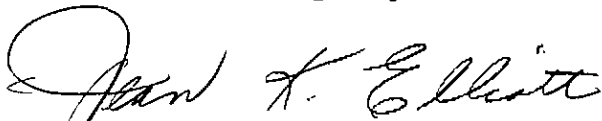


It was moved by Powell, second by VanOrman, to approve a settlement in the amount of \$1,180.80 in the matter of Judy Bohlen versus the City of Oregon City.

Roll call: Light, Aye; VanOrman, Aye; Powell, Aye; Spear, Aye.

There being no further business, the meeting adjourned at 10:08 p.m.



JEAN K. ELLIOTT, City Recorder

## REGULAR MEETING

Oregon City, Oregon, August 1, 1990

A regular meeting of the City Commission was held in the Commission Chambers of City Hall on the above date at 8:00 p.m.

Roll call showed the following present:

Mayor David D. Spear

Commissioner Daniel W. Fowler

Commissioner Carol A. Powell

Charles Leeson, Interim City Manager

Jean K. Elliott, City Recorder

Mark Greenfield, City Attorney

It was moved by Powell, second by Fowler, to approve the minutes of July 18, 1990.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

On the call for future agenda items, there was no input.

Commission Report No. 90-200, Public Hearing - Proposed Zoning Ordinance Amendment - If Approved, Proposed Ordinance No. 90-1042, An Ordinance Repealing Title XI: Zoning, Chapter 3: Zoning Districts, Section 17: "H" Historic Overlay District, of the 1963 City Code, and Reenacting a New Title XI: Zoning, Chapter 3: Zoning District, Section 17: "H" Historic Overlay District - Continued from July 18, 1990, was presented. The report noted that at its July 18, 1990 meeting, the City Commission continued the matter of the public hearing to consider a proposed zoning ordinance amendment because of changes required to the content of the ordinance. Therefore, on the August 1, 1990 agenda, there is the public hearing and proposed Ordinance No. 90-1042 for Commission consideration.

The report continued that the City's Periodic Review Order outlined several of the City's codes to bring them into compliance with requirements outlined in the Order. The changes were reviewed and discussed by the Planning Commission and Periodic Review Advisory Committee. The City Commission also discussed this proposal at a work session on June 27, 1990.

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On June 14, 1990, the Planning Commission held a public hearing to consider amending the "H" Historic Overlay District to incorporate the Oregon Trail-Barlow Road as part of the District. This zoning ordinance amendment is compatible with new comprehensive amendments in the Historic Preservation Element.

The report concluded that notice of proposed Ordinance No. 90-1042 had been posted at City Hall, 320 Warner Milne Road; Courthouse, 807 Main Street; and, Senior Center, 615 5th Street, by direction of the City Recorder. If there was no objection at the public hearing, it was recommended that first reading be approved, second reading be called and approved for final enactment to become effective August 31, 1990.

John Block, Development Services Director, introduced Denyse McGriff, Principal Planner, who presented the staff report. McGriff advised that historic Oregon Trail-Barlow Road Corridor was identified as part of one of the Goal 5 resources during the earlier implementation of the Periodic Review. The City has since coordinated with the County on the designation of the Corridor as it goes through Clackamas County and will be dovetailing with the County on a two-year study to identify the exact route and the archeological resources that may be along the Trail. She further advised that the Mt. Hood National Forest has already inventoried the Trail through their district. Powell asked if the enactment of this ordinance would in any way affect the newly adopted Tourist Commercial Zone for the End of the Trail. McGriff advised that it was a zone and not an overlay and would probably affect it to some degree as a significant portion of the Trail coming into Oregon City is partially under the landfill with most traces gone. In that portion, there can be no development without approval of DEQ, there is no anticipation of any problem at this time.

Mayor Spear declared the public hearing open and called for testimony. With none offered, the hearing was declared closed.

It was moved by Fowler, second by Powell, to approve first reading of proposed Ordinance No. 90-1042.

Roll call: Powell, Aye; Fowler, Aye; Spear, Aye.

Second reading was called after which it was moved by Powell, second by Fowler, to approve second reading for final enactment.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

#### ORDINANCE NO. 90-1042

AN ORDINANCE REPEALING TITLE XI: ZONING, CHAPTER 3: ZONING DISTRICTS, SECTION 17: "H" HISTORIC OVERLAY DISTRICT OF THE 1963 CITY CODE, AND REENACTING A NEW TITLE XI: ZONING, CHAPTER 3: ZONING DISTRICT,

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SECTION 17: "H" HISTORIC OVERLAY DISTRICT.

OREGON CITY ORDAINS AS FOLLOWS:

Section 1. That Title XI: ZONING, Chapter 3: ZONING DISTRICTS, Section 17: "H" HISTORIC OVERLAY DISTRICT, of the 1963 City Code, is hereby repealed and a New Title XI: ZONING, Chapter 3: ZONING DISTRICTS, Section 17: "H" HISTORIC OVERLAY DISTRICT is hereby reenacted to read as follows:

11-3-17: "H" HISTORIC OVERLAY DISTRICT:

(A) Purpose:

1. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character of special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this Section is to:

A,1) (a) Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political and architectural history.

(b) Safeguard the City's historic, aesthetic and cultural heritage as embodied and reflected in such improvements and districts;

(c) Complement any National Register Historic Districts designed in the City;

(d) Stabilize and improve property values in such districts;

(e) Foster civic pride in the beauty and noble accomplishments of the past;

(f) Protect and enhance the City's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;

(g) Strengthen the economy of the City;

(h) Promote the use of historic districts and landmarks for the education, pleasure, energy conservation, housing and public welfare of the City; and

(i) Carry out the provisions of LCDC Goal 5.

(B) Definitions: For the purpose of this Section, the following terms are defined as indicated:

**ALTERATION:** The word shall mean the addition to, removal of or from, or physical modification or repair of, any exterior part or portion of a landmark or structures in an Historic or Conservation District. In an Historic District any physical change shall be considered a form of alteration and shall be treated as such, except repair and maintenance or change of copy.

**ARCHITECTURAL**

**SIGNIFICANCE:** The term shall mean that the structure or district (1) portrays the environment of a group of people in an era of history characterized by a distinctive architectural style; (2) embodies those distinguishing characteristics of an architectural-type specimen; (3) is the work of an architect or master builder whose individual work has influenced the development of the City; or, (4) contains elements of architectural design, detail, materials or craftsmanship which represent a significant innovation.

**BOARD:** The word shall mean the Historic Review Board.

**DEMOLISH:** The word shall mean to raze, destroy, dismantle, deface or in any other manner cause partial or total ruin of the designated landmark or structure in an Historic or Conservation District.

**DISTRICT:** The word shall mean the area within a designated Historic District, Conservation District or Historic Corridor as provided by the zoning maps of the City of Oregon City.

**EXTERIOR:** The word shall mean any portion of the outside of a landmark building, structure, or site in a District or any addition thereto.

**HISTORIC**

**CORRIDOR:** The term shall mean that portion of a parcel of land that is a designated linear historic feature as the route of the Oregon Trail-Barlow Road.

**HISTORICAL**

**SIGNIFICANCE:** The term shall mean that the structure of district (1) has character, interest or value, as part of the development, heritage or cultural characteristics of the City, State or Nation; (2) is the site of an historic event with an effect upon society; (3) is identified with a person or group of persons who had some influence on society; or (4) exemplifies the cultural, political, economic, social or historic heritage of the community.

**HISTORIC**

**SITE:** The term shall mean the structure and the property surrounding a landmark, a structure in an Historic District or a designated structure in a Conservation District.

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**MAJOR PUBLIC**

**IMPROVEMENT:** The term shall mean the expenditure of public funds or the grant of permission by a public body to undertake change in the physical character of lands or the making of public improvements within a District, except for the repair or maintenance of public or private improvements within a District.

(C) **Areas Affected:** The Historic Overlay District shall apply to the following:

1. Historic districts, upon designation in accordance with this Section;
2. Conservation districts designated in accordance with this Section;
3. Landmarks as designated by this Section; and
4. Historic Corridors designated in accordance with this Section.

The boundaries of the historic districts, the boundaries of conservation districts, historic corridors, the location of buildings and structures in conservation districts and the location of landmarks shall be designated on a special Oregon City zoning map or maps.

The following are hereby designated within the Historic Overlay District:

1. The Canemah Historic District; the minimum boundaries of which are those designated by the United States Department of the Interior and the National Register of Historic Places as indicated in the Oregon City Comprehensive Plan.
2. The McLoughlin Conservation District; the surveyed buildings indicated by map in the Comprehensive Plan shall constitute the designated structures in the McLoughlin Conservation District, along with any structures designated since initial adoption of the Comprehensive Plan on March 13, 1980.
3. The Oregon Trail-Barlow Road Historic Corridor: Properties identified as the Original Primary Route or as the Alternate Route in the May 1988 inventory of the Barlow Road by Clackamas County.
4. Designations undertaken pursuant to Section 11-3-17 (E). The established Historic Overlay District shall allow for the designation of two (2) types of Districts so that areas with a high concentration of historic structures are designated Historic Districts and areas with a lower concentration are designated Conservation Districts. Also allowed is the designation of structures of historic or architectural significance not located in an Historic or Conservation District to be designated as Landmarks.

(D) **Citizen Involvement:**

1. The Planning Department shall be authorized to incur expenses in holding public workshops in the Historic Districts and Conservation Districts, distribute written information, show slides and answer questions on remodeling and rehabilitation of older buildings, and to educate the public in the need to comply

with State and Federal laws protecting or encouraging protection of antiquities and other related matters concerning historic preservation.

2. Citizens making applications for district or landmark designations or for exterior alterations or new construction in an Historic or Conservation District, and Historic Corridor or on a landmark site may consult with and receive advice from the Planning Department staff concerning their applications.

(E) Designation of a Conservation District, Historic District, Landmark, or Historic Corridor:

1. Institution of Proceedings: The City Commission, the Planning Commission, the Historic Review Board, a recognized neighborhood group or any interested person may initiate the proceedings for designation of an Historic or Conservation District, Landmark, or Historic Corridor as follows:

(a) The City Commission or the Historic Review Board may initiate designation proceedings by sending a written proposal or application to the Planning staff. Such proposal is not subject to any minimal information requirements other than a description of the boundaries of the area to be designated.

(b) Any interested person or recognized neighborhood group may start designation proceedings by sending a written application to the Planning staff.

2. Application Information: The Planning staff may specify the information required in an application and may from time to time change the content of that information, but at all times the Planning staff shall require the following information:

- (a) The applicant's name and address;
- (b) The owner's name and address, if different from the applicant;
- (c) A description of the boundaries of the proposed district or a description of the proposed landmark;
- (d) A map illustrating the boundaries of the proposed district or the location of the proposed landmark;
- (e) A statement explaining the following:
  - (1) The reasons why the proposed district or landmark should be designated;
  - (2) The reason why the boundaries of the proposed district are adequate and suitable for designation;
  - (3) The positive and negative effects, if any, which designation of the proposed district or landmark would have on the residents or other property owners of the area.

3. The Planning staff shall deliver a proposal or an application for the designation to the Historic Review Board within thirty (30) days after the day on which a proposal or application is received. The Historic Review Board shall review the

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proposal on the application and prepare a written recommendation or decision approving or rejecting the proposed designation.

4. In preparing the recommendation or decision, the Historic Review Board shall limit its review to:

- (a) Whether the proposed district or landmark would serve the purpose of the Historic Overlay District as stated in Section 11-3-17 (A), and
- (b) Conformity with the purposes of the City of Oregon City Comprehensive Plan.

