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TITLE 10B - ADMINISTRATIVE PROCEDURES FOR LAND USE REGULATION

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CHAPTER 10B-01 APPLICABILITY AND GENERAL PROVISIONS.

10B-01-05 TYPES OF ACTION IDENTIFIED. There are four levels of actions provided for in this Title as follows:

1. **Legislative Actions:** which include Comprehensive Plan Changes, Land Use Map Changes, Development Title Changes, Planned Development, and Annexations;
2. **Quasi-judicial Actions:** which include Conditional Uses, Variances, Zoning Map Changes, Temporary Use Permits, Non-conforming Use Exceptions, Subdivisions, and Partitions, and Development Design Standard Modification;

3. **Administrative Review Actions:** which include Administrative Variances, and Use List Interpretations. Historic structure alterations require an Administrative review and approval by the Planning Commission;
4. **Administrative Review Actions:** which include Administrative Variances, and Use List Interpretations. Historic structure alterations require an Administrative review and approval by the Planning Commission;

10B-01-05 PUBLIC HEARINGS REQUIRED. Unless otherwise provided for in this Title or by statute, all Legislative Actions, Zone Changes, Land Partitions, Subdivisions, and appeals to either the Planning Commission or City Council, require a public hearing as set forth in this Title before any final action can be taken. Such hearings shall be public hearings held in accordance with the notification and procedural requirements set forth in this Title.

10B-01-10 AUTHORITY FOR LEGISLATIVE ACTIONS. Legislative actions, excluding annexations, are a two-step process beginning with a hearing and recommendation by the Ontario City Planning Commission. Annexations are processed according to ORS 222.111, and where relevant, agreements between Malheur County and the City of Ontario, governing Urban Growth Boundaries.

10B-01-15 USE LIST INTERPRETATION, APPEAL. An applicant who petitions for a Use List Interpretation Review before the Hearing Officer, and is not satisfied with the Hearing Officer's decision may appeal the decision to the Planning Commission.

10B-01-20 ENACTMENT OF A HEARING OFFICER. It is the intent of this Title to provide all applicants with a timely process for a fair and impartial review of submitted petitions. Therefore, the City Council creates the position of Hearing Officer, who shall conduct formal reviews, as necessary, on applications for such classes of Land Use Actions as the Council or Planning Commission designate.

10B-01-25 AUTHORITY FOR QUASI-JUDICIAL AND ADMINISTRATIVE REVIEW ACTIONS. The Hearing Officer shall conduct the Administrative Review required by this Title, and may approve or deny an application without a hearing if the Hearing Officer gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had the right to notice if a hearing had been scheduled. The Hearing Officer shall make the final decision for the City on the following Quasi-judicial and Administrative Review Actions:

1. Conditional Uses;
2. Variances;
3. Temporary Use Permits;
4. Non-conforming Use Exceptions;
5. Development Design Standard Modification;
6. Administrative Variance.

The Hearing Officer's decisions are subject to appeal to the Planning Commission as provided for in ORS 227.180(1)(a).

10B-01-30 PLANNING DIRECTOR ADMINISTRATIVE STAFF REPORT. The Planning Director shall conduct investigations and prepare a staff report including recommendations and concerns, if any, on all land use action applications.

10B-01-35 AUTHORITY FOR MINISTERIAL REVIEWS. Each building permit shall be reviewed by the City Official responsible for the department in which the applicant is seeking approval to assure compliance with this Title as well as other pertinent titles of the City Code. The Building Inspector shall check for compliance with Flood Plain Regulations based upon review of the Flood Plains Maps.

10B-01-40 PERIODIC REVIEW AND UPDATING. Every five years after the adoption of Title 10, or more frequently if required by the Commission or Council, the Planning Director shall submit to the Commission an evaluation of effectiveness of the Comprehensive Plan and the zoning and land development regulations and recommend amendments if appropriate. The Commission shall, if it deems amendments advisable or if directed by the Council, have prepared and process such legislative

amendments.

10B-01-45 CITIZENS INVOLVEMENT AND COORDINATION. Any periodic review and updating activity shall use the Citizen's involvement and agency coordination mechanisms set forth in the comprehensive plan.

10B-01-50 COORDINATION WITH D.L.C.D. Periodic review shall at a minimum, coincide with or precede any periodic review mandated by the State of Oregon. Notice of legislative amendments to the comprehensive plan or to the text of the zoning and land development regulations shall be given to the Oregon Department of Land Conservation and Development in accordance with Oregon Administrative Rules.

10B-01-55 AGENCY COORDINATION. To assure effected agency involvement in the planning process, any application shall be referred to local, state and federal agencies, as deemed appropriate by the planning official or as mandated by law, by OAR 660-30, or by an Urban Growth Area Agreement, for their review and comment. Failure of an agency to comment upon a proposal after an opportunity for review and comment shall be construed by the city to mean the agency has no objections to the proposal.

Unless otherwise specified by this Title or by law, reviewing agencies shall be given the same period as effected property owners.

CHAPTER 10B-02 APPLICATION FOR LAND USE ACTIONS

10B-02-10 APPLICATION AND STANDING TO INITIATE. An application for a land use action may be initiated by the owner of the property involved or an authorized agent. Authorization to act as an agent shall be in writing and filed with the application. The council, Commission or the City Manager may initiate any appropriate type of proceeding.

10B-02-10 APPLICATION, FORM OF. Applications shall be filed on the appropriate form as prescribed by the city. Applications shall be signed by an authorized person, contain an adequate description of the property, any other specified information, and be accompanied by the site plan, if necessary. In addition, a notarized list of property owners, as specified in this Title, as well as the appropriate fees shall be included.

10B-02-15 SITE PLAN, BASIC INFORMATION. When an application requires the submission of a site plan, that plan shall be submitted on one or more sheets of a xeroxable medium with content dimensions of not more than 8 by 10 inches, or if in the judgement of the planning official or the director of public works a larger format is needed, the plan shall be submitted on one or more sheets of diazo printable medium measuring a minimum of 18 by 24 inches and drawn to a scale of at least one inch equals 50 feet. The applicant may be required to supply a sufficient number of prints for all reviewing parties and files, or to pay the cost of making such prints. The site plan shall include the following information:

1. Date.
2. North arrow.
3. Name of project or action.
4. Name, address and telephone number of the owner or authorized agent, if any.
5. Name, address and telephone number of design professional responsible for the site plan, if any.
6. Written and graphic scale.
7. Legal description of the property by address or tax lot and map number or lot and block number or all of the forgoing.

10B-02-20 ADDITIONAL DATA MAY BE REQUIRED. The following additional data may be required depending on the type and scope of this project:

1. Any data required by the land development regulations.

2. Finished floor elevation related to curb, street, or other established grade or benchmark.
3. Drainage patterns. All lots shall show grading and drainage and finished grades or contours (clearly indicated).
4. The size and location of all existing and proposed public and private utilities, easements, or right of way.
5. The size, setback dimensions, and height of all proposed structures and all existing structures which are to be retained on the site.
6. Location, dimensions and names of adjacent streets and proposed internal streets, showing centerline radii and curb return radii.
7. The location and dimensions of existing and future sidewalks shall be shown.
8. The proposed layout of parking lots including the location and dimensions of parking spaces, curbed islands, internal planter strips, maneuvering aisles, and access driveways with indication of direction of travel.
9. The location of all signs, exterior lighting and fencing to be used to divide properties and to screen mechanical equipment and trash containers.
10. Existing physical features including drainage ways and structures with indication as to which are to be retained. Adjacent properties and their physical features within 50 feet of the property line shall be identified, including setback dimensions of adjacent structures.
11. The location of existing trees and scrubs and notation of which are to be retained on the property; location and dimensions of proposed landscaped areas; location and types of all proposed plant material and ground cover and other pertinent landscape features.
12. Location of all recreational amenities such as open play areas, swimming pools, tennis courts and recreational equipment.
13. The proposed location of all structures including the use of each. The locations may be indicated by construction site envelopes showing possible legal locations near the spot, building dimensions including height, and building separation.
14. Statement of maintenance responsibility for all improvements shown on the site plan.
15. Site data in tabular form including:
 1. Total area of the property in square feet.
 2. Building coverage in square feet and percent total.
 3. Parking lot in square feet and percent total.
 4. Landscaped area in parking lot in square feet.
 5. All other landscaped areas in square feet.
 6. Number of parking spaces provided.
 7. Number of residential units if appropriate.
 8. Existing and proposed gross floor area in square feet.

