

RECEIVED

MILWAUKIE PLANNING COMMISSION
WORKSESSION
TUESDAY, APRIL 24, 1990

MAY X 1990

PLANNING

COMMISSIONERS PRESENT

Chairman Littlehales
Angus Anderson
Carolyn Tomei
Don Trotter
Bob Vial

STAFF PRESENT

Maggie Collins,
Community Dev. Dir.
Dave Krogh,
Assistant Planner
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Betty Fulmore
Patricia Lent

1.0 CALL TO ORDER

Chairman Littlehales called the meeting to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS - None.

3.0 CONSENT AGENDA

3.1 PLANNING COMMISSION MINUTES: April 10, 1990

Don Trotter moved to approve the Minutes of April 10, 1990 as amended. Chairman Littlehales seconded. MOTION PASSED 3-0 with two abstentions. Angus Anderson and Carolyn Tomei were not at that meeting.

4.0 PUBLIC COMMENT -- None.

5.0 PUBLIC HEARINGS -- None.

6.0 CONSIDERATION ITEMS -- None.

7.0 OLD BUSINESS

7.1 Continued Worksession on Solar Access Ordinance

Maggie Collins presented a draft copy of the Solar Access Ordinance to the Commission. She then gave a brief summary of the Ordinance. Section X03 deals with new developments and solar access arrangement; Section X04 deals with the Solar Balance Point, making accommodations in single lots to allow the siting to take advantage of solar access; and Section X05 covers the solar access permit which allows an existing property owner to apply for a permit to protect solar access features for a single-family residence.

The Commission reviewed the draft ordinance and the following changes were suggested:

1. Figures and drawings will be reviewed and inserted at appropriate places.
2. Section X02.B -- Eliminate the words "short plat." Sentence will then read, "Any partition, subdivision..."
3. Section X02.E -- Include a list of the 261 solar friendly trees.
4. The words "Director" and "Planning Director" need to be consistent throughout the document.
5. Section X03.A -- Figures 9 and 10 need to be added to the document.
6. Section X03.05, First Sentence -- "...necessary if it finds..." should be changed to "...necessary if he/she finds..." referring to the director.
7. Section X03.04.D -- "...subject to the Solar Access Ordinance for New Development..." changed to "...subject to Section X03..."
8. Section X03.05.B -- Add the % sign in the second sentence, "...at least 50% of..."
9. Section X03.06, first paragraph -- Eliminate the words "the Solar Balance Point Ordinance," and replace it with "Section X04." Eliminate the words "the Solar Access for New Development," and replace them with "Section X03."

10. Section X03.08 -- Addition of the words "in Section X03." in the first sentence. "...Solar Access protection in Section X03. shall be process..."
11. Section X04.06, first paragraph -- Change the words "extent it finds the applicant" to read, "extent he/she finds the applicant."
12. Section X04.05.E and Section X04.09 -- Staff will have Paul Roeger review this section of the draft ordinance for his comments and suggestions.
13. Section X05.05.A -- Fill in the blank space with "County Assessors Office."
14. Section X05.5.D -- Change "Solar Access Point" to Section X03.; change "...causes not more shade..." to "...causes no more shade..."; and change "Solar Balance Point Ordinance" to "solar balance point provision."

Staff will make the changes and have revised draft ordinance for the public hearing on May 8th.

Recess was taken at 7:50 p.m. and reconvened at 8:00 p.m.

8.0 OTHER BUSINESS

8.1 Worksession on Zone Change Criteria

Dave Krogh reviewed with the Commission the proposed changes for zoning map amendment criteria in the City Zoning Ordinance. These changes were generated from Periodic Review. City Council, in their review of the Comprehensive Plan, requested clarification on Section 9.03.1 and wanted additional provisions on conditional zoning. The goal of the work program is to bring this section into conformity with Periodic Review Comprehensive Plan revisions.

A lot of areas in the City were not given maximum zoning because of the inadequacy of public facilities. In 1984 a public facilities project was completed, upzoning many of these areas. The Comprehensive Plan is the guideline for these public facilities requirements.

Changes in the Comprehensive Plan through the Periodic Review process have addressed the concerns of the City Council and Planning Commission. Proposed new language to the Zoning Ordinance was submitted by Staff.

The Planning Commission reviewed the draft ordinance and the following changes were suggested:

1. Section 9.03.2 -- Change wording from "...current use of the site...", to "...current use and zoning of the site..."
2. Section 9.03.4 -- Change wording from "...zoning standards and requirements..." to "...zoning standards for the proposed zone as well as requirements..."
3. Coordinating Section 9.04 and 9.03. Conditions 1 and 2 of Section 9.04 should become 7 and 8 of Section 9.03. Eliminate the last sentence in Section 9.04.

Recess was taken at 9:00 p.m and reconvened at 9:10 p.m.

4. Section 9.05.2 - Delete the words, "specific design provisions".
5. Section 9.05.3 -- Change language to read, "Restriction of the uses to be allowed on a specific property, and that as proposed by the applicant, even though other uses are authorized by the above."

Staff will review Section 9.05 with the City Attorney to see if the proposed changes are feasible. Any further changes to Sections 9.05 through 9.09 will depend on comments from the City Attorney.

- 9.0 NEXT MEETING: May 8, 1990
9.1 Continuation of ZC-89-04/CU-89-06/CU-89-07
9.2 Public Hearing on Solar Access Ordinance
9.3 Continuation of Zone Change Criteria Worksession
9.4 Election of Officers

Bob Vial moved to adjourn the meeting of April 24, 1990.
Carolyn Tomei seconded. MOTION PASSED UNANIMOUSLY 5-0.
Meeting adjourned at 10:16 p.m.

John Littlehales,
Chairman

Shirley Richardson
Shirley Richardson,
Hearings Reporter

AGENDA
MILWAUKIE PLANNING COMMISSION
Milwaukie Center, 5440 S.E. Kellogg Creek Dr.
Tuesday, April 24, 1990, at 6:30 p.m.

1.0 Call to Order

2.0 Procedural Questions

3.0 Consent Agenda

3.1 Planning Commission Minutes: April 10, 1990

3.2 City Council Minutes: April 3, 1990

4.0 Public Comment

This is an opportunity for the public to comment on any item not on the agenda.

5.0 Public Hearings (see Public Hearing Procedure on reverse) - None

6.0 Consideration Items - None

7.0 Old Business*

7.1 Continued Worksession on Solar Access Ordinance

8.0 Other Business

8.1 Worksession on Zone Change Criteria

9.0 Next Meeting: May 8, 1990

9.1 Continuation of ZC-89-04/CU-89-06/CU-89-07

9.2 Public Hearing on Solar Access Ordinance

9.3 PFP Worksession

The Milwaukie Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please.

| | |
|--|--|
| Commissioners: John Littlehales, Chairman | Staff: Maggie Collins, Community Development Director |
| Angus Anderson | Anne Nickel, Development Coordinator |
| Betty Fulmore | Dave Krogh, Assistant Planner |
| Patricia Lent | Shirley Richardson, Hearings Reporter |
| Carolyn Tomei | |
| Don Trotter | |
| Bob Vial | |

* Information request sheets - delivered at meeting.

Public Hearing Procedure

1. Staff Report
2. Correspondence
3. Applicant's presentation
4. Public testimony from others in support of application
5. Comments or questions from interested persons who are neither proponents nor opponents
6. Public testimony from those in opposition to the application
7. Questions from the Planning Commission
8. Rebuttal testimony from Applicant
9. Closing of public hearing
10. Commission discussion/action

The Planning Commission's decision on these matters may be subject to further review or be appealed to the City Council. For further information, contact the Milwaukie Community Development Department office at 659-5171.

SOLAR ACCESS PROTECTION ORDINANCE

DRAFTX01 PURPOSE

The purpose of this ordinance is:

- A. To provide solar access protection to new development in subdivisions, new and remodeled single family homes, structures within single family zoning districts, and homes which make beneficial use of solar energy.
- B. To promote energy conservation and the wise use of the sun as a renewable resource.
- C. To implement provisions of the Milwaukie Comprehensive Plan encouraging use of solar energy.
- D. To provide a means of encouraging investment in solar design and solar equipment.

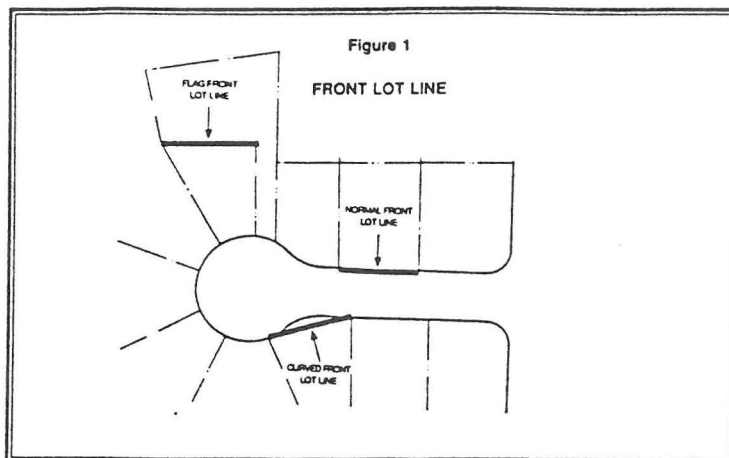
X02 DEFINITIONS

A. Crown Cover: The area within the drip line or perimeter of the foliage of a tree.

B. Development: Any short plat, partition, subdivision or planned unit development that is created under the city's land division or zoning regulations.

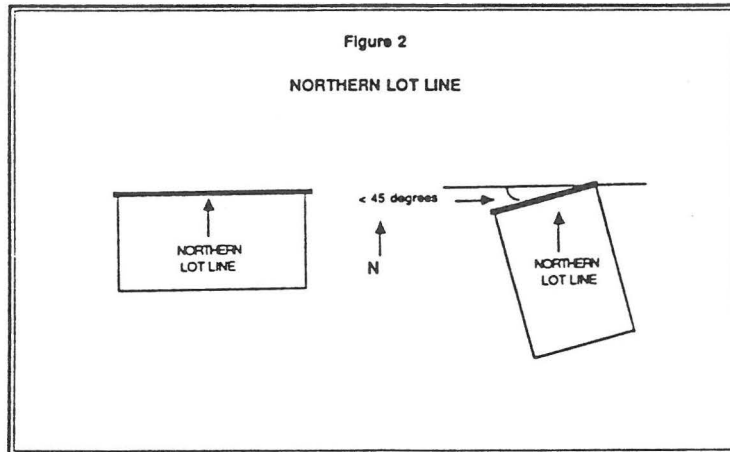
C. Exempt tree or vegetation: The full height and breadth of vegetation that the Planning Director has identified as "solar friendly"; any vegetation listed on a plat map, a document recorded with the plat, or a solar access permit as exempt.

D. Front lot line: For purposes of the solar access regulations, a lot line abutting a street. For corner lots the front lot line is that with the narrowest frontage. When the lot line abutting a street is curved, the front lot line is the chord or straight line connecting the ends of the curve. For a flag lot, the front lot line is the lot line that is most parallel to the closest to the street, excluding the pole portion of the flag lot (see Figure 1).

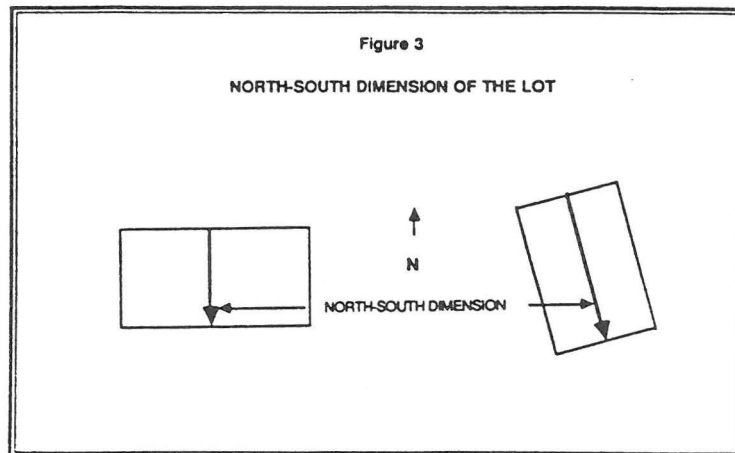


E. Non-exempt tree or vegetation: Vegetation that is not exempt.

F. Northern lot line: The lot line that is the smallest angle from a line drawn east-west and intersecting the northernmost point of the lot, excluding the pole portion of a flag lot. If the north line adjoins an undevelopable area other than a required yard, the northern lot line shall be at the north edge of such undevelopable area. If two lot lines have an identical angle relative to a line drawn east-west, then the northern lot line shall be a line 10' in length within the lot parallel with and at a maximum distance from the front lot line (see Figure 2).



