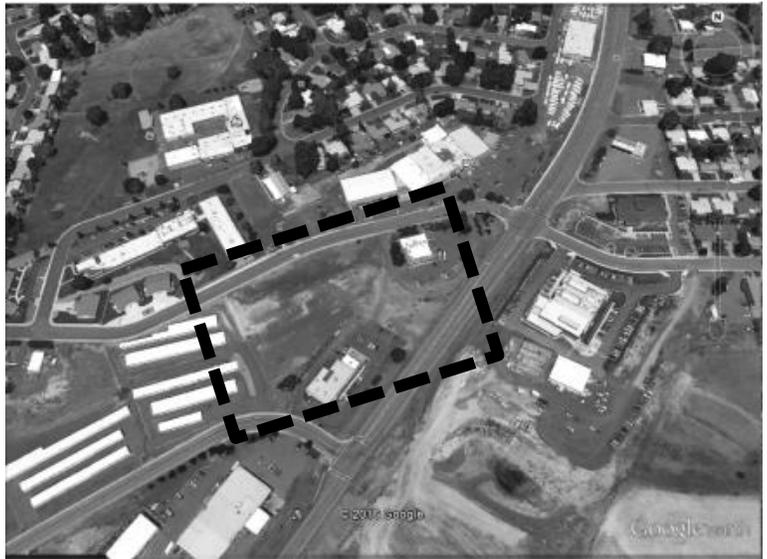


**CITY OF PENDLETON COMMUNITY DEVELOPMENT DEPARTMENT**  
**Staff Report and Administrative Decision**



**File No.:** SUB16-02  
**Prepared:** October 21, 2016  
**Prepared by:** George Clough, City Planner  
Julie Chase, Planning Aide  
**Date Mailed:** October 21, 2016  
**Hearing Date:** November 17, 2016 if requested  
**Applicants/** ADM Development LLC  
Dean Maldonado  
**Owners:** 6855 W Clearwater Ave  
A101-131  
Kennewick, WA 99338  
  
Pendleton Investments LLC  
100902 E Ridgeview Dr  
Kennewick, WA 99338



**Site Location:** 3200 Block SW Perkins Ave  
**Description:** Map 2N-32-16DB TL 00100 & 00400  
**Zoning:** C3 Service Commercial

**Attachments:** Application and supplemental materials

**SUMMARY:** The applicant requests approval of a 5 lot subdivision on 2.46 acres. Two of the lots will have frontage on SW Perkins, one lot will have frontage on Southgate Place, and the other lot will have frontage on Hwy 395. Access will come off of SW Perkins right-of-way. No right-of-way is proposed with this development. An internal road system will provide circulation. The lot is located within the C-3 Service Commercial zone.

**APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:**

**Unified Development Code Ord. #3845**

**Article III. Commercial Zones 4.04**

**Article VIII. Standards Applicable to all Zones 8.01, 8.06**

**Article IX. Design Standards for Land divisions 9.01, 9.02, 9.05 – 9.21**

**Article X. Land Divisions 10.03-10.05**

**Article 13. Land Use Application Procedure**

**Article XV. Administrative Provisions**

**STAFF RECOMMENDATION:**

Approve with conditions:

1. Standard Conditions listed with final decision.
2. A fire truck turn-around shall be constructed within the area between Lots 4 and 5. It may be located where the parallel parking and the hammerhead parking space are shown on Sheet 3 of 3. Two parking spaces may be lost in the configuration of this turn-around, one parallel space and the hammerhead space.
3. “No Parking” signage shall be placed within the fire truck turn-around to preserve adequate emergency response exiting.
4. Access points, driveways, shall be constructed to meet city standards.
5. Any shared private utilities or public utilities placed within the subdivided property shall be recorded in a maintenance agreement and placed on the mylars so that the easements are readily found for future development.
6. A pedestrian pathway shall be installed connecting this development to Hwy 395. Staff recommends extending the sidewalk from the Lot 5 proposed parking area.
7. New subdivisions are required to plant at least 1 shade tree per 70 feet per frontage along a street. This subdivision has approximately 490 feet of frontage. Seven (7) shade trees, not to exceed 20 feet in height, shall be planted along the frontage within this subdivision. The trees shall meet the requirements of Ordinance

3366, Ordinance Providing for the Installation of Street Trees.

8. All parking areas adjacent to public sidewalks shall be buffered from the sidewalk with a minimum of four feet of landscape area with vegetation consistent with the requirements of Section 8.01
9. All parking areas shall be adequately landscaped at a rate of at least 40 square feet per required parking space; however, for every tree planted within a parking lot, 100 square feet of parking area or landscaping may be credited towards the required parking spaces or landscape requirements.
10. Pedestrian pathways with trees and/or parking lot trees may be installed as a mechanism to reduce the required number of parking spaces.
11. Site design indicates a concrete slab for the Pendleton Vet Clinic dog run area. Dog run areas shall be either treated through a bio-filter system (live vegetation/grass) or connected to the public sewer system for treatment. Installation of either system is required.
12. All dumpsters shall be placed in an area as approved by Pendleton Sanitary Service (541.276.1271), and shall be shielded from public view behind sight-obscuring fencing.

## **FINAL DECISION: PAGE 4-5**

The proposed development must comply with applicable provisions contained in Chapter 10 of the General Ordinances of the City of Pendleton, and the City of Pendleton Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the General Ordinances it is considered consistent with the Comprehensive Plan. Additional criteria and standards as contained in Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR) and the most current State Building or Specialty Code may supersede local code.

### **STAFF FINDINGS OF FACT:**

#### **1. LOCATION: ZONING MAP**

The land size is 2.46 acres within the C-3 zone. The project is located within a commercial neighborhood bordered by a restaurant, a state assistance facility, an athletic facility, mini-storage units and a residential care facility. The area exhibits streets that meet city standards, landscaped commercial properties, and both collector and arterial traffic. Commercial properties within 60 feet of a residential zone are required to install yards to act as a buffer between commercial and residential properties.

#### **FINDINGS:**

1. There is no minimum lot size, minimum setback, or maximum lot coverage in commercial zones. The only applicable standard regarding setbacks is that no structure may cross over an existing or proposed property line. No such violation would be created should the request be approved.

**CONCLUSION: Criteria are met.**

#### **2. STANDARDS FOR ALL ZONES: LANDSCAPING**

Subdivisions will typically be developed. Subdivisions developed to commercial standards will have parking areas constructed adjacent to commercial structures. Parking areas require 40 square feet of landscaping per required parking space. Landscaping affects the layout of buildings, parking lots, and traffic paths.

#### **FINDINGS:**

1. There is no requirement that parking lots are installed at the time of subdivision. Staff acknowledges that landscaping affects the layout of buildings, parking lots, and traffic paths. Staff reviewed the anticipated build-out plan for the subdivision and included landscaping requirements that may have an effect on the proposed build-out.

**CONCLUSION: Criteria are met.**

### **3. LAND DIVISIONS:**

#### **DESIGN STANDARDS – ARTICLE IX**

Development is planned with block sections. Blocks are divided by streets. Street connectivity is essential to maintain an efficient traffic pattern for motorist, pedestrian, and emergency response. Block dimensions in general commercial districts are a minimum of 100 foot lengths, maximum of 600 foot lengths with a maximum perimeter of 1,400 feet. Lots are to be laid out in a topographical pattern that will not prohibit the ability to secure a building permit on any one lot within the subdivision. All lots shall be provided with a point of access. Access needs not equate to street frontage. Pedestrian pathways are encouraged to allow passage of persons from interior development to the public street. Public streets require pedestrian sidewalks to maintain a fluid connection between neighborhoods. Natural features and trees add to the beauty of a neighborhood and the city as a whole. They provide a necessary energy component in the form of shade, encourage the public to walk a neighborhood, and enhance the overall attractiveness of the area. Street trees are required at an amount of one (1) street tree per 70 square feet of frontage. It is essential for a city to regulate the types of trees planted and how they are installed within a public right-of-way to protect the public right-of-way from the damage tree roots may impose. Ordinance 3366 regulates street trees.

#### **FINDINGS:**

1. The block perimeter from the intersection of SW Perkins and Hwy 395 to the Perkins-Southgate Place intersection exceeds the allowable block perimeter without a pedestrian connection. A pedestrian pathway is necessary to provide connectivity between the SW Perkins area and the commercial district along Hwy 395.
2. ODOT has control over the access points onto state highways. It is the intent of ODOT to minimize these access points. Therefore, street connectivity is limited to SW Perkins Avenue and Southgate Place. Southgate Place connectivity may be hampered by a drainage ravine that discourages the use as a travel path. This limits street connectivity to SW Perkins Avenue. Preliminary site design indicates that the travel paths within the developed subdivision will not have circulation, connectivity between the two terraced developments. By eliminating the connection to Southgate Place as a travel path, the block perimeter increases to a distance that warrants a pedestrian path through this subdivision. By eliminating connection between the two terraced developments, a fire truck turn-around is necessary so that fire engines can quickly and safely exit out of the developed Lots 3 and 4.
3. The area is vacant of significant trees; therefore the planting of street trees and shade trees is encouraged.

**CONCLUSION: Criteria can be met through conditions of approval.**

### **4. PROPOSAL:**

#### **LAND DIVISIONS – ARTICLE X**

The application was received October 3, 2016, complete with proposed site plan. Site plan included vicinity identification, access ways, parking layout, north arrow, scale, phase schematic, and legend.

#### **FINDINGS:**

**10.04** Land divisions require tentative plat evaluation and final plat evaluation (10.05). Evaluation includes compliance with ORS Chapter 92 and future re-division feasibility. Staff has reviewed the proposed site plan with the improvements and regards the possibility of further sub-division would not be possible due to proposed full build-out.

**10.05** A pre design conference was held on July 12, 2016. Staff discussed storm water drainage and detention, master plan development, utility connections, shared parking agreements, site design, grease traps, and parking lot lighting. Staff encouraged shared access with Roosters, fire department consultation for engine access, and dumpster locations.