10B-02-25 OWNERSHIP LIST. All applications shall be accompanied by a list of the names, addresses, tax lot numbers and map numbers of all owners of property within a 300 foot radius, including public right of way, of external boundaries of the property effected, as such owners are shown on the last preceding tax rolls of the Malheur County Assessor. The ownership list shall be accompanied by an affidavit, on the form prescribed by the city, attesting to the validity of the ownership list.

10B-02-30 IMPROPER APPLICATION. If it is determined by the planning official that any application does not provide the required or necessary information, or have attached other pertinent data requested, the official shall not accept the application until the deficiencies are remedied.

10B-02-31 CONSOLIDATION. Whenever an applicant requests more than one type of approval, the proceedings shall be consolidated as set forth in ORS 227.175. Fees for the consolidated action shall be the highest individual fee listed for any of the constituent actions.

10B-02-35 FINAL ACTION LIMITATION OF TIME. Final action on complete applications, shall be taken within 120 days in accord with the provisions and exceptions of ORS 227.178. The 120 day period may be extended for a reasonable period of time at the request of the applicant. [ORS 227.178 (4)]. If final action is not taken within 120 days after the application is deemed complete, the applicant may apply in Circuit Court for a "WRIT OF MANDAMUS" to get an issuance of approval [ORS 227.178 (7)]

10B-02-40 APPLICATION FEES. The following fees, required to partially defray costs incidental to the proceedings, shall be paid at the time of filing of the application and shall not be refundable, except that if on appeal, the appellant is successful at obtaining an amendment or reversal, then the appeal fee shall be returned. Fees by type of action are:

Appeals (Plus the cost of record transcription, which shall not exceed \$500.00)	\$75.00
Change of zoning map	\$100.00
Comprehensive Plan Change	\$200.00
Conditional use permit	\$100.00
(Fence toppers permit)	\$25.00
Grading and excavation permit	\$25.00
Non-conforming use exception	\$50.00
Partition	\$150.00
Property Line Adjustments	\$25.00
Subdivision, final plat	\$150.00
Subdivision, tentative plan for a subdivision with 30 lots or less Additional for each lot over 30	\$200.00 \$10.00
Temporary use permit	\$35.00
Urban growth area zone change	\$150.00
Variance	\$75.00
Variance, administrative	\$25.00

10B-02-45 PROCESSING COSTS. The application fee scheduled does not include costs incurred by the city in providing legal advertisements and mailing notices. Such costs shall be calculated by the planning official and added to the base fee. The planning official may collect an average cost amount for common types of actions to be collected at the time of filing. Such payment shall be in lieu of detailed billing.

10B-02-50 LAND DEVELOPMENT INSPECTION FEE. A non-refundable land development inspection fee, shall be submitted to the city in the amount of three percent of the estimated cost of required improvements with such estimate to be determined by the Public Works Director. The inspection fee shall be paid in full prior to commencement of any construction within property covered by tentative plans of final plans or maps.

10B-02-55 CHANGING FEES. The Council may amend the fee schedule as a non-land use legislative proceeding.

CHAPTER 10B-03 PUBLIC HEARING, NOTICE OF

10B-03-05 TIME AND PLACE OF HEARING. After receiving a completed application and the appropriate fees paid, the Planning Director shall determine if a public hearing is required. If such hearing is required, a time and place for such hearing on the proposed action shall be scheduled, and proper notice given as prescribed in this Chapter. Notice of the hearing shall be mailed not less than twenty (20) days before the hearing; or if two or more hearings are allowed, ten (10) days before the first

hearing.

10B-03-10 INDIVIDUAL WRITTEN NOTICE BY MAIL. Except as otherwise provided herein, written notice of a land use action application hearing shall be mailed by first class mail to the following persons:

1. The applicant;
2. Owners of record of the property as shown on the most recent property tax assessment roll of property located Within three hundred (300) feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;
3. Those owners of record identified in the application as being burdened by the approval of a solar access or solar shade exception;
4. The owner of a public use airport if the airport is located within 10,000 feet of the subject property;
5. The tenants of mobile home park when the application is for rezoning of any part or all of a mobile home park.

10B-03-15 NOTICE CONTENT. Any required public notice relevant to this Title shall contain the following information as prescribed by ORS 197.763.

1. A clear and understandable description of the nature of the application and the proposed use or uses which could be authorized;
2. A clear and understandable description of the proposed action and a list of the applicable criteria from the Ordinance and/or the Comprehensive Plan that applies to the application;
3. A clear and understandable description including street address, (and legal description as needed) of the location of the proposed action;
4. A statement indicating the date, time, and location of the hearing;
5. A statement that a failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.
6. Include the name of the local government representative to contact, and the telephone number where additional information may be obtained;
7. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria, are available for inspection at no cost, and duplicate copies will be provided at reasonable cost;
8. A statement that a copy of the staff report (if one is prepared) will be available for inspection at least seven (7) days prior to the hearing at no cost, and duplicate copies will be provided at reasonable cost;
9. Include a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings;
10. All mailed notices shall contain the following statement: **NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

10B-03-20 METHOD OF NOTICE.

1. Notice of any public hearing shall be posted by all of the following methods:
 1. By publication in a newspaper of general local circulation at least ten (10) days prior to the hearing.
 2. By giving notice to the electronic media.
 3. By first class mail to those listed in section 10B-03-10 of this Title.
 4. The applicant shall no later than twenty-four (24) hours following the submittal of a land use application, post a notice of the pending land use action by placing a city approved sign on the subject property, if practical, in such a position that it is visible from any adjacent public way. In addition, an affidavit, attesting to the placement of the sign, must be submitted at least ten (10) days prior to the initial hearing, or if the matter is heard before the Hearing Officer, prior to the expiration of the appeal period.
 5. A copy of the notice sent to the property owners shall be posted in the lobby area of City Hall.

2. An appeal resulting from a Hearing Officer's decision, shall require a public hearing, notice of which shall be given as set forth in 10B-03-10 through 10B-03-15 of this section.

10B-03-25 NOTICE IRREGULARITIES. Minor irregularities in the notice procedures, providing constructive notice as given, shall not invalidate any action taken under the provisions of this Title.

CHAPTER 10B-04 HEARING OFFICER PROCEDURE

10B-04-05 REVIEW WITHIN 72 HOURS. Upon receipt of a completed Quasi-judicial or Administrative Action application, the Planning Director shall schedule a review within three (3) working days before the City Hearing Officer. Prior to the time scheduled for the review, the Hearing Officer shall visit the site of the proposed land use action, avoiding any ex parte contact. The review shall be conducted in closed chambers and a decision rendered based on the information in the application, the Hearing Officer's observations from the site visit, and any Staff Report recommendations in addition to standards and criteria as set forth in this Title for the particular type of action sought.

A final decision shall be rendered within three (3) working days, after the scheduled review which shall: include a brief statement that explains the criteria considered relevant to the decision; state the facts that were relied upon as the basis for the decision; and, explain the justification for such decision based upon those facts as they relate to the criteria.

