



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

10/29/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Wheeler Plan Amendment  
DLCD File Number 001-12

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

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, November 13, 2012

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

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

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

Cc: Sabrina Pearson, City of Wheeler  
Gordon Howard, DLCD Urban Planning Specialist  
Matt Spangler, DLCD Regional Representative  
Christine Shirley, DLCD Natural Hazards/Floodplain Specialist  
Amanda Punton, DLCD Natural Resources Specialist

<paa> YA



**PROF 2**

**DLCD**

# Notice of Adoption

In person  electronic  mailed

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**DEPT OF**

**OCT 23 2012**

**LAND CONSERVATION  
AND DEVELOPMENT**

For Office Use Only

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

Jurisdiction: **City of Wheeler**

Local file number: **ZTA 2012-01**

Date of Adoption: **10/16/2012**

Date Mailed: **10/19/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: **2/22/2012**

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".

ADD to Wheeler Zoning Ordinance Section 1.070 Defintions (1) distinction between shall, should and may; Estuary, Green Space, Land Use Density, Net Buildable Area, Parking Lot, Pier, Riparian, Shoreline and Wharf ; AMEND Open Space within a Planned Development; Article 10 Planned Development, Section 11.020 Geologic Investigations, Section 11.050 Design Review, and Article 17 Nonconforming uses.

Does the Adoption differ from proposal? Yes, Please explain below:

The City made non-substantive revisions which retained the original intent to Amendments to Section 1.070 Definitions for "Nonconforming Structure or Use", Section 11.020 Geologic Invesitgations, and Section 11.050 Design Review. The City deleted amendments to add to Section 1.070 Defintions "freeboard" and "lot" and to add "site" and "tract".

Plan Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Location: \_\_\_\_\_ Acres Involved: \_\_\_\_\_

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

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...

35-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** 001-12 (19211) [17216]

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

Tillamook County Department of Community Development, Oregon DSL, Oregon DEQ, Oregon DLCD, the Oregon State Board of Geologist Examiners (OSBGE), the Oregon State Board of Examiners of Engineers and Land Surveyors (OSBEELS)

Local Contact: **Jeff Aprati**

Phone: (503) 368-5767 Extension:

Address: **PO Box 177**

Fax Number: **503-368-4273**

City: **Wheeler**

Zip: **97107-0177**

E-mail Address:

**citymgrwheeler@nehalem.tel.net**

## ADOPTION SUBMITTAL REQUIREMENTS

**This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**

**per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)**

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

AN ORDINANCE AMENDING THE CITY OF WHEELER ZONING ORDINANCE

WHEREAS it was determined that amendments to the Wheeler Zoning Ordinance are necessary, and

WHEREAS the City of Wheeler Planning Commission held workshops regarding proposed amendments to the Wheeler Zoning Ordinance, and

WHEREAS the City of Wheeler, Oregon mailed and published notice of the proposed amendments, and

WHEREAS the Planning Commission held a public hearing on April 5, 2012 and provided their recommendation to the City Council, and

WHEREAS the City Council held a public hearing on June 19, 2012, July 17, 2012 and August 21, 2012, and

WHEREAS the City Council of the City of Wheeler made a decision on August 21, 2012 to adopt amendments to the City of Wheeler after holding a public hearing process as required,

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

Section 1: Amend Section 1.070 Definitions ADD: (1) ...

The word shall is mandatory and the words should or may are permissive.

RENUMBER SECTION

Section 2: Amend Section 1.070 Definitions ADD: Estuary

Estuary

A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.

Section 3: Amend Section 1.070 Definitions ADD: Green Space

Green space

Green space is any land that is landscaped or natural. Green space may consist of natural areas, residential lawns, landscaped areas with trees and shrubs, garden plots, parks and may include bike or hiking paths.

Section 4: Amend Section 1.070 Definitions ADD: Land Use Density

Land Use Density

A land use density is the number of lots or dwelling units allowed on an area of land. When calculating density, the net area is used. Net area is the total area less street dedications and open space dedication

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requirements. When a development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.

Section 5: Amend Section 1.070 Definitions ADD: Net Buildable Area

Net Buildable Area

Net buildable area is the developable / buildable area of a site less public rights-of-way, streets, roads, utility easements, and facilities, sidewalks, riparian setback areas, parking lots, recreation areas, and open space.

Section 6: Amend Section 1.070 Definitions AMEND: Nonconforming Structure or Use

Nonconforming Structure or Use

A nonconforming use is a use or a structure that was legally established but is no longer permitted because zoning regulations have been applied or changed since the use or structure was established.

Section 7: Amend Section 1.070 Definitions (12) Open Space within a Planned Development or Subdivision

Open Space within a Planned Development or Subdivision. Open space within a Planned Development or Subdivision shall be dedicated specifically for the purpose of providing places for recreation, conservation, landscaping, or preservation of natural features. Open space is not occupied by buildings, structures, parking areas, streets, alleys, or driveways. In the open space calculation, the following cannot be included: wetlands, waterways, ponds, marshes, and tidal marshes. See also Section 1.070(51) Open Space.

RENUMBER SECTION

Section 8: Amend Section 1.070 Definitions ADD: Parking Lot

Parking Lot

A parking lot is property, other than streets on which parking spaces are defined for a specific use or for use by the general public.

Section 9: Amend Section 1.070 Definitions ADD: Pier

Pier

A pier is a raised structure, including bridge and building supports and walkways, over water, typically supported by widely spread piles or pillars.

Section 10: Amend Section 1.070 Definitions ADD: Riparian

Riparian

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Of, pertaining to, or situated on the edge of the bank of a river or other body of water. A riparian setback is measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

Section 11: Amend Section 1.070 Definitions ADD: Shoreline

Shoreline

The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

Section 12: Amend Section 1.070 Definitions ADD: Wharf

Wharf

A wharf is a structure located on land that is used to accommodate waterway access.

Section 13: AMEND Section 11.020 Geologic Investigations

Section 11.020 Geologic Investigations

- (1) Site-specific investigations by a qualified professional engineering geologist or qualified professional soils engineer licensed in the State of Oregon shall be a prerequisite for:
  - (a) The issuance of any building permits where ground disturbing activities are proposed
  - (b) All proposals for divisions of land;
  - (c) Where required by the City prior to excavation for the installation of utilities; and
  - (d) For the construction of roads and streets.
- ...
- (6) For any geologic investigation report and geotechnical engineering report submitted, both registered professionals of record shall be required to within their respective lawful scope of practice:
  - (a) Review final plans for development and submit a signed and stamped certification report that all recommendations have been incorporated into development plans.
  - (b) Review sub-grade excavations, fills, and storm water drainage facilities and submit a signed and stamped certification report that all recommendations have been met.
  - (c) Perform a final inspection of the site and submit a signed and stamped certification report that all recommendations have been met.

Section 14: AMEND Section 11.050 Design Review

Section 11.050 Design Review

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1. All commercial and industrial development in any zone, any multifamily dwelling in any zone, is subject to design review by the Planning Commission.
2. When design review is required, no permit will be issued until site plans have been reviewed and approved under Comprehensive Plan Policies and Ordinance Provisions by the Planning Commission.
3. The site plan shall be drawn to a measureable scale and shall show the pre-construction or excavation condition of the site, and indicate any trees over 6 inches diameter at 4 feet above ground level, streams, lowlands, rock outcroppings, slopes, or other natural features. Building elevations shall indicate the type of materials to be used for roofing, siding, or other treatment. A plot plan with a complete landscape design shall indicate all retained mature vegetation, proposed plantings and ground covers, as well as other landscaping materials to be used, the extent and design of paved areas, culverts, and other proposed design features and functions.
4. The following guidelines shall be used by the Planning Commission in the evaluation of proposals:
  - a. Site Design
    - (1) Where existing natural or topographic features are present, they should be used to enhance the development. For example, incorporate small streams in the landscape design rather than placing them in a culvert and filling.
    - (2) Existing trees should be left standing except where necessary for building placement, sun exposure, safety or other valid purpose. Landscaped vegetation buffers shall be provided along major streets or highways, or to separate adjacent uses. The use of native plants is encouraged.
    - (3) Graded areas shall be replanted as soon as possible after construction to prevent erosion. In areas where planting will not thrive, other materials such as wood fences, decorative rock, stone walls, and paving of brick or stone shall be used.
    - (4) Exterior lighting shall be restrained in design, and shielded so as not to cast glare on adjacent private or public property or the night sky.
    - (5) Storage or mechanical equipment shall be screened from view. Trash enclosures and screening shall be carefully located and treated to integrate with the appearance of the site/building design. Screen all outdoor storage. Roof top equipment shall be screened a minimum of 1 foot higher than the highest point on the equipment and shall be setback a minimum of 10 feet from the building edge.
    - (6) Primary building entrances shall open directly to the outside and shall have walkways connecting them to the street sidewalk. Create storefronts and entries that are visible and

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easily accessible from the street. Either orient the primary entrance to the building along a street facing property line or create an ADA accessible courtyard / plaza incorporating pedestrian amenities including street trees, outdoor seating and decorative pavers. Ensure a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site. In addition, provide for connections between adjacent sites, where feasible.