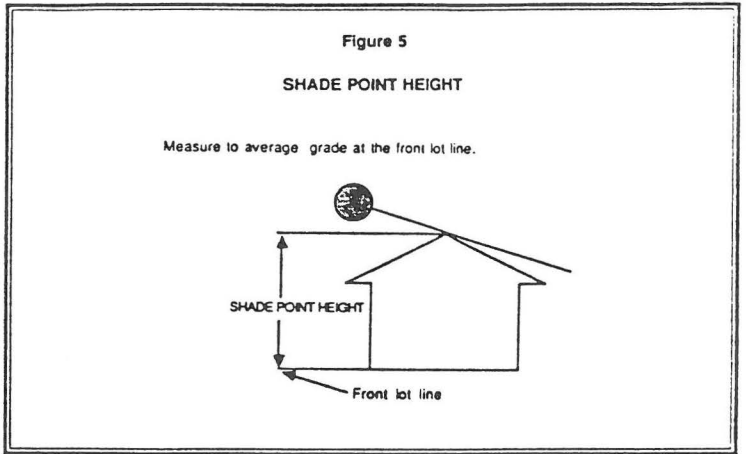
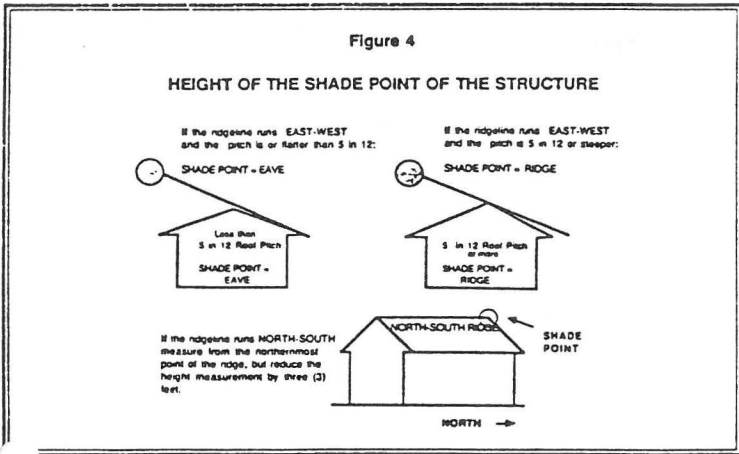
G. North-south dimension: The length of a line beginning at the mid-point of the northern lot line and extending in a southerly direction perpendicular to the northern lot line until it reaches a property boundary (see Figure 3).



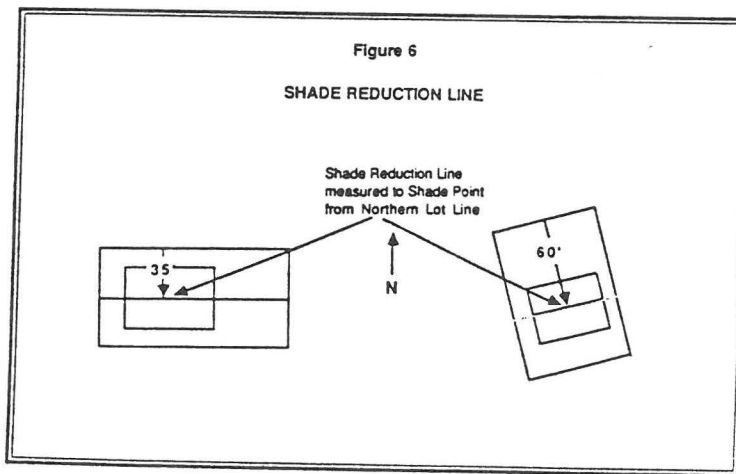
H. Protected solar building line: A line on a plat or map recorded with the plat that identifies the location on a lot where a point two feet above may not be shaded by structures or non-exempt trees (see Figure 10).

I. Shade: A shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

J. Shade point: The part of a structure or non-exempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south; except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 feet or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the north end of the ridgeline of a structure oriented within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 feet (vertical) in 12 feet (horizontal) the shade point will be the eave of the roof. If such a roof has a pitch that is 5 feet in 12 feet or steeper, the shade point will be the peak of the roof (see Figures 4 and 5).



K. Shade reduction line: A line drawn parallel to the northern lot line that intersects the shade point (see Figure 6).



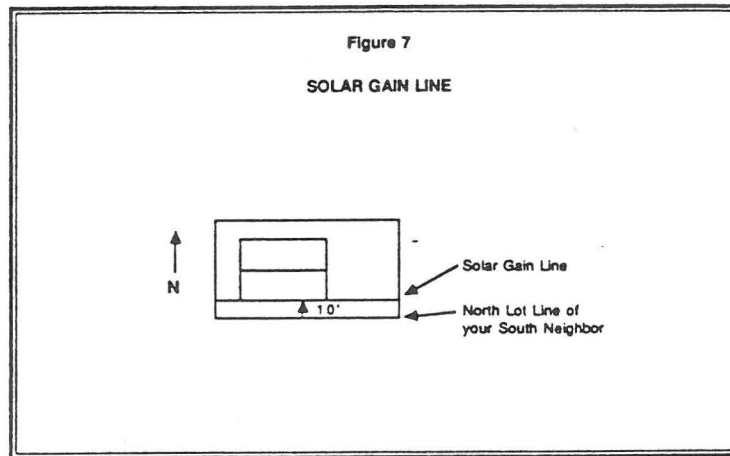
L. Shadow pattern: A graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 12).

M. Solar access height limit: A series of contour lines establishing the maximum permitted height for non-exempt vegetation on lots affected by a Solar Access Permit. (See Figure 11.)

N. Solar access permit: A document issued by the City that describes the maximum height that non-exempt vegetation is allowed to grow on lots to which a Solar Access Permit applies.

O. Solar feature: A device or combination of devices or elements that does or will use direct sunlight as a source of energy for such purposes as heating or cooling of a structure, heating or pumping of water, and generating electricity. Examples of a solar feature include a window that contains at least 20 square feet of glazing oriented within 45 degrees east and west of true south, a solar greenhouse, or a solar hot water heater. A solar feature may be used for purposes in addition to collecting solar energy, including but not limited to serving as a structural member or part of a roof, wall, or window. A south-facing wall without windows and without other features that use solar energy is not a solar feature for purposes of this ordinance.

P. Solar gain line: A line parallel to the northern property line(s) of the lot(s) south of and adjoining a given lot, including lots separated only by a street, that intersects the solar feature on that lot (see Figure 7).



Q. Solar Friendly Tree: A tree which the Planning Director has determined does not cause significant winter shade due to foliar period and branch structure. The Planning Director shall maintain a list of generally recognized solar friendly trees.

R. South or south facing: True south, or 20 degrees east of magnetic south.

S. Sunchart: One or more photographs that plot the position of the sun between 10:30 am and 1:30 pm on January 21, prepared pursuant to guidelines issued by the Planning Director. The sunchart shall show the southern skyline through a transparent grid on which is imposed solar altitude for 45 degree and 30 minute northern latitude in 10 degree increments and solar azimuth from true south in 15 degree increments.

SECTION X00 - SOLAR ACCESS ORDINANCE

- T. Undevelopable area: An area that cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater than 45 degrees east and west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of a property from another portion so that access is not practicable to the unbuildable portion; or manmade conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

X03 SOLAR ACCESS FOR NEW DEVELOPMENT

X03.01 Purpose

The purposes of solar access provisions for new development are to ensure that land is divided so that structures can be oriented to maximize solar access and to minimize shade on adjoining properties from structures and trees.

X03.02 Applicability

The solar design standards in Section X03.03 shall apply to applications for a development to create lots in single family zones and for single family detached dwellings in any zone, except to the extent the approved authority finds that the applicant has shown one or more of the conditions listed in Sections X03.04 and X03.05 exist, and exemptions or adjustments provided for therein are warranted.

X03.03 Design Standard

At least 80 percent of the lots in a development subject to these provisions shall comply with one or more of the options in this subsection; provided, a development may, but is not required to, use the options in subsections X03.03.B or X03.03.C to comply with Section X03.

- A. Basic Requirement. A lot complies with subsection X03.03 if it:
1. Has a north-south dimension of 90 feet or more; and
 2. Has a front lot line that is oriented within 30 degrees of a true east-west axis.

- B. Protected Solar Building Line Option. In the alternative, a lot complies with subsection X03.03 if a solar building line is used to protect solar access as follows:
1. A protected solar building line is designated on the plat or in documents recorded with the plat; and
 2. The protected solar building line is oriented within 30 degrees of a true east-west axis; and
 3. There is at least 70 feet between the protected solar building line and the middle of the north-south dimension of the lot to the south, measured along a line perpendicular to the protected solar building line; and
 4. There is at least 45 feet between the protected solar building line and the northern edge of the buildable area of the lot, or habitable structures are situated so that at least 80 percent of their south-facing wall will not be shaded by structures or non-exempt vegetation.
- C. Performance Option. In the alternative, a lot complies with Section X03.03 if:
1. Habitable structures built on that lot will have their long axis oriented within 30 degrees of a true east-west axis, and at least 80% of their ground floor south wall will be protected from shade by structures and non-exempt trees using appropriate deed restrictions; or
 2. Habitable structures built on that lot will orient at least 32% of their glazing and at least 500 square feet of their roof area to face within 30 degrees east or west of true south, and that glazing and roof area are protected from shade by structures and non-exempt trees using appropriate deed restrictions.

X03.04 Exemptions from Design Standard

A development is exempt from Section X03.03 if the Director finds the applicant has shown that one or more of the following conditions apply to the site. A development is partially exempt from Section X03.03 to the extent the Director finds the applicant has shown that one or more of the following conditions apply to a corresponding portion of the site. If a partial exemption is granted for a given development, the remainder of the development shall comply with Section X03.03.

SECTION X00 - SOLAR ACCESS ORDINANCE

- A. Slopes. The site, or a portion of the site for which the exemption is sought, is sloped 20 percent or more in a direction greater than 45 degrees east or west of true south, based on a topographic survey by a licensed professional land surveyor or USGS or other officially recognized topographic information.
- B. Off-site shade. The site, or a portion of the site for which the exemption is sought, is within the shadow pattern of off-site features, such as but not limited to structures, topography, or non-exempt vegetation, which will remain after development occurs on the site from which the shade is originating.
 - 1. Shade from an existing or approved off-site dwelling in a single family residential zone and from topographic features is assumed to remain after development of the site.
 - 2. Shade from an off-site structure in a zone other than a single family residential zone is assumed to be the shadow pattern of the existing or approved development thereon or the shadow pattern that would result from the largest structure allowed at the closest setback on adjoining land, whether or not that structure now exists.
 - 3. Shade from off-site vegetation is assumed to remain after development of the site if: the trees that cause it are situated in a required setback; or they are part of a developed area, public park, or legally reserved open space; or they are in or separated from the developable remainder of a parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to local law.
 - 4. Shade from other off-site sources is assumed to be shade that exists or that will be cast by development for which applicable local permits have been approved on the date a complete application for the development is filed.
- C. On-site shade. The site, or a portion of the site for which the exemption is requested, is:
 - 1. Within the shadow pattern of on-site features such as, but not limited to structures and topography which will remain after the development occurs; or

2. Contains non-exempt trees at least 30 feet tall and more than 6 inches in diameter measures 4 feet above the ground which have a crown cover over at least 80% of the site, or the relevant portion. The applicant can show such crown cover exists using a scaled survey or an aerial photograph. If granted, the exemption shall be approved subject to the condition that the applicant preserve at least 50% of the crown cover that causes the shade that warrants the exemption. The applicant shall file a note on the plat or other documents in the Office of the County Recorder binding the applicant to comply with this requirement. The City shall be made a party to any covenant or restriction created to enforce any provision of this ordinance. The covenant or restriction shall not be amended without written City approval.
- D. Completion of phased subdivision. The site is part of a phased subdivision none of which was subject to the Solar Access Ordinance for New Development, and the site and the remainder of the unplatted portion of the phased subdivision contain no more than 20 percent of the lots in all phases of the subdivision.

X03.05 Adjustments to Design Standard

The Director shall reduce the percentage of lots that must comply with Section X03.03 to the minimum extent necessary if it finds the applicant has shown it would cause or is subject to one or more of the following conditions.

- A. Adverse impacts on density and cost or amenities.
1. If the design standard in Section X03.03.A is applied, either the resulting density is less than that proposed, or on-site site development costs (e.g. grading, water, storm drainage and sanitary systems, and road) and solar related off-site site development costs are at least 5% more per lot than if the standard is not applied. The following conditions, among others, could constrain the design of a development in such a way that compliance with Section X03.03.A would reduce density or increase per lot costs in this manner. The applicant shall show which if any of these or other similar site characteristics apply in an application for a development.
 - a. The portion of the site for which the adjustment is sought has a natural grade that is sloped 10 percent or more and is oriented greater than 45 degrees east or west of true south based on a topographic survey of the site by a professional land surveyor or USGS or other officially recognized topographic information.

- b. There is a significant natural feature on the site, identified as such in the comprehensive plan or development ordinance, that prevents given streets or lots from being oriented for solar access, and it will exist after the site is developed.
 - c. Existing road patterns must be continued through the site or must terminate on-site to comply with applicable road standards or public road plans in a way that prevents given streets or lots in the development from being oriented for solar access.
 - d. An existing public easement or right-of-way prevents given streets or lots in the development from being oriented for solar access.
 2. If the design standard in Section X03.03.A applies to a given lot or lots, significant development amenities that would otherwise benefit the lot(s) will be lost or impaired. Evidence that a significant diminution in the market value of the lot(s) would result from having the lot(s) comply with Section X03.03.A is relevant to whether a significant development amenity is lost or impaired.
- B. Impacts of existing shade. The shadow pattern from non-exempt trees cover over at least 80% of the lot and at least 50 of the shadow pattern will remain after development of the lot. The applicant can show the shadow pattern using a scaled survey of non-exempt trees on the site or using an aerial photograph.
 1. Shade from non-exempt trees is assumed to remain if: the trees are situated in a required setback; or they are part of an existing or proposed park, open space, or recreational amenity; or they are separated from the developable remainder of their parcel by an undevelopable area or feature; or they are part of landscaping required pursuant to local law; and they do not need to be removed for a driveway or other development.
 2. Also, to the extent the shade is caused by on-site trees or off-site trees on land owned by the applicant, it is assumed to remain if the applicant files in the office of the County Recorder a covenant binding the applicant to retain the trees causing the shade on the affected lots.

X03.06 Protection from Future Shade

Structures and non-exempt vegetation must comply with the Solar Balance Point Ordinance on all lots in a development subject to Solar Access for New Development, including lots for which exemptions or adjustments to the Solar Access for New Development have been granted.