10B-04-10 DEFERRING REVIEW, DECISION. If it is determined that the application is lacking pertinent information required for the Hearing Officer to make a well thought out decision, whether it is information required by this Title or other information the Hearing Officer considers necessary to make a decision, the Hearing Officer is empowered to defer, until another specified time his review/decision until the needed information is provided. The Hearing Officer shall transmit to the applicant a written request for the needed information. The time periods specified in section 10B-04-05 shall be stayed until such time as the Hearing Officer receives the needed additional information.

10B-04-15 NOTICE OF DECISION. The Hearing Officer's decision shall be in writing and communicated via first class mail by the Planning Director to the following persons:

1. The applicant; however, one person may be designated by the Hearing Officer to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants;
2. Owners of property within 300 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment role;
3. Any neighborhood or community organization recognized by the City and whose boundaries include the site;

10B-04-20 CONTENTS OF NOTICE. The notice shall contain the following information:

1. The statement: " RESIDENTS AGGRIEVED BY THE ACTIONS OF THE HEARING OFFICER HAVE 10 DAYS TO SUBMIT WRITTEN COMMENTS PRIOR TO THE DECISION BECOMING FINAL."
2. A statement that: "Issues which may provide the basis for expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue";
3. The applicable criteria used for the basis of the decision;
4. The street address or other geographical reference to the property at issue;
5. List the place, date, and time that written comments are due;
6. A statement indicating that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
7. Include the name and phone number of a local government contact person knowledgeable of the action in question;
8. A brief summary explaining the City's decision making process as it applies to limited land use decisions.

10B-04-25 COUNCIL ADOPTION OF DECISION. In the absence of an appeal the Hearing Officer's decision shall become the final decision of the City. No argument or further testimony will be taken by the City.

10B-04-30 APPEAL OF A HEARING OFFICER'S DECISION. A person may appeal a decision resulting from a Hearing Officer's review provided that such appeal is filed within the guidelines of the appeal procedures as set forth in Section 10B-10-20 through 10B-10-45.

CHAPTER 10B-05 HEARINGS, RULES OF PROCEDURE, COMMON TO ALL

10B-05-05 SCOPE.

1. Conduct of all public hearings by the Commission or the Council pursuant to actions under this Title shall be governed by the procedural rules as provided herein.
2. Every person entitled to notice of hearing pursuant to this Title, or other interested person, shall be entitled to be heard in accordance with the rules as herein established.
3. These rules shall be interpreted to promote justice. Technical violations which do not affect substantial rights of parties, or of the public, shall not interfere with the hearing of an action.

10B-05-10 GENERAL CONDUCT OF HEARING.

1. Each person appearing before the Commission or Council shall give his or her name and address in an audible tone of voice for the record. Persons may be required to be sworn prior to speaking.
2. No person shall speak without being recognized by the presiding officer.
3. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
4. The Commission or Council may set reasonable time limits for all testimony and presentations, and may exclude or limit cumulative, repetitious, or immaterial testimony

10B-05-15 BURDEN, CRITERIA OF PROOF.

1. The proponent of proposals shall have the burden of proving the justification of the request. The greater the impact of the request on an area, the greater is the burden upon the proponent.
2. The requested proposal must be supported by proof it conforms to the requirements of this Title. In this connection, the Planning Director may require that proponents submit written proposed findings substantiating such conformance, as part of the application required by this Title.
3. The following criteria and factors are deemed relevant and material and shall be considered by the Commission or Council in reaching their decision on a proposal:
 1. Mistake or error in the original land use or zone designation.
 2. Change of conditions in the character of the neighborhood in which the use or development is proposed.
4. A change in market conditions affecting the entire urban area.

10B-05-20 ON SITE INSPECTION. Prior to the date set for the hearing, the Commission or Council may inspect the site, avoiding any ex parte contact.

10B-05-25 ORDER OF PROCEDURE. The order of proceedings in hearings shall be as follows:

1. Commencement of hearing. The Commission's or Council's presiding officer shall announce the nature and purpose of the hearing and summarize the rules for the conduct of the hearing. The presiding officer shall ask Commission or Council members for abstentions or disclosures of any ex parte contacts which a member believes should be on the record. Each member shall determine individually whether any ex parte contacts have been sufficient to warrant

disqualification from voting on the subject request.

2. Objections to jurisdiction. The presiding officer of the Commission or Council shall inquire of the audience whether there are objections to jurisdiction of the Commission or Council to hear the matter and, if such objections are received, conduct such further inquiry as necessary to determine the question. The Commission or Council may terminate the hearing if this inquiry results in substantial evidence that the Commission or Council lacks jurisdiction, or the procedural requirements of this Title have not been met. Any matters thus terminated shall, if the defect can be remedied, be rescheduled.
3. Appeal standing. The presiding officer shall advise opponents to the action that they must address with sufficient specificity the approval criterion in the plan or ordinance, which that person testifying believes applies, to have standing to appeal the decision to the Oregon Land Use Board of Appeals.
4. Staff report. The Planning Director or other City staff shall summarize the nature of the proposal, explaining graphic or pictorial displays which are part of the record, a summary of the staff report, and a recital of the applicable criteria for making a decision as they appear in this Title or in other legally binding documents. All petitions and letters filed with the city shall be introduced at this time.
5. Proponent's case.
 1. The applicant or proponent may appear on his or her own behalf, or by a representative. Representatives of applicants must submit written authorization from the applicant for the representative to act as his or her own agent.
 2. Upon failure of the applicant or his/her representative to appear at the hearing on his or her proposal, or upon the applicant's express waiver of presenting testimony and evidence, the Commission or Council shall consider the written application, plus staff materials, as presenting the applicant's case.
6. Questioning of proponents. The opponents shall be allowed, if the proponent is present and upon recognition by the presiding officer, to submit questions through the presiding officer to the proponents. Proponents shall be given a reasonable time to respond solely to the question. The presiding officer of the Commission or Council shall have the right to rule any question out of order.
7. Opponent's case. Persons opposed to the proposal, or their representative, shall next be heard.
8. Questioning of opponents. The proponent shall be allowed, upon recognition of the presiding officer, to submit questions through the presiding officer to opponents who have testified. Opponents shall be given a reasonable time to respond solely to the question. The presiding officer of the Commission or Council shall have the right to rule any question out of order.
9. Rebuttal testimony. The proponent may offer rebuttal testimony, if any.
10. Facts from on-site inspection. The Commission or Council shall propose any additional facts drawn from their on-site inspection, entertain objections or comments thereon from the parties, and make appropriate entries into the record.
11. Close of hearings and deliberations. The Commission or Council shall conclude the hearing and deliberate the proposal.
12. The Commission or Council shall decide the matter, and cause a written report of the decision to be prepared, including findings of fact that have been relied upon in reaching the decision. The Commission or Council, in making their decision, may adopt any findings proposed by the proponent, opponent, or the staff as their own. A copy of the decision shall be filed with the Planning Director, and a copy of the decision shall be sent by first class mail to the applicant and all other parties who have requested a copy of the decision.

10B-05-30 JUDICIAL NOTICE.

1. The Hearing Officer, Planning Commission or City Council may take judicial notice of the following:
 1. All facts and matters which are judicially noticeable in the courts of this state; and
 2. The charter, ordinances, resolutions, rules, regulations, and official written policies of the city.
2. Matters judicially noticed need not be established by evidence, and may be considered by the Hearing Officer, Commission or Council in their determination.

10B-05-35 RECORD OF PROCEEDINGS.

1. The Commission or Council shall cause the proceedings to be stenographically or electronically recorded. It shall not

be necessary to transcribe testimony unless required for review, or unless the Commission or Council deems it necessary for the purpose of their decision.

