Section 9.03.1(2) for public hearing before the Planning Commission. The Planning Commission shall hear and decide the matter as if it were listed in Section 9.03.1(3). Notice of such hearing shall be provided pursuant to 9.03.2 and 9.03.3.

SECTION 9.04.0 PUBLIC HEARING PROCEDURES.

Before making a decision on an application requiring a public hearing or an appeal or permit revocation, the Planning Commission or City Council, as the case may be, shall hold a public hearing on the appeal or application in accordance with the laws of the State of Oregon and the following paragraphs.

SECTION 9.04.1 OPEN HEARING REQUIRED.

- (1) All hearings shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.
- (2) All of the documents or evidence relied upon by an applicant must be submitted to the City and made available to the public for review at least 20 days in advance of the hearing date. The staff report to be used at the hearing must be available to the public at least 7 days in advance of the hearing. The City may charge a reasonable fee for photocopies of the staff report, documents and other evidence.

SECTION 9.04.2 ESTABLISHMENT OF PARTY STATUS.

- (1) In order to have standing under this chapter, a person shall be recognized as a party by the presiding officer.
 - (a) Party status, when recognized by the presiding officer, establishes the right of the person to be heard, either orally or in writing and to pursue a review or appeal under this chapter.
 - (b) Of those who appear and are heard at the time of hearing, the presiding officer shall determine who are parties and who are witnesses only, and shall give them an opportunity, if they choose, to be heard with regard to the ruling. Persons who appear by written communication only shall be accorded the status of witnesses unless they are included among those persons entitled to notice of hearing under this ordinance, or the written statement both asserts a position on the merits of an application and establishes the person's status as a party to the satisfaction of the presiding officer.

- (c) For any determination made by the presiding officer under this section, the Approving Authority may overrule the presiding officer upon motion timely made and passed.
- (2) A request for establishment of Party Status may be made at least eight (8) days before the date set for a quasi-judicial public hearing by any person filing a written statement regarding the application being considered. Such statement shall include:
- (a) The name, address and telephone number of the person filing the statement;
 - (b) How the person qualifies as a party, as defined in Article II of this ordinance;
 - (c) Comments which the party wishes to make with respect to the application under consideration; and
 - (d) Whether the person desires to appear and be heard at the hearing.
- (3) Seven or more days before the date set for the first evidentiary hearing on a matter, the City Administrator shall mail the applicant any statements that have been filed and the report of the City Administrator.
- Any person or entity who is entitled to notice may appeal a decision of the City Administrator relative to an Administrative Action. In the conduct of a consequent hearing, the Approving Authority shall establish the appellant as a party or the appeal shall not be heard and the contested decision shall become final.
- (4) The Approving Authority may authorize a person to have party status, at any time prior to the close of the hearing, if that person is otherwise a party, as defined by Article II of this ordinance.
- (5) In cases where a matter has been referred back to the Planning Commission from the City Council, only those individuals or agencies who were given party status at the first evidentiary hearing on the matter shall be allowed as parties in the matter when reheard by the Commission.

SECTION 9.04.2 NOTICE OF HEARING. *MOVED & DIVIDED INTO TWO NEW SECTIONS -- "NOTICE" [SECTION 9.03.2] & CONTENTS OF NOTICE" [SECTION 9.03.3].*

SECTION 9.04.3 CONDUCT OF HEARING.

- (1) ~~Prior to opening of the hearing, the chairman shall determine that the requirements for open meetings are met and that no conflicts of interest exist among the decision-making body. The Chairman shall also explain hearing procedures to the audience, including the order that testimony will be taken.~~
- (2) ~~At the beginning of a hearing, statements shall be made to identify the applicable criteria that will be used in the decision-making process and explain that the testimony and evidence presented in the hearing must be directed to the applicable~~

~~criteria. It shall also be explained that failure to raise an issue with sufficient specificity to afford the decision-making body and the parties an opportunity to respond to the issue will preclude raising the issue on appeal to the Land Use Board of Appeals (LUBA).~~

~~(3) During the hearing, the decision-making body may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay. Testimony on appeals may be limited to those persons having "standing" or otherwise have participated in the hearing or hearings held prior to the initial decision~~

~~(4) The hearing may be continued until a subsequent meeting and the decision-making body may keep the hearing open to take additional information up to the point a final decision is made. Upon recessing, the time and date the hearing is to be resumed shall be announced. No further notice of a recessed or continued hearing need be published unless a period of six weeks or more elapses between hearing dates.~~

(1) In the conduct of a public hearing, the Planning Commission shall have the authority, pursuant to the provisions of this ordinance, to:

(a) Regulate the course, sequence and decorum of the hearing.

(b) Dispose of procedural requirements or similar matters.

