

## CHAPTER 152: LAND USE AND DEVELOPMENT

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***INTRODUCTORY PROVISIONS***

**§ 152.001 TITLE.**

This chapter shall be known as the City of Malin Land Use and Development Ordinance.  
(Ord. 301, passed 6-10-03 )

**§ 152.002 PURPOSE.**

- (A) To implement the Comprehensive Plan as adopted by the Planning Commission.
- (B) To comply with O.R.S. Chapters 195, 197, and 227.
- (C) To promote the public health, safety, and welfare of the citizens of the city.

(D) To replace the prior zoning and subdivision ordinances with an up to date set of implementation measures for the city.  
(Ord. 301, passed 6-10-03)

**§ 152.003 DEFINITIONS.**

As used in this chapter, the singular includes the plural and the masculine includes the feminine and neuter; the word “may” is discretionary, the word “shall” is mandatory. The following words and phrases shall mean:

**ACCESS.** The way or means by which pedestrians and vehicles enter and leave property, which is commonly open to use by the public.

**ACCESSORY USE OR ACCESSORY STRUCTURE.** A use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use.

**ACCESSWAY.** A walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often as an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in a manner that provides convenient access for pedestrians.

**ALLEY.** A street which affords only a secondary means of access to the property.

**ANIMAL, LARGE.** Cattle, horses, sheep, goats, pigs, emus, ostriches, llamas and bison of any age, raised and kept for primarily personal purposes.

**ANIMAL, SMALL.** Rabbits, chickens, ducks, geese, or other fowl and similar animals raised or kept for personal consumptive purposes. **SMALL ANIMAL** does not include dogs or cats kept for personal companion purposes.

**ANIMAL COMPANION.** Animals that are typically kept for non-consumptive and non-commercial purposes. Examples include dogs, cats, pygmy goats, potbelly pigs and small birds such as parrots.

**APARTMENT.** A building (or portion thereof) consisting of separate living units designed for occupancy by three or more families living independently of each other.

**APPEAL.** A request for a review of the interpretation of any provision of this chapter or a request for a variance.

**AUTOMOBILE WRECKING YARD.** Premises used for the commercial storage or sale of used automobile or truck parts or for the storage, dismantling or abandonment of junk, obsolete automobiles, trailers, trucks, machinery or parts thereof, unless said activity takes place solely within an enclosed structure.

**BED AND BREAKFAST.** An establishment in a residential district that contains up to five guest bedrooms, is owner or manager occupied, provides a morning meal, and limits the length of stay to 15 days.

**BOARDING HOUSE, LODGING, OR ROOMING HOUSE.** A building where lodging with or without meals is provided for compensation, for over four guests to a maximum of 12 guests.

**BUILDING.** A structure or mobile home unit built for the support, shelter, or enclosure of persons, animals or property of any kind.

**CHURCH.** A building used primarily for religious worship.

**CITY.** City of Malin.

**CITY COUNCIL.** The Malin City Council.

**COMMUNITY ASSEMBLY.** Recreational, social, fraternal multi-purpose facilities or buildings owned and operated by a government agency or nonprofit community organization.

**CONTIGUOUS LAND.** Two or more parcels or units of land, including water, under a single ownership which is not separated by an intervening parcel of land under a separate ownership (including limited access rights-of-way) which would deny access between the two parcels under single ownership.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area of special flood hazard.

**DE NOVO.** A new hearing.

**DUPLEX.** A building containing two dwelling units in which each dwelling unit is designed for occupancy by one family.

**DWELLING, SINGLE-FAMILY.** Any building designed or used exclusively for occupancy by one family and containing one dwelling unit, including manufactured homes meeting the requirements of § 152.020(A)(2).

**FAMILY.** An individual or two or more persons related by blood or marriage, or a group of not more than five persons (excluding servants) who need not be related by blood or marriage, living together in a dwelling unit. **FAMILY** shall include two or more persons with a handicap as defined in the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 and following, living as a single housekeeping unit.

**FOURPLEX.** A building containing four dwelling units in which each dwelling unit is designed for occupancy by one family.

**HOME OCCUPATION.** The lawful occupation carried on by a resident of a dwelling as an accessory use solely within the same dwelling, provided:

(1) There is no more than one additional person employed other than the resident of the dwelling; and

(2) The occupation is carried on in such a manner as not to impart the outward appearance of a business in an ordinary meaning of the term, or cause or lead to unreasonable increase of the flow of traffic in the neighborhood or production of noise or other forms of environmental pollution.