The applicant shall file a note on the plat or other documents in the office of the County Recorder binding the applicant and subsequent purchasers to comply with the future shade protection standards in Section X03.06. The City shall be made a party of any covenant or restriction created to enforce any provision of this ordinance. The covenant or restriction shall not be amended without written City approval.

X03.07 Application

An application for approval of a development subject to this ordinance shall include:

- A. Maps and text sufficient to show the development complies with the solar design standard of Section X03.03, except for lots for which an exemption or adjustment from Section X03.03 is requested, including at least:
 - 1. The north-south lot dimension and front lot line orientation of each proposed lot.
 - 2. Protected solar building lines and relevant building site restrictions, if applicable.
 - 3. For the purpose of identifying trees exempt from Section X03.06, a map showing existing trees at least 30 feet tall and over 6 inches diameter at a point 4 feet above grade, indicating their height, diameter and species, and stating that they are to be retained and are exempt.
 - 4. Copies of all private restrictions relating to solar access.
- B. If an exemption or adjustment to Section X03.03 is requested, maps and text sufficient to show that given lots or areas in the development comply with the standards for such an exemption or adjustment in Section X03.04 or X03.05, respectively.

SECTION X00 - SOLAR ACCESS ORDINANCE

X03.08 Process for Approval

Requirements for meeting this provision of Solar Access protection shall be processed simultaneously with other application requirements as provided by this Ordinance.

X04 SOLAR BALANCE POINT

X04.01 Purpose

The purposes of this Section are to promote the use of solar energy, to minimize shading of structures by structures and accessory structures, and, where applicable, to minimize shading of structures by trees. Decisions related to this Section are intended to be ministerial.

X04.02 Applicability

This Section applies to an application for a building permit for all structures in single family zones and all single family detached structures in any zone, except to the extent the approval authority finds the applicant has shown that one or more of the conditions listed in Sections X04.05 or X04.06 exists, and exemptions or adjustments provided for there are warranted. In addition, non-exempt vegetation planted on lots subject to the provisions of Section X03.06 shall comply with the shade point height standards as provided in Sections X04.05 and X04.06 below.

X04.03 Solar Site Plan Required

An applicant for a building permit for a structure subject to this ordinance shall submit a site plan that shows:

- A. The maximum shade point height allowed under Section X04.04;
- B. If the maximum shade point height is adjusted pursuant to Section X04.04.A.2, the average elevation of the rear property line;
- C. The location of the shade point, its height relative to the average elevation of the front lot line or the elevation at the midpoint of the front lot line, and its orientation relative to true south; and, if applicable,
- D. The solar balance point for the structure as provided in Section X04.08.

X04.04 Maximum Shade Point Height Standard

The height of the shade point shall comply with either subsection A or B below.

A. Basic Requirement.

1. The height of the shade point shall be less than or equal to the height specified in Table A or computed using the following formula. The height of the shade point shall be measured from the shade point to either the average elevation at the front lot line or the elevation at the mid-point of the front lot line. If necessary interpolate between the 5 foot dimensions listed in Table A.

$$H = \frac{(2 \times \text{SRL}) - N + 150}{5}$$

Where: H = the maximum allowed height of the shade point (see Figures 4 and 5);
 SRL = shade reduction line (the distance between the shade point and the northern lot line, see Figure 6); and
 N = the north-south lot dimension, provided that a north-south lot dimension more than 90 feet shall use a value of 90 feet for this Section.

2. Provided, the maximum allowed height of the shade point may be increased one foot above the amount calculated using the formula or Table A for each foot that the average grade at the rear property line exceeds the average grade at the front property line.

| TABLE A - MAXIMUM PERMITTED SHADE POINT HEIGHT (In Feet) | | | | | | | | | | | | | |
|---|-------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|
| Distance to Shade Reduction Line from northern lot line (in feet) | North-south lot dimension (in feet) | | | | | | | | | | | | |
| | 100+ | 95 | 90 | 85 | 80 | 75 | 70 | 65 | 60 | 55 | 50 | 45 | 40 |
| 70 | 40 | 40 | 40 | 41 | 42 | 43 | 44 | | | | | | |
| 65 | 38 | 38 | 38 | 39 | 40 | 41 | 42 | 43 | | | | | |
| 60 | 36 | 36 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | | | | |
| 55 | 34 | 34 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | | | |
| 50 | 32 | 32 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 |
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| 40 | 28 | 28 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 |
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| 10 | 16 | 16 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 5 | 14 | 14 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |

- B. Performance Option. The proposed structure, or applicable non-exempt vegetation, will shade not more than 20 percent of the south-facing glazing of existing habitable structure(s), or, where applicable, the proposed structure or non-exempt vegetation comply with Section X03.03.B or X03.03.C. If Section X03.03.B, Protected Solar Building Line, is used, non-exempt trees and the shade point of structures shall be set back from the protected solar building line 2.5 feet for every 1 foot of height of the structure or of the mature height of non-exempt vegetation over 2 feet.

X04.05 Exemption from the Maximum Shade Point Height Standard

The Director shall exempt a proposed structure or non-exempt vegetation from Sections X04.03 and X04.04 if the applicant shows that one or more of the conditions in this Section exist, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, suncharts or photographs, or other substantial evidence submitted by the applicant.

- A. Exempt Lot. When created the lot was subject to the Solar Access for New Development provisions and was not subject to the provisions of Section X03.06.
- B. Pre-existing shade. The structure or applicable non-exempt vegetation will shade an area that is shaded by one or more of the following:
 - 1. An existing or approved building or structure;
 - 2. A topographic feature; or
 - 3. A non-exempt tree that will remain after development of the site. It is assumed a tree will remain after development if it: is situated in a building setback required by local law; is part of a developed area or landscaping required by local law, a public park or landscape strip, or legally reserved open space; is in or separated from the developable remainder of a parcel by an undevelopable area or feature; or is on the applicant's property and not affected by the development. A duly executed covenant also can be used to preserve trees causing such shade.
- C. Slope. The site has an average slope that exceeds 20 percent in a direction greater than 45 degrees east or west of true south based on a topographic survey by a licensed professional land surveyor or USGS or other officially recognized topographic information.

- D. Insignificant benefit. The proposed structure or non-exempt vegetation shades one or more of the following:
 - 1. An undevelopable area;
 - 2. The wall of an unheated space, such as a typical garage;
 - 3. Less than 20 square feet of south-facing glazing; or
 - 4. An undeveloped lot, other than a lot that was subject to Section X03, where:
 - a. There are at least four single family detached or attached homes within 250 feet of the lot within the same subdivision or a phase of the subdivision; and
 - b. A majority of the homes identified in subsection 4.a above have an average of less than 20 square feet of south-facing glazing.
- E. Public Improvement. The proposed structure is a publicly owned improvement.

X04.06 Adjustments to the Maximum Shade Point Height Standard

The Director shall increase the maximum permitted height of the shade point determined using Section X04.04 to the extent it finds the applicant has shown one or more of the following conditions exist, based on plot plans or plats, corner elevations or other topographical data, shadow patterns, suncharts or photographs, or other substantial evidence submitted by the applicant.

- A. Physical conditions. Physical conditions preclude development of the site in a manner that complies with Section X04.04, due to such things as a lot size less than 3,000 square feet, unstable or wet soils, or a drainage way, public or private easement, or right-of-way.
- B. Conflict between the Maximum Shade Point Height and Allowed Shade on the Solar Feature Standards. A proposed structure may be sited to meet the solar balance point standard described in Section X04.08 or be sited as near to the solar balance point as allowed by Section X04.08, if:
 - 1. When the proposed structure is sited to meet the maximum shade point height standard determined using Section X04.04, its solar feature will potentially be shaded as determined using Section X04.07; and

2. The application includes a form provided for that purpose by the City that:
 - a. Releases the applicant from complying with Section X04.04 and agrees that the proposed structure may shade an area otherwise protected by Section X04.04.
 - b. Releases the City from liability for damages resulting from the adjustment; and
 - c. Is signed by the owner(s) of the properties that would be shaded by the proposed structure more than allowed by the provisions of Section X04.04.
3. Before the City issues a permit for a proposed structure for which an adjustment has been granted pursuant to Section X04.06.B, the applicant shall file the form provided for in subsection B.2 above in the office of the county recorder with the deeds to the affected properties.

X04.07 Analysis of Allowed Shade on Solar Feature

- A. An applicant may, but is not required to perform the calculations in or comply with the standards of this Section.
- B. Applicants are encouraged to design and site a proposed habitable structure so that the lowest height of any solar feature(s) will not be shaded by buildings or non-exempt trees on lot(s) to the south. The applicant should complete the following calculation procedure to determine if solar feature(s) of the proposed structure will be shaded. To start, the applicant should choose which of the following sources of shade originating from adjacent lot(s) to the south to use to calculate the maximum shade height at the north property line:
 1. Existing structure(s) or non-exempt trees; or
 2. The maximum shade that can be cast from future buildings or non-exempt trees, based on Table C. If the lot(s) to the south can be further divided, then the north-south dimension is assumed to be the minimum lot width required for a new lot in that zone.
- C. The height of the lowest point of any solar feature of the proposed structure is calculated with respect to either the average elevation or the elevation at the midpoint of the front lot line of the lot to the south.

SECTION X00 - SOLAR ACCESS ORDINANCE

D. The applicant can determine the height of the shadow that may be cast upon the applicant's solar feature by the source of shade selected in subsection B by using the following formula or Table B.

$$SFSH = SH - (SGL/2.5)$$

Where:

- SFSH = the allowed shadow height on the solar feature (see Figure 8)
- SH = the height of the shade at the northern lot line of lot(s) to the south as determined in Section X04.07.B
- SGL = the solar gain line (the distance from the solar feature to the northern lot line of adjacent lot(s) to the south, see Figure 7)

| Distance from Solar Gain Line to lot line (feet) | Allowed Shade Height at Northern Lot Line of Adjacent Lot(s) to the South (feet) | | | | | | | | | | |
|--|--|----|----|----|----|----|----|----|----|----|----|
| | 22 | 21 | 20 | 19 | 18 | 17 | 16 | 15 | 14 | 13 | 12 |
| 50 | 2 | 1 | | | | | | | | | |
| 45 | 4 | 3 | 2 | 1 | | | | | | | |
| 40 | 6 | 5 | 4 | 3 | 2 | 1 | | | | | |
| 35 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 | | | |
| 30 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 | |
| 25 | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 |
| 20 | 14 | 13 | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 |
| 15 | 16 | 15 | 14 | 13 | 12 | 11 | 10 | 9 | 8 | 7 | 6 |
| 10 | 18 | 17 | 16 | 15 | 14 | 13 | 12 | 11 | 10 | 9 | 8 |
| 5 | 20 | 19 | 18 | 17 | 16 | 15 | 14 | 13 | 12 | 11 | 10 |

Table C may be used to determine (SH) in the above formula.

| North-south lot dimension of adjacent lot(s) to the south | 100 | 95 | 90 | 85 | 80 | 75 | 70 | 65 | 60 | 55 | 50 | 45 | 40 |
|---|-----|----|----|----|----|----|----|----|----|----|----|----|----|
| Allowed shade height at the north property line of adjacent lot(s) to south | 12 | 12 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |

- E. If the allowed shade height on the solar feature calculated in subsection D is higher than the lowest height of the solar feature calculated in subsection C, the applicant shall be encouraged to consider changes to the house design or location which would make it practical to locate the solar feature so that it will not be shaded in the future.

X04.08 Solar Balance Point

If a structure does not comply with maximum shade point height standard in Section X04.04 and the allowed shade on a solar feature standard in Section X04.07, then the solar balance point of the lot shall be calculated (see Figure 8). The solar balance point is the point on the lot where a structure would be the same from complying with both of these standards.

X04.09 Yard Setback Adjustment

The City shall grant an adjustment to the side, front, and/or rear yard setback requirement(s) by up to 50% if necessary to build a proposed structure so it complies with either the shade point height standard in Section X04.04, the allowed shade on a solar feature standard in Section X04.07, or the solar balance point standard in Section X04.08 as provided herein (see Figure 8). This adjustment is not intended to encourage reductions in available solar access or unnecessary modification of setback requirements, and shall apply only if necessary for a structure to comply with the applicable provisions of this chapter.

A. R-5 Zone:

- 1. A front yard setback may be reduced to not less than 10 feet.
- 2. A rear yard setback may be reduced to not less than 10 feet.
- 3. A side yard setback may be reduced to not less than 3 feet.

B. R-7 Zone:

- 1. A front yard setback may be reduced to not less than 10 feet.
- 2. A rear yard setback may be reduced to not less than 10 feet.
- 3. A side yard setback may be reduced to not less than 3 feet.

C. R-10 Zone:

1. A front yard setback may be reduced to not less than 15 feet.
2. A rear yard setback may be reduced to not less than 15 feet.
3. A side yard setback may be reduced to not less than 5 feet.

X04.10 Application and Review Process

An application for a building permit shall include the information necessary to meet the provisions of Section X04.04. The Building Official shall refer the plan to the Director for review and approval prior to issuing a building permit, or the Director may delegate this responsibility for review and approval to the Building Official. Disagreements as to interpretation and application of this Section shall be made to the Planning Commission pursuant to _____.

X05 SOLAR ACCESS PERMIT

X05.01 Purpose

The purpose of this Section is to protect solar access to solar features on lots designated or used for a single family detached dwelling under some circumstances. It authorizes owners of such lots to apply for a permit that, if granted, prohibits solar features from being shaded by certain future vegetation on and off the permittee's site.