(c) Determine for the record those persons who have standing in the subject matter and rule on requests for granting party status.

(d) Rule on offers of proof and relevancy of evidence and testimony.

(e) Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross-examination of witnesses and rebuttal testimony.

(f) Take such other action appropriate for conduct commensurate with the nature of the hearing.

(g) Grant, deny, or in appropriate cases, attach conditions to the matter being heard.

(2) The applicant or any party wishing to subpoena witnesses to a hearing may do so by application to the City Administrator. Such subpoenas shall be enforceable upon proper completion and inclusion of those fees applicable to civil cases in the Douglas County Circuit Court. Payment of fees and services shall be the responsibility of the party desiring such service.

(3) Order of Procedure: Unless otherwise specified, the Planning Commission (or Approving Authority) shall:

- (a) At the commencement of the hearing, read a statement to those in attendance that:
- i. Lists the applicable substantive criteria;
 - ii. States that testimony, evidence and arguments to be heard must be directed toward the applicable criteria in the plan or this Ordinance which the person believes to apply to the decision; and,
 - iii. States that failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the approving authority and the parties an opportunity to respond to the issue precludes appeal based on that issue.
- (b) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing.
- (c) Permit members of the Approving Authority to announce:
- i. A potential conflict of interest (any proceeding where the decision made would be to the private pecuniary benefit or detriment of the member or the member's household except for those benefits or detriments described in ORS 244.020(4) (a) and (b)).
 - ii. A direct or substantial financial interest in the proceeding of the member or those persons or businesses described in ORS 215.035.
 - iii. The inability of the member to render a fair judgment because of prejudice or prejudgment (bias).
- No member shall serve on any proceeding in which such member has bias or the member (including those persons or businesses described in ORS 215.035) has a direct or substantial financial interest. If a member refuses to disqualify him or herself for bias, or direct or substantial financial interest, the Approving Authority shall have the power to remove such member for that proceeding.
- (d) Prior to taking any action at the hearing, all members of the Planning Commission shall disclose the content of any significant pre-hearing or ex parte contacts with regard to the matter being heard. Any party to such contact shall be given the opportunity to rebut the substance of the ex parte disclosure.
- (e) Recognize parties to hearing.
- (f) Request the City Administrator or the City Administrator's designee to present the introductory report of the City Administrator and explain any graphic or pictorial displays which are a part of the report. Request the City Administrator or the City Administrator's designee to read findings and

recommendations, if any, and provide such other information as may be requested by the Planning Commission.

- (g) Allow the applicant to be heard first, on his behalf or by representative.
 - (h) Allow parties or witnesses in favor of the applicant's proposal to be heard.
 - (i) Allow other parties or witnesses to be heard next in the same manner as in the case of the applicant.
 - (j) Upon failure of any party to appear, the Planning Commission may take into consideration, written material submitted by such party.
 - (k) Allow the parties to offer rebuttal evidence and testimony, and to respond to any additional evidence. The scope and extent of rebuttal shall be determined by the Chairman.
 - (l) Conclude the hearing.
- (4) Questions may be asked at any time by members of the Planning Commission. Questions by the parties or City Administrator may be allowed by the Chairman, questions may be submitted directly to the witnesses or parties. The witnesses or parties shall be given a reasonable amount of time to respond solely to the questions.
- (5) 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 days after the hearings. When the chair reopens the 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.
- (6) The Planning Commission may continue the hearing to a specified time to gather additional evidence or to consider the application fully, or to allow a party to respond. Unless otherwise provided by the Planning Commission, no additional notice need be given of continued hearings if the matter be continued to a specific date.
- (7) At the conclusion of the hearing, the Planning Commission shall either make a decision and state findings (which may incorporate findings proposed by any party, or the City Administrator), or may take the matter under advisement. If a majority of the quorum fails to agree and there is no lower decision, the matter shall be deemed denied, unless the members present at the hearing vote to reschedule the deliberation. The Planning Commission may request proposed findings and conclusions from any party to the hearing. The Planning Commission, before finally adopting findings and conclusion, may circulate the same in the proposed form to the parties for written comment. All actions taken by the Planning Commission pursuant to adopting findings and conclusions shall be made part of the record. The decision and findings and conclusions which support the decision of the Planning Commission shall not be final until reduced to writing and signed by the Chairman. The Planning Commission shall grant, deny, or in appropriate cases,

attach conditions to the proposal being heard, and the City Administrator shall notify by mail the parties of the decision.

(8) General Conduct of Hearing. The following rules apply to the general conduct of the hearing:

- (a) No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.
- (b) No person shall testify without first receiving recognition from the Approving Authority and stating his full name and address.
- (c) No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence. Formal rules of evidence as used in courts of law shall not apply. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.
- (d) Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing, shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing.