- (7) Community amenities such as patio/seating areas, water features, art work or sculpture, clock towers, pedestrian plazas with park benches or other features located in areas accessible to the public are encouraged and may be calculated as part of the landscaping requirement. Benches in public areas on private property, adjacent to public right of way shall comply with design review standards for architectural style.
- (8) A landscaping plan shall be submitted which shows existing and proposed vegetation, trees, landscaping materials, a timeline for installation and maintenance, and other features in order to permit the Planning Commission to review the plan. Landscaping shall be provided along project site boundaries where it does not interfere with access and clear vision. Landscaping is intended to soften the effects of built and paved areas. It also helps reduce storm water runoff by providing a surface into which storm water can percolate.
- (9) Parking lots shall be divided into groups of no more than 8 spaces with landscaping and walkways dividing the groups. *[Plantings and / or fences]* A walkway or sidewalk shall be provided to separate the parking from public streets and adjacent property. Parking shall be designed to be as unobtrusive as possible, through site location and landscaping.
- (10) Uses shall provide a hard-surfaced, well-marked and lighted pedestrian access system consistent with the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines.

b. Building Design

- (1) The height and scale of the buildings should be compatible with the site and adjoining buildings. Use of materials should promote harmony with the surrounding structures and site. The materials shall be chosen and constructed to be compatible with the natural elements and applicable city ordinances.
- (2) Architectural style should not be restricted. Evaluation of a project should be based on quality of design and the relationship to its surroundings. However, the use of styles characteristic of Wheeler and the coastal area are preferred. These include the use of natural wood siding such as cedar shingles. The City encourages the use of pitched roofs, large overhangs, wood fences and wood signs. Colors should be earth tones harmonious with the structure, with bright or brilliant colors used only for accent.



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- (3) Monotony of design in single or multiple building projects shall be avoided. Variety of detail, form, and site design shall be used to provide visual interest. In a Planned Development, no more than 25% of all buildings in the development shall replicate the same roofline or footprint.
- (4) Restaurants or facilities with late entertainment shall not have an adverse noise impact on adjacent residential uses and shall employ appropriate sound-proofing techniques.
- (5) The impact that structures will have on views from adjacent or other areas will be taken into account.
- (6) New commercial or mixed-use residential / commercial structures shall have ground floor windows or window displays provided along at least 50 percent of the length of the building's ground floor / street-facing elevation(s). Architectural features or landscaping shall be provided for at least 30 percent of the wall length on the street facing elevation.
- (7) Multi-story commercial, mixed-use or multifamily dwellings shall have ground floors defined and separated from upper stories by architectural features that visually identify the transition from ground floor to upper story.
- (8) Provide recessed shielded lighting on street-facing elevations. Provide articulated facades for every 40 feet of building length. Articulated facades shall contain at least one of the following features: building offsets, projections, changes in elevation or horizontal direction, or a distinct pattern of divisions in surface materials. Large expanses of blank walls shall only be located in areas that are not visible to the public.
- (9) New commercial or mixed-use residential / commercial structures shall be encouraged to provide weather protection for pedestrians along street facing elevations.

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PLACE IN APPLICATION PACKET: PLANNED DEVELOPMENT FLOW CHART

Applicant submits planned development preliminary development plan consistent with WZO Article 10 Planned Development and other applicable criteria. Where applicable, applicant submits subdivision tentative plan consistent with Wheeler Subdivision Ordinance.



Staff reviews application for completeness. When the application is complete, the application is scheduled for public hearing. The procedure for reviewing the preliminary development plan is set forth in WZO Section 10.050 and Article 13.



Within one year of the approval of a preliminary development plan, the applicant shall file with the City a final development plan consistent with the approved preliminary development plan and where applicable the approved subdivision tentative plan in a format suitable for site development. This final plan shall be for the entire development or for each stage if submission in stages has been authorized by the Planning Commission.



Prior to site development, the applicant shall submit an engineer's cost estimate and performance bond in an amount approved by the City Council that ensures that the infrastructure will be completed consistent with approved plans and within time limits agreed to in an improvement agreement.



CONSTRUCTION



After site development and prior to final plat approval, or prior to development of each stage if development in stages has been approved and prior to final plat approval, infrastructure shall be certified in writing by the project engineer and as-built drawings showing all infrastructure as constructed and sealed by the project engineer shall be submitted to the written satisfaction of the City.



Prior to occupancy, a final plat and a recorded declaration in accordance with this ordinance, ORS Chapter 94 Planned Communities shall be submitted for approval to the City and shall be recorded with the County.



OCCUPANCY



Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.

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Section 15: AMEND Article 10 Planned Development: Replace Article 10 with the following:

ARTICLE 10: PLANNED DEVELOPMENT

Section 10.000. Planned Development.

Section 10.010. Intent.

To provide for developments which are planned and developed as a unit. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long term value of the homes and other development. A planned development shall comply with Oregon Laws for the formation of planned communities.

Section 10.020. Purpose.

The purpose is to provide a more desirable environment through the application of an overall comprehensive site development plan and to ensure the provision of open space to serve the development.

Section 10.030. Permitted Building and Uses.

The following buildings and uses may be permitted either singly or in combination where they are permitted outright or conditionally in the parent zone:

1. Single family dwellings.
2. Duplexes.
3. Multiple family dwellings or attached dwelling units not exceeding four dwelling units per building.
4. Accessory buildings and uses where accessory to an approved primary use.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone within which the planned development is located.

Section 10.040. Development Standards.

1. Minimum Site Size. Planned Developments shall be established only on sites which are suitable for the proposed development and are determined by the Planning Commission to be in keeping with the intent of this ordinance.
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50 percent of the total area shall be devoted to open space. Of the required open space area, 75 percent shall be common or shared open space and 25 percent of said open space may be utilized privately by individual owners or uses of the planned development. Of the required open space area, 30 percent shall be green space.
3. Density. The density of a planned development shall not exceed the density of the parent zone. When calculating density in a planned development, the net area is used. In a planned development, net area is

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the total area including street dedications less open space requirements. When a Planned Development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.

4. Setbacks. In a Planned Development where structures are not located on individual lots, a 20 foot setback shall be provided from all street rights of way, a 10 foot setback shall be provided between all structures, and a 10 foot setback shall be provided from all structures to the exterior boundary of the development.
5. Subdivision Lot Sizes. Minimum area, width, depth, setbacks and frontage requirements for subdivision lots in a Planned Development may not be less than the minimums set forth elsewhere in City Ordinances.
6. Off-Street Parking. Parking shall conform to provisions of Section 11.090.
7. Signs. All signs of any type within a Planned Development are subject to design review and approval of the Planning Commission and shall be consistent with the approved planned development.
8. Height Guidelines. The same restrictions shall prevail as in the zone in which such development occurs.
9. Streets and Roads. Streets and roads within the planned development shall be dedicated to the public and constructed to City standards.
10. Utilities. All utilities shall be underground.
11. Dedication and Maintenance of Facilities.
  - a. Common Areas: An association of owners or tenants shall be created under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and Bylaws and Recorded Declaration consistent with this ordinance ORS Chapter 94, and adopt and impose such Declaration of Covenants and Restriction on common areas and commonly owned buildings for the purpose of maintaining common area and commonly owned buildings continuously consistent with their intended function. Such an association shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common area for the purposes intended.
  - b. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
12. Approvals. The Planning Commission shall consider the recommendations of fire district, County Sanitarian, the power company, and other utilities which will serve the development in regard to approval of the proposal.

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13. Other Requirements. The Planning Commission may establish additional requirements which it deems necessary to assure that any development conforms to this section, the Zoning Ordinance and the Comprehensive Plan.

Section 10.050. Planned Development Review Procedures.