X05.02 Applicability

An owner or contract purchaser of property may apply for and/or be subject to a solar access permit for a solar feature if that property is in a single family zone, or is or will be developed with a single family dwelling. The City's decision whether or not to grant a solar access permit is intended to be ministerial.

X05.03 Approval standards for a solar access permit

The Director shall approve an application for a solar access permit if the applicant shows:

- A. The application is complete;
- B. The information it contains is accurate; and

- C. Non-exempt vegetation on the applicant's property does not shade the solar feature.

X05.04 Duties created by solar access permit

- A. A party to whom the City grants a solar access permit shall:
 - 1. Record the permit, legal descriptions of the properties affected by the permit, the solar access height limit, and the site plan required in Section X05.05.C with such modifications as required by the Director in the office of the county recorder with the deeds to the properties affected by it, indexed by the names of the owners of the affected properties, and pay the fees for such filing;
 - 2. Install the solar feature in a timely manner as provided in Section X05.08; and
 - 3. Maintain non-exempt vegetation on the site so it does not shade the solar feature.
- B. An owner of property burdened by a solar access permit shall be responsible and pay all costs for keeping non-exempt vegetation from exceeding the solar access height limit. However, vegetation identified as exempt on the site plan required in Section X05.05.C, vegetation an owner shows was in the ground on the date an application for a solar access permit is filed, and solar friendly vegetation are exempt from the solar access permit.

X05.05 Application contents

An application for a solar access permit shall contain the following information:

- A. A legal description of the applicant's lot and a legal description, owners' names, and owners' addresses for lots all or a portion of which are within 150 feet of the applicant's lot and 54 degrees east and west of true south measured from the east and west corners of the applicant's south lot line. The records of the _____ shall be used to determine who owns property for purposes of an application. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons who may be affected.
- B. A scaled plan of the applicant's property showing:
 - 1. Vegetation in the ground as of the date of the application if, when mature, that vegetation could shade the solar feature.

2. The approximate height above grade of the solar feature, its location, and its orientation relative to true south.
- C. A scaled plan of the properties on the list required in subsection A above showing:
1. Their approximate dimensions; and
 2. The approximate location of all existing vegetation on each property that could shade the solar feature(s) on the applicant's property.
- D. For each affected lot, the requested solar access height limit. The solar access height limit is a series of contour lines establishing the maximum permitted height for non-exempt vegetation on lots affected by a Solar Access Permit (see Figure 11). The contour lines begin at the bottom edge of a solar feature for which a permit is requested and rise in five foot increments at an angle to the south not less than 21.3 degrees from the horizon and extend not more than 54 degrees east and west of true south. Notwithstanding the preceding, the solar access height limit at the northern lot line of any lot burdened by a solar access permit shall allow non-exempt vegetation on that lot whose height causes not more shade on the benefitted property than could be caused by a structure that complies with the Solar Balance Point Ordinance for existing lots.
- E. A fee as required by the City.
- F. If available, a statement signed by the owner(s) of some or all of the property(ies) to which the permit will apply if granted verifying that the vegetation shown on the plan submitted pursuant to Section X05.05.C above accurately represents vegetation in the ground on the date of the application. The City shall provide a form for that purpose. The signed statements provided for herein are permitted but not required for a complete application.

X05.06 Application review process

- A. Unless waived by the Director, prior to filing an application for a solar access permit, an applicant or applicant's representative shall pay the fee required by Section X05.05.E and meet with the Director or his or her designate to discuss the proposal and the requirements for an application. If a meeting is held, the Director shall convey a written summary of the meeting to the applicant by mail within 5 calendar days of the meeting.

SECTION X00 - SOLAR ACCESS ORDINANCE

- B. After the pre-application meeting is held or waived, the applicant may file an application containing the information required in Section X05.05 above.
- C. Within 7 calendar days after an application is filed, the Director or his or her designate shall determine whether the application is complete and if it is not complete, notify the applicant in writing, and specify what is required to make it complete.
- D. Within 14 calendar days after the Director decides an application for a solar access permit is complete, the Director or his or her designate shall issue a written decision tentatively approving or denying the request, together with reasons therefore, based on the standards of Section X05.03.
 1. If the tentative decision is to deny the permit, the Director shall mail a copy of the decision to the applicant.
 2. If the tentative decision is to approve the permit, and the owners of all affected properties did verify the accuracy of the plot plan as permitted under Section X05.05.F, the Director shall mail a copy of the decision to the applicant and affected parties by certified mail, return receipt requested.
 3. If the tentative decision is to approve the permit, and the owners of all affected properties did not verify the accuracy of the plot plan as permitted under Section X05.05.F, the Director shall send a copy of the tentative decision to the applicant and to the owners of affected properties who did not sign the verification statement pursuant to Section X05.05.F by certified mail, return receipt requested. If the Director determines that the owners of a given property affected by the permit are not the occupants of that property, then the Director also shall send a copy of the notice to the occupants of such property.
 - a. The notice sent to the applicant shall include a sign that says a solar access permit for the property has been tentatively approved, and that informs readers where to obtain more information about it. The applicant shall be instructed to conspicuously post the sign so it is visible from right-of-way adjoining the property, and to sign and return a form provided by the Director certifying that the sign was posted as provided herein not more than 14 days after the tentative decision was mailed.

- b. The notice shall include the plot plans required in Sections X05.05.B and X05.05.C above, the proposed solar access height limits, and duties created by the permit.
 - c. The notice shall request recipients to verify that the plot plan shows all non-exempt vegetation on the recipient's property, and to send the Director comments in writing within 14 calendar days after the tentative decision is mailed if the recipient believes the applicant's plot plan is inaccurate.
4. Within 28 days after notice of a tentative decision is mailed to affected parties, the Director shall consider responses received from affected parties and/or an inspection of the site, modify the plot plan and the permit to be consistent with the accurate information, and issue a final decision. The Director shall send a copy of the permit and solar access height limits to the owners of each property affected by the permit by certified mail, return receipt requested.
- E. If the application is approved, the applicant shall record the permit, associated solar access height limits, legal descriptions for the affected properties, and the site plan required in Section X05.05.C with such modifications as required by the Director in the office of the county recorder with the deeds to the properties affected by it before the permit is effective.

X05.07 Permit enforcement process

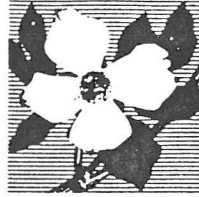
- A. Enforcement request. A solar access permittee may request the City to enforce the solar access permit by providing the following information to the Director:
 1. A copy of the solar access permit and the plot plans submitted with the permit; and
 2. The legal description of the lot(s) on which alleged non-exempt vegetation is situated, the address of the owner(s) of that property, and a scaled site plan of the lot(s) showing the non-exempt vegetation; and
 3. Evidence the vegetation violates the solar access permit, such as a sunchart photograph, shadow pattern, and/or photographs.

- B. Enforcement process. If the Director determines the request for enforcement is complete, he or she shall initiate an enforcement action pursuant to _____. Provided the Director shall not enforce the permit against vegetation the owner of which shows was in the ground on the date the permit application was filed with the City.

X05.08 Expiration and extension of a solar access permit

- A. Expiration. Every permit issued by the Director under the provisions of this ordinance shall expire if the construction of the solar feature protected by such permit is not commenced within 180 days from the date of such permit, or if the construction of the solar feature protected by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. If the permittee does not show construction of the solar feature will be started within 180 days of the date of the permit or the extension, or if the solar feature is removed, the Director shall terminate the permit by recording a notice of expiration in the office of the county recorder with the deeds to the affected properties.
- B. Extension. Any permittee holding an unexpired permit may apply for an extension of the time within which he or she may commence work under that permit when he or she is unable to commence work within the time required by this Section for good and satisfactory reasons. The Director may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

CITY OF MILWAUKIE



MEMORANDUM

COMMUNITY DEVELOPMENT DEPARTMENT
April 24, 1990

To: Milwaukie Planning Commission
Thru: Maggie Collins, Community Development Director
From: Dave Krogh, Assistant Planner
Re: Zoning Map Amendment Criteria Worksession

Proposal

To develop new Zoning Map Amendment criteria, replacing current Section 9.03 of the City Zoning Ordinance.

Background

This proposal has alternately been discussed, put on hold, and rediscussed for the past 2 and 1/2 years. Last fall, the City Council desired to add this proposal to the Periodic Review project. At the request of the Planning Commission, this proposal was pulled out of Periodic Review so that the Planning Commission could have better input into an adoption process. This proposal was to have followed the Stanley-Linwood Area Designation/Zoning project, however, the Commission felt that updating the zoning map amendment criteria should take precedence.

To facilitate this code revision process, Staff is suggesting the following work program with a 90 day completion deadline.

WORK PROGRAM

Goal

To update, by July 24, 1990, the Zoning Map Amendment criteria of Section 9.03 of the City Zoning Ordinance. The intent of this update is to bring this section into conformity with Periodic Review Comprehensive Plan revisions and to provide clear and objective standards as required by law.

Objectives

1. To provide new zoning map amendment criteria consistent with the newly updated Comprehensive Plan.
2. To make certain the new criteria meet legal requirements for clear and objective standards.
3. To explore the feasibility of incorporating provisions to allow conditional rezoning.

Process

The timeline for completion of this process is estimated at 90 days. This will be a two step process following Legislative Review procedures of Section 10.05 (E) of the Zoning Ordinance. Both the Planning Commission and City Council will need to review and hold a public hearing as part of this process.

The Planning Commission will hold at least 2 worksessions and 1 public hearing. The City Council will hold at least 1 worksession and 1 public hearing. This process is flexible and can be extended if additional review time is desired by either the Commission or Council.

Focus of meetings:

| | <u>Date</u> | <u>Review Body</u> | <u>Subject of Meeting</u> |
|----|-------------|--------------------|--|
| 1. | 4/24 | PC | Introductory worksession |
| 2. | 5/8 | PC | Worksession to fine-tune new code language |
| 3. | 6/12 | PC | Public Hearing |
| 4. | 6/19 | CC | Worksession to explain the PC's proposal |
| 5. | 7/3 | CC | Public Hearing |

End Product

Section 9.03 of the Zoning Ordinance will be replaced by the new code language.

Tasks

Meeting 1 (4/24) - PC Worksession

- Review current code language deficiencies
- Review applicable Plan policies
- Review sample codes from other jurisdictions
- Review staff proposed code language
- Suggest corrections/revisions
- Submit draft language for City Attorney comments

Meeting 2 (5/8) - PC Worksession

Correct code language and fine-tune as needed

Meeting 3 (6/12) - PC Public Hearing

Public comments and evaluation

Meeting 4 (6/19) - CC Worksession

- Process explanation
- Introduction of PC revisions

Meeting 5 (7/3) - CC Public Hearing

- Public comments and evaluation
- CC adoption of ordinance (effective in 30 days)

Existing Zoning Map Amendment Criteria

Section 9.03 reads as follows:

"The following criteria will be applied to a proposal for change to the Zoning Map. Two conditions must be met before upzoning may be approved. If conditions are completely met, the rezoning request will be approved. The conditions are:

Memo to Planning Commission
Zoning Map Amendment Criteria
April 24, 1990

1. The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided by the applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.).
2. Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department. For the purpose of this requirement, public facilities include:
 - a. Water service
 - b. Sanitary sewers
 - c. Storm sewers
 - d. Streets
 - e. Police and fire protection
 - f. Schools

Where public utilities are required to be installed or improved by the applicant, a performance contract or bond, assuring their installation to specified standards is required."

Need for Modification of Section 9.03

Both the Planning Commission and the City Council have expressed concerns about Section 9.03 and how it has been implemented in the past.

Section 9.03.1 is currently out-of-date because of Periodic Review modifications to Comprehensive Plan goals and policies. Section 9.03.2 is not needed if conformity to the Comprehensive Plan is required. The Plan includes public facilities goals and policies which are somewhat duplicative of Section 9.03.2.

Conditions of approval have been discussed by both the Commission and Council as one way to better mitigate potential conflicts that may arise from rezoning. Current Section 9.03 only authorizes conditions for public facilities fulfillment.

Code Analysis

Code examples from several different jurisdictions were reviewed, including:

Beaverton
Portland
Oregon City
West Linn
Lake Oswego
Clackamas County
Tigard

Staff also reviewed prior preliminary drafting efforts by the City of Milwaukie to modify Section 9.03.

In summation, none of the ordinances reviewed, by themselves, meets Milwaukie's needs. The proposed code language offered below is an attempt to bring together appropriate language and to address concerns previously aired by both Planning Commission and City Council.

Proposed New Code Language

Section 9.03. Requirements for Zoning Map Amendments. Proposals for zoning map amendments must provide evidence that all requirements of this ordinance relative to the proposed use or uses are satisfied. This evidence shall include a detailed narrative discussing the following:

1. Reasons for requesting the zoning map amendment.
2. Description of existing site conditions, including but not limited to, topography, public facilities and services, natural hazards, natural areas or open space, historic sites, transportation, and the current use of the site.
3. Description of the intended use or uses.
4. Explanation of how development of the site for the intended use or uses will meet (or can be made to meet) zoning standards and requirements for public facilities (water, sewer, transportation, storm sewage, and fire, life and safety).
5. Explanation of how the proposed zone change complies with Comprehensive Plan goals, policies, and objectives.
6. Statement identifying potential effects of the proposed zone change to adjacent properties, and what mitigation efforts, if any, are proposed.

For all proposals, the applicant shall have the burden of proof regarding the above requirements.

Section 9.04. Planning Commission Action. The Planning Commission may deny, recommend approval, or continue actions for additional information or discussion. Actions by the Planning Commission on Zoning Map Amendments shall be based on findings of fact that show conformance with the requirements of Section 9.03. In addition to findings on the requirements of Section 9.03, the Commission shall address the following criteria:

1. There is a demonstrable public need for the change; or the change can be demonstrated to be in the interest of the present and future community; and
2. The proposed change will not adversely affect the health, safety, and welfare of the community.