Staff has reviewed the tentative plat for conformance to applicable standards, and has placed conditions to address site design.

**CONCLUSION: Criteria are met or can be met through conditions of approval.**

**5. PUBLIC NOTICE AND COMMENTS:**

On October 24, 2016, staff sent out 32 notices to the neighboring property owners within 250 feet of this proposal. The deadline to appeal an administrative decision is 14 days. A Hearing date of November 17, 2016 has been reserved for this proposal if an appeal is requested

**FINDINGS:**

**13.04** An affidavit of record is on file showing that the surrounding owners were notified of their right to appeal.

**CONCLUSION: Criteria are met.**

**6. APPLICATION OF THE CRITERIA:**

**SUMMARY FINDINGS:**

- There is no minimum lot size, minimum setback, or maximum lot coverage in commercial zones. The only applicable standard regarding setbacks is that no structure may cross over an existing or proposed property line. No such violation would be created should the request be approved.
- There is no requirement that parking lots are installed at the time of subdivision. Staff acknowledges that landscaping affects the layout of buildings, parking lots, and traffic paths. Staff reviewed the anticipated build-out plan for the subdivision and included landscaping requirements that may have an effect on the proposed build-out.
- The block perimeter from the intersection of SW Perkins and Hwy 395 to the Perkins-Southgate Place intersection exceeds the allowable block perimeter without a pedestrian connection. A pedestrian pathway is necessary to provide connectivity between the SW Perkins area and the commercial district along Hwy 395.
- ODOT has control over the access points onto state highways. It is the intent of ODOT to minimize these access points. Therefore, street connectivity is limited to SW Perkins Avenue and Southgate Place. Southgate Place connectivity may be hampered by a drainage ravine that discourages the use as a travel path. This limits street connectivity to SW Perkins Avenue. Preliminary site design indicates that the travel paths within the developed subdivision will not have circulation, connectivity between the two terraced developments. By eliminating the connection to Southgate Place as a travel path, the block perimeter increases to a distance that warrants a pedestrian path through this subdivision. By eliminating connection between the two terraced developments, a fire truck turn-around is necessary so that fire engines can quickly and safely exit out of the developed Lots 3 and 4.
- A pre design conference was held on July 12, 2016. Staff discussed storm water drainage and detention, master plan development, utility connections, shared parking agreements, site design, grease traps, and parking lot lighting. Staff encouraged shared access with Roosters, fire department consultation for engine access, and dumpster locations.
- Staff has reviewed the tentative plat for conformance to applicable standards, and has placed conditions to address site design.

**CONCLUSIONS:**

**Approval criteria are met or can be met through specific conditions of approval.**

**SIGNS:**

Approval of this Land Use Decision does not constitute sign permit approval. Signs are reviewed through a separate permit application procedure. Signs must comply with all applicable Oregon codes and City of Pendleton ordinances.

**7. DECISION**

As noted in Section 13.06, the burden is on the applicant to prove that a proposal meets the approval criteria. A land use permit may not be approved unless all applicable decision criteria and standards are found met. In this case, staff was able to make findings and conclusions that all criteria are met or can be met through specific non-discretionary conditions of approval.

Julie Chase  
City of Pendleton Planning Aide

**8. NON-DISCRETIONARY CONDITIONS OF APPROVAL**

1. The approval granted herein is limited to those items specifically addressed in this report. Approval of this request does not grant nor imply approval for any other land use action (variance, conditional use, etc.). Issues including, but not limited to (approval of) such non-discretionary matters as ROW improvements, floodplain development standards, impervious surface/stormwater runoff, Development Permit(s), Building Permits and/or construction, are likewise not addressed
2. All mail delivery shall be through a joint mailbox facility on SW Perkins Avenue or as approved by the US Postal Service and Community Development Director.
3. Property owner shall sign consent for a Local Improvement District to for any public street frontage that does not meet city standards for a public right-of-way.
4. Street/access improvements shall be completed prior to final approval of any development or construction upon the subject lots.
5. Street trees shall be planted at the time of development, consistent with the standards contained in Section 9.10.2 or as approved otherwise by the Parks Department Director and Community Development Director.
6. Applicant/property owner shall provide information regarding the location of any and all existing utilities with the final plat submittal.
7. No more than one commercial Development Permit shall be approved on the subject property until such time as a final plat is recorded.
8. The Final Plat shall be submitted pursuant to the standards and requirements contained in UDC §9.7, and shall include the appropriate fee.
9. Any plat or map not receiving final approval within the period of time set forth herein shall be null and void, and the developer shall be required to submit a new tentative plat for approval subject to all existing zoning and land division regulations.
10. The applicant bears the burden of proof for all approvals. Should an appeal arise, the applicant shall be responsible for all costs pursuant to the standards and limitations contained in §13.6 of the UDC.
11. Type II Decisions are not final until 14 days after the Notice of Decision is mailed. If the Planning Director receives an appeal of the Decision within the fourteen (14) day period, a public hearing shall be held according to the standards for appeal of a Type II action. If no objections to the approval are received, the decision shall become final and effective at the end of the 14 day period.
12. Failure to file a complete application for a Final Plat within the two year approval period, including submittal of all engineering Construction Documents, fees, required Consent forms and bonds or other assurances, will cause the tentative approval to expire.
13. Approval of a land use action shall be void after two



years pursuant to the standards contained in §15.4 of the UDC. Pursuant to §15.5 of the UDC, the Planning Director may extend a permit for one additional period of two (2) years upon written request.

## **11. CODES SPECIFIC TO APPLICATION**

### **ARTICLE IV. COMMERCIAL ZONES**

#### **General Provisions for Commercial Zones**

- 4.04.1 **Lot Size.** There is no minimum lot size in Commercial zones.
- 4.04.2 **Yards.** No yards shall be required in commercial zones, with the following exceptions:
- A. When the property abuts or is less than sixty (60') feet from a residential zone, the same yards shall be required as those in the abutting zone.
  - B. New development on corner lots shall observe all standards for Vision Clearance.
  - C. The use of landscaped areas may be required by the Planning Commission to buffer commercial uses from residential uses.
- 4.04.3 **Lot Coverage.** There shall be no maximum lot coverage regulations for commercial zones; however, new residential buildings in commercial zones shall provide at least 10% of the building site as accessible open space and meet applicable parking standards. The 10% open space standard does not apply to redevelopment of existing or historic structures if on-site space is not available.
- 4.04.4 **Building Height.** The maximum allowable height of buildings in the commercial zones shall be as follows:
- A. C-MU: No limit;
  - B. C-2: 50 feet or 5 stories;
  - C. C-3: 50 feet or 5 stories.
  - D. The height limits of this Ordinance shall not apply to church spires, belfries, cupolas and domes not for human occupancy, monuments, water towers, observation towers, transmission towers, windmills, chimneys, smokestacks, derricks, conveyors, flagpoles, radio towers, masts, aerials, solar energy collectors and equipment used for the mounting or operation of such devices, and any other on-site energy generating device.
- 4.04.5 **Fences.** In a commercial zoning district, fences or walls not to exceed eight (8) feet in height may be located or maintained in any yard, except where the requirements of vision clearance apply. Any fence over six (6') feet in height requires a building permit.

### **ARTICLE VIII. STANDARDS APPLICABLE TO ALL ZONES**

#### **Clear Vision Areas**

- 8.01.1 A clear-vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half (2 ½') feet in height, measured from the top of the curb, or where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to a height of eight (8') feet above the grade of a sidewalk, and eleven (11) feet above the grade of a roadway.
- 8.01.2 Property owners shall not permit the limbs or other portion of a tree, bush, flower, plant or shrub on private property or on public property abutting private property to project into or extend over a street so that the vegetation interferes with the use of the sidewalk or roadway, obstructs a driver's view of an intersection, street sign or of traffic upon streets approaching an intersection, or otherwise creates a hazard to the public. Where topography dictates a requirement for retaining walls to provide practical usable yard area, clear-vision area limits shall not apply to such retaining walls construction.
- 8.01.3 Measurement of Clear-Vision Areas. A clear-vision area shall consist of a triangular area two sides of which are lot lines measured from corner intersection of the street lot lines for a distance specified in this regulation, or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection and so measured, and the third side of which is a line across the corner of the lot joining the nonintersecting ends of the other two sides. Where the lot lines have rounded corners, the lot lines extending a straight line to a point of intersection with the third side. The following measurements shall establish clear-vision areas: (see illustration)
- A. In a residential zone:
    - 1. Where the intersection is not equipped with a stop sign or a stop light, the minimum distance shall be thirty (30') feet, or at intersections including an alley, ten (10') feet;
    - 2. Where the intersection is equipped with a stop sign or a stop light, the minimum distance shall be twenty (20') feet, or at intersections including an alley, ten (10') feet.
  - B. In the C-MU Zone, a clear-vision area shall be required at all intersections not controlled by traffic signals, for a minimum of ten (10') feet.
  - C. In all other zones the minimum distance shall be fifteen (15') feet, or at intersections including an alley, ten (10') feet; except that when angle of intersection between streets is less than 30 degrees, the distance shall be twenty-five (25') feet.

#### 8.06.1 Design requirements for parking lots.

- A. All parking areas shall be adequately landscaped at the rate of at least forty (40) square feet per required off-street parking space, unless otherwise approved by the Planning Commission. Parking areas with 25 or more spaces shall provide landscape islands with trees that break up into rows of not more than 15 contiguous parking spaces. All parking areas shall be adequately landscaped at the rate of at least forty (40) square feet per required off-street parking space. This may include hardscape, lawns, shrubbery and trees. When trees are planned as part of the landscaping – excluding landscape islands-, the owner may exchange one (1) tree for one hundred (100) square feet of on the ground hardscape or live vegetation thus reducing the required ground landscaping proportionally, unless other conditions are imposed by the Planning Commission.
- B. Except in the Central Area Parking District, all parking areas adjacent to public sidewalks shall be buffered from the sidewalk (except at gateways and openings) with a minimum of four feet of landscape area with vegetation consistent with the requirements of Section 8.01.