5. City Commission Review of District:

(a) The Historic Review Board shall deliver a copy of its recommendation to the City Commission within thirty (30) days.

(b) The City Commission shall hold a public hearing pursuant to procedures contained in Title XI, Chapter 12.

(c) After the hearing, the City Commission may engage in one of the following actions:

- (1) Refuse to designate the proposed district, or
- (2) Designate the proposed district by a duly enacted ordinance, or
- (3) Remand the matter to the Historic Review Board for additional consideration of a specific matter or matters.

(d) The City Commission may limit itself to the proposed district or may modify the proposed district and, as so modified, approve it. Enlargement of the proposed district shall require additional notice and public hearing. The Commission may hold such hearing or hearings.

(e) The approval or disapproval of the designation by the City Commission shall be in writing and shall state the reasons for approval or disapproval.

(f) Amendment or Rescission: The district designation may be amended or rescinded after the Board and City Commission have utilized the same procedures required by this Ordinance for establishment of the designation. The Board shall give priority to designation of potential districts and landmarks indicated in the Oregon City Comprehensive Plan.

F. Exterior Alteration and New Construction

1. Except as provided pursuant to Section 11-3-17(F)9, no person shall alter any Historic Site in such a manner as to affect its exterior appearance, nor shall any new structure be constructed in an Historic District, Conservation District, Historic Corridor, or on a landmark site, unless a certificate of appropriateness has previously been issued by the Historic Review Board. A building addition that is thirty percent (30%) or more in size of the original building shall be considered new construction in a District. Further, no major public improvements shall be made in a District unless approved by the Board and given a certificate of

appropriateness.

2. Application for such a certificate shall be made to the Planning staff and shall be referred to the Historic Review Board. The application shall be in such form and detail as the Board prescribes.

3. (a) The Historic Review Board, after notice and public hearing held pursuant to Title XI, Chapter 13, shall approve the issuance, approve the issuance with conditions or disapprove issuance of the certificate of appropriateness.

(b) The following exterior alterations to Historic Sites may be subject to administrative approval:

(1) Construction of foundations for structures on historic sites, subject to HRB Policy-1 established by the Board.

(2) Addition of storm windows to structures on historic sites, subject to HRB Policy-2 established by the Board.

(3) Repair of siding, subject to HRB Policy-3 established by the Board.

4. For exterior alterations of Historic Sites in an Historic District or Conservation District or individual landmark, the criteria to be used by the Board in reaching its decision on the certificate of appropriateness shall be:

- (a) The purpose of the Historic Overlay District as set forth in Section 11-3-17(A);
- (b) The provisions of the Oregon City Comprehensive Plan;
- (c) The economic use of the Historic Site and the reasonableness of the proposed alteration and their relationship to the public interest in the structure's or landmark's preservation or renovation;
- (d) The value and significance of the Historic Site;
- (e) The physical condition of the Historic Site;
- (f) The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used with the Historic Site;
- (g) Pertinent aesthetic factors as designated by the Board;
- (h) Economic, social, environmental and energy consequences; and
- (i) Design guidelines adopted by the Historic Review Board.

5. For construction of new structures in an Historic or Conservation District, or on an Historic Site, the criteria to be used by the Board in reaching its decision on the certificate of appropriateness shall include the following:

- (a) The purpose of the Historic Conservation District as set forth in Section 11-3-17(A);
- (b) The provisions of the Oregon City Comprehensive Plan;

- (c) The economic effect of the new structure on the historic value of the district or Historic Site;
- (d) The effect of the proposed new structure on the historic value of the district or Historic Site;
- (e) The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure.
- (f) Economic, social, environmental and energy consequences.
- (g) Design guidelines adopted by the Historic Review Board.

6. For construction of new structures in an Historic Corridor, the criteria to be used by the Board in reaching its decision on the certificate of appropriateness shall include the following:

- (a) The purpose of the Historic Overlay District as set forth in Section 11-3-17(A);
- (b) The policies of the Oregon City Comprehensive Plan;
- (c) The impact on visible evidence of the Trail;
- (d) The impact on archaeological evidence when there exists documented knowledge of archeological resources on the property;
- (e) The visual impact of new construction within the Historic Corridor; and
- (f) The general compatibility of the site design and location of the new construction with the Historic Corridor considering the standards of 11-3-17(F)7.

7. The following standards apply to development within Historic Corridors:

- (a) Within the Oregon Trail-Barlow Road Historic Corridor, a minimum of a thirty foot (30') wide open-visual corridor shall be maintained and shall follow the actual route of the Oregon Trail, if known. If the actual route is unknown, the open visual corridor shall connect within the open visual corridor on adjacent property.
- (b) No new building or sign construction shall be permitted within required open visual corridors. Landscaping, parking, streets, driveways are permitted within required open visual corridors.

8. In rendering its decision, the Board's decision shall be in writing and shall specify in detail the basis therefor.

9. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which does not involve a change in design, material or the outward appearance of such feature which the Building Official shall certify is required for the public safety because of its unsafe or dangerous condition.

10. The following exterior alterations may be made subject to the administrative procedures as outlined below:

-Construction of fences on Historic Sites.

-Exterior alterations, excluding additions, to incompatible structures in the Canemah Historic District.

(a) A notice of the proposed certificate of appropriateness shall be mailed to the following persons:

- (1) The applicant;
- (2) All owners of property within three hundred feet (300') of the property which is the subject of application;
- (3) A recognized neighborhood association and a Citizen Involvement Committee representative of the neighborhood involved, if the property which is the subject of the application lies wholly or partially within the boundaries of such organization.

(b) The failure of the property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to personal notice.

(c) Notice shall also be given by publication in a newspaper of general circulation in the area affected.

(d) Within ten (10) days of the issuance of notice of the proposed certificate of appropriateness, any person who has received personal notice pursuant to subsection (a) above or who demonstrates sufficient interest in the outcome to participate in such proceedings, as determined by the Historic Review Board, may request a public hearing before the Historic Review Board.

(e) Within forty-five (45) days after a request for public hearing is made, a public hearing shall be held before the Historic Review Board following procedures as established in Title XI, Chapter 13.

(f) The Historic Review Board shall then deny or approve the application, either with or without conditions, following procedures as established in Title XI, Chapter 13.

(g) In the event no request for hearing is filed, the Historic Review Board, through its chairperson and Planning staff shall issue a certificate of appropriateness in accordance with the notice given without further hearing.

(h) The Board may adopt policies for review of applications of certificates of appropriateness in the Historic Overlay District. Such policies shall be adopted only after notice and an opportunity to be heard is provided and shall include specific opportunity for comment by the Planning staff, Planning Commission, and the City Commission. Such policies shall carry out the City's Comprehensive Plan, especially those elements relating to historic preservation. In the absence of such policies, the Board shall apply such elements directly.

#### G. Demolition and Moving:

1. If an application is made for a building or moving permit to demolish or move all or part of a structure which is a landmark or which is located in a Conservation District or an Historic District, the Building Inspector shall, within seven (7) days,

transmit to the Historic Review Board a copy of said transaction.

2. The Historic Review Board shall hold a public hearing within forty-five (45) days of application pursuant to the procedures in Title XI, Chapter 13.

3. In determining the appropriateness of the demolition or moving as proposed in an application for a building or moving permit, the Board shall consider the following:

- (a) All plans, drawings and photographs as may be submitted by the applicant;
- (b) Information presented to a public hearing held concerning the proposed work;
- (c) The Oregon City Comprehensive Plan;
- (d) The purpose of this Section is as set forth in 11-3-17(A);
- (e) The criteria used in the original designation of the landmark or District in which the property under consideration is situated;
- (f) The historical and architectural style, the general design, arrangement, materials of the structure in question or its appurtenant fixtures; the relationship of such features to similar features of the other buildings within the district and the position of the building or structure in relation to public rights-of-way and to other buildings and structures in the area;
- (g) The effects of the proposed work upon the protection, enhancement, perpetuation and use of the district which cause it to possess a special character or special historical or aesthetic interest or value;
- (h) Whether denial of the permit will involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this Section.
- (i) Economic, social, environmental and energy consequences.

4. The Board may approve the demolition or moving request after considering the criteria contained in Section 11-3-17(G)3. Action by the Board approving the issuance of a permit for demolition or moving may be appealed to the City Commission by any aggrieved party, by filing a notice of appeal in the same manner as provided in Section 2-6-7 for appeals. If no appeal is filed, the Building Official shall issue the permit in compliance with all other codes and ordinances of the City.

5. The Board may reject the application for permit if it determines that, in the interest of preserving historical values, the structure should not be demolished or moved, and in that event issuance of the permit shall be suspended for a period fixed by the Board, as follows:

- (a) For landmarks or structures located in a Conservation District, the Board may invoke a stay of demolition or stay of moving for a period not exceeding thirty (30) days from the date of public hearing. The Board may invoke an extension of the suspension period if it determines that there is a program or project underway which could result in public or private acquisition of such structure or site, and that there is reasonable ground to believe that such program or project may be successful, then the Board, at its discretion, may extend the suspension period in thirty (30) day increments for an additional period not exceeding ninety (90) days,

to a total of not more than one hundred twenty (120) days from the date of public hearing for demolition, or moving permit. during such period of suspension of permit application, no permit shall be issued for such demolition or moving nor shall any person demolish or move the building or structure. If all such programs or projects are demonstrated to the Board to be unsuccessful and the applicant has not withdrawn the application for demolition or moving permit, the Building Inspector shall issue such permit, if the application otherwise complies with the codes and ordinances of the City.

Action by the Board suspending issuance of a permit for demolition or moving may be appealed to the City Commission by the applicant for permit, by filing a notice of appeal, in the same manner as provided in Section 2-6-7 for appeals.

(b) For structures located in an Historic District, the Board may invoke a stay of demolition or stay of moving for a period not exceeding one hundred twenty (120) days. The Board may invoke an extension of the suspension period if it determines that there is a program or project underway which could result in public or private acquisition of the structure or site, or the preservation or restoration of such structure or site, and that there are reasonable grounds to believe that such program or project may be successful, then the Board, at its discretion, may extend the suspension period for an additional permit not exceeding ninety (90) days, to a total of not more than two hundred ten (210) days from the date of application for demolition or moving permit. During such period of suspension of permit application, no permit shall be issued for such demolition or moving nor shall any person demolish or move the building or structure. If all such programs or projects are demonstrated to the Board to be unsuccessful and the applicant has not withdrawn the application for a demolition or moving permit, the Building Inspector shall issue such permit, if the application otherwise complies with the codes and ordinances of the City.

Action by the Board suspending issuance of the permit for demolition or moving may be appealed to the City Commission by the applicant for permit, by filing a notice of appeal, in the same manner as provided in Section 2-6-7 for appeals.

6. In any case where the City Commission has ordered the removal or demolition of any structure determined to be dangerous to life, health or property, nothing contained in this Chapter shall be construed as making it unlawful for any person, without prior approval of the Historic Review Board, pursuant to this Chapter, to comply with such order.

Read first time at a regular meeting of the City Commission held on the 1st day of August, 1990, and the foregoing ordinance was finally enacted by the City Commission this 1st day of August, 1990.

/s/JEAN K. ELLIOTT, City Recorder

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ATTESTED to this 1st day of August, 1990.