1. Planned Developments will be reviewed in two phases, a preliminary development plan phase and a final development plan phase. The preliminary development plan shall include the information specified in Section 10.060. Additional provisions for reviewing the preliminary development plan are set forth in Article 13 and where a subdivision is proposed, the Wheeler Subdivision Ordinance.
2. The Planning Commission shall consider the preliminary development application at a public hearing. Development in stages may be requested. If the planned development involves subdividing land, the subdivision tentative plat shall be reviewed concurrently with the planned development preliminary plan. If the planned development involves a conditional use, the conditional use application shall be reviewed concurrently with the planned development preliminary plan.
3. Within one year of the date of approval of a preliminary development plan the applicant shall file with the City a final development plan consistent with the approved preliminary development plan, and if applicable, the subdivision tentative plat, in a format suitable for site development. This final plan shall be for the entire development or for each stage if submission in stages has been authorized by the Planning Commission.
4. Prior to site development, the applicant shall submit an engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.
5. After site development, or development of each stage if development in stages has been approved and prior to final plat approval, infrastructure shall be certified in writing by the project engineer and as-built drawings showing all infrastructure as constructed and sealed by the project engineer shall be submitted to the written satisfaction of the City.
6. Prior to occupancy, a final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities shall be submitted for approval to the City and shall be recorded with the County.
7. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.
8. If the final development plan is not submitted within one year as required by this ordinance, a new application shall be required. The Planning Commission may approve one extension of one year where they determine that the application remains consistent with applicable city standards and the goals and policies of the comprehensive plan.

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Section 10.060. Preliminary Development Plan Submission Requirements.

The applicant shall submit a Planned Development application signed by the property owner(s) and twelve (12) copies of the following information drawn to a measurable scale and sealed by a qualified professional engineer:

1. Property boundary survey showing all existing structures to be removed and to remain.
2. Topographical survey with two (2) foot contours.
3. Map showing existing site features and topography.
4. Map showing the relationship of the proposed development to the surrounding area.
5. Plans showing proposed land uses and densities.
6. Plans showing the location, dimensions, and heights of structures
7. Preliminary architectural plans and elevations of typical structures including signage.
8. Plans for open space, common open space, and green space.
9. Preliminary planting and landscaping plan for the site.
10. Plans showing the street development and traffic circulation plan including off-street parking areas.
11. Plans showing the proposed method of utilities service and stormwater drainage.
12. A schedule, if it is proposed that the final development plan will be executed in stages. Documentation shall provide sufficient detail to show how each stage meets applicable criteria without reliance on subsequent stages.
13. A site- specific geologic investigation and engineering recommendations by a qualified geotechnical engineer.
14. Grading plan for the site showing future contours if existing grade is to be changed more than two (2) feet.
15. Drafts of the recorded declaration described in ORS Chapter 94 Planned Communities and any deed restrictions or protective covenants that provide for the maintenance of common areas and insure that the objectives of the Planned Development shall be followed.
16. Written recommendations regarding preliminary development plans from the fire district, county sanitarian, power company and other utilities proposed to serve the project identifying whether proposed facilities are adequate to serve the needs of the development.
17. Written comments from the authority from which access to the development is proposed.
18. Where requested by the City, County or State to determine the appropriate design for access to the development and mitigation of traffic impacts for the development, a traffic impact study may be required.
19. Where requested by the City, a wetland delineation report and survey concurred with by the Oregon Department of State Lands.
20. Where a subdivision is proposed, a subdivision tentative plan application consistent with the Wheeler Subdivision Ordinance.
21. Where a commercial or industrial use is proposed, a design review application with supporting documentation.
22. Where a conditional use is proposed, a conditional use application(s) with supporting documentation.
23. Where a variance is requested, variance application(s) with supporting documentation.
24. Application fees and additional costs incurred in review of the application and thereafter during the public hearing and decision process as required by city ordinance.

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Section 10.070. Planning Commission Review Criteria.

The Planning Commission shall consider the preliminary development plan at a public hearing. The Planning Commission shall determine whether the proposal conforms to Section 10.030 and 10.040 and other City Ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:

1. Resulting development will be consistent with the comprehensive plan and the standards of the parent zone(s).
2. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes, streams or wildlife habitat.
3. The plan can be completed within a reasonable period of time. If development in stages is proposed, each stage is planned to meet the standards of applicable criteria.
4. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
5. Proposed utility and stormwater drainage facilities are adequate for the population densities and type of development proposed.

Section 10.080. Final Development Plan - Submission Requirements.

1. Prior to site development, final plans shall be consistent with the approved preliminary development plan.
2. Plans shall be drawn to a measurable scale and shall be signed by an appropriate architect or engineer.
3. The final plan shall include all information included in the preliminary development plan, if applicable the subdivision tentative plan, and as necessary to meet all conditions of approval plus detailed construction plans for all site development including the following:
  - (a) Proposed streets,
  - (b) Pedestrian walkways,
  - (c) Sidewalks,
  - (d) Utilities,
  - (e) Off-street parking spaces,
  - (f) Open space,
  - (g) Common open space,
  - (h) Green space,
  - (i) Clearing, cutting and filling, and
  - (j) Structures.
4. An engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.

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5. Written certification of infrastructure by the project engineer and as-built drawings showing all infrastructures as constructed and sealed by the project engineer to the written satisfaction of the City.
6. A final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities and recorded with the County.
7. Application fees. Additional costs incurred in review of the application and thereafter during the public hearing and decision process shall be paid prior to final approvals for the project.

Section 10.090. Adherence to Approved Plan.

1. Site development within a planned development shall be consistent with the approved planned development plan.
2. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.

Section 16: AMEND Article 17 Nonconforming Structure or Use

Article 17 Nonconforming Structure or Use

Section 17.010 Continuation of Nonconforming Structure or Use

Subject to the provisions of ORS 215.130 and subsequent provisions of this article, a nonconforming use or structure may be continued.

Section 17.020 Enlargement or Expansion of a Nonconforming Use

- (a) For a nonconforming use that is a structure, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 20% of total floor area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.
- (b) For a nonconforming use that does not involve a structure, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 10% in total land area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.
- (c) The City shall grant a permit to allow an expansion or enlargement of a nonconforming use where the expansion or enlargement is required to conform to another law, such as a pollution control requirement.



AN ORDINANCE AMENDING THE CITY OF WHEELER ZONING ORDINANCE

Section 17.025 Enlargement or Expansion of a Nonconforming Structure

The City shall grant a permit to allow the enlargement or expansion of a nonconforming structure where the enlargement or expansion is consistent with current ordinance requirements. Any enlargement or expansion of a nonconforming structure inconsistent with current ordinance standards shall be regulated as a variance request.

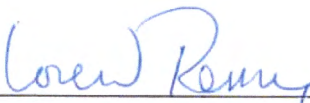
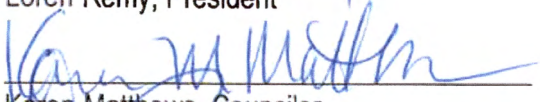
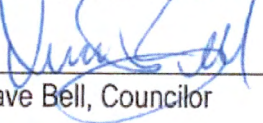
Section 17.030 Discontinuance of Nonconforming Use

If a non-conforming use is discontinued for a period of one year, further use of the property shall conform to city ordinance.

Section 17.040 Destruction of Nonconforming Structure

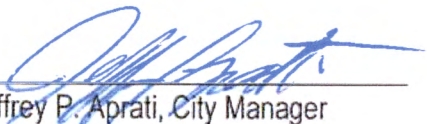
If a nonconforming structure is destroyed by any cause to an extent exceeding 80% of its real market value as indicated by the records of the County Assessor and restoration is not commenced within one year from the date of destruction, a future structure on the site shall conform to city ordinance.

ADOPTED by the City Council of Wheeler, Oregon this 16<sup>th</sup> day of October, 2012, by the following vote:

	Aye / Nay	Absent / Abstain
 _____ Loren Remy, President	<u>X</u> / ___	___ / ___
 _____ Karen Matthews, Councilor	<u>X</u> / ___	___ / ___
 _____ Dave Bell, Councilor	<u>X</u> / ___	___ / ___
_____ Vacant	___ / ___	___ / ___
_____ Vacant	___ / ___	___ / ___

ATTEST:

  
\_\_\_\_\_  
Stevie S. Burden, Mayor

  
\_\_\_\_\_  
Jeffrey P. Aprati, City Manager

## I. DESCRIPTION OF REQUEST:

### MISSION STATEMENT

The City of Wheeler, Oregon proposes to amend Wheeler Zoning Ordinance. The purpose of the proposed amendments is to ensure that development standards are clear and objective on the face of the ordinance, consistent with the goals and policies of the Wheeler Comprehensive Plan, and consistent with the needs of the City.

### PROCESS:

Before an amendment to the text of the zoning ordinance is approved findings of fact [Page 4-8 of this staff report] will be made consistent with *Wheeler Zoning Ordinance Section 16.070* that (1) *the amendment is consistent with the policies of the Comprehensive Plan* and (2) *that the amendment will not adversely affect the ability of the city to satisfy land and water use needs*. Public Hearings will be held by both the Planning Commission, to provide a recommendation, and the City Council to decide whether to adopt the amendments. The Planning Commission held a public hearing on April 6, 2012 and is providing a recommendation to the City Council. At the Council request, the Council and Planning Commission held a joint workshop on May 3, 2012. The City Council held their first public hearing on the amendments on June 19, 2012 and continued that public hearing to July 17, 2012. Council requested evidence to support amendment to Section 11.020 and is specifically considering the language of Section 11.050 (4) (b) (2). The Council will provide an opportunity to review all of the amendments at the July 17, 2012 public hearing.