### ARTICLE IX. DESIGN STANDARDS FOR LAND DIVISIONS

#### 9.01 Blocks

- 9.01.1 Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depths. Exceptions to this prescribed block width shall be permitted due to topography, or in blocks adjacent to arterials, railroads, waterways, cemeteries, parks, or public land or farmland.

In certain blocks, the Planning Commission may require an easement or dedicated right-of-way through the block to accommodate utilities, drainage facilities, pedestrian ways, or bicycle ways. The dedication of pedestrian or bicycle ways, not less than five (5) feet wide for the travel way, may be required by the Commission through a block or to connect to a cul-de-sac or where deemed necessary to provide circulation or access for non-motorized traffic.

In order to promote efficient pedestrian and vehicular circulation throughout the city, subdivisions and site developments shall be served by a connecting network of public streets and/or access ways, in accordance with the following standards. The standards preferably determine minimum and maximum distances between streets and access ways):

- A. Residential Districts: Minimum of one hundred (100) foot block length and maximum of eight hundred (800) length; maximum two thousand (2,000) feet block perimeter;
- B. Downtown: Minimum of one hundred (100) foot length and maximum of four hundred (400) foot length; maximum one thousand seven hundred (1,700) foot perimeter;
- C. General Commercial Districts: Minimum of one hundred (100) foot length and maximum of six hundred (600) foot length; maximum one thousand four hundred (1,400) foot perimeter;
- D. Master planned Developments: Large multi-use sites may be granted a variance from these limits if the development is developed with multiple users and owners in its final development. These developments may not include districts solely developed for retail sales establishments or other similar uses that involve high traffic; and not applicable to the Industrial Districts.

#### 9.02 Lot or Parcel Arrangement

- 9.02.4 Lot or parcel dimensions shall comply with the minimum standards of this ordinance. Where lots or parcels are more than double the minimum required area for the zoning district, the Planning Commission may require that such lots be arranged to allow further subdivision or partition and the opening of future streets or other means of access.

- 9.02.8 Development Permits for siting of new dwellings on any lot more than twice the minimum size of the underlying zone that would prohibit future land divisions are discouraged unless topographical or other similar constraints merit consideration of a larger lot in order to achieve a suitable building envelope.

#### Access to Lots or Parcels

- 9.05.1 All lots in any land division shall have frontage on or access from an existing street on the official map or Comprehensive Plan or:

- A. An existing State Highway, County Road, or City street;
- B. A street shown upon a plat or map approved by the City Planning Commission and recorded in the Umatilla County Clerk's office. Such street shall be suitably improved as required by the standards of the jurisdiction, or be secured by a performance agreement or bond as required by this Ordinance, with the width and right-of-way required by this Ordinance and the Transportation System Plan.

#### 9.05.2 Driveways Permitted.

- A. City Streets. In any district, driveways or access-ways providing ingress and egress to or from private parking areas or garages, public parking areas or garages and parking spaces shall be permitted and constructed consistent with the standards in this Section, together with any appropriate traffic control devices in any required yard.

- B. County Roads. Access to lots fronting on County Roads requires a Umatilla County Access Permit, issued through the Public Works Department.
  - C. State (ODOT) facilities. Access to ODOT rights-of-way requires a Permit to Operate, Maintain and Use a State Highway Approach issued through the ODOT District 12 Office at 1327 S.E. 3<sup>rd</sup> Street.
  - D. Permits for new driveways or any other form of access to a street not improved to City standards shall carry, as a condition of approval, the requirement to either improve the street to City standards or provide a consent to LID to do so at a later date.
- 9.05.3 Residential lots or parcels shall derive access other than from an arterial street. Where driveway access from an arterial may be necessary for several adjoining lots, the Planning Commission may require that such lots be served by a combined access drive, or not be served at all, in order to limit possible traffic hazards on such a street. Driveways shall be designed and arranged so as to avoid requiring vehicles to back into traffic on an arterial or collector street.
- 9.05.4 When a land division borders on or contains an existing or proposed arterial, the Planning Commission shall require that access to such streets shall be limited to the following means (and in priority order):
- A. Lots shall be subdivided and parcels partitioned so as to not front the arterial, but to front onto a minor or local street. Screening shall be provided in a strip of land along the property line common to the arterial of such lots or parcels;
  - B. Alleys or dedicated access easements located between an arterial and a local street shall meet all applicable fire code standards.
  - C. A series of cul-de-sacs, U-shaped streets, or short loop streets entered from and designed generally at right angles to such a parallel street, with rear and/or side lines of their terminal lots or parcels being adjacent to the arterial;
  - D. A marginal access street (separated from the arterial by a planting or grass strip and having access thereto at suitable points).
- 9.05.5 **Corner and Intersection Separation; Access Spacing; Backing onto Public Streets.** New and modified accesses shall conform to the following standards:
- A. On lots having two or more street frontages, the frontage abutting the street with a lower classification shall be used for access.
  - B. On lots having two or more street frontages, all of which are the same classification, the longer frontage shall be used for access.
  - C. In all cases, vehicular access on corner lots shall be the maximum practical distance from the intersection.
  - D. Except as provided under subsection H, below, the following minimum distances shall be maintained between access points or approaches, where distance is measured from the edge of one approach to the edge of another:
    1. On an arterial street: 300-500 feet based on speed limit or posted speed, as applicable, except as otherwise required by ODOT for a state highway, pursuant to Oregon Administrative Rules (OAR) 734-051; and
    2. On a collector street: 100 feet; and
    3. On a local street, 30 feet.
  - E. New property access on state highways shall conform to the State highway access spacing requirements in OAR 734-051.
  - F. New property access on Collector and Arterial streets other than state highways shall not be permitted within fifty (50) feet of an intersection, unless no other reasonable access to the property is available or could be developed and a modification in the site design of the property cannot remedy the situation. The measurement shall be taken from the curb edge, or if no curb exists, from the theoretical curb location based on the planned roadway section for the given street. Where no other alternatives exist, the City may, at its discretion, allow construction of an access connection at a point less than 50 feet from an intersection, provided the access is as far away from the intersection as possible. In such cases, the City may impose turning restrictions and other traffic management techniques (i.e., right in/out, right in only, or right out only).
  - G. Access to and from off-street parking areas shall generally not permit backing onto a public street, except for single-family dwellings and duplexes. Where no other alternative exists the City, at its discretion, may allow backing onto a public street from perpendicular or angle parking spacing with the employment of a variety of transportation engineering or transportation planning techniques designed to mitigate or reduce to a reasonable level the safety hazard. Required features may include one-way streets with curb bulb-outs, curvilinear design, and modification of sidewalk locations.
  - H. The Director may reduce required separation distance of access points where they prove impractical due to lot dimensions, existing development, other physical features, or conflicting code requirements, provided all of the following requirements are met:
    1. Joint-use driveways and cross-access easements are provided, where practical;
    2. The site plan incorporates a unified access and circulation system in accordance with this Section; and
    3. The property owner(s) enter in a written agreement with the City that pre-existing connections on the site will be closed and eliminated in conjunction with construction of each side of the joint-use driveway. Said written agreement can take the form of a condition of approval for a subdivision, partition, development review, site plan review, or recorded with the deed.
  - I. While the TSP does not restrict private driveway access on urban local streets, residential projects under review will be encouraged to combine driveway access through joint-use driveways or to access parking off of established alleys where conditions are practical.
- 9.05.6 **Site Circulation.** New developments shall be required to provide a circulation system that accommodates expected traffic on the site and does not conflict with traffic on adjacent roads. Pedestrian and, as applicable, bicycle way connections on the site,

including connections through large sites, and connections between sites (as applicable) and adjacent sidewalks, must meet minimum City Standards.

- 9.05.7 **Joint and Cross Access Requirement.** The number of driveway and private street intersections with public streets should be minimized by the use of shared driveways for adjoining lots where feasible. When necessary for traffic safety and access management purposes, or to access flag lots, the Director may require joint access and/or shared driveways in the following situations as follows:
- A. For shared parking areas;
  - B. For adjacent developments, where access onto an arterial is limited;
  - C. For multi-tenant developments, and developments on multiple lots or parcels. Such joint accesses and shared driveways shall incorporate all of the following:
    1. A continuous service drive or cross-access corridor that provides for driveway separation consistent with the applicable transportation authority's access management classification system and standards;
    2. A design speed of 10 miles per hour and a maximum width of 20 feet, in addition to any parking alongside the driveway; additional driveway width or fire lanes may be approved when necessary to accommodate specific types of service vehicles, loading vehicles, or emergency service provider vehicles;
    3. Driveway stubs to property lines (for future extension) and other design features to make it easy to see that the abutting properties may be required with future development to connect to the cross-access driveway.
- 9.05.8 **Joint and Cross Access: Reduction in Required Parking Allowed.** When a shared driveway is provided or required as a condition of approval, the land uses adjacent to the shared driveway may have their minimum parking standards reduced in accordance with the shared parking provisions.
- 9.05.9 **Joint and Cross Access: Easement and Use/Maintenance Agreement.** Pursuant to this Section, property owners shall:
- A. Record an easement with the deed allowing cross-access to and from other properties served by the joint-use driveways and cross-access or service drive;
  - B. Record an agreement with the deed that remaining access rights along the roadway for the subject property shall be dedicated to the City and pre-existing driveways will be closed and eliminated after construction of the joint-use driveway;
  - C. Record a joint maintenance agreement with the deed defining maintenance responsibilities of property owners.
- 9.05.10 **Width of Driveway Approach Apron.** The width of driveway approach aprons shall not exceed the following dimensions:
- A. For residential driveways, 14 feet for single driveways and 22 feet for double driveways. No more than one driveway shall be permitted for lots having frontages of 60 feet or less.
  - B. For commercial driveways, when one or more driveway approaches serve a given property frontage, no single apron shall exceed 30 feet in width if the property abuts a street where the speed limit is 25 miles or less per hour; or 35 feet in width where the speed limit is in excess of 25 miles per hour.
  - C. A safety island of full height curb shall be provided between driveway approaches serving any one property frontage. Whenever possible, this safety island shall be 22 feet in length and in no case shall it be less than 10 feet in length.
  - D. In no case shall single driveways serving more than one property be combined to allow greater widths than stated above.
  - E. Deviations not to exceed 50%, of the maximum Driveway Approach Apron width limitations may be considered for Type II Minor Variance approval.
- 9.05.11 **Driveway Surfaces.**
- A. Driveway surfaces shall be designed for all weather conditions (paved or compacted gravel). Vehicle driveway and storage areas will not be allowed to be dirt or vegetation. For grades over 8 percent, paved driveway surfaces are required. All portions of the driveway within the public right-of-way, and at a minimum of the first 20 feet behind the curb or sidewalk shall be paved as an apron to control gravel.
  - B. For residential driveways, including private roads, the maximum slope of any portion of the driveway shall be 20 percent, with an overall average grade of less than 15 percent along the entire length of the driveway. The maximum grade change in any given 10 feet of driveway shall be 12 percent for a crest situation and 16 percent for a sag situation. The maximum number of houses served by a driveway or private road is three.
  - C. For commercial or industrial driveways, including private roads, the maximum slope of any portion of the driveway shall be 15 percent for any point above the elevation of the roadway, and shall be 8 percent for any point below the elevation of the roadway. The overall average grade shall be less than 12 percent along the entire length of the driveway. The maximum grade change in any given 10 feet of driveway shall be 8 percent for a crest situation and 12 percent for a sag situation.
  - D. Every driveway approach or entrance to abutting property shall be maintained and kept in safe condition by the owner of the abutting property. Any driveway approach which is not so maintained or which interferes with the drainage or safe travel of the street shall be repaired to conform to the specifications of the City ordinances and the City Engineer or be removed.
  - E. Driveways less than 18 feet in depth, or those that would force a vehicle to park over an existing or future public sidewalk, shall be prohibited.