/s/David D. Spear

DAVID D. SPEAR, Mayor

Commission Report No. 90-201, Request for Comprehensive Plan Amendment and Zone Change - Properties on the west side of Molalla Avenue, north of Warner Milne Road - Public Hearing - Continued from July 18, 1990, was presented. The report noted that on July 18, 1990, the City Commission held a public hearing on a request by David L. Neff, Steven Blakley, Stan Apperson, and Jerry Porter, for a Comprehensive Plan Amendment from "O" Office to "C" Commercial, and a zone change from "LO" Limited Office to "C" General Commercial. The request involved seven parcels at the northwest corner of Warner Milne Road and Molalla Avenue. The parcels comprised a total area of 2.75 acres. (This request was originally scheduled for public hearing on June 20, 1990 but was continued to July 18th at the request of the applicant).

The report concluded that during the course of the public hearing, the Commission heard a request by a representative of Steven Blakley to withdraw from the application because of a Planning Commission recommendation to require a right-of-way dedication on the property fronting Warner Milne Road. The Commission continued the public hearing so that a meeting of the property owners could be held to try to facilitate an agreement. The meeting was not successful and staff was recommending that the withdrawal of the Blakley property be approved and the request be referred back to the Planning Commission to reconsider the Plan Amendment and Zone Change for the remaining properties.

The Development Services Director advised that a meeting had been coordinated with the property owners. The issue was one of property values and expectations and the ability of the proposed developer to pay what the owners involved wanted. This involved the City because of the requirement of a right-of-way dedication on Warner Milne with that relating to the value of the property. He further advised that when he met with them, he determined that a portion of the right-of-way was unusual, the triangle of property necessary for the realignment. This he felt could be compensated for. He offered the representative of the Blakley property fair market value for that property, estimated at between \$30,000 and \$35,000. This was not acceptable; therefore, the recommendation that is now presented.

Mayor Spear declared the public hearing open and called for testimony.

Mark Zoller, 415 Mill Plain, Vancouver, Washington, representing three of the four property owners, excluding the Blakley property. He noted that he viewed this matter as "common sense" versus "policy". He noted the two options as being sending the matter back for review of the one parcel or approve the zoning but remove the excessive restrictions. He noted that the 20 foot exaction was common but if the properties are separated from Blakley's property, the 20 feet would be a

much larger percentage than the other dedications. If the Blakley property is considered independent there is no way that the 20 feet could be justified and would make the property unbuildable. Exaction could force condemnation of the entire piece.

The Development Services Director advised that the dedication is required at the time of development; if Blakley does not develop, he does not dedicate, that is how the condition is written. The developer would dedicate the right-of-way.

Discussion continued regarding dedication at this time or at the time of permit issuance. Fowler asked if the City has ever taken dedication of right-of-way at the point of permits when it was not a condition of a zone change. Block advised that this was done on two recent occasions. The City's practice is to require the dedication with each land use action requested. In this case, a zone change and comprehensive plan amendment was requested. Block noted that when the City re-zones the property, the City maybe doubling the value of the property. Now is the time to ask for the dedication.

The City Attorney advised that the purpose and basis for the zone change was in City Code 11-5-2 with the findings being that the zone change was in the public interest along with other criteria. There is broad discretion with regard to zone changes and plan amendments with a lot depending on the nature of the application. In this instance, the Planning Commission felt that there was a need for this type of development based on this type of proposal. If there is a different proposal, the Planning Commission might conclude differently. There is a risk if a zone change is approved without the conditions because if condemnation is needed later to acquire property, that property could be worth more with the City having to pay for it.

Block then reviewed the size of the property involved. The property was buildable on the northerly property line and within 10 feet of the right-of-way on Warner Milne Road. Minus the 20 foot dedication, that leaves 83 feet of buildable area. Minus a 10 foot setback on Warner Milne Road, leaves a 73 foot buildable area, which is marketable.

The City Attorney advised that if there was a problem with marketability, a variance could be obtained to the setback requirements.

Powell asked if LCDRC would find the dedication excessive. The City Attorney noted that the test for any condition of approval is if there is a reasonable basis for the condition. If the Planning Commission found in its findings that the traffic generated by this development is such and that it is a reasonable basis for authorizing that for the widening of Warner Milne, he felt that would be no problem. He advised that this was a typical condition of approval.

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Mr. Zoller then advised that Blakley had other points that would have to be considered; the purchase of the additional ground would need to happen, the standards for easements required with the easement on the west side of the property is to be brought up to standards, driveway standards, and all properties must be consolidated in the sense of one ownership is not acceptable.

Clark Balfour, 1001 S. Molalla Avenue, attorney, representing Mr. Blakley, advised that he was standing in for Mr. Schultz, regular attorney on this matter, and reiterated that the property was to be excluded from this matter. Based upon his conversations with Mr. Zoller, Blakley would be agreeable to the zone change with no conditions or willing to agree to the conditions if the zone change is not effective until all contingencies are met. The concern is that if the exaction is put in place now, the ability to develop the property is limited. If they could have the zone change effective only after closure of the sale of the combined properties. In the absence of that, no rights would be waived. He advised that he was relaying what Mr. Schultz had advised him and would attempt to answer questions.

After some questions were asked, the City Attorney noted that he thought he was hearing that there was a willingness to accept a conditional zone change that would become effective if certain conditions were met. He noted hearing a timing issue with Blakley not wanting to dedicate the property unless everything else would happen. He advised that the City could require the dedication with it taking place prior to the issuance of building permits. He suggested that a definite amount of time be established to complete the steps and if they don't complete them in 12 or 18 months, then the zone change is automatically void.

Powell noted that if this merger does not come about and the Blakley property stands alone, he cannot apply for a zone change needed to build a clinic without meeting the same conditions with a 20 foot dedication. Balfour noted that the matter would return to the Commission at some point for revisit.

When asked for the standards on the easement, Block advised that this would be driveway, parking lot standard and not a public street standard.

Balfour asked if this conditional zone change was approved, did it apply only to the Blakley property or to all properties involved. The City Attorney advised that it would apply to all properties because if it didn't work out, the application would become different than reviewed by the Planning Commission and for which public notice was given and should return to the Planning Commission.

Balfour asked if the option to extend was at the property owners discretion. The City Attorney advised that if within a year all conditions could not be met, an extension of 6 months could be granted.

The City Attorney expressed question regarding this being appropriate for Commission action this evening or if Mr. Balfour should return to his client first.

Block advised that an ordinance would have to be brought back to implement the changes.

With no further testimony offered, the hearing was declared closed.

It was moved by Powell, second by Fowler, to continue this matter to the September 5, 1990 meeting for decision.

Roll call: Powell, Aye; Fowler, Aye; Spear, Aye.

Commission Report No. 90-203, Public Hearing - Proposed Zoning Ordinance Amendment - If Approved, Proposed Ordinance No. 90-1044, An Ordinance Repealing Title XI: Zoning, Chapter 13: Administrative Action, of the 1963 City Code, and Reenacting a New Title XI: Zoning, Chapter 13: Administration and Procedures, and Declaring an Emergency, was presented. The report noted that at the July 18, 1990 meeting, the City Commission continued the matter of the public hearing to consider an Administrative Procedures ordinance because of changes recommended by the City Attorney. The Planning Commission had an opportunity to review the changes recommended by the City Attorney. They concur with the changes. Therefore, on the August 1, 1990 agenda, there is a public hearing and proposed Ordinance No. 90-1044 for Commission consideration.

The report continued that the City's Periodic Review Order outlined several requirements to bring the City's Comprehensive Plan and implementing ordinances into compliance. There were many changes adopted by the State Legislature which pertain to notice and hearing requirements. Proposed Ordinance No. 90-1044 repeals Title XI: Zoning, Chapter 13: Administrative Action and reenacts a new Title XI: Zoning, Chapter 13: Administration and Procedures. The proposed ordinance was reviewed by the City Attorneys and was now ready for final adoption. The changes were discussed with the Planning Commission and Periodic Review Advisory Board.

On July 12, 1990, the Planning Commission held a public hearing to consider changes to the Administrative Action section of the Zoning Code. Attached was proposed Ordinance No. 90-1044 which revised and amended the zoning ordinance to provide for new administration and procedures for land use actions. The ordinance included an updated fee schedule for Planning permits. While some fees differed, they were basically the same as those charged by Clackamas County and the City of West Linn.

The report concluded that notice of proposed Ordinance No. 90-1044 had been posted at City Hall, 320 Warner Milne Road; Courthouse, 807 Main Street; and, Senior Center, 615 5th Street, by direction of the City Recorder. It was recommended that first and second reading be approved unanimously so final enactment could become effective August 1, 1990. Upon adoption, an executed copy of the ordinance would be filed with Clackamas County pursuant to ORS

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279.055 (2).

Denyse McGriff, Principal Planner, presented the staff report.

Mayor Spear declared the public hearing open and called for testimony. With none offered, the hearing was declared closed.

It was moved by Powell, second by Fowler, to approve first reading of proposed Ordinance No. 90-1044.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

Second reading was called after which it was moved by Fowler, second by Powell, to approve second reading for final enactment.

Roll call: Powell, Aye; Fowler, Aye; Spear, Aye.

#### ORDINANCE NO. 90-1044

AN ORDINANCE REPEALING TITLE XI: ZONING, CHAPTER 13: ADMINISTRATIVE ACTION, OF THE 1963 CITY CODE, AND REENACTING A NEW TITLE XI: ZONING, CHAPTER 13: ADMINISTRATION AND PROCEDURES, AND DECLARING AN EMERGENCY.

#### OREGON CITY ORDAINS AS FOLLOWS:

Section 1. That Title XI: ZONING, Chapter 13: ADMINISTRATIVE ACTION, of the 1963 City Code is hereby repealed and a new Title XI: ZONING, Chapter 13: ADMINISTRATION AND PROCEDURES, is reenacted to read as follows:

#### CHAPTER 13

#### ADMINISTRATION AND PROCEDURES

#### SECTION:

- 11-13-1 Introduction
- 11-13-2 Definitions
- 11-13-3 Pre-Application Conference
- 11-13-4 Application Requirements
- 11-13-5 Written Notice Requirements
- 11-13-6 Posting Requirements
- 11-13-7 Reports and Record Keeping
- 11-13-8 Assignment of Hearings Bodies
- 11-13-9 Quasi-Judicial Procedures
- 11-13-10 Legislative Procedures

11-13-11	Public Hearing Requirements
11-13-12	Ex-Parte Contact
11-13-13	Challenge for Bias, Prejudgment or Personal Interest
11-13-14	Objections to Procedure, Notice or Qualifications
11-13-15	Conditional Approval
11-13-16	Performance Guarantees
11-13-17	Covenants with the City
11-13-18	Expiration of An Approval
11-13-19	Extension
11-13-20	Reapplication Limited
11-13-21	Concurrent Reviews
11-13-22	Interpretation
11-13-23	Conformity of Permits
11-13-24	Authorization of Similar Uses
11-13-25	Metric Conversion
11-13-26	Reconsideration of Land Use Approvals
11-13-27	Regulations that Apply at the Time of an Application
11-13-28	Transfer of Approval Right
11-13-29	Prior Conditions of Land Use Approval
11-13-30	Violations and Enforcement
11-13-31	Fees

11-13-1: INTRODUCTION: This Chapter is enacted to provide a uniform procedure for land use permit applications, legislative land use actions, hearings and remedies. This Chapter shall regulate all land use procedures.