Appeal: A decision of the Wheeler City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal a land use decision within 21 days after the date the decision sought to be reviewed is final. The complete case, including the final order shall be available for review at the City.

### PUBLIC NOTICE:

Written notice of the proposed amendments was provided to the Department of Land Conservation and development (DLCD) 35 days prior to the first public hearing. Public notice has been be mailed to all property owners in the city and published in the newspaper 30 days prior to the first public hearing. A copy of the proposed amendments has been available for review at City Hall since the time that the public notice was mailed. A staff report has been and will continue to be available not less than seven days prior to any hearing.

The Wheeler Vision Plan: An evaluation of community priorities, not decision criteria

The Wheeler City Council asked the Planning Commission to compare the proposed amendments to the Wheeler Vision Plan to determine if the proposed amendments are consistent with the six identified broad based priorities. The Wheeler Vision Plan is not decision criteria. This comparison information is not part of the findings of fact. Before the Wheeler Vision Plan can be considered applicable criteria, it must be adopted as a land use document through the Post Acknowledgement Plan Amendment public hearing process.

The Wheeler Planning Commission recommends that the proposed amendments are consistent with the six prioritized Wheeler Vision Plan Priorities: (1) Protect the Natural Beauty; (2) Preserve the Small Town Atmosphere; (3) Keep Town Safe and Functional; (4) Improve the Livability of Wheeler; (5) Support a Viable Economy; and (6) Enhance Citizen Enjoyment.

## II. APPLICABLE CRITERIA:

Wheeler Comprehensive Plan  
Wheeler Zoning Ordinance 79-2 as amended ([www.ci.wheeler.or.us](http://www.ci.wheeler.or.us))  
Oregon Revised Statutes ([www.leg.state.or.us](http://www.leg.state.or.us))  
Chapter 197 Land Use Planning  
Chapter 227 City Planning  
Oregon Administrative Rules (<http://arcweb.sos.state.or.us/banners/rules.htm>)  
Chapter 660 Department of Land Conservation and Development  
Oregon Statewide Planning Goals (<http://www.oregon.gov/LCD/goals.shtml>) 1, 2, 5, 7, 8, 9, 10, 11, 16, 17

### WHEELER ZONING ORDINANCE

#### Section 16.070 Criteria

- A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:
1. The amendment is consistent with the Comprehensive Plan;
  2. The amendment will not adversely affect the ability of the City to satisfy land and water use needs.

## III. AMENDMENTS BY TITLE:

1.	ADD to WZO Section 1.070 (1) distinction between shall, should, and may	11
2.	Amend WZO Section 1.070 Definitions ADD: Estuary	11
3.	Amend WZO Section 1.070 Definitions ADD: Green Space	11
4.	Amend WZO Section 1.070 Definitions ADD: [ <i>Land Use</i> ] Density	11
5.	<i>Amend WZO Section 1.070 Definitions AMEND: Lot</i>	<i>12 Tabled</i>
6.	Amend WZO Section 1.070 Definitions ADD: Net Buildable Area	12
7.	Amend WZO Section 1.070 Definitions ADD: Nonconforming Structure	12 Amended
8.	Amend WZO Section 1.070 Definitions ADD: Nonconforming Use	12 Amended
9.	Amend WZO Section 1.070 Definitions AMEND: Open Space within a Planned Development or Subdivision	13
10.	Amend WZO Section 1.070 Definitions ADD: Parking Lot	13
11.	Amend WZO Section 1.070 Definitions ADD: Pier	13
12.	Amend WZO Section 1.070 Definitions ADD: Riparian	13
13.	Amend WZO Section 1.070 Definitions ADD: Shoreline	13
14.	<i>Amend WZO Section 1.070 Definitions ADD: Site</i>	<i>14 Tabled</i>
15.	<i>Amend WZO Section 1.070 Definitions ADD: Tract</i>	<i>15 Tabled</i>
16.	Amend WZO Section 1.070 Definitions ADD: Wharf	15
17.	Amend WZO Section 11.020 Geologic Investigations	15
18.	Amend WZO Section 11.050 Design Review	16 Amended
19.	Amend WZO Article 10 Planned Development	21
20.	Amend WZO Article 17 Nonconforming Uses	26

#### IV. City Council Decision

Motion: Loren Remy; 2<sup>nd</sup> Mike Glowa: Council Vote: Unanimous 5-0

Based on the findings of fact, as referenced in Section III Amendments by Title list provided on page 2 of the August 14, 2012 City Planner Staff Report the City Council adopts amendment #'s 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 16, 17, 19, and 20 as presented in the City Planner Staff Report.

Based on the finding of fact, testimony and discussion of the City Council, as referenced in Section III Amendments by Title list provided on page 2 of the August 14, 2012 Staff Report the City Council adopts amendments #7 and #8 with the amendment presented in the City Planner Staff Report except that the title of the definition shall remain as it is currently written: Nonconforming Use or Structure.

Based on the finding of fact, testimony and discussion of the City Council, as referenced in Section III Amendments by Title list provided on page 2 of the August 14, 2012 Staff Report the City Council adopts amendment #18 Design Review as written in the City Planner Staff Report except do not delete existing Section 11.050 (5) (b) (5) and revise Section 11.050 (5) (b) (2) as amended by the City Council to read:

“Architectural style should not be restricted. Evaluation of a project should be based on quality of design and the relationship to its surroundings. However, the use of styles characteristic of Wheeler and the coastal area are preferred. These include the use of natural wood siding such as cedar shingles. **The City encourages the use** of pitched roofs, **large overhangs, wood fences** and wood signs. Colors should be earth tones harmonious with the structure, with bright or brilliant colors used only for accent.”

Based on findings of fact, testimony and discussion of the City Council, as referenced in Section III Amendments by Title list provided on page 2 of the August 14, 2012 Staff Report the City Council tables proposed amendments #'s 5, 14, 15. The existing lot will be retained at this time. The City Council will evaluate the recommendation of the Planning Commission and City Staff presented in the August 14, 2012 City Planner Staff Report at their earliest opportunity.

City Staff will prepare the ordinance for adoption and review by the City Council at the September 18, 2012 City Council meeting.

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City of Wheeler Mayor, Stevie Burden

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Attest: Jeff Aprati, City Manager

## V. Findings of Fact:

The Wheeler Zoning Ordinance requires that before an amendment to the text of the zoning ordinance is approved, findings of fact shall identify that (1) The amendment is consistent with the Comprehensive Plan and (2) The amendment will not adversely affect the ability of the City to satisfy land and water use needs.

### (1) THE AMENDMENTS ARE CONSISTENT WITH THE WHEELER COMPREHENSIVE PLAN:

The proposed zoning ordinance amendments are consistent with the goals and policies of the Wheeler Comprehensive Plan in that:

#### Wheeler Comprehensive Plan Goal: "The Planning Process"

The proposed amendments are consistent with the Wheeler Comprehensive Plan "The Planning Process" Goals and Policies. Specifically, during the review and preparation of the proposed amendments, residents and property owners have had an opportunity to be involved in the city's planning decisions through the Planning Commission, the citizen involvement body for the city.

#### Wheeler Comprehensive Plan Goal: "Natural Features"

The proposed amendments are consistent with the Wheeler Comprehensive Plan "Natural Features" Goals and Policies. Specifically, the proposed amendments to Wheeler Zoning Ordinance Section 11.020 Geologic Investigations implement the "Natural Features" policy 1 which states that site investigations shall be conducted for (a) all divisions of land, (b) when required by the building official, (c) in other instances where necessary and when required by the City to assure public safety and welfare, and (d) in cases of streets and roads, fill and excavation will require a site investigation. Consistent with the Wheeler Comprehensive Plan Policy 3, the report will make it possible for engineers, planners, and city officials to calculate and design for geologic risks by requiring the submittal of a site investigation report with plan review and sub-grade investigation by the appropriately qualified professional. This process of site investigation submittal with plan and sub-grade review was developed in coordination with the Oregon State Board of Geologic Examiners (OSBGE), the Oregon State Board of Engineering Examiners and Land Surveyors (OSBEELS), and the Oregon Department of Land Conservation and Development (DLCD).