- 9.05.12 **Abandoned Driveways.** When a driveway approach no longer provides necessary access for vehicles to parking areas, driveways, or doors intended and used for vehicles, such driveway approach shall be removed. Upon removal of any such driveway approach, that portion of the street occupied by the same shall be restored as nearly as practicable to match the conditions adjacent to the driveway approach or in accordance with design standards for public streets. Restoration shall include curbing, sidewalk to the nearest grid section, and landscaping, all by and at the expense of the owner abutting the property.

### **Public Parks, Recreation Facilities and Open Spaces**

- 9.06.1 The developer shall dedicate land for parks and playgrounds and other public purposes in locations designated by the Comprehensive Plan, or in locations deemed by the Planning Commission, on recommendation of the Parks Commission, to be appropriate for the public welfare.
- 9.06.2 **Dedication Required.** Each land dedication for parks purposes shall be of suitable size, shape, topography, and location and shall have adequate street frontage and pedestrian access. When recreation areas are required by the Planning Commission, on recommendation of the Parks and Recreation Commission, the area to be dedicated shall be based upon the standard of .015 acres of recreation land for every lot or dwelling unit proposed. The developer shall dedicate all such recreation areas to the City without any reservation at the time of final plat approval.
- A. In single-family residential developments (limited to single family by covenant or other restriction) the recreation standard shall be based on one dwelling unit per lot.
- B. In duplex, multi-family, and high density residential districts (not limited to single-family dwellings by covenant or other restriction) the recreation standard shall be based upon the maximum number of dwelling units per acre that could occupy the property as permitted by this ordinance. The only exception to this standard shall be when a lesser density than that permitted by this ordinance is attached as a condition of approval of the plat by the Planning Commission. In no case shall greater density be allowed at a subsequent date without additional dedication or fee payment by the developer, based upon the recreation standards above and the remainder of this Section.
- 9.06.3 **Minimum Size of Dedication.** In general, land dedicated and accepted for recreation purposes shall have an initial or potential area of at least five (5) acres. The Planning Commission may require that the recreation area be provided at a suitable place on the edge of the subdivision, or on suitable lands outside of the subdivision but under the same ownership, so that additional land may be added at such time as the adjacent land is subdivided. In no case shall an area of less than two acres be accepted for recreational purposes if it will be impractical to secure additional lands in order to increase its area.
- 9.06.4 **Character.** Land set aside for recreation purposes shall be of a character and location suitable for use as a playground, playfield, or other recreational purposes, and shall be relatively level.
- 9.06.5 **Street Frontage.** Any recreation site shall have frontage on public streets of at least thirty three (33) percent of its perimeter. All land to be dedicated to the City for park purposes shall be marked on the plat: "Dedicated for park/public purposes."
- 9.06.6 **Payment in Lieu of Land Dedication.** Where, with respect to a particular subdivision and in all cases with respect to partitions, the dedicating of land pursuant to this Section does not meet the minimum requirements for park dedication, or in cases when the Planning Commission determines (on recommendation of the Parks and Recreation Commission) that such a dedication is not in the public interest, the land divider shall pay a fee in lieu of land dedication prior to final plat or map approval. Such fee shall be deposited in a Neighborhood Park and Recreation Improvement Fund. This fund shall be used by the City in developing neighborhood parks, play lots, and other recreation facilities that will be available to and benefit the persons that will inhabit the land division and surrounding neighborhood.
- 9.06.7 **Maximum Dedication.** A land divider shall not be required to dedicate more than thirty percent (30%) of his land for public purposes, including streets but not including easements. If greater land areas are required for public use, the Planning Commission may require the reservation of such areas for a period of three (3) years, during which time the appropriate agency may acquire such land at such price as is established prior to final approval of the plat or map.

### **Noise Buffering**

- 9.07.1 A buffer zone and/or noise barrier may be required by the Planning Commission to protect and minimize the noise created in new residential subdivisions from arterial streets, state highways, and the federal interstate system (including on and off-ramps).
- 9.07.2 Open space areas, landscaped areas, man-made barriers or walls (constructed of wood, earth, masonry, concrete, etc.) may be acceptable as noise mitigation measures. The location of any proposed or required noise buffering shall be indicated on the Tentative Plat for Planning Commission approval.

### **Pedestrian Walkways**

- 9.08.1 The City recognizes the need to provide safe, non-vehicular access to all areas of the City. The developer is encouraged to design the land division in such a manner as to creatively provide for the efficient and secure flow of pedestrian traffic.

- 9.08.2 Sidewalks shall be included within the dedicated rights-of-way of all streets, unless a variance is approved by the Planning Commission at the tentative plat stage. Sidewalks shall be designed in accordance with street design standards in the Table 9.1. With the approval of the City Engineer, requirements for sidewalks can also be met by providing a multi-use pathway consistent with the City of Pendleton Transportation System Plan.
- 9.08.3 Variances for sidewalks on both sides may be granted by the Planning Commission if:
- A. The topography of the site does not permit the reasonable use of a sidewalk; or
  - B. Some other existing or proposed access way, sidewalk or other facility exists that provides a safe and convenient bicycle and pedestrian route (e.g. pedestrian and bicycle pathways along the rear or side of the lot, easements, bridle paths).
- 9.08.4 Concrete is the standard material for sidewalk construction. Asphalt sidewalks shall be permitted only on approval of the City Council.
- 9.08.5 The City recognizes that certain developers may wish to consider more aesthetic materials for the construction of pedestrian walkways in order to add to the value and attractiveness of the land division. The City encourages the developer to discuss the construction of such innovative walkways with the Community Development Director as early as possible in the platting process.
- 9.08.6 The Planning Commission may require, in order to facilitate pedestrian access from streets to schools, parks, playgrounds or other nearby streets, the dedication of a strip of land or provision of an access easement at least five (5) feet in width for a pedestrian right-of-way. All such dedications or easements shall be noted on the tentative plan and the final plat.  
(Section 9.08 as amended by Ordinance No. 3890, passed July 7, 2016.)

### **Pedestrian and Bicycle Access Ways and Multi-Use Trails and Pathways**

- 9.09.1 The dedication of access ways through a block, not less than ten (10) feet wide shall be required to connect to a cul-de-sac or a long block where it is deemed necessary to provide circulation or access for non-motorized traffic and potentially emergency access for vehicles. Design considerations should be considered to restrict non-emergency motorized vehicles from accessing such ways. Where constraints limit access to pedestrians only, or where it can be determined that bicycle use may be minimal or non-existent, the Pedestrian Walkway Improvement standards shall apply.
- 9.09.2 Multi-use trails should conform to the design standards outlines in the Transportation System Plan Update. Location and construction of trails must be approved by City Engineer.

### **Natural Features and Trees**

- 9.10.1 Existing features which would add to the value of residential development or to the City as a whole, such as trees, waterways, historic sites, and similar assets, shall be preserved as they exist in the design of the land division. No trees shall be removed from any land division nor any change in grade of land affected until approval of the Tentative Plat has been granted. The Tentative Plat shall indicate the location of existing trees, and whether they are planned for removal or retention. Trees required to be retained shall be preserved and protected against excavations. The location of all proposed new shade trees along the street side of each lot or parcel as required by this Ordinance shall also be shown on the Tentative Plat.
- 9.10.2 As a requirement for any subdivision or major partition approval, and prior to City acceptance of the street improvements, the developer shall plant shade trees as established by this Ordinance. Such trees are to be planted within the planting strip five (5) feet of the right-of-way of the streets within and abutting the land division, unless this location is altered for utility purposes. A minimum of at least one (1) tree shall be planted for every seventy (70) feet of frontage along each street unless otherwise approved by the Planning Commission. A minimum of two trees per frontage is required. Sleeves shall be provided under the sidewalk for irrigation of the planting strip. Tree planting is required before the City will establish a Water service account, or other agreements must be made with the City. Shade trees planted in planting strips shall come from the street tree manual developed by the City. At the discretion of the Director and where the sidewalks are curb-tight, the Plantings can be allowed behind the sidewalk or within tree wells.
- 9.10.3 New shade trees to be provided pursuant to this Ordinance shall have a minimum trunk diameter of not less than two (2) inches measured twelve (12) inches above the ground level, and be oak, honey locust, hard maples, or other long-lived shade trees as approved by the Planning Commission. Shade tree maintenance shall be the responsibility of the property owner.