2. The Commission or Council shall, where practical, cause to be received all physical and documentary evidence presented which shall be marked to show the identity of the person offering the same, and whether presented on behalf of the proponent or opponent. Unless evidence is capable of being offered and incorporated in the record of the case, it shall not be received. All exhibits received into evidence shall be retained by the Commission or Council until after any applicable appeal period has expired, at which time the exhibits may be released upon written demand of the person identified thereon.
3. Any member of the public shall have access to the record of the proceedings at reasonable times, places, and circumstances as determined by the City. Any member of the public shall be entitled to make copies of the record at their own expense.

10B-05-40 EX PARTE CONTACTS.

To the extent practicable, the Commission, Council or Hearing Officer shall neither:

1. Communicate, directly or indirectly, with any party or their representatives in connection with any pending action before a review authority, except upon notice and opportunity for all parties to participate; nor,
2. Inspect the site with any party to a proposal unless all parties to the proposal are given an opportunity to be present. Staff may inspect the property with the applicant or opponents or both and shall reveal such inspection in the staff report.

10B-05-45 CIVIL SANCTIONS FOR SOLICITATION OF EX PARTE CONTACTS. It is the intent of this section to discourage and prohibit ex parte contacts, either in writing, in person, or by any electronic or telecommunications methods, between parties on land use actions, and the City Hearing Officer and/or City officials that will review land use action applications for the purposes of rendering a decision as to their approval or denial. Therefore, the city adopts this section to levy civil sanctions against the offending party.

A violation of this section shall be considered a CLASS B Civil Infraction, and if convicted, punishable by civil fine of up to, but not exceeding two hundred fifty dollars (\$250.00).

10B-05-50 CONTINUANCES. The Commission or Council may, at their discretion or at the request of a party for good cause shown, postpone or continue a public hearing to a date certain. The Commission or Council shall notify any party who has submitted written comments, but not present when the continuance was granted, of the new date of hearing.

CHAPTER 10B-10 COUNCIL REVIEW AND RECOMMENDATIONS

10B-10-05 COUNCIL REVIEW OF RECOMMENDATIONS ON LEGISLATIVE ACTIONS AND ZONE CHANGES. The ultimate decision authority for legislative actions and zone changes brought under the provisions of this Title shall rest with the City Council. Certain actions of the Planning Commission are in the form of a recommendation to the City Council. The land use decisions for which the Commission provides only a recommendation to the Council include, but are not limited to, comprehensive plan changes, tentative plans of subdivisions and partitions, and creation of public or private streets outside of land development.

10B-10-10 FINAL ACTION, COMMISSION, HEARING OFFICER, APPEALABLE. Unless otherwise provided for in this Chapter, where final decision authority is granted by this Title to an authority other than the City Council, that decision shall be the final action of the City unless the City Recorder receives a written notice of appeal.

10B-10-15 TIME LIMIT ON APPEAL. Notice of appeal must be filed no later than ten (10) days from the date written notice of the decision is mailed to the applicant and all and all other parties entitled to notice or otherwise entitled to notice under this Title. Notice of decision need not be mailed to anyone other than the applicant if all parties to the action are present at the announcement of the decision.

10B-10-20 APPEAL, STANDING. An applicant may appeal a decision resulting from a review authority's decision, provided that such appeal is filed within the guidelines of the appeal procedures in this Chapter.

10B-10-21 APPEAL PROCEDURE. After notice of appeal has been filed, a hearing date will be scheduled at which time the Planning Commission will consider the appeal and the previous record of the Hearing Officer. An appeal resulting from the Planning Commission's decision must be made to the Oregon, Land Use Board of Appeals in accordance with ORS 197.830. An issue which may be the basis for an appeal to the Land Use Board of Appeals, shall be raised no later than the close of the record at or following the final evidentiary hearing on the proposal before the local government.

Except for appeals from the decision of the Hearing Officer, Appellants must have appeared in person, by agent or in writing before the review authority, and have objected to the decision, raising issues with sufficient specificity so as to afford the governing body, Planning Commission, hearing body, or the parties an adequate opportunity to respond to each issue as set forth in this Chapter for that type of petition. The City Manager may have the standing based on objections by any City Department Head who registered a proper objection at the hearing.

10B-10-25 NOTICE OF APPEAL TO THE CITY, CONTENT. The notice of appeal filed with the City Recorder shall be in writing and shall contain the following:

1. A reference to the action for which review by higher authority is sought and a statement referring to the portions of this Title and of the record of the prior review which supports the appeal.
2. If not submitted by the applicant, a statement of the interest of the appellant, to determine the appellant's standing as a party to the action.
3. A statement of the issue for which additional testimony is desired or which supports a request for appellant authority review. Such issues must address a specific required finding for decision on the type of action being appealed, as set forth in this Title.
4. *(Webmaster's Note: Due to a typo, there is no item #4 in the original code)*
5. Proof of payment of fees for an appeal as provided for in this Title.

10B-10-30 APPEAL, QUASI-JUDICIAL AND ADMINISTRATIVE ACTIONS. The Planning Commission shall hear all appeals of Hearing Officer decisions in a de novo public hearing. The hearing before the Commission shall be noticed in the same manner as for all public hearings, and the Appellant shall be present at the hearing, either in person or through a authorized representative. Upon appeal, the Planning Commission shall consider the record of the Hearing Officer's action.

10B-10-35 TIME LIMIT FOR APPEAL CONSIDERATION. The Commission shall consider an appeal within 60 days from the date it is filed with the City Recorder. The presiding officer at the hearing shall advise those appearing for either side, that to have standing to appeal the Commission's decision to the Oregon Land Use Board of Appeals, they must address issues with "sufficient specificity" that will allow the decision maker to respond to the type of action being considered in this Title.

10B-10-40 DECISION OF PLANNING COMMISSION ON REVIEW

1. Upon review of an appeal, the Commission may affirm, reverse, or modify, in whole or in part, the decision and findings of the lower review authority and may add findings. The Commission may elect to remand the matter to the original review authority noting what additional actions need to be taken to address points of conflict contained in the

record of the prior review or revealed in the hearing which require further consideration.

2. The Commission's action on a Hearing Officer's decision is itself appealable in the manner specified in State Statute. Persons appearing on the losing side of an appeal shall be advised by the presiding officer that they must address a specific required finding at the current hearing as such required findings appear in this Title for the type of action in question to have standing to appeal to the Oregon Land Use Board of Appeals.
3. Upon paying transcription fees, any person may have a transcript of a hearing, the full cost of which shall not exceed the actual cost of preparing the transcript, up to \$500.00.

10B-10-45 SECOND REVIEW OR REHEARING. The Hearing Officer or Planning Commission shall not consider any application, upon which a final action has been taken within the preceding twelve months, unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. Such rehearing shall be de novo with notice provided. The Commission may, upon its own motion, reopen the hearing on any action where notice of intent to appeal has been filed with the Land Use Board of Appeals in accordance with ORS 197.830. Such rehearing shall be for the purpose of augmenting, organizing or correcting the record; to allow submittal of new or more complete evidence; to permit the clarification of factual or policy issues; to correct or augment the findings of fact and conclusions of law, and to allow for an increased possibility of compromise to avoid litigation.

All parties to the previous hearings shall be given as much notice as feasible, but not less than ten (10) days before the rehearing. It is the intent of the rehearing process that the attorneys representing the parties on appeal participate in the rehearing process.

CHAPTER 10B-15 LEGISLATIVE AMENDMENT PROCEDURES

10B-15-05 LEGISLATIVE AMENDMENT, INITIATION OF ACTION. Amendments to Title 10A, 10B, 10C or other Titles in the development code series, or to the comprehensive plan may be initiated by the Council or Commission by motion, or by individuals by application as provided for in this Title. Amendment actions shall first be referred to the Planning Commission for the public hearing and recommendation. The Department of Land Conservation and Development shall be notified of the pending action at least 45 days before the final hearing date, unless a shorter time is authorized by Oregon administrative regulations for the type of action being taken.