#### Wheeler Comprehensive Plan Goal: "Housing"

The proposed amendments are consistent with the Wheeler Comprehensive Plan "Housing" Goals and Policies. Specifically, the proposed amendments to Article 10 Planned Development implement "Housing" Policy (2) The city encourages the development of planned unit and multi-family developments to better utilize lands with physical constraints and to improve housing diversity, "Housing" Policy (5) The City supports the efficient development of housing and land to minimize environmental impacts and provide public services in a cost effective manner, "Housing" Policy (7) "The City will allow, encourage, and support the development of housing units in conjunction with commercial development (e.g., housing located above commercial uses) to provide diversity and security in commercial areas and a range of housing options."

Wheeler Comprehensive Plan Goal: "Economic Development"

The proposed amendments are consistent with the Wheeler Comprehensive Plan "Economic Development" Goals and Policies. Specifically, the amendments to Section 11.050 Design Review support "Goal (C) to Encourage Successful Home Based Businesses Policy (1), the City will encourage home cottage industries and home occupations that are low impact and do not disrupt residential neighborhood character and regulate them through the zoning code"; "Goal (D) Strengthen and Enhance a Strong Commercial Core Business District Policy (1) Development of commercial and industrial uses shall be permitted to locate in designated urban areas appropriately zoned" and "Policy (2) Commercial and industrial development shall be subject to design review by the Planning Commission."

Wheeler Comprehensive Plan Goal: "Air and Water Quality"

The proposed amendments are consistent with the policies of "Air and Water Quality". Specifically, the amendments to Section 1.070 to add "Green Space", "Riparian", "Shoreline", and "Wharf" and Article 10 Planned Development ensure clear ordinance administration to implement Policy (1) to cooperate in implementing state air and water quality standards. The amendments to Section 11.020 Geologic Investigations implement Policy (2) where qualified professionals will provide site investigation and review development plans and sub-grade excavations. The amendments to Section 11.050 Design Review implement Policy (3) by providing review of noise pollution standards in commercial and industrial development.

Wheeler Comprehensive Plan Goal: "Recreation and Open Space"

The proposed amendments are consistent with the policies of "Recreation and Open Space". Specifically the amendments to amend Article 10 Planned Development in a manner that ensures open space implement Policy (1) which states that "New subdivisions and planned unit developments must make a provision for a suitable amount of open space and / or recreation facilities."

Wheeler Comprehensive Plan Goal: "Transportation"

The proposed amendments are consistent with the policies of "Transportation" and do not conflict with the implementation of these policies.

Wheeler Comprehensive Plan Goal: "Energy"

The proposed amendments are consistent with the policies of "Energy" and do not conflict with the implementation of these policies.

Wheeler Comprehensive Plan Goal: "Estuarine Resources"

The proposed amendments are consistent with the policies of "Estuarine Resources" and do not conflict with the implementation of these policies. Specifically the amendments to ADD definitions to Section 1.070 for "Wharf", "Pier", and "Shoreline" and Article 10 Planned Development provide definitions consistent with these policies and provide clear and objective standards to implement the Wheeler Comprehensive Plan and coordinating zoning ordinances.

Wheeler Comprehensive Plan Goal: "Urban Growth Boundary"

The proposed amendments are consistent with the policies of "Urban Growth Boundary" and do not conflict with the implementation of these policies.

Wheeler Comprehensive Plan Goal: "Public Facilities"

The proposed amendments are consistent with the policies of "Public Facilities" and do not conflict with the implementation of these policies. Specifically the amendments to Article 10 Planned Development implement Policy (1) "Land uses and densities developed in the urban service area shall be coordinated with and shall not exceed capacity for existing or planned public facilities."; Policy (2) "Key public facilities and services (water, sewer, the storm water drainage system, and approval of transportation) shall be provided in an orderly and efficient manner."; Policy (4) "Adequate storm water drainage facilities as approved by the City shall be part of all subdivision, planned unit developments or other developments which may impact storm drainage patterns."; Policy (5) "Adequate water, sewage treatment, and storm water drainage capacity shall be available prior to the approval of uses having major impacts on those services."; Policy (6) "The extension of sewer water and storm water drainage services shall be at the affected property owner's expense."; Policy (7) "Large developments or heavy water users shall make equitable contributions to the improvement of the water system and shall pay all costs associated with the extension of water lines."; Policy (8) "Water lines in proposed developments shall be adequately sized to meet future needs at the projected density or usage including fire flow requirements."

Wheeler Comprehensive Plan Goal: "Shorelands"

The proposed amendments are consistent with the policies of "Shorelands" and do not conflict with the implementation of these policies. Specifically, the amendments to Section 11.050 Design Review implement the Coastal Shorelands goal and policies by ensuring that development in the WRC and IND Zones is subject to Design Review. The amendments to Article 10 Planned Development in these areas provide clear and objective standards to implement the Wheeler Comprehensive Plan and coordinating zoning ordinances.

(2) THE AMENDMENTS DO NOT ADVERSELY AFFECT THE ABILITY OF THE CITY TO SATISFY LAND AND WATER USE NEEDS.

The proposed amendments do not adversely affect the ability of the City to satisfy land and water use needs in that: The amendments to add definitions for Estuary, freeboard, green space, land use density, net buildable area, nonconforming structure, nonconforming use, parking lot, pier, riparian, shoreline, site and wharf, to amend definitions for lot, open space within a planned development or subdivision, and to amend Section 11.020 Geologic Site Investigations, Section 11.050 Design Review, Article 10 Planned Development, and Article 17 Nonconforming Uses are proposed to provide clear and objective standards to implement the Wheeler Comprehensive Plan and coordinating City Zoning Ordinances.

**The amendments are consistent with Oregon Statewide Planning Goals and Policies in that:**

Oregon Statewide Planning Goals 1, 2, 5, 7, 8, 9, 10, 11, 16, 17

Goal 1 Citizen Involvement

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 1 Citizen Involvement. The City is conducting the public hearing process consistent with the City Zoning Ordinance providing sufficient opportunities for citizen involvement.

Goal 2 Land Use Planning

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 2 Land Use Planning. The City is implementing minor changes, including the adoption of definitions for estuary, green space, land use density, net buildable area, nonconforming structure, nonconforming use, parking lot, pier, riparian, shoreline, site, track and wharf, amending definitions for lot and open space within a planned development or subdivision, amendments to Section 11.020 Geologic Site Investigations necessary to require geologic site investigation reports consistent with the City Comprehensive Plan, and amendments to Section 11.020 Geologic Site Investigations, Section 11.050 Design Review, Article 10 Planned Development, and Article 17 Nonconforming Uses necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 5. The City is adding definitions from the Oregon Statewide Planning Goals for estuary, riparian and shoreline necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 7 Areas Subject to Natural Hazards

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 7. The City is proposing to amend Section 11.020 Geologic Site Investigations necessary to require geologic site investigation reports consistent with the City Comprehensive Plan and amendments necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 8 Recreation Needs

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 8. The proposed amendments to add definitions for green space, to amend definitions for lot and open space within a planned development or subdivision, and to amend Section 11.050 Design Review and Article 10 Planned Development are necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 9 Economic Development

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 9. The proposed amendments to add definitions for parking lot and to amend Section 11.050



Design Review and Article 10 Planned Development are necessary to provide clear and objective ordinance administration in the implementation of ordinances that enhance economic development.

Goal 10 Housing

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 10. The proposed amendments to add definitions for green space, land use density, net buildable area, to amend definitions for lot and open space within a planned development or subdivision, and to amend Section 11.050 Design Review and Article 10 Planned Development are necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 11

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 11. The proposed amendments to amend Section 11.050 Design Review and Article 10 Planned Development are necessary to provide clear and objective ordinance administration in the implementation of public facilities and services.

Goal 16

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 16. The City is adding definitions from the Oregon Statewide Planning Goals for estuary, riparian and shoreline necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

Goal 17

The proposed amendments do not adversely affect the ability of the city to implement Oregon Statewide Planning Goal 17. The City is adding definitions from the Oregon Statewide Planning Goals for estuary, riparian and shoreline necessary to provide clear and objective ordinance administration in the administration of coordinating ordinances and the City Comprehensive Plan.

**V. Proposed Amendment Text:**

The following language is proposed to be adopted as the text in the Wheeler Zoning Ordinance:

Amended text is written in legislative format. **Bold text is added.** [*Italic text within brackets is deleted*].

Sections One through Seventeen add to or amend Section 1.070 Definitions  
Renumber Section

ONE: Amend WZO Section 1.070 Definitions **ADD:** (1) ...