11-13-2: DEFINITIONS: The following definitions shall apply to this ordinance:

(A) "LAND USE PERMIT" means any quasi-judicial comprehensive plan text or map or zoning text map amendment, conditional use permit, variance, sign variance, site plan and design review, historic review, solar access, subdivision, minor or major partition, subdivision replat or name change, planned development review, condominium plat review, extension permit, lot line adjustment, modification of conditions, or other quasi-judicial land use action.

(B) "PLANNING DIVISION" means the Planning Division of the Development Services Department of the City of Oregon City.

11-13-3: PRE-APPLICATION CONFERENCE:

(A) PURPOSE: The pre-application conference is to provide the applicant an opportunity to discuss and explain the proposed project. Staff has the opportunity to explain and review all applicable policies, standards, ordinances, opportunities and constraints related to the site and proposed development.

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(B) A pre-application conference is required for all land use permits.

(C) Time Limit: A pre-application conference is valid for a period of six (6) months.

(D) An omission or failure by the Planning Division to provide an applicant with relevant information during a preapplication discussion shall not constitute a waiver of any standard, criterion, or requirement of the City of Oregon City.

11-13-4: APPLICATION REQUIREMENTS:

(A) WHO MAY INITIATE APPLICATIONS: A land use permit application may only be initiated upon application by a property owner or contract purchaser, the Planning Commission or the City Commission.

(B) COMPLETENESS CHECK:

1. Initial Check: An applicant shall submit a request for a land use review on the appropriate forms supplied by the Planning Division. The application shall be accompanied by the appropriate filing fee. The Planning Division shall review the application to see if it is complete and shall notify the applicant of any missing information or materials within thirty (30) working days following receipt of the application.

2. Incomplete Applications - Additional Information: Time allowed for additional submittals: If the Planning Division finds that the application is not complete, the applicant shall have 180 days from the date of original submittal to provide the missing information. If the applicant refuses to submit the missing information, the application shall be considered complete on the 31st day after its original submittal and shall be processed based on the information submitted.

3. Time Limitations for Processing Applications: The 120 day limit: The 120 day processing time limit required by ORS 227.178 shall begin on the day the application is determined to be complete.

(C) CHANGES TO APPLICATIONS: Any change to an application which substantially alters the application shall be made at least 15 days before notice of the initial hearing on the application is mailed.

(D) REQUIRED INFORMATION: Unless stated elsewhere in this Chapter, a complete application consists of all the materials listed in Paragraphs 1 through 4 below. The Planning Division may waive items listed if they are not applicable to the specific review. The applicant is responsible for the completeness and accuracy of all information submitted with the request.

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1. One copy of the completed application form bearing an accurate legal description, tax account number(s), map and location of the property. The application shall include the name, address, telephone number and signature of the applicant, the name, address, and signature of all property owners if different from the applicant, and the nature of the applicant's interest in the property.

2. One copy of a written statement that includes the following items:

- (a) A complete list of all land use reviews requested;
- (b) A complete detailed description of the proposal including existing and proposed use(s) or change(s) to the site or building(s);
- (c) A description of how all approval criteria for the land use review(s) are met. As an alternative and where appropriate, this information may be placed on the site plan; and
- (d) Any additional information needed to understand the proposal or requested at the pre-application conference.

(e) Land of sufficient detail in the written statement shall be cause for a determination that the application is incomplete.

3. The Planning Division may require the applicant to submit up to twenty-one (21) copies of a site or development plan. At least one complete copy shall be 8 1/2 inches by 11 inches, suitable for photocopy reproduction. The site or development plan shall be drawn accurately to scale.

4. The required filing fee(s).

(E) SUBMISSION OF DOCUMENTS AND EVIDENCE: All documents and evidence relied upon by the applicant shall be submitted to the Planning Division and be made available to the public by the time written notice of the application is mailed as provided in Section 11-13-5(A).

**11-13-5: WRITTEN NOTICE REQUIREMENTS:**

((A) NOTICE ON HEARING ON THE INITIAL APPLICATION: Notice of an application for a land use permit shall be mailed at least twenty (20) days prior to the date scheduled for public hearing. Written notice shall be sent by first class mail to the following persons:

- 1. The Applicant.
- 2. All owners of property within three hundred (300') feet of the property which is the subject of the application.
- 3. The owner of a public use airport under the circumstances described in ORS 227.175 (6).
- 4. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park as defined in ORS 227.275.

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5. The recognized neighborhood organization within whose boundaries is situated the property which is the subject of the application.

(B) GENERAL INFORMATION ON NOTICE:

1. Address and Mailing: Mailing addresses of property owners shall be obtained from the latest available County real property tax records. The recognized neighborhood organization address shall be the address shown on the most recent record on file with the City.

2. Failure of a property owner to receive notice shall not invalidate the land use action if the City can demonstrate by affidavit that such notice was given.

3. Measurement of Notice Area: The required notice area shall be measured by drawing lines the specified distance, including intervening street widths, from and parallel to the boundary lines of the ownership that includes the lot.

(C) CONTENTS OF MAILED NOTICE ON INITIAL APPLICATION: Mailed notice shall contain at least the following information:

1. The date, time, and location of the hearing;
2. The name and address of the applicant and owner;
3. The legal description and address of the site;
4. A map depicting the subject property in relation to surrounding properties;
5. A description of the proposal and the proposed use or uses which could be authorized.
6. The land use reviews requested and other land use reviews which may be considered as an option;
7. The approval criteria;
8. A statement that a copy of the Planning Division staff report will be made available at least 7 days before the hearing;
9. The time and manner in which written comments may be submitted;
10. The name and telephone number of the recognized neighborhood organization(s), if any, whose boundaries include the site;
11. A general explanation of the requirements for submission of testimony and the procedure for conduct at the hearing;
12. A statement that failure to raise an issue by the close of the record at or following the final hearing, in person or by letter, precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue;
13. A statement that failure to provide sufficient specificity to afford the review body an opportunity to respond to an issue that is raised precludes appeal to LUBA based on that issue; and
14. The place where information on the matter may be examined and the name and telephone number of a local government representative to contact.

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(D) **NOTICE BY POSTING:** Notice for all applications shall also be posted on the property and be visible from the adjacent public way as per Section 11-13-6. Posted notice shall contain the information set forth in Paragraphs 1, 5 and 14 of Subsection (C) of this Section.

(E) **NOTICE BY PUBLICATION:** In addition to notice by mail and posting, notice of a hearing shall be published in a newspaper of general circulation within the city at least twenty (20) days prior to the hearing. Published notice shall contain the information set forth in Paragraphs 1, 2, 3, 5, 6, and 14 of Subsection (C) of this Section.

(F) **NOTICE OF RESCHEDULED OR CONTINUED HEARING:** If written or oral notice of the rescheduling or continuance of a hearing is provided during the originally scheduled hearing, no additional notice is required. The hearing shall be rescheduled to a specific time and place. If notice of a rescheduled or continued hearing was not made at the hearing then renotification is required.

(G) **NOTICE OF DECISION ON INITIAL APPLICATION:** The notice of decision is a short summary of the land use request and decision. The notice of decision shall be mailed to all parties to a quasi-judicial land use proceeding. The notice shall include the following information:

1. The file number;
2. The name and address of the applicant and owner;
3. The legal description and address of the site;
4. A general description of the proposal;
5. A general description of the decision and the date of mailing;
6. A statement that the decision is final unless appealed;
7. A description of the appeal process, time frame, the person or body to which an appeal may be taken, and fees;
8. The place where written findings and other information on the matter may be examined and the name and telephone number of a local government representative to contact.

(H) **NOTICE OF AN APPEAL OF DECISION ON INITIAL APPLICATION:** The mailed appeal notice shall contain the following information:

1. The file number;
2. The name and address of the applicant, owner, and appellant (if different);
3. A legal description and address of the site;
4. A general description of the proposal;
5. The review body decision and the date of mailing;
6. The date, time, and location of the appeal hearing;
7. A summary of the issues raised in the appeal;
8. The approval criteria applicable to the appeal;

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9. A statement that the appeal hearing is confined to the approval criteria and the issues raised in the appeal;
  10. A general explanation of the requirements for submission of testimony and the procedure for conduct at the hearing;
  11. The place where written findings and other information on the matter may be examined and the name and telephone number of a local government representative to contact.

(I) NOTICE OF DECISION FOLLOWING APPEAL: Where a decision is appealed and a subsequent hearings body decision made, a notice of final decision shall be mailed to all parties to the appeal proceeding. The notice shall contain the following information:

1. The file number;
2. The name of the applicant, owner, and appellant (if different);
3. The legal description and address of the site;
4. A description of the proposal, including proposed uses and land use reviews;
5. The review body's decision and the date of mailing;
6. A statement that the decision is final, but may be appealed by any party to the appeal proceeding by mailing a notice of intent to appeal to the Land Use Board of Appeals within 21 days following the mailing of the decision.
7. The place where written findings and other information on the matter may be examined and the name and telephone number of a local government representative to contact.

11-13-6: POSTING REQUIREMENTS: Posting of notice on the site shall be required for land use applications. The notice will be supplied by the Planning Division. The requirements for the posting of notice are stated below.

(A) NUMBER AND LOCATION ON THE SITE: A posted notice shall be placed on each frontage of the site. If a frontage is over 600 feet long, a notice is required for each 600 feet, or fraction thereof. Notices shall be posted within 10 feet of a street lot line and shall be visible to pedestrians and motorists. Notices shall not be posted in a public right-of-way or on trees.

(B) PLACING NOTICE: The Planning Division shall provide the applicant with the following information regarding the posting of notice:

1. The number of notices required;
2. The latest date by which the notice must be posted; and,
3. A statement (to be signed and returned) certifying that the notice was posted on site, acknowledging that a failure to post the notice in a timely manner constitutes an agreement by the applicant to defer the 120 day process limit, and acknowledging that failure to post will result in the automatic postponement of the hearing date.

(C) **STANDARDS AND TIMING:** The applicant shall post the notice to the Planning Division's standards at least 10 days before the first scheduled hearing. At least 5 days before the hearing, the applicant shall file with the Planning Division a signed statement affirming that the posting was made. Failure to post the notice and affirm that the posting was done shall result in automatic postponement of the hearing to the next regularly scheduled meeting or to such other meeting as may be available for the hearing.

(D) **REMOVAL:** The applicant shall not remove the notice before the hearing. The applicant shall remove the notice within 10 days of a final decision on the request.

**11-13-7: REPORTS AND RECORD KEEPING:** Required reports and records shall contain the information stated below.

(A) **DECISIONS:** Decisions include any conditions, time limits, or other restrictions that may apply to the land use action.

(B) **REPORTS:** Reports shall include:

1. The file number;
2. The owner's and applicant's name and address;
3. The legal description and site location;
4. A brief description of the request;
5. The review body;
6. The relevant approval criteria;
7. The findings applying the facts to the criteria;
8. The decision; and
9. Any additional information relevant to the case.

(C) **THE PUBLIC RECORD:** The public record in a quasi-judicial land use proceeding includes, but is not limited to, the application; the staff report; all additional evidence, correspondence, public testimony and other materials considered as part of the proceeding; minutes of the proceeding; the final decision and written findings; and the appeal report if applicable.

**11-13-8: ASSIGNMENT OF HEARINGS BODIES**

(A) **PURPOSE:** This section assigns a hearings body to all land use reviews.

(B) **QUASI-JUDICIAL LAND USE REVIEWS:**

1. **PLANNING DIVISION:** All administrative reviews shall be assigned to the Planning Division as per Section 11-13-9 (B).