10B-15-20 COMMISSION HEARING, DECISION. The Commission shall hold a public hearing on the action and shall recommend approval, disapproval, or modification of the proposed amendment and shall make findings as appropriate to support the recommendation. Written findings and recommendations shall be forwarded to the Council by the Planning Director.

Upon receipt of the Commission's recommendation, the Council shall set a date for a public hearing on the recommendation. If the hearing is to be the final hearing on the action, the date must be set late enough to allow the Department of Land Conservation and Development notice period to expire. The Council may approve, reverse or modify the amendment and may adopt the Commission's findings, create new findings or add to or delete from the Commission's findings. The Council may remand the action to the Commission for further consideration. A copy of the final decision shall be transmitted to the Department of Land Conservation and Development.

CHAPTER 10B-20 QUASI-JUDICIAL ZONING MAP AMENDMENT

10B-20-05 PURPOSE, AUTHORITY. The quasi-judicial zoning map amendment procedures are designed and authorized to adjust zone boundaries and create new zoning classifications on the official zoning map within areas on the land use plan indicated for the uses allowed by the map change. Such changes shall be in conformity with the land use goals of the state.

The decision of the Commission shall be the final decision of the City unless an appeal is filed as authorized by this Title.

10B-20-15 HEARING DATE, NOTICE. When advised of a request for a zoning map amendment, the Planning Director shall schedule a public hearing before the Commission and give public notice as specified in this Title.

10B-20-16 MOBILE HOME TENANTS, NOTICE TO. In accordance with ORS 227.175(8), if an application would change the zone of property which includes all or part of a mobile home park as defined in ORS 446.003, written notice shall be mailed to each existing mailing address for tenants of the mobile home park at least twenty (20) days but not more than forty (40) days before the date of the first hearing on the application.

10B-20-20 AGENCY COORDINATION. Any proposed zoning map amendment shall be submitted to city department heads, Malheur County and state or federal agencies deemed by the Planning Director to have an interest in the action. Such departments or agencies shall submit comments, if any to the Commission no later than the public hearing.

If coordination reveals serious problems in need of resolution, the Commission may continue the hearing to its next regular meeting or other time specified. If counter proposals are developed that are materially different from that in the notice for the first public hearing, new notice shall be given.

10B-20-25 HEARING DECISION. The Commission shall hold a public hearing on the action and shall approve, deny, or modify the proposed zoning map amendment and shall make findings as appropriate to support the decision. The Planning Director shall notify the applicant of the decision of the Commission and notify any person appearing at the hearing in person, if they are not present when the final decision is rendered, or if the person has appeared in writing. During the hearing, persons appearing shall be advised that they must testify in favor of or in opposition to the action to gain standing to appeal the Commission's decision to the Council. Persons testifying shall be advised that they must address one or more of the criteria or required findings set forth in this Title for quasi- judicial zoning map amendment decisions in order to establish standing to appeal the final local decision to the Oregon Land Use Board of Appeals.

10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi- judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action:

1. The zoning map amendment is in conformance with statewide planning goals and guidelines.
2. The zoning map amendment is in conformity with the acknowledged comprehensive plan.
3. The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally effecting the area which make the proposed change appropriate.
4. A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.
5. The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.
6. The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.
7. The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

10B-20-35 APPEAL TO THE COUNCIL. The action of the Planning Commission may be appealed to the City Council within the time frame and by those with standing to appeal as set forth in this Title.

CHAPTER 10B-25 CONDITIONAL USE PERMITS

10B-25-05 PURPOSE AND AUTHORITY. Certain types of uses require special consideration prior to their being permitted in a particular zone.

All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as outright uses in the particular zone as established by this Title. The location and operation of conditional uses shall be subject to review by the Hearing Officer prior to issuance of a conditional use permit. The purpose of review shall be to determine that the characteristics of a proposed conditional use shall be reasonably compatible with the type of uses permitted in surrounding areas, the size of the area required for the development of such uses, and such impacts as may occur from emissions of discharges into the air, land or water as well as impacts of noise, vibration, odor, heat, dust, glare and lighting; and for the further purpose of stipulating such conditions as be reasonable so that the basic purposes of this Title shall be served. Nothing herein shall require the city to grant a conditional use permit. The decision of the Hearing Officer shall be the final decision of the City unless an appeal is filed as authorized by this Title.

10B-25-10 INITIATION OF ACTION. Conditional use permit applications shall be filed, appropriate fees paid, and a Hearing Officer review conducted according to the provisions of this Title.

10B-25-15 RECOMMENDATIONS. Any proposed conditional use permit shall be submitted to city department heads, Malheur County and State or federal agencies, deemed by the Planning Director to have an interest in the action. Such departments or agencies shall submit comments, if any to the Hearing Officer no later than the day of the scheduled application review. If coordination reveals serious problems in need of resolution, the Hearing Officer may postpone the review to another time specified.

10B-25-25 HEARING, DECISION. The Hearing Officer shall conduct a review on the proposed action and shall approve, deny, modify or attach conditions to the proposed conditional use permit and shall make findings as appropriate to support the decision. The Planning Director shall notify the applicant of the decision and shall mail notice of decision to all property owners owning land within three hundred (300) feet of the affected property.

10B-25-30 REQUIRED FINDINGS, DECISION CRITERIA. Prior to making decisions on conditional use applications, the Hearing Officer shall analyze the following criteria and incorporate such analysis into his decision and findings:

1. The conditional use permit conforms to the requirements of this Title, including the site plan standards of this Title, and all other provisions of the City Code.
2. The site for the proposed use is adequate in size and shape to accommodate said use, and all yards, spaces, walls and fences, parking, loading, landscaping, and other features required to make the use compatible with surrounding uses in the neighborhood.
3. The site for the proposed use relates to streets and other public facilities adequately to accommodate the demands generated by the proposed use.
4. The conditions stated in the decision are deemed necessary to protect the public health, safety, and general welfare.

10B-25-35 AUTHORITY TO ATTACH CONDITIONS. The Hearing Officer may impose such conditions as deemed necessary to secure the purpose of this Title, including but not limited to:

1. regulation of uses, special yard setbacks, structural coverage, and building height.
2. Requiring fences, walls, screens, landscaping, and maintenance beyond minimums established in this Title.
3. Improvement of the adjacent street system, including paving, curbs, sidewalks, and traffic signals.
4. Regulation of signs and lighting.
5. Regulation of noise, vibration, and odors.
6. Requiring provision of additional parking areas beyond minimums established in this Title.
7. Requiring rehabilitation or restoration plans.
8. Improvements or enlargement of public utilities and facilities serving the proposed use.

9. Regulation of hours of operation and duration of use or operation.
10. Requiring a time period within which the proposed use shall be developed.
11. Requiring bonds adequate to ensure performance of special conditions.
12. Dedication or enlargement of public utility and facility easements.
13. Each other condition as will make possible the development of the city in an orderly and efficient manner, and in conformity with the intent and purpose set forth in this Title.

10B-25-40 EFFECTIVE DATE, EXPIRATION OF PERMIT. No conditional use permit shall become effective until ten days have elapsed from the date of the decision, or until expiration of an appeal period, whichever is later.

A conditional use permit shall terminate and become void unless:

1. The use authorized for such permit shall have commenced or construction necessary thereto shall have commenced, on or before the time limit specified in such permit, and thereafter diligently advanced; or
2. If no time limit is specified, on or before six months after the date the permit became effective; or
3. Such period of time may be extended by the Hearing Officer, without a public hearing for a period of six months but not in excess of 18 months from the date the first approval became effective.