**KENNEL.** A facility:

(1) In which dogs are given training for which a fee is charged;

(2) Operated, not for profit and intended to provide temporary care for lost, stray or abandoned animals;

(3) In which dogs which are licensed under county kennel licensing regulations are kept for breeding or sale;

(4) Which is a business for the purpose of boarding and/or sale of dogs; or

(5) Any lot or premises on which five or more dogs, at least four months of age are kept, boarded, or trained.

**LOT.** A parcel or tract of land.

**LOT AREA.** The total area of the lot measured in the horizontal plane within the lot boundary lines.

**LOT DEPTH.** The average horizontal distance between the front lot line and the rear lot line.

**LOT LINE, FRONT.** The line on the lot facing the street from which the access to the lot is commonly made.

**LOT WIDTH.** The average horizontal distance between the side lot lines ordinarily measured parallel to the front lot line.

***MANUFACTURED DWELLING.***

(1) **Manufactured Home.** Only those manufactured dwellings manufactured after June 15, 1976 and conforming to Housing and Urban Development Standards (HUD).

(a) For any purpose other than that set forth in division (1)(b) of this definition, “manufactured home” means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction; or

(b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, “manufactured home” has the meaning given the term in the contract.

(2) ***MANUFACTURED DWELLING*** does not mean any building or structure subject to the structural specialty code adopted pursuant to O.R.S. 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer.

***MOBILE HOME PARK.*** Any privately owned place where four or more mobile homes used for human occupancy are parked within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is the rental of spaces.

***MULTIPLE-FAMILY DWELLING.*** A structure containing dwelling units designed or intended for the residence of three or more families.

***NEW CONSTRUCTION.*** Structures for which the “start of construction” commenced on or after the effective date of this chapter.

***NON-CONFORMING STRUCTURE OR USE.*** A lawfully existing structure or use at the time this chapter or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

***OWNER.*** A person, his authorized agent or representative having legal authority to use, transfer or lease land.

***PARKING PLACE.*** A rectangular area not less than 20 feet long and 10 feet wide, together with maneuvering and access space for an automobile, equipment or other vehicle to park within the rectangle without the necessity of maneuvering other parked vehicles.

***PERSON.*** A natural person, firm, partnership, estate, receiver, syndicate, branch of government or any group or combination acting as a unit.

**PLANNING COMMISSION.** The City of Malin Planning Commission.

**PUBLIC FACILITIES.** Water, sewer and electric service lines and related activities, but does not include buildings or structures.

**RECREATIONAL VEHICLE.** A vacation trailer or other unit with or without motive power which is designed for human occupancy and to be used temporarily for recreational or emergency purposes and has a gross floor space of less than 400 square feet. The unit shall be identified as a recreational vehicle by the manufacturer.

**RECREATIONAL VEHICLE PARK.** Any area designed to establish, operate, manage, or maintain the same for picnicking or overnight recreational vehicle or tent camping by the general public or any other segment of the public, which includes but is not limited to the areas open to use free of charge or through a payment of a tax or fee or by virtue of rental, lease, license, membership, association, or common ownership, and further includes but not limited to those areas divided into two or more lots, parcels, units, or other interests for the purposes of such use. Such **RECREATIONAL VEHICLE PARKS** as defined are not intended for residential occupancy.

**RESIDENTIAL USE.** A structure or use designed or used for occupancy as a human dwelling or lodging place, such as single family dwelling, duplex, apartment, boarding, lodging or rooming house, mobile home or mobile home park, or labor camp.

**RESIDENTIAL FACILITY.** A residential care, residential training, or residential treatment facility licensed or registered by or under the authority of the Department, as defined in O.R.S. 443.400 under O.R.S. 443.400 to O.R.S. 443.460, or licensed by the Children's Services Division under O.R.S. 418.205 to O.R.S. 418.327 which provides residential care alone or in conjunction with treatment or training, or the combination thereof, for six to 15 individuals who need not be related. Staff persons required to meet the licensing requirement shall not be counted in the number of facility residences and need not be related to each other or to any resident of the residential facility.

**RESIDENTIAL HOME.** A residential treatment or training or adult foster home licensed by or under the authority of the Department as defined O.R.S. 443.400, under O.R.S. 443.400 to 443.825, a residential facility registered under O.R.S. 443.480 to O.R.S. 443.500, or an adult foster home licensed under O.R.S. 443.705 to 443.825, which provides residential care alone or in conjunction with treatment or training, or a combination thereof, of five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any residents of the residential home.