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2. HISTORIC REVIEW BOARD: The following land use reviews shall be assigned to the Historic Review Board:

- (a) Landmark designations; and removal of landmark designations.
- (b) Design review of new structures, exterior alterations and signs in Historic and Conservation Districts as designated;
- (c) Demolitions in Historic and Conservation Districts as designated;
- (d) Demolitions of historic landmarks outside of districts.
- (e) Archeological site designation;
- (f) Recommendations to other groups, agencies, boards, commissions, or citizens on matters relating to historic preservation with the City and Urban Growth Boundary, traffic, parking facilities, planned developments, land divisions, and other similar land use issues or matters.

3. PLANNING COMMISSION: Unless otherwise provided, all quasi-judicial land use reviews shall be assigned to the Planning Commission.

4. CITY COMMISSION: All quasi-judicial Comprehensive Plan and zoning amendments require final City Commission action following Planning Commission review. All appeals of land use reviews are assigned to the City Commission.

(C) LEGISLATIVE LAND USE REVIEWS: All legislative land use reviews are assigned to the Planning Commission, who will make recommendations to the City Commission. Final action is by the City Commission.

#### 11-13-9: QUASI-JUDICIAL PROCEDURES:

(A) PURPOSE: This Section states the procedures and requirements for quasi-judicial reviews. It contains the step-by-step processing requirements. The Chapter also describes the rules of conduct for all people involved in the quasi-judicial review process.

The regulations provide standardized methods for processing quasi-judicial land use reviews. The requirements provide clear and consistent rules to ensure that the legal rights of individual property owners and the general public are protected.

#### (B) DECISIONS BY PLANNING DIVISION:

1. REVIEW BY PLANNING DIVISION: An application for a minor variance or minor land partition may be decided by the Planning Division or referred to the Planning Commission for a hearing for resolution of doubtful or contested application of standards.

2. PREAPPLICATION CONFERENCE: A preapplication conference is required as provided by Section 11-13-3.

3. APPLICATION: The applicant shall submit an application on the appropriate form and accompanied by the correct fee as per Section 11-13-4.

4. NOTICE OF DECISION: Notice of the decision of the Planning Division shall be mailed to the applicant and to persons entitled to notice in Section 11-13-5(A). Notice of the decision shall also be posted as set forth in Section 11-13-6.

5. APPEALS: Within 10 days following the mailing of notice of the decision, any person who has received notice as per Section 11-13-5(A) or who is adversely affected or aggrieved by the decision may request a public hearing before the Planning Commission. The request for a hearing shall be in writing.

6. If no hearing is requested within 10 days following the mailing of notice of the decision, then the Planning Division's decision is final.

(C) PROCEEDINGS BEFORE THE PLANNING COMMISSION:

1. PREAPPLICATION CONFERENCE: A preapplication conference with the Planning Division is required for all quasi-judicial land use applications as per Section 11-13-3.

2. APPLICATION: The applicant shall submit an application on the appropriate form and accompanied by the correct fee as per Section 11-13-4.

3. HEARING SET: Upon determining that the application is complete, the Planning Division shall schedule a hearing within 60 days.

4. NOTICE OF THE REQUEST: Notice of the request shall be mailed at least 20 days prior to the scheduled hearing as per Section 11-13-5.

5. POSTING NOTICE ON THE SITE: The applicant shall post a notice (supplied by the City) on the site as per Section 11-13-6.

6. DECISION BY THE PLANNING COMMISSION:

(a) The Planning Division shall prepare and file with the Planning Commission a staff report and recommendation. Copies of the report shall be made available to the public at least seven (7) days prior to the hearing. A copy of the staff report shall be mailed to the applicant and to such other persons who request a copy.

(b) PUBLIC HEARING: The public hearing shall be held in accordance with the requirements of Section 11-13-11.

(c) HEARINGS BODY DECISION: The action may be to approve the application as submitted, to deny the application, or to approve the application with

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such conditions as may be necessary to carry out the Comprehensive Plan and implementing ordinances. In all cases the presiding officer of the Planning Commission shall state the Planning Commission's decision upon the close of the hearing or upon continuance of the matter to a time certain. No decision of the Planning Commission shall be deemed final, and the time for filing an appeal shall not begin to run, until findings are adopted and a written final order, signed by the chairperson of the Planning Commission, is filed with the Planning Division.

(d) NOTICE OF DECISION: The final decision shall be in writing and mailed, as per Section 11-13-5(G), to all parties entitled to receive notice; provided, however, that the hearings body may designate one person to be the recipient of the decision for an identified group, organization, group of petitioners, or similar collection of individuals constituting parties.

(e) ABILITY TO APPEAL: The Planning Commission's decision is final unless appealed to the City Commission within ten (10) days following the mailing of the final order or unless the City Commission, on its own motion, orders review within ten (10) days following the mailing of the final order.

(f) WHEN AN APPEAL IS FILED: Appeals shall comply with this Subsection.

(1) CONTENT OF APPEAL: All appeals shall be submitted to the Planning Division on forms provided by the Planning Division. All information requested on the form shall be submitted in order for the appeal to be accepted. The appeal shall contain:

- (a) The file number and land use review(s) appealed;
- (b) Each appellant's name, address, signature, phone number, and relationship to the land use action;
- (c) A statement of which approval criteria the decision violates;
- (d) An explanation how those approval criteria are violated; and
- (e) The required fee.

(2) NOTICE OF THE APPEAL: Notice shall be mailed to the appellant and all persons entitled to receive notice as per Section 11-13-5.

(3) APPEAL HEARING: Appeal hearings shall comply with the provisions of Section 11-13-11. Review by the City Commission shall be limited to the grounds relied upon in the petition or request for review. Appeals heard by the City Commission shall be heard on the record and shall also conform to any rules of procedure adopted by the Commission.

(4) APPEAL DECISION AND FINDINGS:

(a) The City Commission may adopt the hearings body decision, modify it, or reverse it, based on information presented at the hearing and in the record. If

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the City Commission modifies or reverses the decision of the hearings body, an amended report with findings supporting the decision shall be prepared. If the prevailing party is represented by a professional consultant or attorney, the City Commission may require the prevailing party to provide findings and conclusions to support their decision. In such instances, all findings shall be reviewed by the City Attorney and Planning Division.

(5) **APPEAL DECISION FINAL:** The appeal decision of the City Commission is final and is not appealable to another hearing body in the City.

(6) **LAND USE BOARD OF APPEALS:** A decision of the City may be appealed to the Land Use Board of Appeals (LUBA) within 21 days following notice of the final written decision.

(D) **PROCEEDINGS BEFORE THE HISTORIC REVIEW BOARD:** Proceedings before the Historic Review Board shall follow the procedures for proceedings before the Planning Commission set forth in Section 11-13-9(C) of this Title.

**11-13-10: LEGISLATIVE PROCEDURES:**

(A) **PURPOSE:** Legislative actions provide for the establishment and modification of land use plans, policies, regulations, and guidelines. The legislative procedure includes a public hearing. The hearings provide opportunities for public comment and input on actions which may affect large areas of the City.

(B) **PLANNING COMMISSION REVIEW:**

1. **HEARING REQUIRED:** The Planning Commission shall hold at least one public hearing before recommending action on a legislative matter. The Planning Division shall notify the Department of Land Conservation and Development, in compliance with the post acknowledgement procedure set forth at ORS 197.610 to 197.625.

2. **PUBLIC NOTICE:** Notice of the hearing shall be published in the newspaper of general circulation within the City at least twenty (20) days prior to the hearing.

3. **REPORT:** The Planning Division shall have a report or document available at least seven (7) days prior to the hearing.

4. **ADDITIONAL INFORMATION:** The hearings body has authority to request, receive and examine additional information.

5. **HEARINGS BODY RECOMMENDATION AND DECISION:** If a hearings body decides that no action is appropriate, the matter is terminated. This decision may not be appealed. If the City Commission initiated the legislative action, the hearings body shall submit a report and recommendation not to act to the City

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Commission.

6. **FORWARDING RECOMMENDATION TO CITY COMMISSION:** If the last hearings body reviewing a legislative action recommends adoption, a report and recommendation shall be forwarded to the City Commission.

7. **CITY COMMISSION DECISION:** At the conclusion of its hearing, the City Commission may adopt, modify or reverse the recommendation. If the decision is to adopt a code or policy change which was originally enacted by ordinance, the City Commission shall enact its decision by ordinance.

8. **NOTICE OF FINAL DECISION:** Not later than five (5) working days following the final decision, the Planning Division shall mail or otherwise submit notice of its decision in accordance with the requirements of ORS 197.615(2).

**11-13-11; PUBLIC HEARING REQUIREMENTS:**

(A) **RULES OF PROCEDURE:** All public hearings shall conform to the rules of procedure adopted by the review body. The rules of procedure shall comply with the Oregon Public Meetings law, statutory land use hearing requirements, and this Title.

(B) **INITIAL HEARING STATEMENTS:** At the beginning of each public hearing on an initial quasi-judicial application, a statement shall be made to those in attendance that:

1. Lists the applicable substantive approval criteria;
2. States that testimony and evidence must be directed toward the applicable substantive criteria or other criteria in the plan or this Code which the persons believes applies to the decision;
3. States that in order to be able to appeal an issue to the City Commission and the Land Use Board of Appeals, the issue shall be identified clearly and with sufficient detail for other parties to respond and for the reviewing body to consider the testimony in making its decision;
4. States that failure to raise an issue which may be the basis for an appeal before the close of the record at or following the final evidentiary hearing on the application precludes appeal of that issue to the City Commission and the Land Use Board of Appeals.

(C) **HEARING RECORD:** Written minutes shall be prepared as required by ORS 192.650. A record of all public hearings shall be made and retained in written or electronic form for at least three (3) years. If a case is appealed beyond the jurisdiction of the City, the record shall be retained until the final disposition of the case.

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(D) REOPENING OF PUBLIC HEARING: When the reviewing body reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

11-13-12: EX PARTE CONTACT:

(A) PRIVATE CONTACTS: Prior to rendering a decision, a member of a review body may not communicate, directly or indirectly, with any person interested in the outcome. Should such communication occur, at the beginning of the hearing the member of the review body shall:

1. Enter into the record the substance of the written or oral communication; and
2. Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the contact.

(B) PLANNING DIVISION CONTACT: The Planning Division staff may communicate with applicants, owners, their representatives, citizens, City agencies and other public and private organizations as part of the processing of land use applications.

11-13-13: CHALLENGE FOR BIAS, PREJUDGMENT OR PERSONAL INTEREST:

(A) Prior to or at the beginning of a hearing, any party may challenge the qualification of the hearings body, or a member thereof, for bias, prejudgment or personal interest. The challenge shall be documented with specific reasons supported by facts.

(B) Should qualifications be challenged, the hearing body or a member shall disqualify him/herself, withdraw or make a statement on the record of his/her capacity to hear.

11-13-14: OBJECTIONS TO PROCEDURE, NOTICE OR QUALIFICATIONS: Any objections not raised prior to or during the hearing are waived.

(A) The following limitations shall be applicable to conditional approvals:

1. Conditions shall be fulfilled within the time limitations set forth in the approval.
2. Such conditions shall be reasonably conceived to fulfill public needs emanating from the proposed land use as set forth in the application in the following respects:

(a) Protection of the public from the potentially deleterious effects of the proposed use; or

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(b) Fulfillment of the need for public service demands created by the proposed use.