### **Design of Streets**

- 9.11.1 Streets shall be designed consistent with the standards in Table 9.1. Streets shall be designed consistent with American Association of State Highway and Transportation Officials (AASHTO) and Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) standards. Consideration shall also be given to the National Association of City Transportation Officials (NACTO) Urban Street Design Guide. Bicycle facilities may be designed according to the NACTO Urban Bikeway Design Guide. This Code



recognizes that some other jurisdictions in Oregon and elsewhere may have more progressive design standards than those contained in the adopted AASHTO, MUTCD and NACTO guides. Developers have the option of proposing treatments that have been approved in other jurisdictions, subject to review and recommendation by the Community Development Director and/or City Engineer. With the approval of the City Engineer, requirements for sidewalks and bike lanes can also be met by providing a multi-use pathway consistent with the City of Pendleton Transportation System Plan.

- 9.11.2 Streets shall be related appropriately to the topography, to permit efficient drainage and utility systems, and to provide convenient and safe access to property. All streets shall be arranged so as to obtain as many as possible of the building sites at, or above the grade of the adjoining streets. Grades of streets shall conform as closely as possible to the original topography. A combination of steep grades and curves shall be avoided where possible.
- 9.11.3 Streets shall be graded and improved to conform with City construction standards and specifications and shall be approved as to design and specifications by the Community Development Director, in accordance with the construction plans required to be submitted prior to final plat or map approval.
- 9.11.4 As topography permits, streets within a new land division should be oriented east-west to take advantage of solar energy applications. East-west streets are conducive to more north-south lot orientations and east-west home orientations that are desirable for solar access.
- 9.11.5 All streets shall be properly integrated with the existing and proposed system of thoroughfares and dedicated rights-of-way as set forth in the Comprehensive Plan.
- 9.11.6 Minor streets shall be platted to conform as much as possible to the topography, to discourage use by through traffic, to permit efficient drainage and utility systems, and to provide convenient and safe access to property.
- 9.11.7 A rectilinear gridiron street pattern need not be adhered to, provided the network achieves a similar level of connectivity.
- 9.11.8 The use of cul-de-sacs and U-shaped streets may be considered only when a reasonable grid cannot be accomplished.
- 9.11.9 Proposed streets shall be extended to the boundary lines of the property to be divided, unless prevented by the topography or other physical conditions, or unless the Planning Commission determines that the extension is not necessary or desirable for the coordination of the layout of the subdivision or partition with the existing layout or the most advantageous future development of adjacent tracts.
- 9.11.10 In commercial and industrial developments, the streets and other access-ways shall be planned in connection with the grouping of buildings, location of rail facilities, and the provisions of alleys, truck loading and maneuvering areas, and walks and parking areas so as to minimize conflicting movements between various types of traffic.
- 9.11.11 In order to provide for streets of suitable location, width and improvement to accommodate prospective traffic and afford satisfactory access to police, fire fighting, snow removal, sanitation, transit, and street maintenance equipment, and to coordinate streets so as to compose a convenient system and avoid undue hardship to adjoining properties, design standards are set forth in this Section and the Design Standards Table at the end of this Article. The pavement surface width indicated herein are the maximum permitted and lesser widths may be approved by the Planning Commission when it can be shown that the projected traffic volume can be safely and efficiently accommodated on the proposed width.
- 9.11.12 After sewer and water utilities have been installed by the developer, he shall construct curbs and gutters and shall surface roadways to the widths prescribed in this Ordinance. Said surfacing shall be of such character as is suitable for the expected traffic and in harmony with similar improvements in the surrounding areas. Types of pavement shall be as determined by the Community Development Director. Adequate provisions shall be made for culverts, drains, and bridges. All street pavements, shoulders, drainage improvements and structures, curbs, turnarounds, pedestrian walkways, and bicycle ways shall conform to all construction standards and specifications adopted by the Community Development Director and shall be incorporated into the construction plans required to be submitted by the developer for final plat or map approval.
- 9.11.13 Right-of-way widths in excess of the standards designated in this Ordinance shall be required whenever, due to topography, additional width is necessary to provide adequate earth slopes.
  - A. In residential districts, a buffer strip at least twenty-five (25) feet in depth in addition to the normal depth of the lot or parcel required in the district shall be provided adjacent to the railroad right-of-way or limited access highway. This strip shall be part of the platted lots or mapped parcels and shall be designated on the plat or map: This strip is reserved for landscape buffering; the placement of structures hereon is prohibited.
  - B. In districts zoned for commercial or industrial uses, the nearest street extending parallel or approximately parallel to a railroad right-of-way shall, whenever practical, be at a sufficient distance therefrom to ensure suitable depth for commercial or industrial sites.
  - C. Streets parallel to the railroad when intersecting a street which crosses the railroad at grade shall, to the extent practical, be at a distance of at least one hundred and fifty (150) feet from the railroad right-of-way. Such distance shall be determined with

due consideration of the minimum distance required for future separation of grades by means of adequate approach gradients.

- 9.11.14 The creation of reserve strips controlling access to streets shall not be approved unless necessary to protect the public welfare or a substantial property right. The control and disposal of the land comprising such strips shall be placed within the jurisdiction of the City under conditions approved by the Planning Commission.
- 9.11.15 **Dead End Streets.** A temporary "T" or "L-shaped" or circular turnaround shall be provided on all temporary dead-end streets (which may extend into adjoining vacant property as some future date). The plat or map shall contain a notation that such land outside the normal street right-of-way shall revert back to the abutting property owners whenever the street is continued. The Planning Commission may limit the length of temporary dead-end streets in accordance with the design standards of this Ordinance.
- 9.11.16 When a street does not extend to the boundary of the land division or cannot be extended due to topography or other means, and its continuation is not required by the Planning Commission for access to adjoining property, its terminus shall normally not be nearer to such boundary than fifty (50) feet. However, the Commission may require the reservation of an appropriate easement to accommodate drainage facilities, utilities, or the dedication of land for pedestrian or bicycle ways. A cul-de-sac turn-around shall be provided at the end of a permanent dead-end street in accordance with this Ordinance and the City construction standards and specifications. For greater convenience to traffic and more effective police and fire protection, permanent dead-end streets shall be limited in length in accordance with the design standards of this Ordinance and be appropriately signed.
- 9.11.17 **Temporary dead-end streets** shall include clear signage that the street is a dead-end and that it is barricaded. The sign shall read "Dead End, This road will be extended with future development". Further the street shall include a reflective barricade (per Manual of Uniform Traffic Control Devices) constructed at the end of the street by the developer and shall not be removed until authorized by the City or other applicable agency with jurisdiction over the street. The cost of the barricade and signage shall be included in the street construction cost and born by the developer
- 9.11.18 **Intersections**
- A. The use of roundabouts instead of traditional intersections may be considered for all new intersections unless prohibited by topography.
  - B. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two new streets shall not be less than seventy-five (75) degrees. An oblique street should be curved approaching an intersection and should be approximately at right angles for at least one hundred (100) feet therefrom. A maximum of two streets (four approaches) shall intersect at any one point, unless alternative intersection designs are considered, such as roundabouts.
  - C. Proposed new intersections along one side of an existing street shall, whenever practical, coincide with any existing intersections on the opposite side of the street. Street jogs with center line offsets shall not be less than 125 feet, except where the intersected street has reserve strips without median breaks at either intersection. Where streets intersect arterial streets, their alignment shall be continuous. Intersection of arterial streets shall be at least 800 feet apart.
  - D. Minimum curb return radius at the intersection of two minor streets shall be at least twenty feet, and the minimum curb return radius at an intersection involving a collector or arterial street shall be at least twenty-five feet. Alley intersections and abrupt changes in alignment within a block shall have the corners cut off in accordance with standard engineering practices, as approved by the Community Development Director, to permit safe vehicle movement.
  - E. Intersections shall be designed with a grade no greater than five percent (5%). In hilly or rolling areas, at the approach to an intersection, a leveling area shall be provided having no greater than a ten percent slope at a distance of fifty feet from the nearest right-of-way line of the intersecting street.
  - F. Wherever street intersections will involve earth banks or existing vegetation inside any lot or parcel corner that would create a traffic hazard by limiting visibility, the developer shall cut such ground and/or vegetation (including trees) in connection with the grading of the public right-of-way to the extent deemed necessary to provide an adequate sight distance. However, the design of any proposed street shall take into consideration the location of any existing trees and vegetation. Trees shall not be destroyed for the construction of a street or other improvement if practical alternative design is available.
  - G. The cross slopes on all streets, including intersections, shall be five (5) percent or less.
- 9.11.19 **Bridges.** Bridges of primary benefit to the applicant, as determined by the Planning Commission, shall be constructed at the expense of the developer, with no reimbursement from the City. The sharing of expense for the construction of bridges not of primary benefit to the applicant (as determined by the City Council on recommendation of the Planning Commission) if approved, will be established by agreement. Said cost shall be charged to the applicant pro rata as the percentage of vehicular impact of the proposed land division versus the bridge capacity or potential traffic volumes.
- 9.11.20 **Alleys.** Alleys shall be permitted in all zones.
- A. The minimum alley width shall be 20 feet unless additional width is warranted due to Fire code or other applicable standards.
  - B. Dead-end alleys shall not be permitted, except that the Planning Commission may waive this restriction if such an alley is unavoidable, provided that adequate turnaround facilities are either provided or deemed unnecessary to preserve/satisfy public safety needs.

C. Access and utility easements shall be preferred over dedication of ROW for alleys. Maintenance of alleys and access easements shall be the responsibility of developer and abutting property owners. Any access easement that may serve future infill development shall be recorded with a reservation for dedication as future right-of-way.

9.11.21 **Perimeter Streets.** Streets systems in new land divisions shall be laid out so as to eliminate or avoid the creation of new perimeter half-streets. Where an existing half-street is adjacent to a new land division, the other half of the street shall be improved and dedicated by the land developer. The Planning Commission may authorize a new perimeter street where the land divider improves and dedicates the entire required street right-of-way width within his own land division boundaries.