10B-25-45 REVOCATION OF PERMIT. The Commission, after notice and public hearing, may revoke any conditional use permit on the basis of any one or more of the followings grounds:

1. Violation of any provision of the City Code.
2. Failure to comply with any prescribed requirements of the conditional use permit.
3. The use for which the permit was granted has ceased to exist or has been suspended for six consecutive months, or for 18 months during any three year period.
4. The use for which the permit was granted has been so exercised as to be detrimental to the public health safety, or general welfare, or so as to constitute a nuisance.

10B-25-50 CONDITIONAL USE PERMIT REQUIRED PRIOR TO BUILDING PERMIT. No building permit shall be issued when a conditional use permit is required by this Title, unless the conditional use permit approved by the Hearing Officer has become effective.

10B-25-51 FENCE TOPPERS. Persons intending to erect barbed-wire fence toppers within the Corporate City Limits are required to apply for an Administrative Conditional Use Permit. For fencing that does not encroach on public right-of-way, the application shall be reviewed by the Hearing Officer, and a decision rendered three (3) working days after the submission of a completed application. If the applicant intends to erect barbed-wire fence toppers that will encroach on the public right-of-way, a hearing shall be required before the City Council.

10A-25-55 APPEAL TO LAND USE BOARD OF APPEAL. The action of the Hearing Officer and/or Planning Commission, may be appealed within the time frame and by those with standing to appeal as set forth in this Title, and prescribed under ORS 197.830

CHAPTER 10B-30 VARIANCES

10B-30-05 PURPOSE AND AUTHORITY. Unnecessary physical hardships may result from the size, shape, or dimensions of a site or location of existing structures thereon, geographic or topographic or other physical conditions on the site or in the immediate vicinity. Variances may be granted to overcome these unnecessary physical hardships. The authority to grant a variance does not extend to use regulations. The purpose of a variance is not to change the zoning of property or to allow uses that are expressly prohibited.

A variance shall not be granted when special circumstances upon which the applicant relies are a result of the actions of the applicant or owner or previous owner (s), including but not limited to:

- A) Self-created hardships.
- B) Willful or accidental violations.
- C) Manufactured hardships.

10B-30-10 INITIATION OF ACTION. Variance applications shall be filed, the appropriate fees paid, a review date scheduled, and Hearing Officer review conducted according to the provisions of this Title.

10B-30-15 REVIEW DATE, NOTICE. When advised of a request for a variance, the Planning Director shall schedule a review as specified in this Title.

10B-30-20 AGENCY COORDINATION. Any proposed variance shall be submitted to city department heads, Malheur County and state or federal agencies, deemed by the Planning Director to have an interest in the action. Such departments or agencies shall submit comments, if any to the Hearing Officer no later than the scheduled date of the review of the application. If coordination reveals serious problems in need of resolution, the Hearing Officer may postpone the review to another time specified.

10B-30-25 HEARING OFFICER REVIEW, DECISION. The Hearing Officer shall conduct a review on the action and shall approve, deny, or modify the action requested in the application. In all actions, the Hearing Officer shall make findings as appropriate to support the decision. The Planning Director shall send notice within three (3) working days of the Hearing Officer's decision to all property owners owning property within three hundred (300) feet of the affected property.

10B-30-30 CRITERIA FOR APPROVAL OF VARIANCES. No variance may be granted by the Hearing Officer unless, on the basis of the application, investigation, and evidence submitted:

A) Both findings "1" and "2" below are made:

1.
 - (a) That a strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this ordinance.
 - (b) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district; or
 - (c) That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties classified in the same zoning district;
2. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the near vicinity.

B) In addition to the criteria in (A) above, no application for a variance to the Airport Development Zone may be granted by the Hearing Officer unless the following additional finding is made:

"The variance will not create a hazard to air navigation."

C) An application for a variance to the Flood Hazard Overlay zone requirements shall comply with Section 10A-47-60 VARIANCE SPECIAL STANDARDS.

10B-30-40 SIDE WALK VARIANCE. The City recognizes that occasionally there will be those situations and/or circumstances beyond the control of the property owner that will prevent or hinder their ability to construct sidewalks as prescribed in Chapter 10A-60, Section 05 of the City Ordinances. Therefore, in order to allow for this condition, the Hearing Officer is empowered to review the circumstances of each petition and issue a variance in compliance with this Title.

10B-30-41 SIDEWALK CONSTRUCTION TIME EXTENSION. The Hearing Officer shall have the authority to grant an extension of time, in monthly increments, up to but not exceeding six (6) months, upon the written request of a partitioner.

10B-30-45 EXPIRATION OF VARIANCE, EXTENSION. No variance granted by the Hearing Officer shall be valid for a period longer than six (6) months unless the permitted variance is established within such period, or in the event such permitted variance is dependent upon the erection or alteration of a building, unless a building permit for said erection or alteration is obtained within such six month period; provided, however, that the hearing officer, upon a written request of the applicant and without a formal review, may extend the period six months but not in excess of twelve (12) months from the date the first order granting the variance was given.

10B-30-50 APPEAL TO LAND USE BOARD OF APPEAL. The action of the Planning Commission, and/or Hearing Officer may be appealed to the Oregon, Land Use Board of Appeals in the manner prescribed by ORS 197.830.

CHAPTER 10B-35 TEMPORARY USE PERMITS

10B-35-05 PURPOSE AND AUTHORITY. By issuing a temporary use permit, the Hearing Officer may, on a temporary basis, allow the placement of a mobile or manufactured structure, not meeting the uniform building code, in a C-1, C-2, C-2-H, C-3, BP, I-1, or I-2 zone for the purpose of conducting a use permitted in said zone. No temporary use permit shall be issued in lieu of a zone change or other appropriate zoning regulation defined under this Title.

10B-35-10 INITIATION OF ACTION. A person may request approval for a Temporary Use Permit by submitting the prescribed application, and including the appropriate fees as required in this Title.

10B-35-15 REVIEW DATE, NOTICE. When advised of a request for a temporary use permit, the Planning Director shall schedule a review before the Hearing Officer as specified in this Title.

10B-35-20 AGENCY COORDINATION. Any proposed temporary use permit shall be submitted to city department heads, Malheur County and state or federal agencies, deemed by the planning official to have an interest in the action. Such departments or agencies shall submit comments, if any to the hearing officer no later than three (3) working days after the submission of the application. If coordination reveals serious problems in need of resolution, the hearing officer may continue the hearing to another time specified.

10B-35-25 HEARING OFFICER, DECISION. The Hearing Officer shall conduct a review on the action and shall approve, deny, modify or attach conditions to the proposed temporary use permit and shall make findings as appropriate to support the decision. The Planning Director shall notify the applicant of the decision and shall notify, by first class mail, all property owners within three hundred (300) feet of the affected parcel.

10B-35-30 REQUIRED CONDITIONS. The following conditions shall apply to all permitted temporary uses:

1. Temporary use permits shall be issued for a specified length of time, not to exceed two (2) years.
2. No temporary use permit shall be transferable to any other owner or occupant, but may extend upon approval of the Hearing Officer
3. A minimum of 150 square feet of open space which is landscaped and continuously maintained shall provided around temporary uses; temporary landscaping in tub-type containers shall be permitted to satisfy this requirement, and a permanent irrigation system shall not be required.
4. Hard surface parking shall be installed as provided in the off-street parking provisions of this Title.
5. Structures shall be removed from the site within 30 days after the expiration date of the temporary use permit, or if the use for which the permit was granted ceases to exist for 30 days.

6. Such other conditions deemed necessary to accomplish the purpose of this Title.

10B-35-35 REVOCATION OF PERMIT. The Planning Commission, after notice to the applicant, and opportunity for hearing, may revoke any temporary use permit on the basis of any one or more of the following grounds:

1. Violation of any of the provisions of the city code.
2. Failure to comply with any prescribed conditions or requirements of the temporary use permit.
3. The use for which the permit was granted has been so exercised as to be detrimental to the public health, safety, or general welfare, or as to constitute a nuisance,

10B-35-40 APPEAL TO LAND USE BOARD OF APPEAL. The action of the Planning Commission, and/or the Hearing Officer may be appealed within the time frame and by those with standing to appeal as set forth in this Title.