**The word shall is mandatory and the words should or may are permissive.**

RENUMBER SECTION

TWO: Amend WZO Section 1.070 Definitions **ADD:** Estuary

**Estuary**

**A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.**

THREE: Amend WZO Section 1.070 Definitions **ADD:** Green Space

**Green space**

**Green space is any land that is landscaped or natural. Green space may consist of natural areas, residential lawns, landscaped areas with trees and shrubs, garden plots, parks and may include bike or hiking paths.**

FOUR: Amend WZO Section 1.070 Definitions **ADD:** Land Use Density

**Land Use Density**

**A land use density is the number of lots or dwelling units allowed on an area of land. When calculating density, the net area is used. Net area is the total area less street dedications and open space dedication requirements. When a development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.**

**PROPOSED REVISION**

**Density**

**Density is the number of dwelling units per net buildable acre.**

OAR 660-024 Density

Amendment text is written in legislative format. **Bold Text is added;** [*Italic Text within brackets is deleted*].

FIVE: Amend WZO Section 1.070 Definitions **AMEND:** Lot

Lot

A [parcel or tract of land] lot is a legally defined piece of land, other than a tract, that is the result of a subdivision.

**PROPOSED REVISION**

Lot

A [parcel or tract of land] lot is a single unit of land that is created by a subdivision of land.

ORS 92.010 Lot

**ACTION: TABLED BY CITY COUNCIL**

SIX: Amend WZO Section 1.070 Definitions **ADD:** Net Buildable Area

**Net Buildable Area**

**Net buildable area is the developable / buildable area of a site less public rights-of-way, streets, roads, utility easements, and facilities, sidewalks, riparian setback areas, parking lots, recreation areas, and open space.**

SEVEN: Amend WZO Section 1.070 Definitions **ADD:** Nonconforming Structure

**Nonconforming Structure**

**A nonconforming structure is any structure that does not meet height or setback standards.**

EIGHT: Amend WZO Section 1.070 Definitions **ADD:** Nonconforming Use

**Nonconforming Use**

**A nonconforming use is a use that is no longer allowed in the zone in which the use is located. A use that is on a lot that is substandard for that use is a nonconforming use.**

DELETE: Section 1.070 [(48) "*Nonconforming Structure or Use*"]

*A lawful existing structure or use at the time this ordinance or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.]*

**PROPOSED REVISION**

**Nonconforming Use**

**A nonconforming use is a use or a structure that was legally established but is no longer permitted because zoning regulations have been applied or changed since the use or structure was established.**

ORS 215.130 Nonconforming Use; An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon (2007)

NINE: Amend Section 1.070 Definitions (12) ...

Open Space within a Planned Development or Subdivision. Open space within a **Planned Development or Subdivision** shall be dedicated specifically for the purpose of providing places for recreation, conservation, landscaping, or preservation of natural features. Open space is not occupied by buildings, structures, parking areas, streets, alleys, or driveways. In the open space calculation, the following cannot be included: wetlands, waterways, ponds, marshes, and tidal marshes. See also Section 1.070(51) Open Space.

RENUMBER SECTION

TEN: Amend WZO Section 1.070 Definitions **ADD:** Parking Lot

**Parking Lot**

**A parking lot is property, other than streets on which parking spaces are defined for a specific use or for use by the general public.**

ELEVEN: Amend WZO Section 1.070 Definitions **ADD:** Pier

**Pier**

**A pier is a raised structure, including bridge and building supports and walkways, over water, typically supported by widely spread piles or pillars.**

TWELVE: Amend WZO Section 1.070 Definitions **ADD:** Riparian

**Riparian**

**Of, pertaining to, or situated on the edge of the bank of a river or other body of water. A riparian setback is measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.**

THIRTEEN: Amend WZO Section 1.070 Definitions **ADD:** Shoreline

**Shoreline**

**The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.**

FOURTEEN: Amend WZO Section 1.070 Definitions **ADD:** Site

**Site**

**The area proposed for development in an application.**

**PROPOSED REVISION**

**Site**

**The area proposed for development in an application. A site is dedicated for each structure from which the area, setbacks, and mean site elevation shall be calculated.**

ORS 92.010, 92.060, 92.190, 92.192 Property Line Adjustment; Wheeler Subdivision Ordinance Section 54 Lot Line Adjustment

**SECTION 4 – DEFINITIONS**

As used in this ordinance, unless the context otherwise requires, the following words and phrases shall mean:

...

- (8) **Lot Line Adjustment.** Adjustment of an existing platted lot line in such a way that the size of two adjacent platted lots is changed but no additional lot is created.

...

**SECTION 54 – Lot Line Adjustments**

- (1) Application requesting a lot line adjustment shall be made to the City on a form provided by the City.
- (2) The City shall review the request to determine compliance with the standards of this ordinance and the city zoning ordinance. The City shall approve or deny the request in writing based on the criteria of this ordinance and the zoning ordinance within 30 day of the submittal of the request.
- (3) The request must meet the following two criteria:
  - a. Neither lot affected by the lot line adjustment shall be reduced below the minimum lot size for the zone in which they are located.
  - b. The adjustment shall not cause any structure on either lot to be in violation of the city zoning ordinance requirements for the zone in which the lot is located.
- (4) The applicant may appeal the decision of the City to the Planning Commission within 20 days of the decision.

**ACTION: TABLED BY CITY COUNCIL**

FIFTEEN: Amend WZO Section 1.070 Definitions **ADD:** Tract

**Tract**

**A tract is a piece of land reserved for open space, utility corridor, recreation facilities, or the protection of sensitive lands, or similar purpose. A tract shall be dedicated for maintenance to a homeowners' association or other entity.**

**PROPOSED REVISION**

**Tract**

**A tract is one or more contiguous lots or parcels under the same ownership.**

ORS 215.010 (2) Tract

**ACTION: TABLED BY CITY COUNCIL**

SIXTEEN: Amend WZO Section 1.070 Definitions **ADD:** Wharf

**Wharf**

**A wharf is a structure located on land that is used to accommodate waterway access.**

SEVENTEEN: AMEND Section 11.020 Geologic Investigations

Section 11.020 Geologic Investigations

- (1) Site-specific investigations by a qualified professional engineering geologist or qualified professional soils engineer licensed in the State of Oregon shall be a prerequisite for:
  - (a) The issuance of any building permits where ground disturbing activities are proposed
  - (b) **All proposals for divisions of land;**
  - (c) **Where required by the City prior to excavation for the installation of utilities; and**
  - (d) **For the construction of roads and streets.**
- ...
- (6) **For any geologic investigation report and geotechnical engineering report submitted, both registered professionals of record shall be required to within their respective lawful scope of practice:**
  - (a) **Review final plans for development and submit a signed and stamped certification report that all recommendations have been incorporated into development plans.**
  - (b) **Review sub-grade excavations, fills, and storm water drainage facilities and submit a signed and stamped certification report that all recommendations have been met.**
  - (c) **Perform a final inspection of the site and submit a signed and stamped certification report that all recommendations have been met.**

EIGHTEEN: AMEND Section 11.050 Design Review

Section 11.050 Design Review

1. **All commercial and industrial development in any zone, any multifamily dwelling in any zone, is subject to design review by the Planning Commission.**
2. **When design review is required, no [building] permit [for commercial or industrial development] will be issued until site plans have been reviewed and approved under Comprehensive Plan Policies and Ordinance Provisions by the Planning Commission.**
3. The site plan shall be drawn to a measureable scale and shall show the pre-construction or excavation condition of the site, and indicate any trees over 6 inches diameter at 4 feet above ground level, streams, lowlands, rock outcroppings, slopes, or other natural features. Building elevations shall indicate the type of materials to be used for roofing, siding, or other treatment. A plot plan with a complete landscape design shall indicate all retained mature vegetation, proposed plantings and ground covers, as well as other landscaping materials to be used, the extent and design of paved areas, culverts, and other proposed design features and functions.
4. *[The plans shall be reviewed by the Planning Commission within 30 days of their submission.]* The following guidelines shall be used by the Planning Commission in the evaluation of proposals:
  - a. Site Design
    - (1) Where existing natural or topographic features are present, they should be used to enhance the development. For example, incorporate small streams in the landscape design rather than placing them in a culvert and filling.
    - (2) Existing trees should be left standing except where necessary for building placement, sun exposure, safety or other valid purpose. Landscaped vegetation buffers shall be provided along major streets or highways, or to separate adjacent uses. The use of native plants is encouraged.
    - (3) Graded areas shall be replanted as soon as possible after construction to prevent erosion. In areas where planting will not thrive, other materials such as wood fences, decorative rock, stone walls, and paving of brick or stone shall be used.
    - (4) Exterior lighting shall be restrained in design, and shielded so as not to cast glare on adjacent private or public property or the night sky.
    - (5) **Storage or mechanical equipment shall be screened from view. Trash enclosures and screening shall be carefully located and treated to integrate with the appearance of the site/building design. Screen all outdoor storage. Roof top equipment shall be screened a minimum of 1 foot higher than the highest point on the equipment and**

shall be setback a minimum of 10 feet from the building edge.