The Planning Commission may recommend conditional approval if the requirements of Section 9.03 could only be met by the completion of specified conditions.

Section 9.05. Conditions of Approval. Conditions of approval for zoning map amendments may be applied in order to ensure compliance with the requirements of Section 9.03. Such conditions shall be calculated to fulfill public need and may be imposed to protect the public from potentially deleterious effects of the proposed use or uses; and/or to fulfill the need for public service demands created by the proposed use or uses. Conditions of approval may include, but are not limited to the following:

1. Where public facilities need to be installed or improved by the applicant, a performance contract, bond, or escrow account may be required to assure installation of public facilities to specified standards.
2. Where the potential for impacts or adverse effects may occur, mitigation may be required in the form of larger front, side, or rear-yard setbacks, specific landscaping provisions, signage limitation, height restrictions, access restrictions, specific design provisions, and other similar requirements.
3. Restrictions of the number and types of uses to be allowed on a specific property, even though such uses are authorized by the new zone proposed.
4. Imposition of a time limit to meet conditions of approval.

Section 9.06. Modification of Official Zoning Map. For zoning map amendments not involving conditions of approval, Community Development Department Staff shall modify the Official Zoning Map of the City of Milwaukie at such time as the ordinance of adoption goes into effect. For zoning map amendments involving conditions of approval, Zoning Map modification shall not occur until all conditions of approval are satisfied as follows:

1. Specific site improvements or public facilities installation required as conditions of approval must be completed and verified by City Staff.

2. If a use restriction is imposed, deed covenants and restrictions must be recorded with Clackamas County for the subject property, reflecting the use restriction, and a recorded copy provided to City Staff for verification.

Section 9.07. Time Limit for Conditional Rezoning. If no time limit is specified for meeting conditions of approval as part of zoning map amendment proposals, a two (2) year time limit is hereby imposed. The two (2) year time limit will commence from the date of ordinance signing by the mayor.

Section 9.08. Revocation of Conditional Rezoning. If conditions of approval are not met within the specified time period, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning. This review shall follow the procedures of Section 10.05 (c), Minor Quasi-Judicial Review. The Planning Commission may also, upon determination that the Applicant is making satisfactory progress towards completing conditions of approval, grant one (1) time extension not to exceed a maximum of two (2) years.

Section 9.09. Enforcement. Conditional rezonings involving deed covenants and restrictions to limit uses shall be enforced by the City by one or more of the following procedures.

1. Civil suit requiring compliance with recorded deed covenants and restrictions.
2. Enforcement procedures of Section 1.08 of the Milwaukie Municipal Code.
3. Revocation as per procedures of Section 9.08.

Analysis of New Code Language

New Section 9.03 has been expanded to require a more comprehensive submission. Since some of the material required is information oriented and not in the form of a criterion, the heading for this section speaks in terms of "requirements" as opposed to "criteria".

This section may increase the burden on rezone applicants over what is currently required. However, a comprehensive submission as is proposed would aid both the City Council and Planning Commission by providing more complete information on issues of concern.

Several new sections are suggested for addition to both clarify and guide the rezoning process.

Section 9.04 provides decision criteria by reference for Planning Commission actions and identifies when conditions of approval may be used.

Section 9.05 authorizes conditions of approval and provides clarification on when such may be imposed and in what form.

Section 9.06 tells when the official Zoning Map is to be modified. The intent is that the map is not modified to reflect new zoning unless conditions, if imposed, are met.

Section 9.07 specifies time limits for compliance with conditional rezonings unless different time limits are specified as a condition.

Section 9.08 identifies a revocation process if conditions are not met within the specified time period. Staff proposes this be a minor quasi-judicial review (as opposed to major quasi-judicial) because:

- The City Council does not need to review time extensions.
- Applicants are still assured of City Council review by appeal.
- The review by the Planning Commission will be of limited scope (i.e. whether or not conditions are met). Such a limited review leaves little room for interpretation.

Section 9.09 deals with enforcement of conditional rezonings involving deed covenants. Three options are open to the City in this regard.

Summation

New Sections 9.03 - 9.09 provide increased flexibility for the City in administering rezonings. Requirements are clearly stated and procedures specifically outlined.

Exhibits

1. Code Examples:
 - a. Beaverton
 - b. Portland (proposed new)
 - c. Oregon City
 - d. West Linn
 - e. Lake Oswego
 - f. Clackamas County
 - g. Tigard

Section 12. Fees.

12.1 In order to defray expenses incurred in connection with the processing of applications, preparation of reports, publications of notices, issuance of permits and other matters, the City may charge and collect filing and other fees as established by resolution of the Council. The required fees shall be paid to the City upon filing of an application or at such other time as may be specified in this ordinance. The City may charge double the usual application fee to those who fail to apply for any permit or other approval required by the City. The failure to submit a required fee with an application or a notice of appeal, including return of checks unpaid or other failure of consideration, may preclude the processing of that application or appeal.

12.2 Application fees are non-refundable, except in cases where the City has incurred no cost in the processing of a terminated or withdrawn application. Municipal corporations and other public agencies are exempt from the payment of application fees. The Council may reduce or waive required fees upon a showing of just cause to do so.

Section 13. Conditional Approvals.

13.1 Limitations. The following limitations shall be applicable to all conditional approvals by the Council, Planning Commission or Board:

A. Conditions shall be fulfilled within the time limitations set forth in the approval thereof, if no time be set forth, within a reasonable time.

B. Substantial changes or alterations of conditions shall be processed in the same manner as the original application or request.

C. Conditions may be set forth in a contract executed between the Council, acting by and through the Mayor and the property owner and any contract purchasers. If a contract be required, no development permits for the use applied for shall be issued until the properly executed contract is recorded with the Department of Records and Elections of Washington County. Such contract shall not restrict the power of subsequent Council or Planning Commission action. In return for the granting of the application the property owner, contract purchasers and their heirs, successors and assigns shall perform the conditions set forth therein for the benefit of public health, safety and welfare. Said contract shall contain provisions that it is enforceable against the signing parties, their heirs, successors and assigns by the City of Beaverton by appropriate action at law or suit in equity.

13.2 Security. Security in a form and amount acceptable to the City, or a cash deposit from the property owners or contract purchasers in such an amount that will assure compliance with the conditions imposed may be required. Such security shall be posted prior to the issuance of the appropriate development permit.

13.3 Compliance; Revocation. Failure to fulfill any conditions of approval within the time limits provided shall constitute a violation of this ordinance as set forth in Section 14 and the subject approval may be revoked after a hearing by the City Council.

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| | Amendment Criteria |

B. By posting notice in three (3) conspicuous public places in the City not less than 15 days prior to the date of the hearing; and

C. By mail to the owners of any property that is included in the proposed amendment not less than 30 days prior to the date of the hearing; and by mail to the neighborhood association officially recognized by the City through Ordinance No. 3120 for the geographic area in which the proposed change would occur. If the map amendment would change the zone of the property which includes all or part of a mobile home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days, but not more than 40 days before the day of the first hearing on the application. The failure to send notice to a tenant or failure of a tenant to receive notice shall not invalidate any zone change. (ORD 3561)

D. By method determined by the Planning Director to the owners of the property within an area enclosed by lines parallel to and 300 feet from the exterior boundaries of the properties for which the amendment is proposed not less than 15 days prior to the date of the hearing; and

E. By such other notice as the Planning Commission may deem desirable.

128.3 The City Council may, but is not required to, hold a public hearing on the proposed amendment. Should the City Council choose to hold a public hearing, the notice to be given shall be the same as that required for the Planning Commission hearings on legislative map amendments set forth in Section 128.2. The City Council may adopt, modify, or reject the recommendation of the Planning Commission, or may take no action on the proposed amendment.

128.4 Failure to send notice to a person specified in this section, or failure of a person to receive notice, shall not invalidate any proceeding described in this section.

Section 129. Quasi-judicial Amendments to Zoning Map

~~129.1~~ Quasi-judicial amendments to the City zoning map (generally small in size, single ownership or single interest changes in the zoning map, as determined by the City Council, if necessary) may be initiated by the Mayor, City Council, the Planning Commission or by application of an owner of property within the area for which the amendment is proposed or by the owner's authorized agent.

129.2 The applicant shall demonstrate that the request meets the following criteria:

1. The proposal conforms with the City's General Plan.
2. The proposal complies with all applicable statutory and ordinance requirements and regulations.

129.3 In addition to the criteria stated in 129.2 a rezone to Convenience Service (C-V) shall meet the following criteria because no General Plan amendment is necessary: (ORD 3352)

1. There is a public need for the proposal and that this need will be served by changing the zoning district classification of the property in question as compared with other available property.

2. The public interest is best carried out by approving the proposal at this time.

129.4 In addition to the criteria stated in 129.2, rezones from R-3.5 to R-2 and rezones from R-7 to R-5 shall meet the following additional criteria: adequate public facilities are available and capable of servicing the increase in density.

Section 130. Quasi-Judicial Procedures

An application by a property owner or the owner's agent requesting a quasi-judicial decision shall be filed with the Planning Director on official forms accompanied by the appropriate application fee and the information required by the application form. The Planning Director shall coordinate and assemble, through a facilities review process, the reports and data submitted by the applicant, affected City departments and any governmental agencies having an interest in any proposed quasi-judicial decision. The Planning Director shall prepare a report summarizing the factors involved and including proposed findings, reasons, conclusions and recommendations and shall place the request on the Commission's agenda, in a manner consistent with the adopted rules of the Commission, for a public hearing. If the request does not meet the applicable requirements, the Planning Director shall advise the applicant of the deficiencies prior to placing it on the Commission's agenda. The applicant may withdraw the application at any time.

130.2 The Planning Commission shall set a public hearing before it on each application, to be held in accordance with its adopted rules of procedure at which time people particularly interested may appear and be heard on the matter. The Commission shall, at the beginning of the hearing describe the review and appeal process for Commission action provided by the ordinance.

130.3 Notice of the Planning Commission Hearing on any quasi-judicial application shall be given as follows:

A. By publication of a notice giving the time, date, place, nature of the proposed change and purpose of the hearing in a newspaper of general circulation within the City not less than 15 days prior to the date of the hearing; and

B. By posting notice in three (3) conspicuous public places in the City not less than 15 days prior to the date of the hearing.

C. By posting the property for all decisions except variances in residential zones and administrative quasi-judicial decisions, not less than 15 days before the hearing stating a land use decision will be made about the property and giving the Planning Department phone number. Signs shall be of sufficient number, size and location so as to be visible to a passing

motorist. In lieu of posting, variances in residential zones and review of administrative quasi-judicial decisions shall require notice to residents by a method deemed appropriate by the Planning Director within an area enclosed by lines parallel to and 300 feet from the exterior boundary of the property under consideration.

D. By mailing notice not less than 15 days prior to the date of the hearing to property owners within an area enclosed by lines parallel to and 300 feet from the property for which the change is contemplated and to the neighborhood association officially recognized by the City through Ordinance No. 3120 for the geographic area in which the proposed change would occur and by mailing notice by certified mail not less than 30 days prior to the date of the hearing in the case of a zone change to the owner and resident of the property for which the change is contemplated; and to the owner of property in all other cases. (ORD 3240; December 1981) If the map amendment would change the zone of the property which includes all or part of a mobile home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days, but not more than 40 days before the day of the first hearing on the application. The failure to send notice to a tenant or failure of a tenant to receive notice shall not invalidate any zone change. (ORD 3561)

130.4 A. The City shall use for the purpose of ascertaining the property owners the names and addresses of the owner of record as shown in the current copy of the records, forwarded by the County Assessor, on file with the City.

B. Failure to send notice to a person specified in this section, or failure of a person to receive a notice, shall not invalidate any proceeding in connection with the quasi-judicial application.

C. All notices required in this ordinance to be given, shall be performed by, or under director of, the Planning Director.

130.5 A. The Planning Commission shall make findings based upon the record before it to support its decision. Proposed findings of the Planning Director or others may be adopted by reference.

B. For all applications it shall be established that:

1. The proposal conforms with the City's General Plan.
2. The proposal complies with all applicable statutory and ordinance requirements and regulations.

C. The applicant has the burden of proof on all criteria.

130.6 .A. Planning Commission shall, following public hearing, approve or disapprove the request. If it appears to the Planning Commission that a proposal different from the one submitted should be considered, the Planning Commission shall remand the proposal to the Planning Director for review and resubmission at the next Planning Commission meeting.

B. The Planning Commission may add conditions designed to guarantee fulfillment of public service demands created or increased by the proposed use, and mitigate any adverse effects upon surrounding property owners or the City.



130.7 A. The decision of the Planning Commission shall be by written order signed by the chairman or his/her designate. If the order contains findings not previously made available to the public, the chairman shall refer the order to the Commission for approval prior to signing. A copy of the order shall be mailed to the Commissioners for their review. The Commissioners shall submit their vote on the order in writing to the chairman. If there is a majority vote for approval as provided in the Planning Commission bylaws, the chairman may then sign the order. If there is not a majority vote for approval, then the order shall return to the next regularly scheduled meeting of the Planning Commission for consideration. (ORD 3494)

B. A copy of the signed order shall be forwarded to the applicant within 3 calendar days of being signed by the chairman or designate. The appeal period described in section 132.1 begins to run from the date the order is signed by the chairman or designate. (ORD 3494)

C. The Planning Commission's order shall appear upon the consent agenda of the City Council at its first regularly scheduled meeting held after the appeal period has elapsed unless prior to appearing on the consent agenda an appeal to the City Council has been perfected. The Planning Commission's order shall be final on the date it is approved by the City Council. (ORD 3494)

D. The Council on its own motion may order review of the Planning Commission's order. Said review may be de novo or on the record as provided in Section 132.4. (ORD 3494)

Section 131. Planning Commission Review of Administrative Quasi-Judicial Decisions.