9.11.22 Where directions of travel are separated by a median, such as with boulevard cross-sections with or without a left turn lane, the median shall be no less than twelve (12) feet and be provided for landscaping. Planted medians may be a minimum of six (6) feet in width when separating travel lanes for a road section without center or left turn lanes in the median. Median shall be planted with shade trees no less than every thirty (30) feet. Trees planted in medians shall come from the street tree manual developed by the City.

## 9.12 Street Improvements

9.12.1 All streets shall be constructed and surfaced in accordance with the applicable standard specifications of the City. In a residentially zoned area, if the City requires a developer to install a street with pavement width greater than 36 feet to provide an arterial street or traffic route, the City will pay only the portion of the pavement and rock base cost in excess of the cost of a 36 foot street. If the City determines that a developer shall install a street with pavement width greater than 36 feet to provide a collector street or traffic route, the City will have no obligation to participate in oversizing costs. In a commercial or industrially zoned area, if the City requires a developer to install a street with a pavement width greater than 36 feet to provide a collector or arterial street or traffic route, the City will have no obligation to participate in oversizing costs.

9.12.2 In instances where streets will provide direct access for any residential zone utilizing a density of less than 21 dwelling units per acre, the developers shall provide excavation and embankment for every right-of-way within their development from the back of the curbs and/or sidewalks to the property line to a vertical grade not to exceed five (5%) percent. In all other instances, developers shall provide excavation and embankment behind the curb and/or sidewalk to plus or minus five (5%) percent vertical grade for a total width of fifty-two (52) feet for a thirty-six (36) foot wide street, and sixty (60) feet for a forty-four (44) foot wide street. If after construction of the street, the land requiring access is changed to any residential zone utilizing a density of less than 21 units per acre, the developer making the change to any residential zone utilizing a density of less than 21 units per acre shall modify the direct access streets to provide excavation and embankment of those rights-of-way within their development from the back of the curbs and/or sidewalks to the property line to a vertical grade not to exceed five (5%) percent.

## 9.13 Mail Boxes

9.13.1 Joint mail box facilities shall be provided in all residential subdivisions, with each joint mail box group servicing at least two, but no more than twelve dwelling units, unless otherwise approved by the Planning Commission. Joint mailbox structures shall be placed in the street right-of-way adjacent to the curb as set forth in the design standards adopted by the Community Development Director. Proposed locations of joint mailboxes shall be designated on the Tentative Plat and shall be approved by the Community Development Director and the U.S. Postal Service. Sketch plans for the structures shall be approved by the City prior to final plat approval.

## 9.14 Soil Grading, Drainage, and Retention

9.14.1 Prior to the issuance of a Certificate of Occupancy, final grading shall be completed in accordance with applicable Code requirements and the approved final subdivision plat or partition map.

## 9.15 Drainage Improvements

9.15.1 The Planning Commission shall approve a plat only when adequate provisions are made for the handling of storm or flood water runoff. The storm water drainage system shall be separated and independent of any sanitary sewer system. Storm sewers shall be designed to the approval of the Community Development Director, and a copy of design computations shall be submitted along with the construction plans. Inlets shall be provided so that surface water is not carried across or around any intersection, or for a distance of more than six hundred (600) feet in a gutter. When calculations indicate that curb capacities are exceeded at a point, no further allowance shall be made for flow beyond that point, and basins shall be used to intercept flow at that point. Manholes shall be installed at the end of each line; at all changes in size, alignment, or grade; at all intersections; and at distances not greater than five hundred (500) feet, or as approved by the Community Development Director. All manholes must be accessible by a motor vehicle. Manhole construction shall be in accordance with City standard specifications.

9.15.4 The developer shall provide a drainage study showing the effect of each development or land division on existing downstream facilities outside the area of development or the land division for flow greater than a 25-year storm, and up to a 100-year storm.

This drainage study, together with other such studies as shall be appropriate, shall serve as a guide to improvements. Where it is anticipated that the additional runoff from the development from an incident greater than a 25-year storm will overload an existing downstream drainage facility, and especially when it is found that there is imminent potential of downstream property damage, the Planning Commission may withhold approval of the land division until provisions have been made to upgrade the drainage facility so it can handle the anticipated flows.

9.15.6 Drainage Easements.

- A. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within the street rights-of-way, perpetual unobstructed easements at least ten feet in width for such drainage facilities shall be provided across property outside the street lines with satisfactory access to the street. Drainage easements shall be carried from the street to a natural watercourse or to other drainage facilities.
- B. When a proposed drainage system will carry water across private land outside of the land division, appropriate drainage rights must be secured and indicated on the plat.
- C. The applicant may be required to dedicate land (either in fee or by drainage or conservation easement) adjacent to existing water-courses, in locations to be determined by the Planning Commission to meet the policies of the City.

**9.16 Water System Improvements**

9.16.2 In an area utilizing municipal water, the developer will be required to install public water lines to acceptable standards and of sufficient size to meet all demands including fire flow demands, actual and potential, of the area being developed. The sizes required shall be established by the Community Development Director in accordance with acceptable engineering standards, but in no case, except in certain dead-end water lines recognized by the Community Development Director, shall this size be less than eight (8) inches in diameter. Should the City require water line oversizing in excess of that normally required for the area being developed, the City shall reimburse the developer in the amount of the difference in pipe material costs.

9.16.3 Nothing in this Ordinance shall be construed as requiring the City to furnish water to any land division.

9.16.4 All water lines shall have a minimum depth of thirty (30) inches.

9.16.5 Wherever a water main or service passes beneath a sidewalk, this location shall be permanently identified by etching a "W" into the concrete curb directly above the water line at the time of street and curb improvements.

9.16.6 Fire hydrants shall be required for all subdivisions and may be required for a partition. Fire hydrants shall be so located per the Fire Code. The location of fire hydrants shall be approved by the Community Development Director and the Fire Chief. To minimize future street openings, all underground utilities for fire hydrants, together with the fire hydrants themselves, shall be installed before any final paving of a street shown on the final plat. Fire Hydrants shall be installed and flow tested to the satisfaction of the Fire Department, Public Works Department, and Community Development Director prior to the beginning of any combustible construction.

**9.17 Sewer System Improvements**

9.10.4 General Requirements.

- A. All developers shall install sanitary sewer facilities in a manner prescribed by the construction standards and specifications of the City. All plans must be approved by the Community Development Director.
- B. All sanitary sewage facilities of any land division shall connect to the City sanitary sewer system. Individual disposal systems or treatment plants (private or group disposal systems) will not be permitted.

**9.18 Utilities**

9.18.1 All utility facilities, including but not limited to gas, electric power, telephone, and television cables, shall be located underground throughout the land division. The costs associated to the installation of all utilities shall be the responsibility of the developer. Wherever existing facilities are located above ground, they shall either be removed and/or placed underground at the cost of the developer. When possible all utility facilities should be located within a public utility easement (PUE). Utilities may be located in the dedicated street right-of-way with prior approval of the Community Development Director. All new subdivisions shall provide a minimum ten foot (10') wide PUE outside of, but continuously adjacent to all public right-of-ways.

9.18.2 Easements centered on rear or side lot lines shall be provided for utilities, both public and private, when deemed necessary by the Planning Commission, the Community Development Director, and/or Public Works Director, or upon recommendation of the appropriate utility. Such recommendations shall be made at the prehearing conference for a subdivision or major partition, and during plat review for a minor partition. Such easements shall be a minimum of ten feet wide, five (5) feet on each side of the property line.

9.18.3 All utility easements shall be kept free of any building, structure, or tree in accordance with the City easement standards. If approved, fences, hedges, and other landscaping may be located within an easement, as may parking areas.

## **9.19 Dedication of Public Improvements.**

9.19.1 Land dedicated for public purposes may be provided to the City by any of the following methods:

- A. By dedication on the land subdivision plat, condominium plat or replat; or
- B. By a separate dedication or donation document on the form provided by the City.

## **9.20 Maintenance of Public Improvements**

9.20.1 The developer shall be required to maintain all improvements and provide for snow removal, sweeping and flushing on streets and walkways, until acceptance of said improvements by the City.

9.20.2 The developer shall be required to file a maintenance bond with the City in an amount determined by the Community Development Director and in a form satisfactory to the City Attorney, in order to assure the satisfactory condition of the required improvements for a period of one (1) year after the date of their acceptance by the City.

## **9.21 Bonding and Assurances**

9.21.1 Performance Guarantee for Public Improvements. On all projects where public improvements are required, the City shall require a guarantee prior to final plat approval in order to guarantee completion of the public improvements.

9.21.2 Performance Guarantee Required. When a performance guarantee is required, the developer shall file an assurance of performance with the City supported by one of the following:

- A. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
- B. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
- C. Cash.

9.21.5 Agreement. An agreement between the City and developer shall be recorded with the final plat. The agreement may be prepared by the City or prepared by the applicant as a letter. It shall not be valid until it is signed and dated by both the applicant and City. The agreement shall contain all of the following:

- A. The period within which all required improvements and repairs shall be completed;
- B. A provision that if work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the applicant;
- C. The improvement fees and deposits that are required;
- D. (Optional) A provision for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

9.21.6 Any and all right-of-way and public improvements proposed for dedication to the public shall be constructed in accordance with an approved tentative plat, construction plans and/or other adopted standards and any applicable conditions of approval.

9.21.7 Any required landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping as determined by the City or a qualified landscape architect is filed with the City assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation.

9.21.8 All improvements, new right-of-way and other public infrastructure, including receipt of staff approved as-builts, shall be completed prior to acceptance by the City; otherwise, all public improvements will remain under the ownership of the developer with notification sent to the entity providing assurance.

9.21.9 Final acceptance of all improvements shall be submitted to the City Council for adoption by Resolution.

9.21.10 Concurrent with acceptance of any new infrastructure, the Resolution shall authorize staff to notify the provider of assurance that applicable constructions bond(s) have been released.