3. Modifications of conditions shall be processed as a new land use action.

4. The City may require a covenant between the City and the owner, and any contract purchasers as per Section 11-13-17.

#### 11-13-16: PERFORMANCE GUARANTEES:

(A) PURPOSE: This section states the requirements for performance guarantees when they are required of an applicant by this Title or as a condition of a land use approval.

(B) TYPES OF GUARANTEES: Guarantees by the applicant may be in the form of a performance bond payable to the City in cash, by certified check, irrevocable letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees shall be accompanied by a contract. The form of the guarantee and contract shall be approved by the City Attorney. The guarantee shall be filed with the Planning Division.

(C) AMOUNT OF GUARANTEE: The amount of the performance guarantee shall be equal to at least 150 percent (150%) of the estimated cost of performance. The applicant shall provide written estimates by three contractors with their names and addresses. The estimates shall include as separate items all materials, labor, and other costs of the required action.

(D) COMPLETION: An inspection and approval of the action or improvement covered by the performance guarantee shall be required before the performance guarantee is returned. The inspection is done by the Planning Division or other appropriate City departments. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the applicant.

#### 11-13-17: COVENANTS WITH THE CITY:

(A) CONTENT OF THE COVENANT: A covenant required by this Title or a condition of a land use approval shall state that:

1. The owner shall comply with all applicable code requirements and conditions of approval; and
2. If the owner fails to perform under the covenant, the City may terminate occupancy of the site and seek all necessary injunctive relief, including seeking to prevent future occupancy of the site while a violation of the covenant exists.

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3. Where the development rights of one site are dependent on the performance of conditions by the owner of another site (such as joint access), the covenants are judicially enforceable by the owner of one site against the owner of another.

(B) **ADOPTING THE COVENANT:** The form of all covenants shall be approved by the City Attorney. The covenant shall run with the land and shall be placed in the Clackamas County deed records prior to the issuance of any permits or development activity pursuant to the approval taking place. Proof of recording shall be made prior to the issuance of any permits and filed with the Planning Division. Such covenant shall be properly signed and executed within thirty (30) days after approval with conditions; provided, however, that the Planning Division may grant reasonable extensions, not to exceed an additional 30 days, in cases of practical difficulty. Failure to sign and record the covenant within the prescribed period shall render the land use approval void. Such covenant shall not restrict the power of subsequent administrative action with or without conditions.

**11-13-18: EXPIRATION OF AN APPROVAL:**

(A) **WHEN APPROVED DECISIONS BECOME VOID:** All quasi-judicial land use approvals, except for zoning map or Comprehensive Plan map amendments, become void under any of the following circumstances:

1. If, within 1 year of the date of the final decision, a building permit has not been issued; or
2. If, within 1 year of the date of the final decision, the approved activity has not commenced or, in situations involving only the creation of lots, the land division has not been approved by the Planning Division and recorded.

(B) **DEFERRAL OF THE EXPIRATION PERIOD:** If a decision is appealed beyond the jurisdiction of the City, the expiration period shall not begin until review before the court(s) or administrative agency has been completed, including proceedings on remand to the City. In this case, the expiration period will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

**11-13-19: EXTENSION:**

(A) Any land use permit may be extended, prior to expiration, by the Planning Staff, for a period of six (6) months up to an aggregate period of one (1) year. Such extensions shall be administrative, without notice and in writing.

(B) However, no permit may be extended unless there has been substantial implementation thereof.

**11-13-20: REAPPLICATION LIMITED:** If a specific application is denied or withdrawn following the close of the public hearing on the application, no

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reapplication is denied or withdrawn following the close of the public hearing on the application, no reapplication for the same or substantially similar proposal may be made for one (1) year from the date of final disposition of the case.

11-13-21: CONCURRENT REVIEWS: Applications for more than one land use review request on a site may be consolidated into a single application package. If the reviews are not assigned to the same review body, they are assigned in the manner stated below:

(A) Where a proceeding under Section 11-13-9(B) and any other proceeding arise from a concurrent application, the public hearing process shall be used.

(B) When the requested land use applications have the same procedure but are assigned to different review bodies, the review bodies shall process the applications concurrently. The decision of the first reviewing body shall not become final until the second reviewing body has rendered its decision. Thereafter, any appeal shall be consolidated.

11-13-22: INTERPRETATION: Where a provision of this Ordinance conflicts with another ordinance or requirement of the City the provision or requirement that is more restrictive shall govern.

11-13-23: CONFORMITY OF PERMITS: No permit shall be issued by the Building Official for the construction, reconstruction, alteration or change of use of a structure or lot that does not conform to the requirements of this Title.

11-13-24: AUTHORIZATION OF SIMILAR USES: The Planning Commission may decide, in the manner provided in Section 11-13-9 of this Title and related sections, that a use, not specifically listed in the allowed uses of a district, shall be included among the allowed uses if the use is of the same type and is similar to the allowed uses. However, this Section does not authorize the inclusion of a use which is of the general type and similar to a use specifically listed in another district.

11-13-25: METRIC CONVERSION: The Planning Commission is authorized to convert this Code to the metric system of linear measurement at such time as deemed expedient and necessary.

11-13-26: RECONSIDERATION OF LAND USE APPROVALS:

(A) PURPOSE: The ability to publicly reconsider a land use approval provides an opportunity to determine if the use or development is in compliance with this Chapter. It also allows for clarification of prior land use approvals. As part of this reconsideration, the ability to add new conditions or revoke the approval provides a strong enforcement mechanism for this Code.

(B) SITUATIONS WHEN LAND USE APPROVALS MAY BE RECONSIDERED: All quasi-judicial land use approvals, except plan amendments and zone changes, that become conditional uses or nonconforming uses due to a change of zoning regulations, mapping or annexation, may be reconsidered upon a motion by the Planning Commission. They may be reconsidered if there is evidence of any of the following situations:

1. One or more conditions of the land use approval have not been implemented or have been violated;
2. The activities of the use, or the use itself, are substantially different from what was approved; or
3. The use is subject to the conditional use or nonconforming use regulations, has not been subject to a conditional use or nonconforming use review, and has substantially changed its activities or substantially increased the intensity of its operations since it became a conditional use or a nonconforming use.

(C) INITIATING THE RECONSIDERATION: The Planning Division may initiate a reconsideration if there is substantial evidence that one of the situations described in Subsection B above applies to the use or development. The evidence relied on shall be made part of the record. The reconsideration may be initiated anytime after 30 days have passed from the first notice of violation as described in 11-13-26(B) above.

(D) PROCEDURE FOR RECONSIDERATION BY HEARINGS BODY:

1. PROCEDURE: After initiation, the reconsideration is processed using the hearings procedure in Section 11-13-9(C). An application does not have to be submitted, a pre-application conference is not required, and a fee is not charged.
2. REVIEW BODY: The hearings body shall be the same one that is assigned to hear new requests of that time.
3. NOTICE:
  - (A) The property owner, applicant or operator of the site shall be notified that the reconsideration process has been initiated. This notice shall be mailed at least 20 days prior to the scheduled hearing. Written comments from the property owner, applicant, or operator shall be received 15 days prior to the public hearing date to be included in the staff report.
  - (b) Additional public notice: In addition to people who are mailed notice pursuant to the public hearing procedure requirements, people who have complained writing about the use or development shall also be mailed notice of the hearing.

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(E) POSSIBLE ACTIONS AT THE RECONSIDERATION HEARING: Depending on the situation, the hearings body may take any of the actions described below. The hearings body may not approve the new use or one more intense than originally approved unless the possibility of this change has been stated in the public notice.

1. Uses or development which are alleged to have not fulfilled conditions or which violate conditions are subject to the following actions:

(a) The hearings body may find that the use or development is complying with the conditions of the land use approval. In this case, the use or development is allowed to continue.

(b) The hearings body may find that the use or development does not fully comply with the conditions of approval, but that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if the conditions are met. In this case, the review body may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, and refer the case to the Code Compliance Officer for enforcement of the existing conditions.

(c) The hearings body may revoke the land use approval if it finds that there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.

2. Uses and development which are alleged to be different from what was approved are subject to the following actions:

(a) The hearings body may find that the use or development is consistent with what was approved. In this case, the use or development is allowed to continue.

(b) The hearings body may find that the use or development, including its intensity or scale, is not consistent with what was approved, but that the differences are not substantial enough to warrant revocation, and that the use or development can comply with the original approval criteria with appropriate conditions. In this case, the hearings body may modify the existing conditions or add new conditions to ensure compliance with the original approval criteria.

(c) The hearings body may revoke the land use approval if it finds that the land use being conducted on the site is substantially different from what was approved, does not comply with the original approval criteria for the use, and it cannot be reasonably conditioned to come into compliance.

3. Conditional uses and nonconforming uses that have not been subject to a land use review by the City are subject to the following actions:

(a) The hearings body may find that the use and its activities, including its intensity,, are consistent with what was on the site at the time it became a

conditional or nonconforming use. In this case, the use is allowed to continue.

(b) The hearings body may find that the use and its activities are substantially different from what was on the site at the time it became a conditional use or nonconforming use and that the differences do not comply with the current approval criteria for the use. In this case, the hearings body may apply conditions or restrictions to ensure that the differences comply with the approval criteria.

(F) **ENFORCEMENT OF REVOCATION:** In the event that the land use approval is revoked, the use or development becomes illegal. The use or development shall be terminated within 30 days of the date the revocation final order is signed by the Planning Commission Chairperson, unless the decision provides otherwise. Revocation actions are appealable as per Section 11-13-9(C)(6)(f). The filing of an appeal shall stay the revocation action.

**11-13-27: REGULATIONS THAT APPLY AT THE TIME OF AN APPLICATION:** When new zoning code amendments or changes to the zoning map are adopted but not yet implemented, the regulations of this Section apply.

(A) **APPLICATIONS:** Applications for building permits or land use reviews shall be processed based on the regulations in effect at the time a complete application is submitted to the City. For the purposes of this Section, a complete application means an application that contains the information necessary for the Planning Division on the request.

(B) **USE OF NEW REGULATIONS OR MAPPING:** Applications shall not be accepted for building permits or land use reviews based on regulations or zone changes that have been approved but not implemented. However, pre-application conferences may be requested and held.

**11-13-28: TRANSFER OF APPROVAL RIGHTS:** Approvals of quasi-judicial land use reviews run with the land and are transferred with ownership. Any conditions, time limits, or restrictions apply to all subsequent operators.

**11-13-29: PRIOR CONDITIONS OF LAND USE APPROVALS:**

(A) **INCORPORATING PRIOR CONDITIONS OF LAND USE ACTIONS:** Over time, there are instances when uses or development previously approved with conditions are subject to new zoning regulations. This may result from a change of the content of zoning regulations or from legislative zone changes including annexation rezonings. This Section addresses situations where a use or development was approved with conditions as part of a land use review under zoning regulations that no longer apply to the site. The regulations stated below apply to all prior conditions of approval, unless the conditions of approval or the ordinance adopting the conditions specifically refer to the situations outlined below and provide for the continuance of the conditions. In that instance, the conditions of approval will continue to apply.

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(B) ZONE CHANGES: If a site is subject to conditions as the result of a zone change, the conditions continue to apply if the site is rezoned to a comparable zone as part of an annexation rezoning or as part of a legislative remapping.

(C) CONDITIONAL USES:

1. AN ALLOWED CONDITIONAL USE: If a use was an approved conditional use under the prior regulations, and is a conditional use under the new regulations pertaining to the site, any conditions of approval continue to apply.