**SETBACK.** An area established for the purpose of defining limits within which no building or structure or any part thereof shall be erected or permanently maintained.



**SIGN.** An outdoor display, message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is used, designed or intended for advertising purposes or to inform or attract the attention of the public. The term includes the sign supporting structure, display surface and all other component parts of the sign. When dimensions of the sign are specified, the term includes the panels and frames, and the term includes both sides of the sign of specified dimension or area, but the term shall not include a sign as reasonably necessary or required by any branch or agency of the government pursuant to any public law or regulation.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of the property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. The Planning Commission may, at its discretion, extend authorization for an additional 180 days on request.

**STREET.** The entire width between the right-of-way lines of every public way for vehicular and pedestrian traffic, and includes the terms road, highway, lane, place, avenue, alley or other similar designation which is commonly open to use by the public.

**STRUCTURE.** A walled and roofed building including a gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE.**

(1) Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(2) The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**TRACT OR AREA.** The area within a measurable boundary of land or contiguous parcels of land.

**TRIPLEX.** A building containing three dwelling units in which each dwelling unit is designed for occupancy by one family.

**USE.** The purpose, for which land or building is designed, arranged or intended, or for which it is occupied or maintained.

**URBAN GROWTH BOUNDARY.** Urban Growth Boundary or UGB refers to the boundary lines of descriptive areas of land outside the incorporated boundary of the city, which areas are considered to be urbanizable land.

(1) **URBANIZABLE LAND.** Land areas outside the incorporated boundary of the city but within the UGB, which land areas are identified and determined to be necessary and suitable for future urban uses; can be served by urban services and facilities and are needed for the expansion of the urban area.

(2) The annexation of urbanizable land shall be consistent with the applicable provisions of the land use plan and state law.

(3) The land use regulations of the city shall apply to lands annexed. Provided, however, that newly annexed land shall take the zoning designation of the contiguous land use zone until changed by the City Council. A zoning change shall be consistent with the land use plan.

**VARIANCE.** A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

**WALKWAY.** A hard-surfaced area intended and suitable for pedestrians, including sidewalks and the surfaced portions of accessways.

**YARD.** An open space on a lot, which is unobstructed except as otherwise provided in this chapter, and includes driveways.

**YARD, FRONT.** A yard between the side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a building. Any yard meeting this definition abutting on a street other than an alley shall be considered a front yard.

**YARD, REAR.** Yard between the side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of a building.

**YARD, SIDE.** The yard between the front and rear yard measured horizontally at right angles from the side lot line to the nearest point of a building.  
(Ord. 301, passed 6-10-03; Am. Ord. passed 11-8-05)

**BASIC PROVISIONS**

**§ 152.010 COMPLIANCE WITH CHAPTER PROVISIONS.**

The land may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as this chapter shall permit.  
(Ord. 301, passed 6-10-03)

**§ 152.011 ESTABLISHMENT OF LAND USE ZONE.**

<i>ZONE</i>	<i>ABBREVIATED DESIGNATIONS</i>
Residential	R
Commercial	C
Industrial	I
Public	P
Rural Residential	R2

(Ord. 301, passed 6-10-03; Am. Ord. passed 11-8-05; Am. Ord. 308, passed 12-12-06)

**§ 152.012 LOCATION OF ZONES.**

The boundaries of the zones listed in this chapter are indicated on the Malin Zoning Map, which is attached to Ordinance No. 301.  
(Ord. 301, passed 6-10-03)

**§ 152.013 ZONING MAP.**

The Zoning Map of the city is attached to Ordinance No. 301. Zoning map amendments shall be dated with the effective date of the ordinance that adopts the map amendment and filed in the office of the City Recorder.

(Ord. 301, passed 6-10-03)

**§ 152.014 ZONING BOUNDARIES.**

Unless otherwise specified, zone boundaries are centerlines of streets, lot lines, and city limits lines.

(Ord. 301, passed 6-10-03)

**§ 152.015 APPLICATION.**

The provisions of this chapter shall apply to all land areas inside the incorporated boundary of the city.

(Ord. 301, passed 6-10-03)

**§ 152.016 VIOLATIONS; PERMITS.**

(A) No person shall locate, construct, maintain, repair, alter the use, or transfer land in violation of any provisions of this chapter.

(B) Where a permit or approval is required by any provisions of this chapter, no person shall take any action or do any of the things mentioned in division (A) of this section without such permit or approval.