- (6) **Primary building entrances shall open directly to the outside and shall have walkways connecting them to the street sidewalk. Create storefronts and entries that are visible and easily accessible from the street. Either orient the primary entrance to the building along a street facing property line or create an ADA accessible courtyard / plaza incorporating pedestrian amenities including street trees, outdoor seating and decorative pavers. Ensure a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site. In addition, provide for connections between adjacent sites, where feasible.**
- (7) **Community amenities such as patio/seating areas, water features, art work or sculpture, clock towers, pedestrian plazas with park benches or other features located in areas accessible to the public are encouraged and may be calculated as part of the landscaping requirement. Benches in public areas on private property, adjacent to public right of way shall comply with design review standards for architectural style.**
- (8) **A landscaping plan shall be submitted which shows existing and proposed vegetation, trees, landscaping materials, a timeline for installation and maintenance, and other features in order to permit the Planning Commission to review the plan. Landscaping shall be provided along project site boundaries where it does not interfere with access and clear vision. Landscaping is intended to soften the effects of built and paved areas. It also helps reduce storm water runoff by providing a surface into which storm water can percolate.**
- (9) **Parking lots shall be divided into groups of no more than 8 spaces with landscaping and walkways dividing the groups. [*Plantings and / or fences*] A walkway or sidewalk shall be provided to separate the parking from public streets and adjacent property. **Parking shall be designed to be as unobtrusive as possible, through site location and landscaping.****
- (10) **Uses shall provide a hard-surfaced, well-marked and lighted pedestrian access system consistent with the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines.**

b. Building Design

- (1) The height and scale of the buildings should be compatible with the site and adjoining buildings. Use of materials should promote harmony with the surrounding structures and site. The materials shall be chosen and constructed to be compatible with the natural elements and applicable city ordinances.



- (2) Architectural style should not be restricted. Evaluation of a project should be based on quality of design and the relationship to its surroundings. However, the use of styles characteristic of Wheeler and the coastal area are preferred. These include the use of natural wood siding such as cedar shingles. **The City encourages the use of pitched roofs, large overhangs, wood fences and wood signs.** Colors should be earth tones harmonious with the structure, with bright or brilliant colors used only for accent.
- (3) Monotony of design in single or multiple building projects *[should]* **shall** be avoided. Variety of detail, form, and site design shall be used to provide visual interest. **In a Planned Development, no more than 25% of all buildings in the development shall replicate the same roofline or footprint.**
- (4) **Restaurants or facilities with late entertainment shall not have an adverse noise impact on adjacent residential uses and shall employ appropriate sound-proofing techniques.**
- (5) The impact that structures will have on views from adjacent or other areas will be taken into account.
- (6) **New commercial or mixed-use residential / commercial structures shall have ground floor windows or window displays provided along at least 50 percent of the length of the building's ground floor / street-facing elevation(s). Architectural features or landscaping shall be provided for at least 30 percent of the wall length on the street facing elevation.**
- (7) **Multi-story commercial, mixed-use or multifamily dwellings shall have ground floors defined and separated from upper stories by architectural features that visually identify the transition from ground floor to upper story.**
- (8) **Provide recessed shielded lighting on street-facing elevations. Provide articulated facades for every 40 feet of building length. Articulated facades shall contain at least one of the following features: building offsets, projections, changes in elevation or horizontal direction, or a distinct pattern of divisions in surface materials. Large expanses of blank walls shall only be located in areas that are not visible to the public.**
- (9) **New commercial or mixed-use residential / commercial structures shall be encouraged to provide weather protection for pedestrians along street facing elevations.**
- [(4) Design attention should be given to the placement of storage or mechanical equipment so as to be screened from view.]*

PLACE IN APPLICATION PACKET: PLANNED DEVELOPMENT FLOW CHART

Applicant submits planned development preliminary development plan consistent with WZO Article 10 Planned Development and other applicable criteria. Where applicable, applicant submits subdivision tentative plan consistent with Wheeler Subdivision Ordinance.



Staff reviews application for completeness. When the application is complete, the application is scheduled for public hearing. The procedure for reviewing the preliminary development plan is set forth in WZO Section 10.050 and Article 13.



Within one year of the approval of a preliminary development plan, the applicant shall file with the City a final development plan consistent with the approved preliminary development plan and where applicable the approved subdivision tentative plan in a format suitable for site development. This final plan shall be for the entire development or for each stage if submission in stages has been authorized by the Planning Commission.



Prior to site development, the applicant shall submit an engineer's cost estimate and performance bond in an amount approved by the City Council that ensures that the infrastructure will be completed consistent with approved plans and within time limits agreed to in an improvement agreement.



CONSTRUCTION



After site development and prior to final plat approval, or prior to development of each stage if development in stages has been approved and prior to final plat approval, infrastructure shall be certified in writing by the project engineer and as-built drawings showing all infrastructure as constructed and sealed by the project engineer shall be submitted to the written satisfaction of the City.



Prior to occupancy, a final plat and a recorded declaration in accordance with this ordinance, ORS Chapter 94 Planned Communities shall be submitted for approval to the City and shall be recorded with the County.



OCCUPANCY



Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.

NINETEEN: AMEND Article 10 Planned Development: Replace Article 10 with the following:

## ARTICLE 10: PLANNED DEVELOPMENT

### Section 10.000. Planned Development.

#### Section 10.010. Intent.

To provide for developments which are planned and developed as a unit. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long term value of the homes and other development. A planned development shall comply with Oregon Laws for the formation of planned communities.

#### Section 10.020. Purpose.

The purpose is to provide a more desirable environment through the application of an overall comprehensive site development plan and to ensure the provision of open space to serve the development.

#### Section 10.030. Permitted Building and Uses.

The following buildings and uses may be permitted either singly or in combination where they are permitted outright or conditionally in the parent zone:

1. Single family dwellings.
2. Duplexes.
3. Multiple family dwellings or attached dwelling units not exceeding four dwelling units per building.
4. Accessory buildings and uses where accessory to an approved primary use.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone within which the planned development is located.

#### Section 10.040. Development Standards.

1. Minimum Site Size. Planned Developments shall be established only on sites which are suitable for the proposed development and are determined by the Planning Commission to be in keeping with the intent of this ordinance.
2. Open Spaces. In all residential developments, or in combination residential-commercial developments, 50 percent of the total area shall be devoted to open space. Of the required open space area, 75 percent shall be common or shared open space and 25 percent of said open space may be utilized privately by individual owners or uses of the planned development. Of the required open space area, 30 percent shall be green space.
3. Density. The density of a planned development shall not exceed the density of the parent zone. When calculating density in a planned development, the net area is used. In a planned development, net area is

- the total area including street dedications less open space requirements. When a Planned Development is in more than one parent zone, overall project density shall be based on the sum of the density permitted in each parent zone.
4. Setbacks. In a Planned Development where structures are not located on individual lots, a 20 foot setback shall be provided from all street rights of way, a 10 foot setback shall be provided between all structures, and a 10 foot setback shall be provided from all structures to the exterior boundary of the development.
  5. Subdivision Lot Sizes. Minimum area, width, depth, setbacks and frontage requirements for subdivision lots in a Planned Development may not be less than the minimums set forth elsewhere in City Ordinances.
  6. Off-Street Parking. Parking shall conform to provisions of Section 11.090.
  7. Signs. All signs of any type within a Planned Development are subject to design review and approval of the Planning Commission and shall be consistent with the approved planned development.
  8. Height Guidelines. The same restrictions shall prevail as in the zone in which such development occurs.
  9. Streets and Roads. Streets and roads within the planned development shall be dedicated to the public and constructed to City standards.
  10. Utilities. All utilities shall be underground.
  11. Dedication and Maintenance of Facilities.
    - a. Common Areas: An association of owners or tenants shall be created under the laws of the State of Oregon, which shall adopt such Articles of Incorporation and Bylaws and Recorded Declaration consistent with this ordinance ORS Chapter 94, and adopt and impose such Declaration of Covenants and Restriction on common areas and commonly owned buildings for the purpose of maintaining common area and commonly owned buildings continuously consistent with their intended function. Such an association shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to maintain said common area for the purposes intended.
    - b. Easements: Easements necessary to the orderly extension of public utilities may be required as a condition of approval.
  12. Approvals. The Planning Commission shall consider the recommendations of fire district, County Sanitarian, the power company, and other utilities which will serve the development in regard to approval of the proposal.

13. Other Requirements. The Planning Commission may establish additional requirements which it deems necessary to assure that any development conforms to this section, the Zoning Ordinance and the Comprehensive Plan.