SECTION 9.04.4 OFFICIAL NOTICE.

(1) The Approving Authority may take official notice of the following:

- (a) All facts which are judicially noticeable. Judicially noticed facts shall be stated and make part of the record.
- (b) The Comprehensive Plan and other officially adopted plans, ordinances, rules and regulations of the City of Myrtle Creek

(2) Matters officially noticed need not be established by evidence, and may be considered by the Approving Authority in the determination of the application.

SECTION 9.04.4 9.04.5 MODIFICATION OF APPLICATION AT HEARING.

- (1) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Planning Commission or City Council, the applicant may agree to modify his application, including the plans and specifications submitted.
- (2) Unless such modifications are so substantial or extensive that the decision-making body cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Commission/Council may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

SECTION 9.04.5 9.04.6 RECORD OF HEARING AND DECISION.

- (1) A tape recording shall be made of all hearing proceedings and, in accordance with State regulations for records retention, such recordings shall be kept for a minimum of one year. Accurate minutes shall also be kept of all such proceedings, however, the record need not set forth the evidence verbatim. A permanent record of each set of minutes shall be maintained in a safe place by the City Recorder.
- (2) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a permanent part of the record of the proceedings.
- (3) Any **participant party** in a hearing may request and receive approval for the record to remain open 7 days after the hearing. When a request is received to reopen the record to admit new evidence, it shall be treated in accordance with procedures for an appeal and a new hearing shall be held to provide an opportunity for any **person party** to raise new issues relating to the new evidence.
- (4) **The Planning Commission (or City Council) may approve the application, deny the application, or grant approval subject to special conditions necessary to carry out the purpose and intent of this ordinance. For all cases, the Approving Authority shall make a decision based on the record before it as justification for its action.**
- (5) **The Planning Commission (or City Council) shall make its decision upon the close of its hearing or upon continuance of the matter to a specified date.**
- ~~(6)~~(4) A decision made by the Planning Commission or City Council regarding an application or appeal or revocation of a permit shall not be official until reduced to writing and mailed to the applicant and any other qualified parties. A registry of all land use decisions shall be kept on file, regardless of whether or not the holding of a public hearing is required.
- ~~(7)~~(5) The written decision described in paragraph ~~(4)~~ ~~(6)~~ above shall include a statement of the principal findings and conclusions utilized in the decision making process whenever a land use decision involves discretionary action by the Planning Commission or City Council. These "Findings of Fact" shall be made available to the public, however, a fee may be charged for photocopies in accordance with the Myrtle Creek *Handbook of Fees and Charges*.
- (8) **The City Administrator or the City Administrator's designee shall send a copy of the Planning Commission's (or City Council's) final written decision to all parties to the proceeding within seven (7) days of said decision, and the City Recorder shall at the same time, file a copy of the final order or decision in the official records of the City.**
- ~~(9)~~(6) Prior to the expiration of the appeal period prescribed in Section 9.05.0, no building or development permit shall be issued, nor shall any development activity commence, including the erection, construction, reconstruction, alteration, use or occupancy of the

land or a structure, when such development, use or occupancy is the subject of a Planning Commission or City Council decision.

SECTION 9.05.0 APPEALS.

SECTION 9.05.1 APPEALS OF CITY ADMINISTRATOR DECISION.

- (1) Any action taken by the City Administrator in the interpretation, administration or enforcement of this ordinance shall be subject to review by the Planning Commission.**
- (2) Any person or entity who would have been entitled to notice, or a person who is adversely affected or aggrieved by the City Administrator decision, may file a timely written statement to appeal a decision of the City Administrator relative to an administrative action. In the conduct of an appeal hearing, the Planning Commission shall establish that the appellant is qualified as a party as defined by this ordinance, or the appeal shall not be heard and the contested decision shall become final.**
- (3) The Planning Commission may review the action of the City Administrator upon its own motion by resolution filed within twelve (12) days of the City Administrator's decision, or upon receipt of a Notice of Appeal as prescribed herein. For the purpose of this section, an appeal shall be filed with the City Administrator no later than twelve (12) days following the date of the decision or action of the City Administrator.**
- (4) Every notice of appeal shall contain:**

 - (a) A reference to the application sought to be appealed.**
 - (b) The date of the final decision on the action.**
 - (c) A statement as to how the petitioner qualifies as a party.**
 - (d) The specific facts from the record of the hearing which form the basis of the petitioner's request for review.**
- (5) The appeal shall be accompanied by the required fee, as designated in the *City of Myrtle Creek Handbook of Fees and Charges*.**
- (6) At least twenty (20) days prior to the date of the Planning Commission meeting, the City Administrator shall give notice as provided by Sections 9.03.2 and 9.03.3 of this chapter of the time and place of the meeting to all interested persons to the case.**
- (7) Members of the Planning Commission shall neither:**