2. USE ALLOWED OUTRIGHT: If the use is a permitted use, the conditions of approval continue to apply.

3. USE NO LONGER ALLOWED: If the use was a conditional use without an expiration date and is no longer allowed, it becomes a nonconforming use under the new regulations, and shall continue to meet the conditions as well as the nonconforming use regulations.

(D) VARIANCES: If the variance was to a standard or which is now allowed, and the development on the site conforms with the current regulations, then the prior conditions of approval no longer apply.

(E) OTHER LAND USE ACTIONS: If the use or development was approved with conditions under a review which is no longer in effect on the site, the conditions continue to apply.

11-13-30: VIOLATIONS AND ENFORCEMENT:

(A) ABATEMENT: In case a building or other structure is or is proposed to be located, constructed, maintained, repaired, altered or used, in violation of this Ordinance, the building or land thus in violation shall constitute a nuisance and the City may, as an alternative to other remedies that are legally available for enforcing this Ordinance, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful location, construction, maintenance, repair, alteration or use.

(B) ENFORCEMENT UPON DECLARATION OF A NUISANCE: Any act or omission in violation of this Chapter shall be deemed a nuisance. Violation of any provision of the Zoning Code shall constitute a Civil Infraction, subject to the Code enforcement procedures of Title I, Chapter 16 of this Code.

11-13-31: FEES:

(A) PURPOSE: Application fees aid in defraying the City's cost for processing applications. Fees charged are not intended to exceed the average cost for processing the type of review requested.

(B) **FILING FEES:** The following fees shall be required to be paid to the City at the time of application for the action requested. Such fees shall not be refundable, except as noted in 11-13-31(C).

1.	Annexation	\$ 0.00
2.	Appeals of Land Use Decisions	250.00
3.	Conditional Use Permit	395.00
4.	Conditional Use Permit - Mobile Home Park	450.00
5.	Design/Site Review - Cost of Construction	
	\$ 0.00 - 999.00	75.00
	\$ 1,000.00 - 9,999.00	200.00
	\$ 10,000.00 - 49,999.00	400.00
	\$ 50,000.00 - 99,999.00	700.00
	\$ 100,000.00 - 249,000.00	1,000.00
	\$ 250,000.00 - 449,000.00	1,500.00
	\$ 500,000.00 - 999,999.00	2,500.00
	\$1,000,000.00 - 4,999,999.00	3,500.00
	\$5,000,000.00 and over	5,000.00
6.	Engineering Site Review	150.00
7.	Extension of Land Use Permit	150.00
8.	Historic Review	0.00
9.	Lot Line Adjustment	100.00
10.	Lot Line Consolidation	50.00
11.	Minor Land Partition	275.00
12.	Major Land Partition	375.00
13.	Mobile Home License Fee	10.00/space
14.	Mobile Home License Transfer Fee	10.00
15.	Modification of Conditions	200.00
16.	Planned Unit Development	\$375.00 plus \$25.00/unit
17.	Plan Amendment	700.00
18.	Sign Variance	275.00
19.	Similar Use	395.00
20.	Subdivision	700.00 + 25.00/lot
21.	Vacation - streets, alley, plat	375.00
22.	Variance	275.00
23.	Willamette River Greenway Permit	395.00
24.	Willamette River Greenway Permit Requiring compatibility review	395.00
25.	Zone Change	500.00 plus \$50.00/acre

(C) **FEE REFUNDS:** The situations under which required fees may be refunded are stated below:

1. **UNNECESSARY FEES:** When a fee is accepted by staff for a land use review that is found to not be required, a full refund will be given.

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**FILING FEES:** The following fees shall be required to be paid to the City at the time of application for the action requested. Such fees shall not be refundable, except as noted in 11-13-31(C).

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	\$ 10,000.00 - 49,999.00	400.00
	\$ 50,000.00 - 99,999.00	700.00
	\$ 100,000.00 - 249,000.00	1,000.00
	\$ 250,000.00 - 499,000.00	1,500.00
	\$ 500,000.00 - 999,999.00	2,500.00
	\$1,000,000.00 - 4,999,999.00	3,500.00
	\$5,000,000.00 and over	5,000.00
6.	Engineering Site Review	150.00
7.	Extension of Land Use Permit	150.00
8.	Historic Review	0.00
9.	Lot Line Adjustment	100.00
10.	Lot Line Consolidation	50.00
11.	Minor Land Partition	275.00
12.	Major Land Partition	375.00
13.	Mobile Home License Fee	10.00/space
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24.	Willamette River Greenway Permit Requiring compatibility review	395.00
25.	Zone Change	500.00 plus \$50.00/acre

**(C) FEE REFUNDS:** The situations under which required fees may be refunded are stated below:

**UNNECESSARY FEES:** When a fee is accepted by staff for a land use review that is found to not be required, a full refund will be given.

2. **ERRORS:** When an error is made in calculating a fee, overpayment will be refunded.

3. **FULL REFUNDS:** If a written request for the withdrawal of an application for a land use review is received before staff has notified other departments or prepared any maps, a full refund will be given.

Section 2. Because this ordinance is necessary for the immediate preservation of the peace and public health, safety and welfare of Oregon City, and to provide for an orderly transition in a reasonable amount of time to this regulatory system, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage by the Commission and approval by the Mayor.

Read first time at a regular meeting of the City Commission held on the 1st day of August, 1990, and the foregoing ordinance was finally enacted by the City Commission on the 1st day of August, 1990.

/s/JEAN K. ELLIOTT, City Recorder

ATTESTED to this 1st day of August, 1990.

/s/David D. Spear

DAVID D. SPEAR, Mayor

Mayor Spear declared a break at 9:05 with the meeting reconvening at 9:15 p.m.

Commission Report No. 90-202, Formation of Bond Pool to Fund Sewer, Water, Storm Drain and Public Works Facilities - Resolution No. 90-47, was presented. The report noted that on the August 1, 1990, City Commission agenda was proposed Resolution No. 90-47 that would authorize the issuance of up to Five Million Dollars (\$5,000,000) in bonds for the construction of sewer, water, storm drain, and public works facilities. The bonds are sold in a single issue to keep costs of issuance to a minimum. The availability of the funds at the start of a project will also provide for lower costs of borrowing.

The report continued that the projects to be funded would be Local Improvement Districts for sewers, water, storm drains and streets. Typical would be the HOPP sewer and Meyer's Road extension. By having the cost of borrowing fixed prior to the end of the project, we would be able to start assessment payments more quickly.

The City has not issued new bonds since 1984, when the Boynton Standpipe was funded by a \$1,400,000 water revenue bond. That issue had an 11.3% interest rate. Currently, the interest rate for 20 years would be 7.14%, which is consistent with rates for the last few years. The market has obtained some stability, however, the

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possibility of a tax limitation measure in November could increase costs. By starting early and coming to the market with flexibility in the timing of issuance, the City will have the best chance to save on the interest paid.

Direct negotiation of the sale was necessary because of having a mixture of resources for the payment of debt service (principal and interest) and not having any property tax levy to fall back on. Only a general obligation bond (property tax can be used to make payments) is generally put out to bid. A major disadvantage of bidding is having to pick a date well in advance. If on that date, interest rates rise, it locks in the rate for 20 years. Seattle Northwest Security Corporation has worked for most of our neighboring municipal governments and has demonstrated the ability to service our needs. A reference list was attached.

Based upon the need for the issuance of revenue bonds for the City's sewer, water, storm drain and facilities needs, it was recommended that Resolution No. 90-47 be adopted.

The City Attorney advised that if the bonding included street facilities there is a risk of Gas Tax monies becoming commingled with other funds which could create problems. The recommendation would be that the Pool be to fund Sewer, Water and Storm Drain improvements only and not Public Works facilities.

It was moved by Fowler, second by Powell, to adopt Resolution No. 90-47 with the amendment of excluding Public Works facilities references.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

#### RESOLUTION NO. 90-47

A RESOLUTION AUTHORIZING THE ISSUANCE OF SEWER, WATER, AND STORM DRAIN REVENUE BONDS AND DIRECTING THE PUBLISHING OF A NOTICE OF INTENT TO ISSUE REVENUE BONDS.

WHEREAS, the City of Oregon City, Oregon (the "Issuer") plans to construct certain additions and improvements to the Issuer's infrastructure system (the "Facilities"); and

WHEREAS, the additions and improvements to the Facilities will cost an estimated \$5,000,000 and the Issuer intends to issue bonds to finance the cost of the additions and improvements to the Facilities; and

WHEREAS, the Issuer finds it desirable to issue sewer, water, and storm drain revenue bonds (the "Bonds") in an amount not to exceed \$5,000,000 to finance the cost of the additions and improvements to the Facilities pursuant to Oregon Revised Statutes 288.805 to 288.945, inclusive (the "Uniform Revenue Bond Act"), and to pledge for payment of the Bonds assessments to be levied against benefited

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properties and the unobligated net revenues of the Issuer's Enterprise systems, being a revenue producing facility providing services related to the services to be financed by the Bonds.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Oregon City, Oregon:

Section 1. The Issuer hereby authorizes the issuance of the Bonds in a principal amount not to exceed \$5,000,000 for the purpose of financing the cost of construction of the additions and improvements to the Facilities and paying for engineering fees, attorney fees and other related costs.

Section 2. The Bonds shall not be general obligations of the Issuer or a charge upon the tax revenues of the Issuer. The assessments to be levied against benefited properties and the unobligated net revenues of the Issuer's Enterprise systems are hereby pledged to the payment of the principal of and interest on the Bonds, after payment of the ordinary operation and maintenance expenses of the Enterprise systems from the gross revenues thereof. So long as the Bonds are outstanding, the Issuer shall fix rates and collect charges for Enterprise services adequate to provide sufficient revenues to pay, in addition to all other expenses and obligated indebtedness, principal and interest on the Bonds.

Section 3. The Issuer hereby designates the Bonds for purposes of paragraph (3) of Section 265(b) of the Internal Revenue Code of 1986, as amended, (the "Code") as "qualified tax-exempt obligations" and covenants that the Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations, the interest on which is excludable under Section 103(a) of the Code from gross income for federal income tax purposes (excluding, however, private activity bonds other than qualified 501 (c)(3) bonds) including the Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, if any, during the calendar year 1990.

Section 4. The Finance Director is authorized and directed to publish a Notice of Intent To Issue Bonds and describing the purposes for which the Bonds are to be sold, in the form attached hereto as Exhibit A, in one issue of the Enterprise-Courier, a newspaper of general circulation within the geographical boundaries of the Issuer. In addition, the Finance Director shall cause the Notice of Intent To Issue Bonds to be given in the same manner as are other public notices of the Issuer. The Bonds may not be sold at public competitive bid, nor shall a purchase agreement be executed for a private negotiated sale, for at least 60 days following publication of the Notice of Intent To Issue Bonds.

Section 5. Voters residing within the geographical boundaries of the Issuer may file a petition with the Issuer asking to have the question of whether to issue the Bonds referred to a vote. If the Issuer receives petitions containing valid signatures

of the Issuer's electors totaling not less than five percent (5%) of the Issuer's electors, the question of issuing the Bonds shall be placed on the ballot at the next legally available election date. In the event the Issuer receives such a petition within 60 days from publication of the Notice of Intent To Issue Bonds, the Bonds shall not be sold until this Resolution is approved by a majority of the electors of the Issuer voting on this Resolution.