(Ord. 301, passed 6-10-03)

***LAND USE ZONES*****§ 152.020 RESIDENTIAL ZONE "R".**

Uses. Buildings or structures hereafter erected, structurally altered, enlarged, or moved and land hereafter used in the "R" Residential Zone shall comply with the following regulations:

(A) *Permitted uses.*

(1) Single-family dwellings.

(2) Manufactured homes that meet the following standards:

(a) The manufactured home shall be multi-sectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall have a foundation of sufficient strength to support the loads imposed by the manufactured home as specified by the manufacturer's installation instructions. Manufactured home placements shall be reviewed and approved by the city's designated building official. In the absence of the specific manufactured home installation instructions, installation of the manufactured home shall follow the installation requirements outlined in Oregon Administrative Rules, Chapter 918. Skirting of a non-corrosive, noncombustible material which matches the exterior color of the unit shall be provided.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(3) Accessory uses and buildings customarily incidental to the above uses. Detached accessory buildings shall not be located within the required setback areas. Accessory uses are those which are clearly incidental and subordinate to the primary use of the main building.

(4) Name plates and signs. One non-illuminated nameplate not to exceed one and one-half square feet in area placed flat against the building, for each dwelling containing a home occupation. One temporary non-illuminated sign not to exceed eight square feet in area appertaining to the lease, rental, or sale of a building or premises upon which it is located. One bulletin board not to exceed 12 square feet in area for each church, public library, neighborhood or community center.

(5) Residential homes.

(6) Public facilities.

(B) *Conditional uses.* Permitted with approval of the Planning Commission in accordance with § 152.050(A):

- (1) Churches;
- (2) Mobile home parks;
- (3) Multiple family dwellings;
- (4) Schools and libraries;
- (5) Home occupation;
- (6) Lodge for civic or fraternal organization carrying on no commercial activity;
- (7) Necessary public utilities and public services, city and county service buildings;
- (8) Bed and breakfast facilities meeting the provisions of §152.040;
- (9) Residential facilities;
- (10) Wireless telecommunication facilities - see §152.043; and
- (11) Manufactured homes not meeting the standards in (A)(2) of this section.

(C) *Height.* Buildings, structures, or portions thereof shall not be erected to exceed a height of 35 feet, excluding the basement.

(D) *Area.*

- (1) *Front yard.* There shall be a front yard of not less than 15 feet in depth.
- (2) *Side yard.* On interior lots, there shall be a side yard on each side of the main building and each side yard shall have a width of not less than seven feet. On corner lots the interior side yards shall have a width of not less than seven feet but the side yard on the street side of such corner lot shall not be less than ten feet in width.
- (3) *Rear yard.* There shall be a rear yard of not less than ten feet in depth.
- (4) *Lot area.* The minimum parcel size shall be 9,000 square feet for single-family dwellings and additional 3,000 square feet for each additional dwelling unit. This 9,000 square foot minimum parcel size shall apply to lots platted after June 10, 2003.
  - (a) Accessory buildings shall have the same setbacks as the principal structure.

(b) Street centerline setbacks shall be:

1. Sixty-five feet from Klamath Falls - Malin Highway centerline;
2. Forty-five feet from any other street or road centerline.

(c) All uses shall have adequate area to meet the property line setback requirements and the off street parking space requirements of this chapter.

(d) All uses shall have a frontage on the street of a minimum of 75 feet.

(E) *Parking regulations.*

- (1) Dwellings. Two parking spaces shall be provided on the lot for each dwelling unit.
- (2) Uses other than dwellings. See §152.035.

(F) *Sanitation regulations.* Before any dwelling is occupied, it must be connected to the city sewer system.

(Ord. 301, passed 6-10-03; Am. Ord. 311, passed 11-13-07)

**§ 152.021 COMMERCIAL ZONE "C".**

Uses. Buildings and structures hereafter erected, structurally altered, enlarged, or moved or land hereafter used in the "C" Commercial Zone shall comply with the following regulations.

(A) *Permitted uses.*

- (1) Retail trade and service establishments in which the operation takes place solely within an enclosed building.
- (2) Public facilities.
- (3) Retail trade establishments, personal, and business services in which the operation takes place solely within an enclosed building and the owner, operator or lessee of the business lives in an apartment on the premises.
- (4) Existing residential uses at the time of adoption of this chapter.