 - (a) Communicate, directly or indirectly, with any party or representative in connection with any issue related to the appeal except upon notice and opportunity for all parties to participate; nor,**

- (b) Take notice of any communication, reports, staff memoranda, or any other materials prepared in connection with the particular case, unless the parties are afforded an opportunity to review the material so noticed.
- (8) During the course of the review, the City Administrator or the City Administrator's designee shall first present to the Planning Commission the decision and the reasons for such action. The appellant then may present its argument and may call witnesses to give additional testimony.
- (9) Appeal of an administrative decision to the Planning Commission shall be conducted as a new hearing without prejudice (de novo hearing).
- (10) The review shall be accomplished in accordance with the provisions of this ordinance. The Planning Commission may continue the appeal hearing to a specified time to gather additional evidence or to consider the application fully, or to allow a party to respond. Unless otherwise provided by the Planning Commission, no additional notice need be given of continued hearings if the matter be continued to a specific date.
- (11) The Planning Commission shall act upon appeal within thirty (30) days of filing thereof, unless such time limitation be extended with the consent of the applicant; provided that, unless otherwise ordered by the Planning Commission, the City Administrator shall forward such appeals in the order in which they are filed.
- (12) Any person wishing to subpoena or depose witnesses to an appeal may do so by application to the City Administrator not less than seven (7) days prior to the hearing, and by showing that the witness resides in Oregon, is unable or unwilling to appear, and his testimony is material and relevant. Such subpoenas or depositions shall be enforceable, upon proper completion and inclusion of those fees applicable to civil cases in the Douglas County Circuit Court.
- (13) All evidence offered may be received. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs. All evidence received shall become a part of the record of the hearing.
- (14) The Planning Commission may affirm, reverse or modify the action of the City Administrator and may reasonably grant approval subject to conditions necessary to carry out the purpose and intent of this ordinance.
- (a) For all cases, the Planning Commission shall make a decision based upon the findings and conclusions from the record of the hearing.
- (b) The Planning Commission shall make its decision upon the close of its hearing, or upon continuance of the matter to a specific date.
- (c) Only those members of the Planning Commission reviewing the entire record may act on the matter reviewed. Upon failure of a majority of a quorum to agree, the decision of the lesser authority shall stand.

- (d) The City Administrator shall send a copy of the Planning Commission's final written decision to all parties to the appeal within seven (7) days of said decision and shall, at the same time, file a copy of the Planning Commission's final order in the records of the City.
- (e) If a request is denied by the Planning Commission, and no higher local authority reverses such denial upon appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from the date of the final order on the action denying the application.

SECTION 9.05.2 REVIEW OF PLANNING COMMISSION DECISION.

- (1) Ten (10) days from the date of the written decision of the Planning Commission, the decision shall become effective, unless review is sought pursuant to this section.
- (2) Review of the decision of the Planning Commission:
 - (a) Shall be made by the City Council upon any party filing a Notice of Review with the City Administrator within ten (10) days of the filing of the written decision sought to be reviewed. Review by the City Council shall be conducted pursuant to Section 9.05.3.
 - (b) May be made by the City Council on its own motion passed within ten (10) days of the filing of the written decision sought to be reviewed. Review by the City Council shall be conducted pursuant to Section 9.05.3.
- (3) Notice of the time and place of the review, together with any Notice of Review filed, shall be mailed to all parties at least ten (10) days prior to the date of review by the City Council.
- (4) A record of the review shall be made and shall be the same as that required at the hearing before the Planning Commission, pursuant to Section 9.04.6.
- (5) Every Notice of Review shall contain:
 - (a) A reference to the decision sought to be reviewed.
 - (b) The date of the decision sought to be reviewed.
 - (c) A statement as to how the petitioner qualifies as a party.
 - (d) The specific facts from the record of the hearing which form the basis of the petitioners request for review.
- (6) Except when filed by the City Council, a Notice of Review shall be accompanied by the required fee, as designated in the *City of Myrtle Creek Handbook of Fees and Charges*.

- (a) If the City Council does not desire a transcript, the applicant or any party may request a transcript. Any such transcript request shall be paid for by the person requesting it in the manner provided in this section. The estimated cost of the transcript shall be specified by the City Administrator. Within five (5) days of such estimate, the person making the request for a transcript shall deposit the estimated cost with the City Administrator. Any deposit excess shall be returned to the depositing person.
- (b) If a transcript is desired by the City Council, the costs shall be borne by the City.

SECTION 9.05.3 REVIEW BY THE CITY COUNCIL.