Section 6. The bonds may be sold at a private negotiated sale in accordance with the Uniform Revenue Bond Act and Seattle-Northwest Securities Corporation is hereby designated to serve as underwriter in connection with the issuance of the Bonds.

Section 7. Rankin VavRosky Doherty MacColl and Mersereau is hereby designated to serve as bond counsel in connection with the issuance of the Bonds.

Adopted, signed and approved this 1st day of August, 1990.

/s/David D. Spear  
Mayor-Commissioner

/s/  
Commissioner

/s/Daniel W. Fowler  
Commissioner

/s/  
Commissioner

/s/Carol A. Powell  
Commissioner

Comprising the City Commission  
of Oregon City, Oregon

Commission Report No. 90-204, Morton Road Sewer Local Improvement District - Resolution No. 90-48, was presented. The report noted that on the August 1, 1990 agenda was Resolution No. 90-48 which would initiate the process of creating a local improvement district for the construction of sanitary sewers in the Morton Road area. Attached was the initiating petition and Engineer's Report as required by City Code.

The project cost is estimated at \$209,761.46 and would provide service to 10 properties representing 36.15 acres. Eighty percent (80%) of the property owners signed the petition representing 99.2 percent of the land area and 100% of the frontage. City Code requires at least 60% of the frontage supporting the local improvement district.

The report concluded that Development Services verified the petitions compliance with City Code and was recommending the adoption of Resolution No. 90-48 to initiate the creation process and set August 15, 1990 as the first public hearing date.

It was moved by Fowler, second by Powell, to adopt Resolution No. 90-48.

Roll call: Powell, Aye; Fowler, Aye; Spear, Aye.

## RESOLUTION NO. 90-48

**A RESOLUTION OF INTENT TO CREATE A LOCAL IMPROVEMENT DISTRICT FOR THE CONSTRUCTION OF SANITARY SEWERS IN THE MORTON ROAD AREA.**

WHEREAS, a petition requesting the formation of a local improvement district to construct certain sanitary sewer improvements was filed with the City Recorder on the 22nd day of July, 1990; and

WHEREAS, the Development Services Department of the City has reviewed said petition and finds that it is a valid petition and that said improvement would be in the public interest; and

WHEREAS, a preliminary plan and cost estimate have been prepared and sanitary sewers could be provided to the petitioned area, and the said cost estimate being approximately \$209,761.46. Said plans and estimate are hereby referred to and made a part of this Resolution. The location of said sewers is described as follows:

8" Gravity Sewer beginning at a connection with the Newell Creek interceptor and running easterly approximately 2,410 lineal feet to Morton Road.

WHEREAS, funds for constructing said sewers are available in the City's Assessments Collection Fund.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Oregon City that it is the intention of the City to form a local improvement district to construct the said sewers and to retain consulting engineers to prepare plans and specifications and final cost estimates.

RESOLVED the above described sewers to be known as Sewer District No. 90-03.

That notice of formation of said District be given by publication of this resolution in the Daily Enterprise-Courier, a newspaper of general circulation in Oregon City, on August 3, 1990, and that notice of the formation of said District and preliminary assessments be mailed to all property owners within said District no later than August 3, 1990, and that a public hearing will be held by the City Commission at the hour of 8:00 p.m., August 15, 1990, at the City Hall, 320 Warner Milne Road, Oregon City, Oregon, at which time written and oral remonstrances to the formation of said District and preliminary assessments will be heard and considered.

The City Recorder is hereby directed to publish this Resolution in the manner provided by Charter.

The foregoing Resolution adopted this 1st day of August, 1990.

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/s/David D. Spear  
Mayor-Commissioner

/s/Carol A. Powell  
Commissioner

/s/Daniel W. Fowler  
Commissioner

/s/  
Commissioner

/s/  
Commissioner

Comprising the City Commission  
of Oregon City, Oregon

Commission Report No. 90-199, Proposed Sale of Old Sewer Treatment Plant Property, was presented. The report noted that on the August 1, 1990 agenda was a request to set August 15, 1990 as the time and place for public hearing to consider the surplus and sale of the Old Sewer Treatment Plan property. ORS 221.725 provides the criteria on notice to be followed.

The report continued that in June, the voters of Oregon City approved the sale of the northerly 2 acres of the site as required in the City Charter. Clackamas County has now approved a release of their interest in the property that paves the way for the sale of the property. Attached was a letter of appraisal and map of the property for Commission review.

The report concluded that two offers on the property were pending and a sale agreement could not be finalized until the requirements of ORS 221.725 were met. It was recommended that the Commission set August 15, 1990 as the public hearing to consider the sale of the Old Sewer Treatment Plant property.

The Development Services Director noted that the ORS requirements with regard to this matter were being followed. The property was of high value, worth in excess of \$1 million dollars to the City with ORS requiring a public hearing, an appraisal or other evidence of value being needed. A professional appraiser was retained with a letter of appraisal offered. He noted that the City Attorney advising that legally this process was correct but it was recommended from a policy view that an MAI appraisal be obtained. This was not felt necessary because of an appraisal received in 1985 along with the current one.

Fowler asked if the policy question would affect the setting of a hearing date. The City Attorney advised that it could. The Attorney advised that over a year ago sales of City property came before the City Commission and at that time he was requested to research and determine what kind of appraisal was appropriate. He learned that when selling land it is to be sold at market value with an appraisal to assure the public of appropriate value for the property. It was discussed over a year ago obtaining a full appraisal or less than a full appraisal. What caught the City Attorney's attention was the statement in the appraisal that this should not be viewed as a full appraisal. Gresham City Attorney advised our City Attorney that Gresham often uses less than a full appraisal when there is a matter that is non-controversial and for a relatively small value. Where condemnation is involved or

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where the value is large or where the matter is controversial, Gresham obtains a full appraisal. A full appraisal was the recommendation of the City Attorney.

When asked if a full appraisal would show that the property worth would be another \$500,000, the Development Services Director advised that he felt uncomfortable discussing property value but that there were two offers for purchase of the property based on values. He advised of the timing factor involved on the expiration of the offers and reminded the Commission that an Executive Session was scheduled upon adjournment of the regular meeting for discussion of Real Property Transactions.

Fowler advised that he felt the value would be what the market would bear. He did not see this as condemnation, nor controversial as yet. The Manager noted that the City Attorney was offering interpretation and it was up to the Commission to make the decision.

It was moved by Fowler, to adopt Report No. 90-199 and set the public hearing for August 15, 1990. Motion failed for lack of second.

Block advised of the lengthy process to get the property available for sale with development interest on it for several months. Offers have been withheld for the required vote and the County release of interest. One offer expired on July 31st but they have agreed to extend the offer to August 15. Block advised he was intending to negotiate a transaction and return with a purchase of sale agreement at the conclusion of the public hearing on August 15. If the hearing was continued to a meeting date in September, the offers may not be extended.

At this point, Mayor Spear declared a recess at 9:38 p.m. to conduct an Executive Session pursuant to ORS 192.660(1)(e) Real Property Transactions.

Upon adjournment of the Executive Session at 10:45 p.m., the regular Commission meeting was reconvened. It was moved by Fowler, second by Powell, to set the public hearing date for August 15, 1990.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

Commission Report No. 90-205, Professional Services Agreement - Lee Engineering, Inc. - Water System Projects, was presented. The report noted that on the August 1, 1990 agenda was a Persona Services Agreement with Lee Engineering, Inc., to design several water system improvement projects for the City. Attached were the agreements and engineer's report for Commission review.

The report concluded that these projects were indicated in the City's Water Master Plan and would implement the recently completed South End Intergovernmental Agreement between the City and Clairmont Water District. Funding was available in the fiscal year 1990-91 budget. It was recommended that the City Commission

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adopt a motion approving the agreement and authorize the City Manager to execute.

It was moved by Powell, second by Fowler, to approve the agreement and authorize the City Manager to execute on behalf of the City.

Roll call: Powell, Aye; Fowler, Aye; Spear, Aye.

Commission Report No. 90-206, Central Point/McCord Road Sanitary Sewer LID - Advance Finance Project - Bid Award, was presented. The report noted that on the August 1, 1990 agenda was a recommendation to award the bid for the Central Point/McCord Sanitary Sewer Project to the second lowest bidder, Coffman Excavation in the amount of \$444,708.10. Attached was the bid summary for the project for Commission review.

The report continued that five bids were received ranging in price from \$331,325.25 to \$497,464.00. The low bid had to be rejected because of mistakes in the bid and lack of prequalification with the State. Attached was a letter from the City Attorney confirming the City's ability to reject the low bid from Canby Excavation. The bid from Coffman was within the engineer's estimate for the project and was being recommended for acceptance. Coffman Excavation was a local contractor who was prequalified with the State, having just completed the State Intake Sewer Project.

The report concluded by recommending that the City Commission award the bid to Coffman Excavation and authorize the Mayor and City Recorder to execute the construction contract.

Commissioner Fowler advised that he knows Coffman professionally but has no personal knowledge of this matter.

It was moved by Powell, second by Fowler, to award the bid to Coffman Excavation and authorize the Mayor and City Recorder to execute the construction contract.

Roll call: Fowler, Aye; Powell, Aye; Spear, Aye.

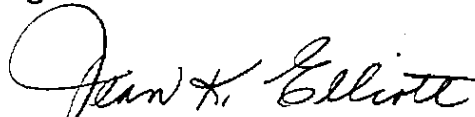
At this time, Mayor Spear re-appointed Edna Gregor to Position No. 5 on the Senior Center Advisory Board with term expiring July, 1993.

Mayor Spear requested that the one-way alley between 10th and Center Streets near the Bluff be blocked to vehicular traffic because of the safety situation created when vehicular operators travel in both directions.

It was requested that the graffiti at the bottom of the Elevator be removed.

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There being no further business, the meeting adjourned at 10:55 p.m. The Executive Session scheduled at the end of the regular meeting was cancelled since it was called during the regular meeting.

  
JEAN K. ELLIOTT, City Recorder

**REGULAR MEETING**

Oregon City, Oregon, August 15, 1990

A regular meeting of the City Commission was held in the Commission Chambers of City Hall on the above date at 8:00 p.m.

Roll call showed the following present:

Mayor David D. Spear	Charles Leeson, Interim City Manager
Commissioner Daniel W. Fowler	Jean K. Elliott, City Recorder
Commissioner Suzanne VanOrman	Peggy Hennessey, City Attorney
Commissioner Carol A. Powell	
Commissioner Robert M. Light	

It was moved by Powell, second by Fowler, to approve the minutes of August 1, 1990.

Roll call: Light, Aye; VanOrman, Aye; Powell, Aye; Fowler, Aye; Spear, Aye.

On the Mayor's call for future agenda items, David Eby, 619 Brighton Avenue, addressed the Commission regarding money now being available for operation of the Elevator. The Manager advised that money was budgeted for operation of the Elevator which may not be as it currently is being operated. When asked if it was going to be contracted out, the Manager advised that was an option. The Mayor also advised that the Elevator would be operated in the current hours but the funding arrangement may be changed. When asked if there would be different operators, he was advised there could be. No decisions had been made as yet. The City wants to deliver the service of an Elevator to the citizens, but it needs to be done in the most cost effective way possible.

Clair Neal McCully, Fourth Judicial District, 729 Molalla Avenue, #1, Oregon City, addressed the Commission by reading a "Complaint of Trespass of Venue and Jurisdiction in the City Limits of the Municipal City of Oregon City". Upon conclusion of the reading of the Complaint, this matter was referred to the City Attorney for comment and advice as to whether there is need for a meeting.