(B) *Conditional uses.* Permitted with approval of the Planning Commission in accordance with § 152.050 of this chapter.

- (1) Churches.
  - (2) Service commercial establishments, such as drive-in restaurant or gasoline service station.
  - (3) Retail trade and service establishments in which 50% of the activities take place in an enclosed building.
  - (4) Agricultural support services including produce storage facilities.
  - (5) Residential uses on the second floor of a structure above commercial uses on the ground floor.
  - (6) Recreational vehicle park.
  - (7) Light industrial uses provided that all activities and operations except off street parking and loading take place wholly within an enclosed building and that it is not deemed to be incompatible with surrounding uses because of noise, odor, sight or other kinds of environmental pollution.
  - (8) Lodge for civic or fraternal organization.
  - (9) Mini storage units with the condition that the design and landscaping must be approved by the Planning Commission prior to construction of the building(s).
  - (10) Wireless telecommunications facilities. See § 152.043.
  - (11) Public buildings and structures.
- (C) *Height.* Buildings, structures or portions thereto shall not be erected to exceed a height of 35 feet, exclusive of the basement.
- (D) *Setback requirements.* In the Commercial zone, setbacks shall be as follows.
- (1) Standards in the "R" zone shall apply when adjacent to the residential zone.
  - (2) All uses shall have adequate area to meet the off street parking space requirements of this chapter.
  - (3) All uses shall have a frontage on the street of a minimum of 25 feet.
- (E) *Parking regulations.*
- (1) Residential off-street parking. For residential uses, two parking spaces for each dwelling unit.



(2) Off-street parking. See § 152.035.

(3) Off-street parking requirements will not be applicable to uses fronting on Broadway.

(4) Parking area approval. Land used for parking areas in this zone shall be developed in accordance with a plan approved in writing by the Planning Commission. The area must be surfaced with asphalt, concrete, or other type of surfacing approved by the Planning Commission and all parking spaces shall be individually marked.

(Ord. 301, passed 6-10-03; Am. Ord. 311, passed 11-13-07)

**§ 152.022 INDUSTRIAL ZONE "I".**

The purpose of the Industrial "I" Zone is to provide areas for the making of commodities by manufacturing, assembling, fabrication, or compounding by manual labor or machinery. The term includes physical or chemical processes or combinations thereof.

*(A) Permitted uses.*

(1) Light Industrial is defined as those activities identified above which occur totally within an enclosed structure. There is no odor, vibration, dust, or noise discernible to the human sensory perception beyond the exterior walls of the structure.

(2) Public facilities.

*(B) Conditional uses.*

(1) Heavy industrial is defined as those activities listed above which can occur outside an enclosed structure. The uses include outside storage, loading and unloading, stockpiling, etc. for which there is odor, vibration, dust, or noise discernible to the human sensory perception beyond the property line of the site.

(2) Necessary public facilities.

(3) Dog kennels.

(4) Governmental offices and associated uses.

*(C) Setback requirements.* In the Industrial zone, setbacks shall be as follows.

(1) Standards in the "R" zone shall apply when adjacent to the residential zone.

(2) The setback from the center line of a public street shall be 45 feet.

(3) The rear yard shall be a minimum 25 feet measured from the foundation where abutting a residential zone.

(D) *Height requirements.* In an "I" zone no building shall exceed a height of 45 feet.

(E) *Limitations on use.* In an "I" Zone the following conditions and limitations shall apply:

(1) A use is prohibited which creates a nuisance because of noise, smoke, odor, dust or gas or which has been declared a nuisance by statute, by action of the municipal court or by a court of competent jurisdiction.

(2) Wastes and other materials shall be stored and grounds shall be maintained in a manner that will not attract or aid the propagation of insects or rodents or otherwise create a health hazard.

(3) Where outside storage is used, such use shall have a solid enclosure at least six feet in height.

(4) Points of access from a public street to properties in an "I" Zone shall be so located as to minimize traffic congestion and avoid directing traffic onto residential streets.

(5) Building entrances or other openings adjacent to or across the street from a residential zone shall be prohibited if they cause glare, excessive noise or otherwise adversely affect land uses in the residential zone.

(F) *Off-street parking regulations.* See supplemental provisions, § 152.036.  
(Ord. 301, passed 6-10-03)

### § 152.023 OPEN SPACE/PUBLIC FACILITIES ZONE "P".

(A) *Permitted uses.*

(1) Parks.

(2) Public facilities.