9.21.11 Termination of Performance Guarantee. The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

9.21.12 When Developer Fails to Perform. In the event the developer fails to carry out all provisions of the agreement and the City has unreimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.

## ARTICLE X. LAND DIVISIONS

### Land Division Classifications

- 10.03.1 Under Oregon Revised Statutes, Chapter 92, land divisions are classified as one of two types:
- A. Partition (parent parcel into no more than three individual parcels in a calendar year)
  - B. Subdivision (parent parcel into more than three individual lots in a calendar year)
- 10.03.2 **Land divisions do not include:**
- A. Divisions of land resulting from lien foreclosures;
  - B. Divisions of land resulting from foreclosure of recorded contracts for the sale of real property;
  - C. Divisions of land resulting from the creation of cemetery plots;
  - D. Any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by an this ordinance. Such boundary line adjustments shall be reviewed and approved by the City as set forth in this Ordinance;
  - E. The sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner;
  - F. A sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and Oregon Law.

### 10.04 General Requirements

- 10.04.1 Land Division Approval through Two-step Process. Applications for subdivision, partition or replat approval shall be processed by means of a tentative plat evaluation and a final plat evaluation, according to the following two steps:
- A. The tentative plat must be approved before the final plat can be submitted for consideration; and
  - B. The final plat must include all conditions of approval of the tentative plat.
- 10.04.2 Compliance with ORS Chapter 92. All subdivision, partition or replat proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.
- 10.04.3 Future Re-division Plan. When subdividing, partitioning or replatting tracts into large lots (i.e., greater than two times or 200 percent the minimum lot size required in the underlying zone), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the zone. A re-division plan shall be submitted for large lots identifying:
- A. Potential future lot division(s), consistent with the density and lot size standards of the zone;
  - B. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;
  - C. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.
- 10.04.14 Conditional Approvals. Regulation of the subdivision of land, and the attachment of reasonable conditions to land divisions is an exercise of valid powers delegated by the state of Oregon to the City. The developer has the duty of compliance with reasonable conditions established by the Planning Commission for design, dedication, improvements, and restrictive usage of land so as to conform to the Comprehensive Plan.
- 10.04.15 Conformance to Applicable Rules and Regulations. In addition to the requirements established in this Ordinance, all subdivisions, partitions and replats shall comply with the following laws, rules, and regulations:
- A. All applicable statutory provisions;
  - B. The Structural Code, Fire Code, and all other applicable laws of the City;
  - C. The Comprehensive Plan, official map, public utilities plan and capital improvements program, including all streets, drainage systems, and parks shown on the official map or Comprehensive Plan as adopted;
  - D. The special requirements of these regulations and any rules of county and state agencies, such as the State Department of Transportation (if any part of the subdivision or partition were to abut a state highway);
  - E. The standards and regulations adopted by the Public Works Director and all boards, commissions, agencies and officials of the City of Pendleton;
  - F. All pertinent standards contained within the planning guides published by any state or regional planning agency;
  - G. The Transportation System Plan.
  - H. If the owner places restrictions on any of the land contained in the land division greater than those required by this ordinance, such restrictions or reference thereto may be required to be indicated on the plat, or the Planning Commission may require that restrictive covenants be recorded with the Umatilla County Office of County Records in a form approved by the City Attorney. Such restrictions shall not be the enforcement responsibility of the City of Pendleton.

## 10.05 Subdivisions, Partitions and Replats

### 10.05.2 Tentative Plat Procedure.

- A. Purpose. The process of tentative plat approval is intended to present for evaluation:
1. The plat documents and statements submitted by the developer or his agent concerning the plan for the proposed development;
  2. The report of the pre-hearing conference;
  3. Additional reports or statements of public officials or agencies affected by the proposed land division;
  4. The testimony of all citizens who wish to comment upon the proposed land division;
  5. The staff report of the Planning Department and other City officials concerning the tentative plat.
- B. Application Procedure and Requirements. Prior to proceeding to application for final plat approval, the developer of a subdivision or major partition shall file an application for approval of a tentative plat. The application shall:
1. Be made on forms available at the Community Development Department;
  2. Include all the land which the applicant proposes to divide and any abutting properties under the same ownership;
  3. Be accompanied by a statement of the intended method of developing the proposed land division, indicating:
    - a. If the land will be developed in one or more stages or phases;
    - b. If the lots or parcels, in whole or in part, will be sold to additional contractors for the construction of structures or if the contracting will be undertaken in whole or in part by the applicant for tentative plat approval.
- C. Information Required on the Tentative Plat. The tentative plat shall be prepared by an Oregon licensed Surveyor or Engineer. All sheets shall be numbered in sequence and the following shall be shown on all documents:
1. General Information.
    - a. The proposed name of the land division;
    - b. The name and address of the owner or owners, land divider, engineer, and/or surveyor and land planner;
    - c. Appropriate identification clearly stating the map is a tentative plat;
    - d. The date, north arrow, and scale of the drawing.
  2. Vicinity Map. A vicinity map shall be provided and shall specify:
    - a. All existing subdivisions, partitions, streets and tract lines of acreage land parcels within 1500 feet of the proposed land division;
    - b. The manner in which streets and alleys in the proposed land division will connect with existing and proposed streets and alleys in neighboring land divisions or undeveloped property to produce the most advantageous development of the entire area.
  3. Detail Map. The Tentative plat shall be drawn at a scale of one inch equals 100 feet. The size of the plat shall be either 18 inches by 24 inches or 24 inches by 36 inches. The following information shall be shown on the detailed map:
    - a. The location of the proposed land division by section, township, range, and a legal description sufficient to define the location and boundaries of the property;
    - b. The area of the proposed land division;
    - c. The date of the last property survey;
    - d. The number of lots or parcels.
  4. Existing Conditions. The detailed map shall show the following existing conditions:
    - a. The location, widths, and names of all existing and platted or mapped streets or other public rights-of-way within or adjacent to the proposed land division, railroad rights-of-way and other features such as section lines and corners, political subdivision or corporate lines, monuments and easements;
    - b. The location in the adjoining streets or property of existing sewer and water mains, culverts and drain pipes, electrical conduits or lines proposed to be used or connected to the property to be subdivided. The invert elevations of sewers, culverts and drains shall be shown at points of proposed connection;
    - c. Contour lines having the following minimum intervals:
      - Two foot contour intervals for ground slopes less than ten percent;
      - Five foot contour intervals for ground slopes more than ten percent.The elevations of all control points which are used to determine the contours shall be indicated and must be to U. S. Geodetic Survey Datum, if within a one-mile radius of an existing monument. If datum is not within a one-mile radius, datum shall be that approved by the City Engineer.
    - d. The approximate location of area subject to inundation or storm water overflow with the approximate high water elevation. Surface water drainage patterns shall be shown for every lot, parcel and block;
    - e. Location, width, direction and flow of all water courses;
    - f. Natural features, such as rock outcroppings, marshes, wooded areas and existing trees;
    - g. Existing use or uses of the property and adjacent property, including the location of existing structures to remain on the property or immediately adjacent to the property after final approval;
    - h. The land use zoning on and adjacent to the tract;
    - i. The location of at least one temporary bench mark within the plat boundaries.
  5. Proposed Plat of Land Division. The following information shall be included on the tentative plat:
    - a. The location, width, names, approximate grades and radii of curves of proposed streets;
    - b. The locations, widths and purposes of all easements on the land proposed to be divided and on abutting

- property;
- c. The location, area, and approximate dimensions of proposed lots or parcels and the proposed lot or parcel and block numbers;
- d. The proposed land use, including any lots or areas allocated for multi-family dwellings, shopping or commercial facilities, churches, industrial uses, parks, schools, playgrounds, public or semi-public use;
- e. Applicants shall also submit a circulation plan which includes the subject site and all adjacent parcels. Proposed streets must be shown to the point of connection with the existing street system within six hundred (600) feet. The circulation plan shall demonstrate feasibility with development of adjacent properties, or may revise the off-site portion of prior approved plans. Circulation plans shall also be consistent with the Transportation System Plan Map, as amended. Circulation plans shall be schematic in nature and include sufficient off-site and on-site conditions to evaluate it against the review criteria. It shall include:
  - Proposed project boundary;
  - Existing and proposed streets (from TSPM), transit routes and facilities, and other pedestrian/bicycle destinations within six hundred (600) feet of the project boundary;
  - Site access points for vehicles, pedestrians, bicycles, and transit; and
  - Contours showing changes in elevation.
  - Sensitive lands (wetlands, shorelines, geologic hazard, floodplain, etc.)
- 6. Explanatory Information. The following information shall be included with the tentative plat, but may be submitted in the form of statements in lieu of being drawn on the detailed map:
  - a. Proposed deed restrictions, if any, in outline form;
  - b. The location within the land division and in the adjoining street and properties of existing sewer and water mains, culverts, drain pipes and electrical lines as well as the provisions to be made for water supply, sewage disposal and drainage and flood control.
- 7. Supplementary Proposals with Tentative Plat. Any of the following may be required by the Community Development Department to supplement the plat of land division:
  - a. Approximate center-line profiles with extensions for a reasonable distance beyond the limits of the proposed land division showing the finished grade of streets and the nature and extent of street construction;
  - b. A plan for domestic water supply lines and related water service facilities;
  - c. Proposals for sewage disposal, storm water drainage and flood control, including profiles of proposed drainage ways;
  - d. If lot areas are to be graded, a plan showing the nature of cuts and fills and information on the character of the soil;
  - e. Proposals for other improvements such as electric utilities, pedestrian walkways, bikeways, etc.

#### 10.05.3 Study of Tentative Plat.

- A. The tentative plat, upon being submitted to the City Planner and distributed to appropriate departments and agencies for their review and comment, will be checked against the Comprehensive Plan and City Ordinances; and if conforming, may be processed pursuant to the standards for a Type II action contained in Article 13.
- B. If the proposed tentative plat is a residential subdivision containing ten or more lots, if it does not appear to comply with the Comprehensive Plan, or if it appears to comply only if conditions are imposed, the application shall be submitted to the Planning Commission under the standards for a Type III action contained in Article 13. The Planning Commission may require such dedications of land and easements and may specify such conditions and modifications to appear on the final plat as are deemed necessary to achieve compliance with the Comprehensive Plan and City Ordinance.