CHAPTER 10B-40 ADMINISTRATIVE VARIANCE

10B-40-05 PURPOSE AND AUTHORITY. Administrative variances are intended to provide for minor adjustment or relief from regulations that, because of unique conditions, would cause undue hardship. Administrative variances may be granted only for those quantifiable or dimensional requirements listed below under approval criteria. No administrative variance shall be issued for permitted uses in zones, or other non-quantified regulations.

10B-40-10 INITIATION OF ACTION. Administrative variance applications shall be filed, appropriate fees paid, and a Hearing Officer review date scheduled by the Planning Director in accordance with the provisions of this Title.

10B-40-15 AGENCY COORDINATION. Any proposed administrative variance shall be submitted to city department heads, Malheur County and state or federal agencies, deemed by the Planning Director to have an interest in the action. Such departments or agencies shall submit comments, if any to the Hearing Officer no later than the date of review for approval of the application. If coordination reveals serious problems in need of resolution, the hearing officer may continue the action to another time specified.

10B-40-20 DECISION. The Planning Director shall set a date for review of the application. On the set date the Hearing Officer shall study the issues raised by the application, examine the situation on the ground and consider all comments by interested governmental agencies, then decide the issue and make findings appropriate to support the decision. The Planning Director shall notify the applicant of the decision and shall notify all property owners.

10B-40-25 REQUIRED FINDINGS, DECISION CRITERIA. The Hearing Officer may grant an Administrative Variance of up to 25 percent of required setbacks, fence height, vision clearance area, number of parking spaces, or minimum open area; or up to 15 percent of required lot area, lot depth and width, lot coverage, and any other quantifiable land development standard, in each case when all of the following conditions are found to exist:

1. Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Title;
2. Strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges generally enjoyed by the owners or other properties classified in the same zone;
3. There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other properties classified in the same zone;
4. The granting of the administrative variance will not constitute a grant of special privileges inconsistent with the limitations on other properties classified in the same zone;
5. The granting of the administrative variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; and

6. The administrative variance is the minimum variance which would alleviate the difficulty.

10B-40-30 EXPIRATION OF ADMINISTRATIVE VARIANCE. No administrative variance granted by the hearing officer shall be valid for a period longer than six months unless permitted administrative variance is established within such period, or in the event such permitted variance is dependent upon the erection or alteration of a building, unless the building permit for said erection or alteration is obtained within such six-month period; provided, however, that the Hearing Officer, upon a written request of the applicant, may extend the period six months but not in excess of 18 months from the date the first order granting the administrative variance was given.

10B-40-35 APPEAL TO PLANNING COMMISSION. The action and/or decision of the Hearing Officer may be appealed to the Planning Commission within the time frame and by those with standing to appeal as set forth in this Title.

CHAPTER 10B-45 ANNEXATION

10B-45-05 PURPOSE AND AUTHORITY. Annexations shall be processed according to the provisions of the Oregon Revised Statutes, The comprehensive plan and provisions of this Title. The inclusion of land within the urban growth boundaries as shown on the comprehensive plan shall be evidence of the annexability of the land if other statutory criteria are met, and therefore no land hearing on the subject of annexability need be held.

10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.

10B-45-15 HEARING DATE, NOTICE, DECISION. When the Planning Director receives a complete petition for annexation, he/she shall determine if annexation is in harmony with the comprehensive plan and if the accompanying documents are in compliance with the statutes. If the petition is in compliance with the plan and statutes, the Planning Director shall transmit the annexation question to the City Council for preparation of an ordinance and advertising of a public hearing.

The Planning Director shall advertise a public hearing on the quasi-judicial change of the zoning map as specified in Title 10A and 10B. If the requested zoning change requires a legislative plan change, the Planning Director shall set hearing dates and advise D.L.C.D. as set forth in this Title for legislative plan changes. Each constituent action in a consolidated action shall be decided and subject to appeal according to the procedures set forth in this Title for each type of action.

10B-45-20 AGENCY COORDINATION. Within ten days after the effective date of the annexation proceedings, the City Recorder shall submit to the Oregon Secretary of State one copy of the annexation ordinance, a copy of the statement of consent of landowners in the territory annexed; a description of metes and bounds or legal subdivision, and a map depicting the new city limits. Similar exhibits shall also be sent to the Malheur County Assessor, Malheur County Clerk, Malheur County Planning Department, and the Center of Population Research and Census at Portland State University. The map of the new City limits shall be sent to all local utilities and to the Fire and Police Departments.

CHAPTER 10B-52 PROPERTY LINE ADJUSTMENT

10B-52-05 PURPOSE AND AUTHORITY. Property line adjustments (boundary adjustments) are defined as not the partitioning of land, but only the relocation of a common boundary line where an additional parcel is not being created and the

existing parcel is not being reduced below the minimum lot size required by the zone. Prior to filing of the new deeds as required in Section 10B-52-20, the Planning Director and Public Works Director are authorized to approve property line adjustments when all of the necessary requirements listed in Section 10B-52-20 have been met.

Approval, conditional approval or denial of the final plan by the Planning Director and the Public Works Director shall be the final action of the City, unless the action is appealed to the Planning Commission as provided in this Title.

10B-52-10 INITIATION OF ACTION. Property line adjustments, Tentative Plans, shall be filed and fees paid in accordance with the provisions of this Title.

10B-52-15 DECISION. Upon receipt of the Tentative Plan, for a property line adjustment, the Planning Director and the Public Works Director shall review the tentative plan for compliance with Section 10B-52-20 and shall notify the applicant of their decision within seven (7) working days from the date of submittal.

10B-52-20 DECISION CRITERIA. The following criteria shall be the basis for approval of the tentative plan for a property line adjustment:

1. New deed descriptions resulting from property line adjustments shall clearly show those property lines being moved and shall describe the new configuration of both parcels in their entirety.
2. New property lines being created by the property line adjustments shall be surveyed and new property corners established and marked at each new corner by a registered professional land surveyor and a record of survey filed with the County Surveyor.
3. No property line adjustment shall be allowed when the property lines thus adjusted would result in either property being split zoned.
4. A property line adjustment shall not be approved if the proposed adjustment is found to encroach upon the required yard space of any existing structure(s). All proposed property line adjustment survey tracings shall include the location of all existing structures, together with sufficient detailed measurements to accurately locate said structures on the property involved.
5. The record of survey shall be signed by all affected landowners, lienholder, the City Planning Director and the Public Works Directors showing their approval for the property line adjustment. The property line adjustment shall be filed with the County surveyor within forty five (45) days from the date of approval. Evidence of such filing shall be returned to the city within seven (7) days from the date of filing.
6. New deeds as required by this section shall be filed with the County Clerk within forty five (45) days from the date of approval. Evidence of such filing shall be returned to the city within seven (7) days from the date of recordation.

CHAPTER 10B-55 PARTITIONS AND SUBDIVISIONS

10B-55-05 PURPOSE AND AUTHORITY. Partitions and Subdivisions are defined by ORS 92.010. The statutes authorize local governments to adopt standards for constructing partitions and subdivisions and procedures for processing applications as well as criteria to consider for approval. Applications for approval of Partitions and Subdivisions shall be handled as Quasi-judicial Actions under the provisions of this Title for such actions. Tentative plans for Partitions and Subdivisions shall be reviewed by the Technical Review Committee (TRC) as provided for by Chapter 10B-56.