- (1) The review of the Planning Commission's decision by the City Council shall be confined to the arguments of the parties and the record of the proceeding below, which will include the following:
 - (a) All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the Planning Commission as evidence.
 - (b) All materials submitted by the City Administrator to the Planning Commission with respect to the application.
 - (c) The transcript of the hearing, if desired by the City Council, or the tape recording of the hearing or other evidence of the proceedings before the Planning Commission.
 - (d) The written findings, conclusions and decision of the Planning Commission.
 - (e) Additional evidence, upon election of the Council, to cure ex parte contacts.
- (2) Review by the City Council upon appeal by a party shall be limited to the facts from the record of the hearing which form the basis of the petitioner's request for review. New materials or testimony containing facts which were not made part of the original hearing shall not be received.
- (3) At the commencement of the review of any application, a statement shall be made to those in attendance that the describes the applicable substantive criteria; that the arguments to be heard on the testimony and evidence in the record must be directed towards these criteria; and that the failure to address a criterion precludes appeal based on that criterion.
- (4) Order of procedure: In the conduct of a hearing, the City Council shall:
 - (a) Announce the nature and purpose of the hearing.

- (b) Permit members of the City Council to announce a potential conflict of interest, direct or substantial financial interest or any prejudice of bias as specified in 9.04.3(3)(c). No member shall serve in any proceeding in which such member has bias or the member has a direct or substantial financial interest. If a member refuses to disqualify him or herself for bias or direct or substantial financial interest, the Council shall have the power to remove such member for that proceeding.
 - (c) Advise all parties that they have the right to rebut the substance of the communication.
 - (d) Request the City Administrator or the City Administrator's designee for an introductory and summary report of the matter before the Council and provide such other information as may be requested by the Council.
 - (e) Allow the appellant to be heard first.
 - (f) Allow other parties in support of the appellant to be heard next.
 - (g) Allow parties opposed to the appeal to be heard next.
 - (h) Allow the appellant and parties in support of the appeal to make any rebuttal arguments they may have. The scope and extent of rebuttal shall be determined by the Council.
 - (i) Allow parties opposed to the appeal to make any rebuttal arguments they may have. The scope and extent of rebuttal shall be determined by the Council.
 - (j) Conclude the hearing.
- (5) The City Council may affirm, reverse or modify the action of the Planning Commission, and may approve or deny the request, or grant approval subject to special conditions necessary to carry out the purpose and intent of this ordinance.
- (a) For all cases, the City Council shall make a decision based upon the findings and conclusions from the record of the original hearing.
 - (b) The City Council shall enter such findings, conclusions and final orders upon the close of its hearings or upon continuance of the matter to a specific time.
 - (c) The City Council shall, within seven (7) days of its final order, cause copies of its final written order to be sent to all parties participating in the review before it.
- (6) The City Council may remand the matter to the Planning Commission if it is satisfied that testimony or other evidence could not have been presented at the initial hearing. In deciding such remand, the City Council shall consider and make findings and conclusions:

- (a) That substantial prejudice to parties resulted;
 - (b) That material, relevant and competent evidence at the time of the initial hearing was unavailable through no lack of diligence of the party offering such testimony and evidence; or
 - (c) That surprise to opposing parties occurred.
- (7) Only those members of the City Council reviewing the entire record may act on the matter reviewed. The agreement of a majority of those reviewing is necessary to amend, reverse or remand the action of the Planning Commission. Upon failure of a majority of those reviewing to agree, the decision of the Planning Commission shall stand.
- (8) City Council decisions for discretionary permits may be appealed to the Land Use Board of Appeals (LUBA), as provided in ORS 197.830. It shall be the responsibility of the appellant to contact LUBA regarding proper appeal procedure.
- ~~(1) An interpretation, action, or ruling by the City Administrator pursuant to this Ordinance may be appealed by an affected or aggrieved party to the Planning Commission as follows:~~
- ~~(a) A person intending to file an appeal on an administrative decision shall promptly request written notice of said decision from the City Administrator;~~
 - ~~(b) The appellant shall, within 12 days from the date the decision was mailed, file written notice of the appeal with the City Administrator. The appeal shall be accompanied by the service charge, if any, established for appeals in the Myrtle Creek Handbook of Fees and Charges; and~~
 - ~~(c) The Administrator shall forward the appeal to the Planning Commission at the next regular meeting. The Commission shall receive a report and recommendation thereon from the City Administrator and shall hold a public hearing on the appeal. Notice and conduct of hearing shall be in accordance with Section 9.04.0.~~
- ~~(2) An action or ruling of the Planning Commission pursuant to this Ordinance may be appealed by an affected or aggrieved party to the City Council within 10 days from the date the written notice of the Commission's decision has been mailed.~~
- ~~(a) Written notice of the appeal shall be filed with the City Administrator accompanied by the service charge, if any, established for appeals in the Myrtle Creek Handbook of Fees and Charges; and~~