### **ARTICLE 13. LAND USE APPLICATION PROCEDURE**

#### **13.04 Type III Procedure (Quasi-Judicial)**

**13.04.1 Pre-application Conference.** A pre-application conference is not required for Type III applications but is highly recommended.

**13.04.2 Neighborhood Meetings.** There is no legal requirement to conduct neighbor-developer meetings. However, applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. The City can provide the same list used for mailed notices to the applicant if he/she wishes to provide additional notification and/or schedule a community meeting.

#### **13.04.3 Application Requirements.**

- A. Application forms. Type III applications shall be made on forms provided by the Community Development Department; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
- B. Submittal Information. When a Type III application is required, it shall:
  - 1. Include the information requested on the application form;

2. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making;
3. Be accompanied by the required fee.

#### 13.04.4 Notice of Hearing.

- A. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:
  1. At least 20 days before the hearing date, notice shall be mailed to:
    - a. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
    - b. All property owners of record within 100 feet of the site;
    - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
    - d. Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
    - e. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
    - f. Any person who submits a written request to receive notice;
    - g. For appeals, the appellant and all persons who provided testimony in the original decision; and
    - h. For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  2. The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
  3. Notice of the hearing shall be printed in a newspaper of general circulation in the City at least 7 business days before the hearing. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

#### 13.04.5 Conduct of the Public Hearing.

- A. At the commencement of the hearing, the hearings body shall state to those in attendance:
  1. The applicable approval criteria and standards that apply to the application or appeal;
  2. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
  3. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised in person or by letter not later than the close of the record or following the final evidentiary hearing on the proposal before the local government. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
  4. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a continuance), or by leaving the record open for additional written evidence or testimony per subsection B.
- B. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
- C. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.
  1. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
  2. An extension of the hearing or record granted pursuant to this Section is subject to the limitations of ORS 227.178 ("120-day rule"), unless the continuance or extension is requested or agreed to by the applicant;
  3. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence;
  4. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
  5. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
  6. The review authority shall retain custody of the record until the City issues a final decision.

- D. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
1. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
  2. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
  3. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
  4. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
  5. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this Section.
- E. Ex parte communications.
1. Members of the hearings body shall not:
    - a. Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per subsection D above;
    - b. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
  2. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:
    - a. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
    - b. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
    - c. A communication between City staff and the hearings body is not considered an ex parte contact.
- F. Presenting and receiving evidence.
1. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
  2. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in subsection C;
  3. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

**13.04.6 Recess of Hearing.** The Planning Commission may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposed action. Upon recessing for this purpose, the Commission shall announce the time and date when the hearing will be resumed.

**13.04.7 The Decision Process.**

1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection B, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten business days after the close of the deliberation;
5. Notice of Decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.

6. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.

13.04.8 **Appeal.** A Type III decision may be appealed to the City Council as follows:

A. Who may appeal? The following people have legal standing to appeal a Type III Decision:

1. The applicant or owner of the subject property;
2. Any person who participated in the proceeding by submitting written comments to the Planning Commission.
3. Any person who participated in the proceeding by providing oral testimony to the Planning Commission at the hearing(s).
4. The City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. This review shall be conducted in accordance with appeal procedures specified herein.

B. Appeal filing procedure.

1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures;
2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
3. Content of notice of appeal. The Notice of Appeal shall contain:
  - a. An identification of the decision being appealed, including the date of the decision;
  - b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
  - c. A statement explaining the specific issues being raised on appeal;
  - d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
  - e. Filing fee.

C. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be a hearing de novo before the City Council. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Planning Commission review. The City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

D. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type III Appeals;

E. Further Appeal. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

## **10. ARTICLE XV. ADMINISTRATIVE PROVISIONS**

### **15.01 Policy of Nondiscrimination**

Age, gender/race or physical disability shall not be an adverse consideration in making a land use decision as defined in Oregon Law.

### **15.02 Duty of Enforcement**

It shall be the duty of the City Manager to see that this Ordinance is enforced. No permit for the construction or alteration of any building or part thereof shall be issued unless the plans, specifications and intended use of such building conform in all respects with the provisions of this Ordinance.

### **15.03 Compliance with Ordinance Provisions**

15.03.1 The provisions of this Ordinance shall be deemed minimum requirements for the preservation of the public safety, health, convenience, comfort, prosperity and general welfare of the people of the City of Pendleton.

15.03.2 A lot may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as this Ordinance permits.

15.03.3 No lot area, yard or other open space existing on or after the effective date of this Ordinance shall be reduced below the minimum required for it by this Ordinance.

15.03.4 No lot area, yard or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard, or open space for another use.

15.03.5 Development shall not commence until the applicant has received all of the appropriate land use and development permits (including but not limited to a Development Permit and building permits).

### **15.05 Permit to Run with the Land**

A Permit granted pursuant to the provisions of this Section shall run with the land and shall continue to be valid upon a change of

ownership of the site or structure which was the subject of the use permit application, except as otherwise provided in this Section.

**15.06 Limitations**

No building or other permit shall be issued in any case where a Permit is required by the terms of this ordinance until after the applicable appeal period of the decision. An appeal from an action of the Planning Commission shall automatically stay the issuance of a building or other permit until such appeal has been completed. In the event the council acts to grant said Permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit.

**15.07 Permit Expiration**

Any permit granted pursuant to this Ordinance shall become void two (2) years after approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises.

**15.08 Permit Extension**

The Planning Director may extend a permit for one additional period of two (2) years, subject to the following requirements:

- A. The request is made in writing; and
- B. The request is received prior to permit expiration.

It is the responsibility of the permit holder to submit a request for extension. No more than one such extension may be granted. Development standards that apply at time of approval shall remain valid for the original term of approval, and shall not exceed four years from the original date of approval in the event of an extension.

**15.09 Vested Rights**

Land use approvals granted under this Ordinance shall be effective only when the exercise of the right granted therein is commenced within the approval period of that decision. In case such right has not been exercised or extension obtained the approval shall be void. Nothing contained in this Ordinance shall:

- A. Require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Ordinance, provided the structure, if non-conforming or intended for a non-conforming use, is completed and in use within two (2) years from the time construction was commenced.
- B. Be construed to limit the sale, transfer, or other conveyance of property on which exists a non-conforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Ordinance.

**15.13 Resubmittal of Application Following Denial**

An application which has been denied or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, will be rejected for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least 12 months from the date the final city action is made denying the application unless there is substantial change in the facts, a change in the Development Code, or a change in city policy which would change the outcome.

**15.14 Violation of Conditions**

The Planning Commission, on its own motion, may revoke any Permit for noncompliance with conditions set forth in the granting of said permit after first providing notice and holding a public hearing pursuant to the standards for a Type III application. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a Permit.

**15.15 Agreements for Conditional Approvals**

Conditions imposed upon rezoning approvals, discretionary permits, land divisions, or any other authorizations to applicants pursuant to this Ordinance, may be incorporated into an agreement which shall be binding on the applicant and the applicant's successors, heirs and assigns as a continuing obligation running with the property which is the subject of such authorization. The Mayor and City Recorder are hereby authorized to execute such agreements when approved by the Planning Commission in the case of discretionary permits, or by the City Council in the case of rezoning ordinances, appeals on discretionary permits, or other authorizations requiring Council action.

Where the conditions imposed by any provision of this Ordinance are less restrictive than comparable conditions imposed by any other provisions of this Ordinance or of any other ordinance, the provisions which are more restrictive shall govern.

**15.16 Interpretation**

The City reserves the right to interpret its own ordinances. Requests for a formal Interpretation shall be processed according to the standards contained in Article 11.

**15.17 Severability**

The individual Sections of this Ordinance are severable. The invalidity of a Section shall not affect the validity of the remaining Sections.

**15.18 Conflict with Public and Private Provisions**

- 15.18.1 These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of the law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulations, or other provision of law, whichever provisions impose higher standards shall govern.
- 15.18.2 This Ordinance is not intended to abrogate any easement, covenant or any other private agreement or restriction, which shall be enforced by the parties of said provision, not the City.

**15.19 Enforcement of Private Agreements**

The City of Pendleton is not a party to and does not administer, monitor or enforce provisions contained in covenants, conditions, restrictions, easements, and other private agreements.

**15.20 Unlawful Construction or Use a Nuisance**

The location, erection, construction, maintenance, repair, alteration or use of a building or other structure, or the division, or use of land, in violation of the terms of this Ordinance is hereby declared to be a nuisance, under the provisions of the Nuisance Ordinance (No. 2422).

**15.21 Remedies for Unlawful Structures**

In case a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered or used, or any land is, or is proposed to be, used in violation of this Ordinance, the City Council or any person whose interest in real property in the City is, or may be affected by the violation, may, in addition to other remedies provided by law, institute proceedings for an injunction, mandamus, abatement, or other appropriate action or suit to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use.

**15.22 Violations and Penalties**

- A. A violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.
- B. Every full day during which an activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.
- C. Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel.
- D. Confiscation. Any building or structure erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, demolished, equipped, used, occupied or maintained in violation of this Ordinance may be confiscated by the City and, may be disposed of as provided by applicable State law or City ordinance.
- E. Additional Remedies.
  - 1. In addition to the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a fee due under this Ordinance and to enforce collection of the judgment by execution.
  - 2. The City may seek an injunction to prohibit a person from erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, demolishing, equipping, using, occupying or maintaining any building or structure without complying with this Ordinance.
  - 3. In an action authorized by this Section, if the City prevails, it shall recover reasonable attorney's fees to be set by the Court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.
  - 4. Whenever a fee required by this Ordinance is not paid when due, the City Recorder shall add as a penalty to the fee an amount equal to ten (10%) percent of the fee for each month or part thereof during which the fee and accumulated penalty amounts remain unpaid. The total amount of penalties shall not exceed one hundred (100%) percent of the original fee.