131.1 When the Planning Director has the authority to make an administrative decision to approve or deny a quasi-judicial request, notice of such a decision shall be given by mailing notice of the decision to the applicant and the property owners within an area enclosed by lines parallel to and 300 feet from the exterior boundary of the property about which the decision was made and by a method approved by the Planning Director to residents within an area enclosed by lines parallel to and 300 feet from the exterior boundary of the property about which the decision is made.

131.2 The notice shall include the following information:

- A. The name of the applicant and location of the property.
- B. The nature of the request.
- C. The decision and reason therefor.
- D. Explanation of the notice recipient's right to a hearing before the Planning Commission.

- B. Legislative.** Requests for a zoning map amendment which are legislative are reviewed through the legislative procedure stated in Chapter 240, Legislative Procedure.

340.050 Approval Criteria For Base Zone Changes

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

- ✓
- A. Compliance with the Comprehensive Plan Map.** The zone change is to a zone designated by the Comprehensive Plan Map. When the Comprehensive Plan Map allows more than one base zone, it must be shown that the proposed zone is best fitted to the site and is generally consistent with the surrounding zoning map pattern; and
- B. Adequate public services.** Public services are capable of supporting the uses allowed by the zone, or will be capable when development occurs. For the purposes of this evaluation, public services include: water supply, sanitary sewage disposal, stormwater disposal, transportation system structure and capacity, and police and fire protection. Adequacy of services only applies to the specific zone change site. Determination of the service demand of a site will be made using official City service bureau projection calculations for the zone. If a specific use and development proposal is submitted that will have greater service demands than the projection numbers, the numbers for the proposal will be used.

340.060 Approval Criteria For Other Changes

In addition to the base zones and Comprehensive Plan designations, the Official Zoning Maps also show overlay zones, plan districts, and other items such as special setback lines, recreational trails, and historical landmarks. Amendments to all of these except historical landmarks are reviewed against the approval criteria stated in this Section. Historical landmarks are reviewed as stated in Chapter 335, Historical Landmarks. An amendment will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A.** Where an overlay zone, plan district, special setback line, or recreational trail is proposed to be added, it must be shown to be needed to address a specific situation. When removed, it must be shown that the reason for applying the overlay zone, plan district, special setback line, or recreational trail no longer exists or has been addressed through other means; and
- B.** The addition or removal is consistent with the purpose and adoption criteria of the regulation and any applicable goals and policies of the Comprehensive Plan and any area plans.

340.070 Recently Annexed Areas

Areas annexed into the City from Multnomah County automatically receive comparable City zoning upon officially being incorporated into the City. Comparable zoning is shown in Table 340-1.

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11-12-3

11-12-5

11-12-3: PUBLIC HEARING: A public hearing shall be held pursuant to standards set out in Title XI, Chapter 13.

11-12-4: AMENDMENT BY THE COMMISSION: If the Planning Commission approves such request or petition for an amendment, supplement or change, it shall automatically forward its findings and recommendation to the Commission for action thereon by that body. In granting a change in zoning classification to any property, the Commission may attach such conditions and requirements to the zone change as the Commission deems necessary in the public interest, in the nature of, but not limited to those listed in Section 11-6-1. Such conditions and restrictions shall thereafter apply to the zone change. Where such conditions are attached, no zone change shall become effective until the written acceptance of the terms of the zone change ordinance by the property owner, contract purchaser (if any), and optional purchaser (if any), or by the new property owner, contract purchaser (if any), and optional purchaser (if any), who may have purchased the property or become interested in said property between the time of petition and the acceptance of such ordinance, shall have been filed with the City Recorder.

11-12-5: FILING OF PETITION: Applications for amendment, supplement or change in this Title shall be filed with the City Recorder on forms available at the City Recorder's office. At the time of filing a petition, the petitioner shall pay to the Recorder the sum listed in the fee schedule in Section 11-13-6. (Ord. 1953, 3-13-80)



11-13-1

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ADMINISTR.

SECTION:

- 11-13- 1: Definition; Application of
- 11-13- 2: Public Hearings
- 11-13- 3: Initial Hearing on Propose
- 11-13- 4: Appeals
- 11-13- 5: Form of Petitions; Applic
- 11-13- 6: Filing Fees
- 11-13- 7: Abatement
- 11-13- 8: Interpretation
- 11-13- 9: Building Permits
- 11-13-10: Authorization of Similar U
- 11-13-11: Metric Conversion
- 11-13-12: Enforcement

11-13-1: DEFINITION; APPLICATION ACTION:

- (A) An "Administrative Action" means
 1. In which the legal rights, d determined only after a hearing i and be heard; or
 2. In which the City Commission order.
- (B) This Chapter shall be the sole accomplished to implement plann conditional uses, and all other r specifically set forth in this Ordina

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✓ (D) The burden of proof is placed upon the petitioner seeking an action pursuant to the provisions of this Section. Unless otherwise provided for in this Ordinance such burden shall be to prove that the proposed action fully accords with the applicable map elements of the relevant Comprehensive Plan and also the goals and policies of the Plan.

Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to consider.

✓ (E) In all cases, the Planning Commission shall enter findings based upon the record before it to justify its decision.

(F) If the application be denied either initially and no review taken or upon review by the City Commission or action by the courts affirming denial, no new application for the same or substantially similar action shall be filed for at least six (6) months from the date of the final order on the action denying the application.

(G) Evidence:

1. All evidence offered and not objected to may be received unless excluded by the Planning Commission chairperson. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their every day affairs.

2. The Planning Commission may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence; but erroneous admission of evidence by the Planning Commission chairperson shall not preclude action by the chairperson or cause reversal on appeal unless shown to have substantially prejudiced the rights of a party. When a hearing may be expedited, any part of the evidence may be received in written form.

3. All evidence shall be offered and made a part of the record in the case; and, except for matters stipulated to and except as provided in subsection (G)4 of this Section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

4. The Planning Commission chairperson may take notice of general, technical or scientific facts within his specialized knowledge. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Planning Commission chairperson may utilize experience, technical competence and specialized knowledge in evaluation of the evidence presented to the Commission.

G) 5. Every party is entitled to a rebut evidence.

6. All interested persons shall b

(H) Those persons entitled to perso hereby defined as parties and s counsel, to participation in a t and to review by the City Comr

(I) The following limitations shall b

1. Conditions shall be fulfilled approval thereof, or, if no time

2. Such conditions shall be r emanating from the proposed l following respects:

(a) Protection of the pu of the proposed use; or

(b) Fulfillment of the ne proposed use.

3. Changes or alterations of administrative action.

4. Such conditions may be set f Commission, acting by and thr any contract purchasers. If a c the use applied for shall be des contract is filed with the City signed and executed within thir provided, however, that the City in cases of practical difficulty. t subsequent administrative action the granting of the application their heirs, successors and assign therein for the benefit of publ shall be enforceable against the assigns by the City by appropria

5. Failure to fulfill any condit time limitations provided may action.

105.000 AMENDMENTS TO THE CODE & MAP

105.010 PURPOSE

The purpose of this chapter is to set forth the standards and procedures for legislative amendments to this code and to the map and for the quasi-judicial changes to the map as provided by the code chapters setting forth the procedures and by the Comprehensive Plan. Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes or to address changes in the law.

105.030 LEGISLATIVE AMENDMENTS TO THIS CODE & MAP

Legislative amendments to this code and to the map shall be in accordance with the procedures and standards set forth in chapter 98 of this code.

105.040 QUASI-JUDICIAL AMENDMENTS & PROCEDURES

Quasi-judicial amendments to this code and to the map shall be in accordance with the procedures set forth in this code and the following:

1. The Planning Commission shall decide zone change applications which do not involve Comprehensive Plan map amendments as provided by 99.060(B). A petition for review by the council may be filed as provided by 99.280(B).
2. The Planning Commission shall make a recommendation to the council on an application for a Comprehensive Plan Map amendment. The council shall decide the application on the record as provided by 99.280(C).
3. The Planning Commission shall make a recommendation to the Council on a zone change application which also involves a concurrent application for a Comprehensive Plan Map

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amendment. The Council shall decide the applications on the record as provided by 99.280(C).


105.050 QUASI-JUDICIAL AMENDMENTS & STANDARDS FOR MAKING THE DECISION

A decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

1. The standards set forth in Section 99.110A; which provide that the decision shall be based on consideration of the following factors:
 - a. The applicable Comprehensive Plan policies as identified in subsection 3 of this section and map designation.
 - b. The applicable standards of any provision of this code or other applicable implementing ordinance.
2. The standards set forth in Section 99.110(B) which provides that in making the decision, consideration may also be given to the following:
 - a. Proof of change in the neighborhood or community or a mistake or inconsistency in the Comprehensive Plan or Zoning Map as it relates to the property which is the subject of the development application.
 - b. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or

positive attributes of the proposal or factors in subsection A or subsection B1 above.

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3. The Comprehensive Plan, Plan and Ordinance Revision Process, and specific policy No. 4, which provides that the decision shall be based on consideration of the following criteria:
- a. Conformance with the Comprehensive Plan policies and criteria.
 - b. There is a public need for the change or that the change can be demonstrated to be in the interest of the present and future community.
 - c. The changes will not adversely affect the health, safety and welfare of the community.



105.060 **CONDITIONAL OF APPROVAL**

A quasi-judicial decision may be for denial, approval or approval with conditions as provided by Section 99.110(E).

105.070 **RECORD OF AMENDMENTS**

The Planning Director shall maintain a record of amendments to the text and map of this code in a format convenient for the use of the public and in accordance with Section 98.150 of this code.

48.760 Quasi-Judicial Amendments to the Map.

1. Quasi-judicial amendments to the zoning map may be initiated by the City Council, Planning Commission or property owner (or agent). An amendment is quasi-judicial in nature if it is described by the definition found in LOC 48.810(1).

2. The application for a quasi-judicial amendment to the map shall contain at least the following information.

a. Statement of proposed zone change including existing zoning and proposed zoning.

b. Tax map of area being considered for zone change, indicating boundaries, existing zoning and existing Comprehensive Plan designation.

c. A copy of a document showing ownership of the subject property, and if the applicant is not the owner, a letter of authorization from the owner.

d. Vicinity map showing subject property and surrounding parcels, with their current zoning.

e. Reason(s) for requesting the zone change.

f. Existing site conditions, including but not limited to: topography, public facilities and services, natural hazards, natural areas, open space, scenic and historic areas, transportation, and present use of site.

g. Explanation of how the proposed zone change complies with the Comprehensive Plan and Code criteria, taking into consideration plan policies and objectives concerning natural resources; natural hazards; natural areas; open space; scenic and historic areas; transportation; residential, industrial and commercial development; public facilities and the proposed use of site.

h. Statement of the potential effect(s) of the zone change on the site. For instance, if the zone change were from residential to commercial, what impact(s) would it have on adjacent residences? Or, if the zone change were from low-density residential to high-density residential, what impact(s) would it have on adjacent uses or vacant areas?

3. A hearing on the application shall be held by the Planning Commission pursuant to the provisions of LOC 48.810. The decision of the Planning Commission is final unless

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1202 ZONE CHANGE

1202.01 The Hearings Officer shall allow a zone change, after a hearing conducted pursuant to Section 1300, provided that the applicant provides evidence substantiating the following, unless otherwise provided for in this Ordinance: (7-15-81)



- A. Approval of the request is consistent with the Comprehensive Plan;
- B. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

1202.02 Alternate recommendation for zoning map change may be substituted by the Hearings Officer for the applicant's petition request subject to the following:

- A. The alternative district implements the same plan category, as indicated on the land use plan map for the property, and (7-15-81)
- B. Public Hearings Notice shall include notification of additional consideration as required by Section 1300.

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| | <u>Amendment Criteria</u> |

1303 INITIAL HEARING ON PROPOSED ACTIONS; ORDERS

1303.01 SCHEDULE OF APPLICATION: The Hearings Officer shall act upon the application as provided in subsection 1303.02 within sixty (60) days of receipt of the application by the Planning Director unless such time limitation is extended with the consent of the applicant; provided, however, that unless otherwise ordered by the Board of County Commissioners, the Planning Director shall schedule before the Hearings Officer applications in the order in which they are filed with him, and shall not accept applications which he deems cannot be acted upon within sixty (60) days of receipt unless the applicant consents to a longer period for action.

1303.02 NATURE OF ACTION: Findings: The action may be to approve the application as submitted, to deny the application or to approve the application with such conditions as may be necessary to carry out the Comprehensive Plan and as provided for in subsection 1303.05. In all cases the Hearings Officer shall state his decision upon the close of the hearing or upon continuance of the matter and shall enter findings based upon the record before him to justify his decision.

1303.03 REFILING APPLICATION (7-1-83)

A. If the application for an administrative action, or Planning Director action under subsection 1305.02, is denied, an applicant may refile for consideration of the same or substantially similar application if the Planning Director finds that one of the following applied:

1. All the specific findings, as set forth in the written decision denying the application, no longer apply because of changes in the ordinance and/or Comprehensive Plan as applicable; and
2. A change has occurred in the zoning of the property, or adjacent property, that substantially affects the merits of the application; or
3. There have been substantial changes in the surrounding area, or on the subject property, such as availability of services or improvements to public facilities, that affect the merits of the application.