~~(b) If the appeal is not filed within the 10 day period, the decision of the Planning Commission shall be final and binding on all parties concerned. 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. Notice and conduct of hearing shall be in accordance with Section 9.04.0.~~

~~(3) An action or ruling by the City Council pursuant to this Ordinance may be appealed to the Land Conservation and Development Commission, the Land Use Board of Appeals or Circuit Court, as appropriate, in accordance with State regulations regarding land use decisions. It shall be the responsibility of the appellant to contact the appropriate State agency regarding proper appeal procedure.~~

SECTION 9.05.4 AMENDMENTS TO LAND USE ACTIONS.

(1) "Minor Amendment" means a change which:

(a) Does not increase the intensity of the approved land use;

(b) Does not change the general location or amount of land devoted to an approved land use; or

(c) Includes only minor shifting of established lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces.

(2) "Major Amendment" means any change which is not a minor amendment.

(3) Approval of Minor Amendments - A minor amendment to an approved ministerial, administrative or quasi-judicial land use action may be approved by the City Administrator.

(4) Approval of Major Amendments - Approval of a major amendment to an approved land use action requested within two years of the date of decision (or, within the extension period for the decision if an extension has been authorized) shall be a land use action subject to the provisions of Article IX of this ordinance.

SECTION 9.06.0 DUTIES OF THE PLANNING DEPARTMENT.

The Planning Department shall receive, examine and process all applications for development as required by this Ordinance and shall:

(1) Review and evaluate all site plans to establish compliance with the provisions of this Ordinance; prepare staff reports for development applications requiring submission to the Planning Commission or City Council; and issue Certificates of Plan Check as directed by the authorizing body.

- (2) Receive and process all applications for land use actions ~~variances, conditional use permits, temporary permits and zone changes~~ in accordance with the processing procedures of Sections 9.03.0 and 9.03.1.
- (3) Record and file all applications with accompanying plans and documents and to otherwise act as secretary to the Planning Commission. All applications and documents shall be a public record.

SECTION 9.07.0 BUILDING OFFICIAL DUTIES AND POWERS.

- (1) Receive, examine and process all applications for Building Permits.
- (2) Issue Building Permits only where there is compliance with the provisions of this Ordinance. Permits for construction of uses requiring a Variance, Conditional Use Permit, Temporary Permit or Certificate of Plan Check shall be issued only upon order of the City Administrator, Planning Commission or City Council, as applicable.
- (3) Conduct inspections and surveys to determine compliance or non-compliance with the terms of this Ordinance.
- (4) Revoke, by writing, a permit or approval issued contrary to this Ordinance or based on a false statement or misrepresentation in the Application.
- (5) Stop, by written order, work being done contrary to the Building Code or to this Ordinance. Such written order, posted on the premises involved, shall not be removed except by order of the Building Official. Removal without such order shall constitute a violation of this ordinance.
- (6) Institute any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct or abate such violation, so as to prevent the occupancy or use of any building, structure or land; or prevent any illegal act, conduct, business or use in or about such premises.
- (7) Record and file all applications for permits with accompanying plans and documents. All applications, plans, and documents shall be a public record.

SECTION 9.08.0 CITY PUBLIC WORKS DIRECTOR ~~ENGINEER~~ DUTIES AND POWERS.

The City ~~Engineer~~ **Public Works Director** is charged with the administration and enforcement of public facility construction standards and flood hazard and slope hazard area protection requirements as specified herein. The City ~~Engineer~~ **Public Works Director** shall coordinate all plans for construction to ensure application of engineering principles.

SECTION 9.09.0 CITY ADMINISTRATOR DUTIES AND POWERS.

The City Administrator shall coordinate the administration of this Ordinance with other City, State or Federal laws and regulations as these plans, laws and regulations may now or hereafter provide. Additional duties of the City Administrator shall be specified in other parts of this Ordinance. In addition, the Administrator shall be expected to seek the fulfillment of the provisions of this Ordinance, both general and specific, and shall be called upon to interpret the provisions of this Ordinance including interpretations of the various uses in any district not expressly mentioned in this Ordinance. However, an interpretation which would result in any identifiable loss of protection or which would increase the nuisance potential of any use should not be made by an Administrator but should only be made when the party interpreting this Ordinance has the power to impose additional restrictions or conditions.

SECTION 9.10.0 DUTIES OF THE PLANNING COMMISSION.