10B-55-10 INITIATION OF ACTION. The person or authorized agent requesting the Partition or Subdivision shall file a written application, including the appropriate fees, which shall be paid in accordance with the provisions of this Title. As prescribed by ORS 92.040, each application shall include the Tentative Plan showing the general design of the proposed subdivision or partition. In addition to information required for partition or subdivision applications, the Technical Review Committee may require the submission of all or part of the information required for Land Use Actions of this Title, if such information is needed to properly process the Tentative Plan of a Partition or Subdivision.

10B-55-15 PUBLIC HEARINGS, NOTICE. When an application is received for approval of a partition or subdivision, two (2) Public hearings shall be scheduled. The first, before the Planning Commission for the purposes of preparing recommendations to the City Council, and the second before the City Council for approval of the permit. The Planning Director shall set appropriate dates, and give notice of the hearings in the manner provided for in Chapter 10B-03 (Notice of Public Hearing) of this Title.

10B-55-20 AGENCY COORDINATION. Any tentative plan for a Partition or Subdivision shall be submitted to City Department Heads, Malheur County and State or Federal Agencies, deemed by the Planning Director to have an interest in the action. Such departments or agencies shall submit comments, if any, to the Planning Commission no later than the public hearing. If coordination reveals serious problems in need of resolution, the Commission may continue the hearing to its next regular meeting or other time specified. If counter proposals are developed that are materially different from that in the notice for the first public hearing, then new notices shall be given.

10B-55-25 STATEMENT OF WATER RIGHTS. Upon application for a permit of partition or subdivision, the applicant seeking the permit shall be advised that it is a requirement of this section that he file a statement of water right.

10B-55-30 FINDINGS, DECISION CRITERIA. The Commission in recommending approval, denial or approval conditioned upon changes of a Tentative Plan, to the City Council shall consider the following as appropriate:

1. Access, circulation ease and safety for vehicles, pedestrians and bicycles;
2. Adequate emergency or utility equipment access to all lots;
3. Preservation of solar energy access to the maximum number of lots;
4. The ability of all lots to be built upon as of right under the zoning currently governing the land;
5. The design promotes the efficient use of public facilities and services;
6. The design on the tentative plan complies with the design standards set forth in the subdivision regulations of this Title;
7. Securing safety from fire, flood, slides, pollution or other dangers;
8. Facilitating adequate provision of transportation, water supply, sewerage, drainage, education, recreation or other needs;
9. Preventing the overcrowding of land.

10B-55-35 EFFECT OF COUNCIL APPROVAL. Approval of the Tentative Plan by the Council shall constitute approval of the final plat, if there is no change in the plan for land development and the subdivision is constructed in compliance with the standards of this Title. The City Council shall be the final decision authority on partitions and subdivision applications.

10B-55-40 NOTIFICATION OF ACTION. The action of the Council shall be noted on two copies of the Tentative Plan, and shall include reference to any attached documents describing conditions to be met. One copy shall be transmitted to the applicant and one is to remain in the action file of the City. All persons who have been a party to the proceeding, but not present when the decision was rendered, shall be notified by the Planning Official.

10B-55-45 SUBMISSION OF FINAL PLAT. Within one year after approval of the Tentative Plan, the applicant shall cause the subdivision to be constructed, surveyed, and a plat prepared to the specifications of the subdivision regulations of this Title. The applicant shall submit the original drawing, or a duplicate original reproducible drawing and five (5) sets of prints and supplemental exhibits as required by the subdivision regulations, to the city for review and approval.

If the applicant wishes to proceed with the land development after the expiration date of the approved Tentative Plan, an application for extension may be sought from the Council. The council may require the submittal of a new Tentative Plan revised to meet current conditions.

10B-55-50 TECHNICAL REVIEW OF FINAL PLAT. Upon receipt of the final plat, it shall be reviewed by the Technical Review Committee, who shall examine the plat and the development to determine if the subdivision has been constructed and the plat prepared in substantial compliance with the approved Tentative Plan and the standards of the subdivision regulations.

The Public Works Director may direct field checks if he deems them advisable to verify that the plat is sufficiently correct on the ground.

If the Public Works Director finds that full conformity has not been achieved, he shall advise the applicant, or his engineer or surveyor of changes or additions required and shall afford the applicant an opportunity to make changes or additions.

10B-55-55 APPROVAL OF THE FINAL PLAT. If the Technical Review Committee determines that the plat and all required exhibits are in conformity with the standards of the subdivision regulations and that the subdivision has been constructed to the City's engineering standards, the Public Works Director shall advise the Mayor, who may then sign the plat. The installation of subdivision improvements may be delayed under bond or other financing guarantee specified in the subdivision regulations.

10B-55-60 DEDICATION OF STREETS, ACCEPTANCE. All streets, alleys and easements shown on the plat shall be expressly dedicated to the public and acceptance of the final plat by the city shall constitute acceptance of such platted streets, alleys and easements. Private streets shown on the plat shall be approved as specified by this Title and shall not be accepted as streets or alleys by the approval of the plat, however, all easements shall be dedicated to the public.

10B-55-65 FILING OF PLAT. Within ten days of the signing of the plat by the Mayor, the applicant shall secure the other required signatures and shall immediately record the plat and associated exhibits with the Malheur County Recorder.

10B-55-70 FAILURE TO TIMELY RECORD. If the applicant does not record the plat and associated exhibits with the Malheur County Recorder within 60 days, all of the City approvals shall be null and void, and the planning official shall advise the County Recorder that the plat is not approved for recording.

10B-55-75 PRIVATE STREET IN SUBDIVISION OR PARTITION. Private streets may be created in a partition or subdivision as a variance from the subdivision regulations and processed as a quasi-judicial variance as provided for in this Title, and adhere to the following requirements:

1. Document accompanying a plat containing a private street shall include a fully organized home owner's association with powers and financial capability to maintain such private street.
2. Any private street shall be constructed to the engineering standards of the subdivision regulations in this Title.

10B-55-80 PUBLIC STREET OUTSIDE LAND DEVELOPMENT. A public street may be created by deed to the City if such deed is accepted by the City, Malheur County or the State of Oregon.

The establishment of such street shall be initiated by the City, County or State if declared essential for the purpose of general traffic circulation. The completion of the improvements in the street shall be provided for in the proceedings leading to the acceptance of the street.

Additional building sites created by the establishment of a deeded street shall be processed as a partition or subdivision.

10B-55-85 ACCEPTANCE OF A DEEDED STREET, PROCEDURE. If an action for accepting a deeded street is made known to the Council, the Council shall refer the matter to the Planning Commission for public hearing as provided herein, and recommendation. Upon receiving the recommendation from the Commission, the Council shall, by motion, accept or deny the action to accept the deed. If the council decision is to accept the deed, the Council shall accept the deed by ordinance as provided for in the City charter.

CHAPTER 10B-56 REVIEW COMMITTEE

10B-56-01 TECHNICAL REVIEW COMMITTEE.

1. Establishment. The Technical Review Committee (TRC) is established to act in a technical review capacity for the City of Ontario and is authorized to perform such functions as provided for in this ordinance. The TRC shall consist of the following members or their duly authorized representatives.
 1. Director - City Planning Department.
 2. Director - Public Works, who shall serve as Chairman.
 3. Manager - Technical Services.
 4. Ontario City Surveyor.
 5. Ontario City Building Official.
 6. Ontario City Fire Chief.
2. Responsibility of TRC. The TRC shall have the responsibility to examine all Tentative (Preliminary) Land Partitions and Subdivision plats and assist the Planning Director in rendering a decision relating to the approval, conditional approval or disapproval of said applications. In the case of a variance or conditional use request, the TRC shall form a committee recommendation to the Planning Director. Applications for review by the TRC shall be submitted ten (10) days prior to any review. The TRC shall not limit its review to land divisions exclusively, but shall also be utilized in preliminary review of all major construction projects and other issues which may require technical review.

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