1303.04 SUBPOENA PROVISIONS: Any person wishing to subpoena witnesses to hearings may do so by application to the Planning Director not less than seven (7) days prior to the hearing and show that the witness resides in Oregon, is unwilling to appear and his testimony is material and relevant. Such subpoenas shall be enforceable, upon proper completion and inclusion of those fees applicable to Circuit Court cases, in the Circuit Court for the State of Oregon upon application by any party and approval of the Planning Director.

1303.05 CONDITIONS OF APPROVAL: Approval of any administrative action request may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:

- A. Conditions shall be fulfilled within the time limitations set forth in the approval thereof, or, if no time is set forth, within a reasonable time.
- B. Such conditions shall be reasonably calculated to fulfill public need; emanating from the proposed land uses as set forth in the application in the following respects:
 - 1. Protection of the public from the potentially deleterious effects of the proposed use; or
 - 2. Fulfillment of the need for public service demands created by the proposed use.
- C. Changes or alterations of conditions shall be processed as a new administrative action.
- D. Such conditions may be set forth in a contract executed between the Board of County Commissioners, acting by and through its Chairman, and the property owner and any contract purchasers. If a contract is required, no building permits for the use applied for shall be issued, nor shall the use applied for be deemed approved, until the properly executed contract is filed with the Clackamas County Clerk. Such contract shall be properly signed and executed within thirty (30) days after approval with conditions, provided, however, that the Board of County Commissioners may grant reasonable extensions in cases of practical difficulty. Such contract shall not restrict the power of subsequent administrative action with or without conditions. In return for the granting of the application, the property owner, contract purchasers and their heirs, successors and assigns shall perform those conditions set forth therein for the benefit of public health, safety and welfare. Said contract shall be enforceable against the signing parties, their heirs, successors and assigns by Clackamas County by appropriate action in law or suit in equity.
- E. Failure to fulfill any conditions to the grant of applications within the time limitations provided shall be grounds for initiation of administrative action by the County to rescind the permit or approval.
- F. A bond, in a form acceptable to the Planning Director, or a cash deposit from the property owners or contract purchasers in such an amount as will assure compliance with the conditions imposed pursuant to this Section may be required. Such bond shall be posted at the same time the contract containing the condition of approval is filed with the Clackamas County Clerk.

1303.06 EVIDENCE

- A. All evidence offered and not objected to may be received unless excluded by the Hearings Officer on his own motion. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.

AMENDMENTS TO THE TITLE AND MAP

Sections:

- 18.22.010 Purpose
- 18.22.020 Legislative Amendments to this Title and Map
- 18.22.030 Quasi-Judicial Amendments and Procedures
- 18.22.040 Quasi-Judicial Amendments and Standards for Making the Decision
- 18.22.050 Conditions of Approval
- 18.22.060 Record of Amendments

18.22.010 Purpose

- A. The purpose of this chapter is to set forth the standard and propose governing legislative and quasi-judicial amendments to this title and the zoning district map.
- B. Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes or to address changes in the law. (Ord. 89-06; Ord. 83-52)

18.22.020 Legislative Amendments to this Title and Map

- A. Legislative amendments to this title and to the map shall be in accordance with the procedures and standards set forth in Chapter 18.30. (Ord. 89-06; Ord. 83-52)


18.22.030 Quasi-Judicial Amendments and Procedures

- A. Quasi-judicial amendments to this title and to the map shall be in accordance with the procedures set forth in this title and the following:
 1. The Commission shall decide zone change applications which do not involve comprehensive plan map amendments as provided by Section 18.32.090.C.3. A petition for review by the Council may be filed as provided by Section 18.32.310.B;
 2. The Commission shall make a recommendation to the Council on an application for a comprehensive plan map amendment; and
 3. The Commission shall make a recommendation to the Council on a zone change application which also involves a concurrent application for a comprehensive plan map amendment. The Council shall decide the applications on the record as provided by Section 18.32.320.B. (Ord. 89-06; Ord. 83-52)

18.22.040 Quasi-Judicial Amendments and Standards for Making the Decision

- A. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

| | |
|-----------|-------------------------|
| EXHIBIT # | <u>9</u> |
| DATE | <u>4/24/88</u> |
| SUBMITTED | |
| BY | <u>Staff - 2 pages</u> |
| | <u>Tigard</u> |
| RECEIVED | <u>Zoning Map</u> |
| | <u>Amendment Antena</u> |

- 
1. The applicable comprehensive plan policies and map designation and; the change will not adversely affect the health, safety and welfare of the community;
 2. The statewide planning goals adopted under Oregon Revised Statutes Chapter 197, until acknowledgment of the comprehensive plan and ordinances;
 3. The applicable standards of any provision of this code or other applicable implementing ordinance; and
 4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application. (Ord. 89-06; Ord. 83-52)

18.22.050 Conditions of Approval

- A. A quasi-judicial decision may be for denial, approval, or approval with conditions as provided by Section 18.32.250.F.
- B. A legislative decision may be approved or denied. (Ord. 89-06; Ord. 83-52)

18.22.060 Record of Amendments.

- A. The Director shall maintain a record of amendments to the text and map of this title in a format convenient for the use of the public and in accordance with Section 18.40.020 (Ord. 89-06; Ord. 83-52)



UNIVERSITY OF OREGON

April 11, 1990

MEMORANDUM

TO: City and County Planning Directors and Planning
Commission Chairs

FROM: Peter K. Watt, Land Use Research Associate

SUBJECT: Planning Commissioner Training Program

Because of strong interest, the Bureau of Governmental Research and Service is offering another one-day training program for planning commissioners on Saturday, June 2, in the Portland Area. We have room for 75 participants.

Response to our previous planning commissioner programs has been very positive. Over 400 city and county planning commissioners have participated in the past seven workshops and have evaluated the program as informative and useful. The training program, which is designed for both new and experienced commissioners, is described in the enclosed program flyer. In addition to the training, participants will receive a reference handbook and a certificate of completion.

Please encourage the members of your planning commission to take advantage of this opportunity to learn more about their roles and responsibilities.

REGISTRATION FORM

Name: _____

City or County: _____

Address: _____

Telephone: _____

Fee: \$60 (includes lunch). A copy of the registration form must be completed for each commission member and received with payment by the Bureau by **May 18, 1990**. Make checks payable to Bureau of Governmental Research and Service. If you have any questions, please call Peter Watt at 346-5232.

PLANNING COMMISSIONER TRAINING PROGRAM

Red Lion Inn, Portland Center
310 Southwest Lincoln, Portland, Oregon
Saturday, June 2, 1990

8:00 Registration

8:30 **The Role and Requirements of Planning Commissioners**

A review of state laws pertaining to planning, the legal basis for making land use decisions, and planning commissioner functions and responsibilities within the state and local planning system.

Adrienne Brockman, Deputy City Attorney, Portland,
and Chair, Lake Oswego Planning Commission
Lorna Stickel, Planning Director, Multnomah County
Peter Watt, Land Use Research Associate, BGRS

10:30 Break

10:45 **Making Land Use Decisions**

Participants will divide into small groups to discuss decision-making rules and procedures. New planning commissioners who want more of the basic information concerning the rules and procedures will form one group. More experienced participants who want to discuss specific concerns about different types of decisions will join either a city or county group.

Noon Luncheon

1:00 **Effective Participation on Planning Commissions**

Tips and techniques for achieving successful planning commission meetings: methods for effective participation, common problems of commissions, how to respond to the public, and ways to streamline meetings without sacrificing quality and participation.

Ardis Stevenson, Consultant in Communication and Participation

3:00 Break

3:15 **New Legislation Affecting Planning Commissions**

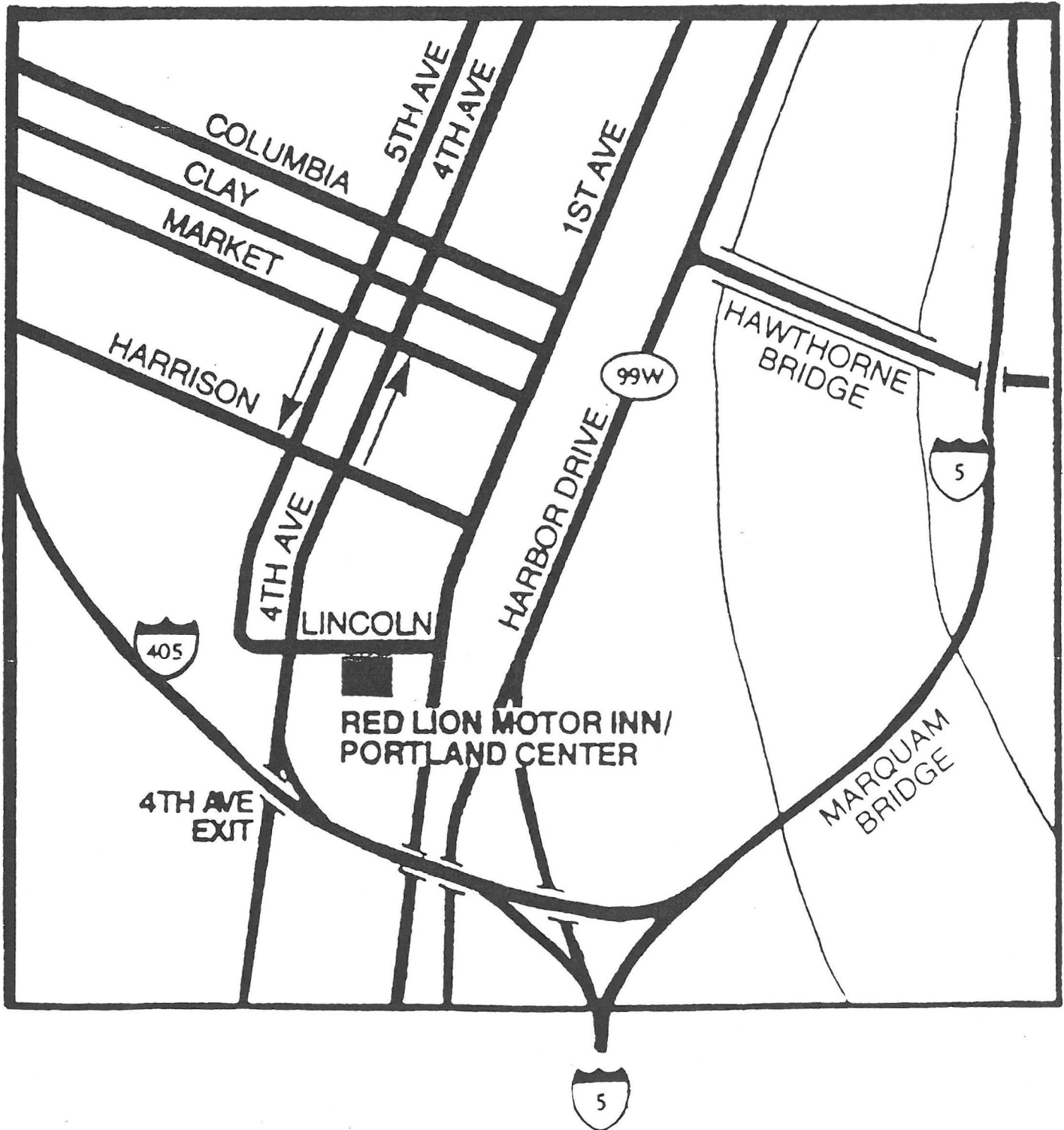
A review of new laws passed by the 1989 Legislative Assembly that deal with land use procedures, subdivisions, and other planning matters. Participants will also have the opportunity to ask questions and discuss any planning issues of individual interest and concern.

Lorna Stickel and Peter Watt

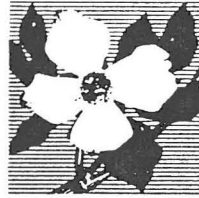
4:30 Adjournment

The **Red Lion Inn** is offering available rooms for the weekend of June 1-3 at a special group rate of \$59 for singles or doubles. We encourage you to take advantage of this rate by making your reservation as soon as possible. Call the Red Lion/Portland Center at 221-0450 and tell them you are attending the Planning Commissioner Training Program.

Stay overnight Friday and be fresh and ready to participate in the training session early Saturday. Stay the weekend and enjoy the Rose Festival.



CITY OF MILWAUKIE



April 13, 1990

Mr. Dick Close
215 SE 102nd
Portland OR 97216

Dear Dick:

This letter is a follow-up to your call about the possibility of requesting Council reconsideration of its decision on AP-CPA-90-01 on April 3, 1990.

If Council were to reconsider its decision it would be based on a Robert's Rule; specifically, the case where a person who had voted in the affirmative on the previous motion presents a new motion to reconsider the previous decision.

You should address a letter to Mayor Hall with copies to all other Councilors. The letter should be available prior to the Council's meeting on April 17, 1990. You should detail your rationale, what additional information is available that was not reviewed, and when that information can be made available.

From a planning perspective, information not previously submitted must be substantive, not simply more detail supporting conclusions already in the oral and written record. Along with the new information on public need that you referred to in our telephone conversation, you must also address access and other traffic circulation questions that have not been satisfactorily addressed by the record on this request.

Should you decide to do this, Staff will recommend that if the Council chooses to reconsider, that it be done by setting a date certain and that the new information be reviewed with recommendation by the Planning Commission prior to Council review and action.

Sincerely,



Maggie Collins
Community Development Director

MC/mgh

cc: Dan Bartlett, City Manager

growth policies in either direction can hurt revitalization efforts. A sudden reduction in growth can scare away new businesses and private investment. A sudden increase can turn commercial avenues into traffic-clogged arterials that repel potential customers.

As we enter a new decade, the topic of regional growth is on the agenda of every San Francisco Bay Area community. Whether we live in bedroom communities that are experiencing major changes in their local demographics, or in once rural outposts experiencing quantum leaps in population, growth is bringing a unique set of challenges to our Main Street programs.