- (1) The Planning Commission shall conduct public hearings and review and decide on all quasi-judicial applications and administrative applications appealed to the Commission; and make a recommendation to the City Council as provided by this Ordinance.
- (2) The Planning Commission shall study and report on all proposed amendments to the text or map of this Ordinance referred to it by the City Council or upon receipt of a petition.
- (3) The Planning Commission shall review this Ordinance and report on the same to the City Council at least once every 5 years, commencing on the date of enactment of this Ordinance. Specifically, the Planning Commission shall:
 - (a) Analyze the extent to which development has occurred in the City as compared to the projected growth at the time of the last previous mapping of the districts created by this Ordinance;
 - (b) Recommend any changes in the Zoning Map or Comprehensive Plan which would be required in order to accommodate the expected 20 year growth of Myrtle Creek for residential, industrial, commercial and other land uses; and,
 - (c) Analyze the continued validity of any other regulations imposed by this Ordinance in terms of changed conditions since the last review of the same.

SECTION 9.11.0 CITY COUNCIL.

This is the legal ruling body of the City of Myrtle Creek and, as such, the only one which can adopt or amend ordinances, including this one. Therefore, it shall be the City Council which hears and passes on initiations for amendments and zone changes. This body shall also appoint the Planning Commission members and the City Administrator, if any, and shall hear and decide on appeals.

SECTION 9.12.0 CITY ATTORNEY.

The City Attorney shall be the official to seek redress for the City for any violations of this Ordinance.

SECTION 9.13.0 PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM.

In their interpretation, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. Whenever the requirements of any lawfully adopted rules, regulations and ordinances conflict, the most restrictive or that imposing the higher standards shall govern.

SECTION 9.14.0 SEVERANCE AND LIABILITY.

- (1) Should any section, provision, clause or portion of this Ordinance be declared by the courts to be invalid, the same shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid.
- (2) The granting of approval of any structure or use shall not constitute a representation, guarantee or warranty of any kind or nature by the City of Myrtle Creek or any official or employee thereof or the practicality or safety of any structure or use proposed, and shall create no liability upon or cause of action against such public body, official or employee for any damage that may result thereto.

SECTION 9.15.0 ENFORCEMENT AND REVIEW.

Whenever the Administrator receives a written and signed complaint alleging a violation of this Ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

SECTION 9.15.1 PERSONS LIABLE.

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

SECTION 9.15.2 ENFORCEMENT PROCEDURES.

- (1) If the Administrator finds that any provision of this Ordinance is being violated, he shall mail written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it and the time limit in which action must be taken. Additional written notices may be sent at the administrator's discretion.
- (2) The final written notice (the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed in accordance with Section 9.05.0.

- (3) Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 9.15.3.

SECTION 9.15.3 PENALTIES AND REMEDIES.

- (1) A violation of this Ordinance or failure to comply with any of its requirements, including conditions established in connection with grants of variances, conditional use permits and other permits regulated herein, shall constitute a misdemeanor, punishable by a fine of up to \$50, or a maximum 30 days imprisonment, or both.
- (2) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements, including conditions established in connection with the granting of a permit or variance, shall also subject the offender to a civil penalty of \$25. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the City in a civil action in the nature of debt. A civil penalty may not be appealed if the offender was sent a final notice of violation in accordance with Section 9.15.2 and did not take an appeal (as provided by Section 9.05.0) within the prescribed time.
- (3) This chapter may also be enforced by any appropriate equitable action, including declaring the building or land thus in violation a nuisance or instituting injunction, mandamus, abatement or other appropriate proceedings to prevent or remove the unlawful use.
- (4) Each day that any violation continues after notification by the Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.
- (5) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

SECTION 9.15.4 PERMIT REVOCATION.

- (1) Planning Clearance for variances, conditional use permits, sign permits, fence permits and all other permits regulated by this Ordinance (hereinafter called "permits") may be revoked by the permit-issuing authority if the permit recipient fails to develop or maintain the property in accordance with the plans submitted or in accordance with the requirements of this Ordinance or any additional requirements or conditions lawfully imposed by the Planning Commission or City Council.
- (2) Before a permit may be revoked, the administrator shall give the permit recipient 10 days of notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If a hearing is requested, notice shall be given in accordance with Section 9.04.0.

- (a) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Subsection (1) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party; and,
 - (b) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion and the administrator shall provide to the permittee a written statement of the decision and the reasons therefor.
- (3) No person may continue to make use of land or buildings in the manner authorized by permit after such permit has been revoked in accordance with this Section.

SECTION 9.16.0 REPEAL.

Upon the effective date thereof, but not otherwise, Ordinance No. 468, "Zoning Ordinance of the City of Myrtle Creek" enacted September 25, 1978, as amended by: Ordinance 473, adopted June 17, 1980; Ordinance 478 adopted July 15, 1980; Ordinance 493, adopted June 16, 1981; Ordinance 494, adopted July 21, 1981; Ordinance 499, adopted August 18, 1981; Ordinance 500, adopted September 15, 1981; and Ordinance 505, adopted February 16, 1982, are hereby repealed and all other ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECTION 9.17.0 EFFECTIVE DATE

This Ordinance shall take effect on the 30th day after enactment.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR THIS 28TH DAY OF JUNE, 1982.