Section 10.050. Planned Development Review Procedures.

1. Planned Developments will be reviewed in two phases, a preliminary development plan phase and a final development plan phase. The preliminary development plan shall include the information specified in Section 10.060. Additional provisions for reviewing the preliminary development plan are set forth in Article 13 and where a subdivision is proposed, the Wheeler Subdivision Ordinance.
2. The Planning Commission shall consider the preliminary development application at a public hearing. Development in stages may be requested. If the planned development involves subdividing land, the subdivision tentative plat shall be reviewed concurrently with the planned development preliminary plan. If the planned development involves a conditional use, the conditional use application shall be reviewed concurrently with the planned development preliminary plan.
3. Within one year of the date of approval of a preliminary development plan the applicant shall file with the City a final development plan consistent with the approved preliminary development plan, and if applicable, the subdivision tentative plat, in a format suitable for site development. This final plan shall be for the entire development or for each stage if submission in stages has been authorized by the Planning Commission.
4. Prior to site development, the applicant shall submit an engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.
5. After site development, or development of each stage if development in stages has been approved and prior to final plat approval, infrastructure shall be certified in writing by the project engineer and as-built drawings showing all infrastructure as constructed and sealed by the project engineer shall be submitted to the written satisfaction of the City.
6. Prior to occupancy, a final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities shall be submitted for approval to the City and shall be recorded with the County.
7. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.
8. If the final development plan is not submitted within one year as required by this ordinance, a new application shall be required. The Planning Commission may approve one extension of one year where they determine that the application remains consistent with applicable city standards and the goals and policies of the comprehensive plan.

Section 10.060. Preliminary Development Plan Submission Requirements.

The applicant shall submit a Planned Development application signed by the property owner(s) and twelve (12) copies of the following information drawn to a measurable scale and sealed by a qualified professional engineer:

1. Property boundary survey showing all existing structures to be removed and to remain.
2. Topographical survey with two (2) foot contours.
3. Map showing existing site features and topography.
4. Map showing the relationship of the proposed development to the surrounding area.
5. Plans showing proposed land uses and densities.
6. Plans showing the location, dimensions, and heights of structures
7. Preliminary architectural plans and elevations of typical structures including signage.
8. Plans for open space, common open space, and green space.
9. Preliminary planting and landscaping plan for the site.
10. Plans showing the street development and traffic circulation plan including off-street parking areas.
11. Plans showing the proposed method of utilities service and stormwater drainage.
12. A schedule, if it is proposed that the final development plan will be executed in stages. Documentation shall provide sufficient detail to show how each stage meets applicable criteria without reliance on subsequent stages.
13. A site- specific geologic investigation and engineering recommendations by a qualified geotechnical engineer.
14. Grading plan for the site showing future contours if existing grade is to be changed more than two (2) feet.
15. Drafts of the recorded declaration described in ORS Chapter 94 Planned Communities and any deed restrictions or protective covenants that provide for the maintenance of common areas and insure that the objectives of the Planned Development shall be followed.
16. Written recommendations regarding preliminary development plans from the fire district, county sanitarian, power company and other utilities proposed to serve the project identifying whether proposed facilities are adequate to serve the needs of the development.
17. Written comments from the authority from which access to the development is proposed.
18. Where requested by the City, County or State to determine the appropriate design for access to the development and mitigation of traffic impacts for the development, a traffic impact study may be required.
19. Where requested by the City, a wetland delineation report and survey concurred with by the Oregon Department of State Lands.
20. Where a subdivision is proposed, a subdivision tentative plan application consistent with the Wheeler Subdivision Ordinance.
21. Where a commercial or industrial use is proposed, a design review application with supporting documentation.
22. Where a conditional use is proposed, a conditional use application(s) with supporting documentation.
23. Where a variance is requested, variance application(s) with supporting documentation.
24. Application fees and additional costs incurred in review of the application and thereafter during the public hearing and decision process as required by city ordinance.

Section 10.070. Planning Commission Review Criteria.

The Planning Commission shall consider the preliminary development plan at a public hearing. The Planning Commission shall determine whether the proposal conforms to Section 10.030 and 10.040 and other City Ordinances. In addition, in considering the plan, the Planning Commission shall seek to determine that:

1. Resulting development will be consistent with the comprehensive plan and the standards of the parent zone(s).
2. The proposed development will be in substantial harmony with the surrounding area, including vegetation and topography and any important natural areas such as marshes, streams or wildlife habitat.
3. The plan can be completed within a reasonable period of time. If development in stages is proposed, each stage is planned to meet the standards of applicable criteria.
4. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
5. Proposed utility and stormwater drainage facilities are adequate for the population densities and type of development proposed.

Section 10.080. Final Development Plan - Submission Requirements.

1. Prior to site development, final plans shall be consistent with the approved preliminary development plan.
2. Plans shall be drawn to a measurable scale and shall be signed by an appropriate architect or engineer.
3. The final plan shall include all information included in the preliminary development plan, if applicable the subdivision tentative plan, and as necessary to meet all conditions of approval plus detailed construction plans for all site development including the following:
  - (a) Proposed streets,
  - (b) Pedestrian walkways,
  - (c) Sidewalks,
  - (d) Utilities,
  - (e) Off-street parking spaces,
  - (f) Open space,
  - (g) Common open space,
  - (h) Green space,
  - (i) Clearing, cutting and filling, and
  - (j) Structures.
4. An engineer's cost estimate and a performance bond in an amount approved by the City Council as sufficient to insure that a development proposal is completed as approved and within the time limits agreed to in an improvement agreement.

5. Written certification of infrastructure by the project engineer and as-built drawings showing all infrastructures as constructed and sealed by the project engineer to the written satisfaction of the City.
6. A final plat and a recorded declaration in accordance with this ordinance and ORS Chapter 94 Planned Communities and recorded with the County.
7. Application fees. Additional costs incurred in review of the application and thereafter during the public hearing and decision process shall be paid prior to final approvals for the project.

Section 10.090. Adherence to Approved Plan.

1. Site development within a planned development shall be consistent with the approved planned development plan.
2. Any changes to an approved preliminary development plan shall be submitted to the Planning Commission for public hearing and processed as an amendment to the preliminary development plan to be reviewed using the same procedure used to review the original application.

TWENTY: AMEND Article 17 Nonconforming Structure or Use

Article 17 Nonconforming Structure or Use

Section 17.010 Continuation of Nonconforming Structure or Use

Subject to the provisions of ORS 215.130 and subsequent provisions of this article, a nonconforming use or structure may be continued. *[The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of the passage of this ordinance is not considered an enlargement or expansion of a nonconforming use.]*

Section 17.020 Enlargement or Expansion of a Nonconforming Use

- (a) **For a nonconforming use that is a structure**, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 20% of total floor area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.
- (b) **For a nonconforming use that does not involve a structure**, in case of practical difficulty and unnecessary hardship, the Planning Commission may grant a permit to allow for the enlargement or expansion of a nonconforming use up to a cumulative 10% in total land area as the nonconforming use exists on the effective date of the ordinance that made the use nonconforming.



- (c) The **City** *[Planning Commission]* shall grant a **permit to allow an** expansion or enlargement of a nonconforming use **where the expansion or enlargement is** required to conform to another law, such as a pollution control requirement.

#### **Section 17.025 Enlargement or Expansion of a Nonconforming Structure**

**The City shall grant a permit to allow the enlargement or expansion of a nonconforming structure where the enlargement or expansion is consistent with current ordinance requirements. Any enlargement or expansion of a nonconforming structure inconsistent with current ordinance standards shall be regulated as a variance request.**

#### Section 17.030 **Discontinuance** of Nonconforming Use *[or structure]*

If a non-conforming use *[or a structure containing a nonconforming use]* is *[destroyed by any cause to an extent exceeding 80% of its real market value as indicated by the records of the County Assessor and restoration is not commenced within one year from the date of destruction, a future structure or use on the site]* **discontinued for a period of one year, further use of the property** shall conform to city ordinance.

#### Section 17.040 Destruction of Nonconforming *[Use or]* Structure

If a nonconforming structure *[or a structure containing a nonconforming use]* is destroyed by any cause to an extent exceeding 80% of its real market value as indicated by the records of the County Assessor and restoration is not commenced within one year from the date of destruction, a future structure *[or use]* on the site shall conform to city ordinance.

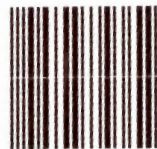
#### *[Section 17.050 Completion of Structure*

*Nothing contained in this ordinance shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been issued and construction work has commenced. Provided the building, if nonconforming or intended for a nonconforming use is completed and in use within one year from the time the building permit is issued.]*

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