Jeff Eichenfield is the executive director of the Main Street program in Alameda, Calif. He was formerly Main Street manager in Livermore, Calif.

During the 1990s, nearly two-thirds of the growth in the work force will be women. Although women will continue to make less than men, 81 percent of wives already control over half the expenditures in middle and upper-income households.

Small Towns in the 1990s: The Economic Future of Main Street— Part III

Donovan D. Rypkema

Economic and Demographic Trends that Will Affect Small Towns

What are the economic and demographic trends most likely to affect Main Street in the 1990s? This series identifies 13 such factors. Several are potentially positive influences for our towns, but all represent significant challenges. They are as follows:

- increasing numbers of women in the workplace
- increasing numbers of people who work at home
- the internationalization of markets
- the slowing pace of suburban growth
- the increasing rate of saving by the baby-boom generation
- significant expansion in consulting fields
- decentralization of public and private decision making
- dominance of the service sector

- an entry-level labor shortage and mid-level labor surplus
- an excess of money in relation to a shortage of time
- jobs following people
- influx of new dollars into education
- small business as the primary source of economic growth

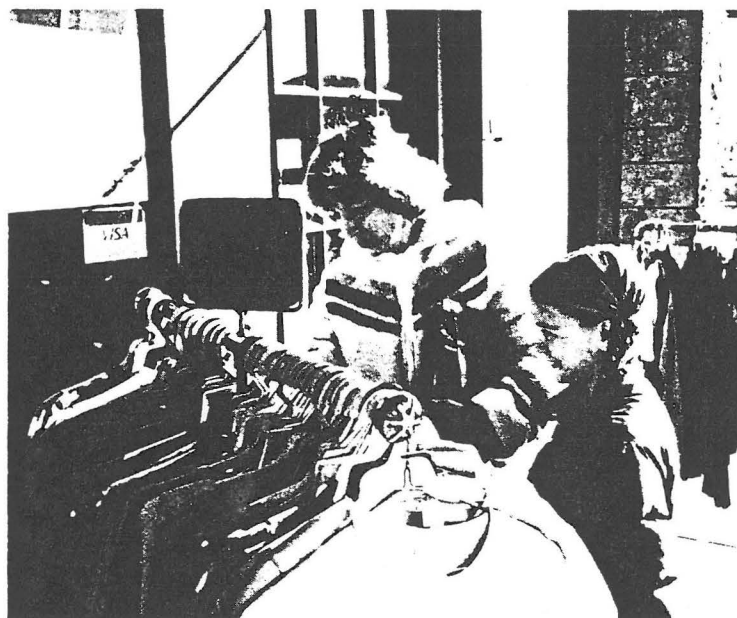
This article discusses the first seven of these trends; the remaining six will appear in the next installment of this series.

The Changing Workplace

First, women in the workplace. In 1950, less than 32 percent of the nation's women worked outside the home. Today, it is 55 percent; by the year 2000, it will be 60 percent. During the 1990s, nearly two-thirds of the growth in the work force will be women. Already 7 of 10 women in their thirties work, but as those prime childbearing years pass, the number rises to 8 out of 10 women in their forties. Today 55 percent of America's families are dual career households; by 2000, it will be 75 percent. This rapid evolution of the work force will have both economic and social consequences.

While the paycheck gender gap will continue to exist, it is narrowing. In 1960, a woman made only 61 percent as much as a man; today, the ratio is about 70 cents to the dollar; by the year 2000, it will be 85 cents. On the expenditure side, however, women are more powerful. Today, 81 percent of wives control over half the expenditures in middle- and upper-income households. One symbol of this female economic power is the fact that today more insurance policies are sold to women than to men.

While the money women will have to spend will be significant, the social change their working creates will be even greater. Day care at the office, flex-schedules and shared jobs are becoming increasingly commonplace. There is a high degree of job satisfaction among women but also



NMISC

high importance attached to child care, recreation, time for self and time for other relationships.

Ultimately, it will be women's demand for more time that will lead to an abandonment of the suburbs in favor of the central city or the small town. The quality of the workplace rather than the size of the paycheck will be-

have made working at home a possibility; the shift to a service economy, the growth of consulting and the increased number of women in the work force have made the trend a reality. By the year 2000, nearly half of all service workers will be in the knowledge business: collecting, analyzing, synthesizing, structuring or retrieving information.

markets is already well under way. With the economic unification of Europe scheduled for 1992, the world's largest market will be established. Before the decade is out, there will probably be a similar North American Common Market including the United States, Canada and Mexico. There is nothing to prevent downtown businesses—especially service businesses—from competing on an international level. Small businesses already make up one-fourth of all U.S. exporters. A headline in a recent *Business Week* read, "The Little Guys Are Making It Big Overseas."



In the 1960s, the workplace expanded into the suburban village in the 1970s, it moved to the electronic cottage. The trend in the 1980s may be the electronic village as downtown becomes a work center for people telecommuting around the world.

come the driving choice.

While television still shows reruns of *Leave It to Beaver*, reflecting the perennial nuclear family, only 3.7 percent of households are composed of husband wage earner, wife homemaker and two children. That day is gone for the foreseeable future.

The second trend, at-home workers, is often pictured as a technological phenomenon, but it is also a social and economic one. Certainly, the rapid advance in technology has abetted this trend. Last year, there were 1.3 million FAX machines; there will be 30 million by the year 2000. Today, 18 percent of the nation's households have personal computers; 70 percent will have them by the turn of the century, and most will be equipped with telephone modems. Today, there are 1.2 million portable computers; in just three years, there will be 8 million.

While technological advances

Half of these workers will be working at home. The October 1989 issue of *Nation's Business* estimated that 23 percent of the nation's labor force already works at home at least part-time. These employees will increasingly be organized around tasks instead of time. Once the decision is made that work needn't be done at the office, it can be done anywhere there is a telephone and electricity.

But the concept of working at home will be altered somewhat. There is a continuing need for some social interaction. Studies indicate that two or three days a week of at-home work maximize productivity. Thus, social interaction will take place in other ways. In the 1960s, we heard about the global village and in the '70s, about the electronic cottage. What we will see in the next decade is the electronic village—downtown work centers for people telecommuting around the world.

The internationalization of

Slowing the Pace of Suburban Growth

Although one can't tell it from the expenditures of developers, we may be witnessing the end of suburban growth. E.V. Walters, author of the book *Placeways*, refers to them as "suburbs . . . where nothing moves but station wagons and lawn sprinklers." There are at least 10 early signs that the end may be near for suburbs. They include:

- an increasing dissatisfaction with the time required for commuting; by the mid-1990s, the average speed on Los Angeles freeways will be 15 miles an hour. It will take as long to commute in L.A. at the end of the 20th century as it did at the beginning.
- vocal opposition by suburban residents who are saying, "enough is enough"
- tentative opposition by local political leaders who in the past were strong advocates of continued growth for the sake of property tax revenues and jobs
- environmental opposition to the further development of outlying lands
- the recent realization that the cost of public maintenance of a sprawling suburban infrastructure costs 40 to 400 percent more than a compact community—an unacceptable alternative in these days of increasingly scarce public resources
- the unwillingness of working

women to spend time commuting at the expense of all other desired activities

- opposition by preservation groups who realize that suburban expansion often results in the effective abandonment of important buildings and neighborhoods

- an attitudinal shift among an entire generation that is increasingly rejecting overconsumption, of which continuing suburban development is a prime example

- a belated recognition of the truth of E.V. Walter's contention that "for the first time in human history, people are systematically building meaningless places"

- the disappearance of the factors that gave rise to suburbs in the first place

Those factors, most of which were identified in the book *Crabgrass Frontier* by Kenneth Jackson, were: (1) rapidly growing per capita wealth; (2) an abundance of cheap land; (3) inexpensive transportation; (4) residential construction cost savings; (5) government encouragement on a national level; (6) households made up of commuting husbands and housebound wives; and (7) unbridled encouragement by local government.

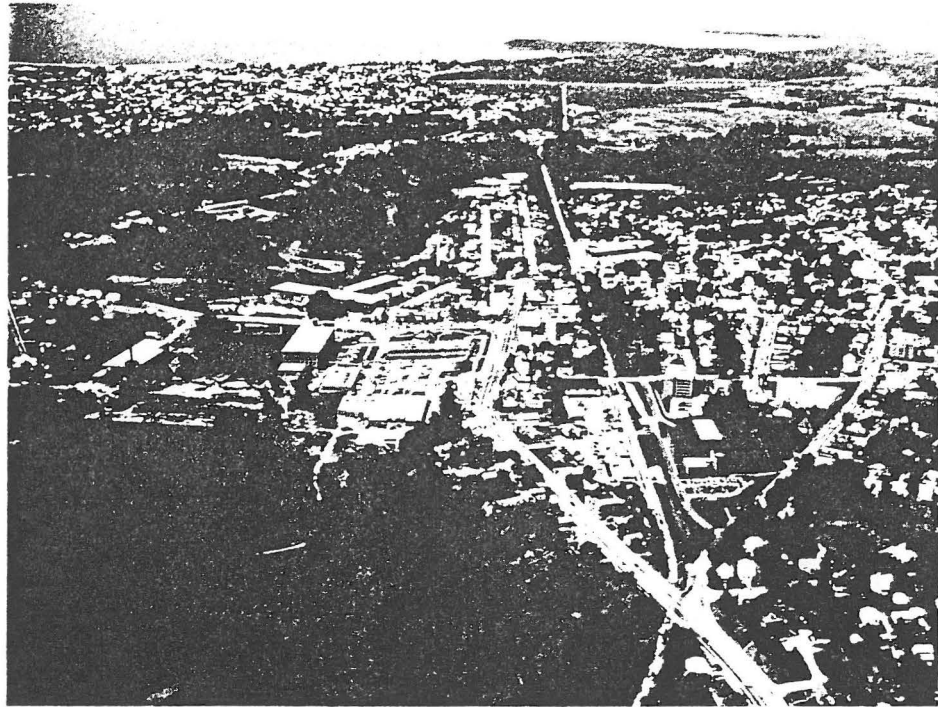
Which of those elements are still in place today? Virtually none of them. Today, we have rising costs of energy, transportation, money and land; few cost-saving improvements in building technology; diminishing federal support; strengthening of local development controls; and changing needs of the family. This beginning of the end of suburban expansion is a good omen for those small towns and large cities that can provide a quality economic and social alternative.

Aging of the Baby-Boom Generation

The fifth long-term trend that will affect our downtowns is the beginning of the "saving phase" among baby boomers. America

is decried for having such a low rate of savings. And compared to other industrial nations—especially Japan—that is certainly true. What has not been widely recognized, however, is that it is only now as the first of the baby boomers are reaching their for-

Third, largely unrelated factors will combine to create the sixth economic trend—the dramatic expansion of consulting at an annual rate approaching 20 percent. On the supply side, the flattening of layers of middle management in both the public



SAMUEL MILLER

ties that any significant saving has been possible for most of us. For most families, the expense of setting up a household, providing for children and purchasing a first or second home consumes all—or in many cases more—money than we make.

As the baby-boom generation ages, however, more money will be available for savings. Over the next decade, we will see the national savings rate increase from 4 percent of income to 5 percent—a 25 percent overall increase. In 1990, for the first time in years, savings will grow faster than incomes. Over the next decade, this will leave the depositories well stocked with money; keep interest rates down, allow plenty of money for business creation and expansion and significantly reduce the portion of the national debt owed to foreign interests. Tomorrow, there will be the kind of competition for the savings of baby boomers that there is today for their expenditures.

and private sectors accompanied by an excess of labor—the baby boomers—holding those positions will push white-collar professionals out of large organizations. One analyst has called these people the MADMUPS—Middle-Aged, Downwardly Mobile, Underemployed Professionals.

Secondly, an increasing inclination toward entrepreneurship supplemented by a spouse's income will permit more people of both sexes to take that "out on my own" step. On the demand side, more organizations will go outside to hire that esoteric specialist who isn't needed as a full-time employee but is absolutely crucial for periodic assistance. The clients for most consultants will be based on industry, not on location; so the choice of where to live and work can be a highly individualized one.

Suburban expansion may slow as people realize that maintaining a sprawling infrastructure costs 40 to 100 percent more to maintain than that of a compact community.



The central city and the small town may attract increasing numbers of residents as people grow dissatisfied with the time required to commute from home to job.

Decentralizing Decision Making

DA multitude of events—many only marginally related—have given rise to the next of the identified trends: the decentralization of public and private decision making. It has been a basic tenet in American conservative political thought that decision making should take place at the lowest possible level. A recent speaker said, "Blaming or scapegoating others is no substitute for revitalizing our own economy. . . . Led by [local interests] we must forge a new equation . . . forged from the bottom up, not from the top down." That speaker could have been Ronald Reagan or George Bush; in fact, it was Jesse Jackson. Over the last eight years, the cutback of federal support for local government has resulted in an extraordinary amount of innovation on the local and neighborhood level. The revival of the citizens assembly in the form of town or neighborhood meetings is a manifestation of this trend.

In the private sector, there has been a technological revolution that gives local decision makers instant access to worldwide information while enabling them to keep their "fingers on the pulse" of the local situation. With the thinning and flattening of the layers of corporate management, more and more decisions will be made locally.

This decentralization in both the public and private sectors

will lead to what has been referred to as the municipalization of the economy and its management by the community. This community empowerment will be the most exciting, challenging and, as yet, unrecognized phenomenon of the next decade. We in Main Street are the vanguard of this community empowerment movement. Donovan D. Rypkema is a real estate and economic development consultant based in Washington, D.C.

MainStreet

Main Street News is published by the National Main Street Network, a membership program of the National Main Street Center, National Trust for Historic Preservation, 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036 (202) 673-4219. © 1990 National Trust for Historic Preservation.

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