CITY OF MYRTLE CREEK

207 NW PLEASANT, P.O. Box 940, MYRTLE CREEK, OR 97457

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WWW.MYRTLECREEK-OREGON.ORG

January 8, 2008

STAFF REPORT

TO: Myrtle Creek City Council

THROUGH: Aaron K. Cubic, City Administrator

FROM: Lisa Hawley, Community Services Planner

RE: 2007 Legislative Amendments

INTRODUCTION

On January 15, 2008, the City Council will be conducting a public hearing on the proposed legislative amendments to the Myrtle Creek Zoning Ordinance and Subdivision Ordinance, and the Myrtle Creek Comprehensive Plan. The City Council will accept public testimony on the legislative amendments at the public hearing, and will then close the hearing and render a decision on the matter.

Attached is a summary of the proposed amendments, as well as a draft of the entire proposed amendments for your review and consideration [Third Draft, dated January 7, 2008]. These amendments include updating definitions; modifying variance criteria; revising and streamlining the application processing procedures and appeal processes; and clarifying and/or revising other miscellaneous items to update the Ordinances (including larger detached accessory structures, updated street light standards, and amended property line adjustment procedures). The amendments also include co-adopting findings and policies for the Interchange Area Management Plan (IAMP) for Exits 103, 106 and 108 for the City Comprehensive Plan and Myrtle Creek Transportation System Plan, which will help facilitate the future funding of transportation projects at Exits 103, 106 and 108.

BACKGROUND

As part of this process, the Planning Commission has held workshops on February 27, 2007, March 27, 2007, April 24, 2007, and October 23, 2007 to review and discuss various items to be included in the amendments. On December 17, 2007, the Planning Commission conducted a public hearing on the proposed legislative amendments. The Commission heard testimony from several individuals regarding the amendments, including Ruth Martin, Patrick Skrip and Richelle Gibbons. After the public hearing, the Planning Commission voted unanimously to forward a favorable recommendation to City Council to approve the proposed amendments.

January 8, 2008

Notice of Proposed Amendment was mailed to the Department of Land Conservation and Development (DLCD) on October 31, 2007, which was at least 45 days prior to the first evidentiary public hearing on December 17, 2007.

On December 12, 2007, notice of the proposed land use regulations was mailed to owners of property located within the city limits of Myrtle Creek and Area 1 of the Myrtle Creek Urban Growth Boundary. In accordance with ORS 227.186, this notice [commonly known as Ballot Measure 56 Notice] was provided at least 20 days and not more than 40 days prior to City Council's first reading on the proposed ordinance for the legislative amendments.

A legal notice of the public hearing on the proposed legislative amendments was posted in the *Douglas County Mail* on December 6, 2007 for the Planning Commission meeting on December 17, 2007. A legal notice of the public hearing before City Council was also posted in the *Douglas County Mail* on January 3, 2008 for the City Council meeting on January 15, 2008.

ALTERNATIVES

Alternative No. 1

The City Council approves the proposed legislative amendments to the Myrtle Creek Zoning Ordinance, Myrtle Creek Subdivision Ordinance, and the Myrtle Creek Comprehensive Plan by the ^{2nd} reading of City Ordinance No. 768.

Alternative No. 2

The City Council approves the proposed legislative amendments to the Myrtle Creek Zoning Ordinance, Myrtle Creek Subdivision Ordinance, and the Myrtle Creek Comprehensive Plan, with modifications or other changes, based on Findings of Fact and/or testimony brought forward through the public hearing process.

Alternative No. 3

The City Council takes no action at this time on the proposed legislative amendments.

Planning Staff recommends the City Council approve the proposed amendments and accept Alternative No. 1.

Attachments

- (1) Summary of proposed amendments
- (2) Third draft of proposed amendments, dated January 7, 2008

IGLAS COUNTY PLANNING DEPARTMENT
ROOM 106, JUSTICE BUILDING
DOUGLAS COUNTY COURTHOUSE
ROSEBURG, OR 97470

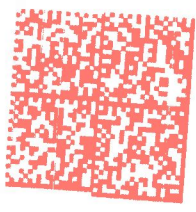


ATTN PLAN AMENDMENT SPECIALIST
DEPT OF LAND CONSERVATION &
DEVELOP.
635 CAPITOL ST NE STE 150
SALEM OR 97301-2540

DEPT OF

FEB 25 2008

LAND CONSERVATION
AND DEVELOPMENT



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