(B) *Conditional uses.* The following uses and their accessory uses are permitted when authorized:

(1) Public and private schools;

- (2) Public buildings and uses including community centers;
- (3) Commercial, private or public picnic or campground;
- (4) Utility facility. Facilities necessary for the health, safety, and welfare of residents;
- (5) Public or private golf courses;
- (6) Public picnic grounds, parks, playgrounds, campgrounds or nature trails; and
- (7) Public or private recreational vehicle parks.

(C) *Standards.* In the "P" Zone, the following standards shall apply if determined to be the best interest and welfare of residents:

(1) The minimum lot size shall be determined by the Planning Commission to be necessary for the protection of public health and safety and natural resources; and

(2) Set back dimensions shall be determined by the Planning Commission.

(D) *Limitations on conditional use.* In addition to the approval standards that may be attached to the approval of a conditional use as provided by the City Zoning Ordinance, the following limitations shall apply to a conditional use in a "P" Zone:

(1) The city may require establishment and maintenance of fire breaks, the use of fire resistant material in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas.

(2) The city may limit changes in the natural grade level, or the alteration, removal or destruction of natural vegetation in order to prevent or minimize erosion, pollution or degradation of the natural resources or features of the area.

(3) An application for a conditional use in a "P" Zone shall be denied if, in the opinion of the city, the proposed use would exceed the carrying capacity of the area or would be detrimental to the natural resources or features of the area.

(Ord. 301, passed 6-10-03)

#### § 152.024 RESIDENTIAL ZONE "R2".

Uses. Buildings or structures hereafter erected, structurally altered, enlarged, or moved and land hereafter used in the "R2" Residential Zone shall comply with the following regulations:

(A) *Permitted uses.*

(1) Single-family dwellings of not less than 1,200 square feet.

(2) Manufactured homes that meet the following standards.

(a) The manufactured home shall be multi-sectional and enclose a space of not less than 1,200 square feet.

(b) The manufactured home shall have a foundation of sufficient strength to support the loads imposed by the manufactured home as specified by the manufacturer's installation instructions. Manufactured home placements shall be reviewed and approved by the City's designated building official. In the absence of the specific manufactured home installation instructions, installation of the manufactured home shall follow the installation requirements outlined in Oregon Administrative Rules, Chapter 918. Skirting of a non-corrosive, noncombustible material which matches the exterior color of the unit shall be provided.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(3) Accessory uses and buildings customarily incidental to the above uses. Detached accessory buildings shall not be located within the required setback areas. Accessory uses are those which are clearly incidental and subordinate to the primary use of the main building.

(4) Name plates and signs. One non-illuminated nameplate not to exceed one and one-half square feet in area placed flat against the building, for each dwelling containing a home occupation. One temporary non-illuminated sign not to exceed eight square feet in area appertaining to the lease, rental, or sale of a building or premises upon which it is located. One bulletin board not to exceed 12 square feet in area for each church, public library, neighborhood or community center.

(5) Small animals not to exceed ten animals per acre.

(6) Large animals not to exceed one animal per acre.

(7) Public facilities.

(8) Residential home.

(9) Essential services.

(10) Accessory uses or accessory structure.

(B) *Conditional uses.* Permitted with approval of the Planning Commission in accordance with Section § 152.050(1).

(1) Bed and breakfast facilities meeting the provisions of § 152.040.

(2) Churches.

(3) Community assembly.

(4) Park.

(5) Residential care facility.

(C) *Height.* Buildings, structures, or portions thereof shall not be erected to exceed a height of 35 feet, excluding the basement.

(D) *Area.*

(1) *Front yard.* There shall be a front yard of not less than 25 feet in depth.

(2) *Side yard.* On interior lots, there shall be a side yard on each side of the main building and each side yard shall have a width of not less than ten feet. On corner lots the interior side yards shall have a width of not less than seven feet but the side yard on the street side of such corner lot shall not be less than ten feet in width.

(3) *Rear yard.* There shall be a rear yard of not less than 25 feet in depth.

(4) *Lot area.* Minimum two acres.

(a) *Lot width.* Each lot shall have a minimum width of 50 feet, unless otherwise specified by this code.

(b) *Lot depth.* Each lot shall have a minimum depth of 100 feet.

(c) *Corner lot.* Corner lots shall have a minimum width of 60 feet to permit appropriate building setbacks.

(d) Orientation of side property line. As far as practical, the side property line of a lot shall run at right angles to the street upon which it faces, except that on a curved street the side property line may be radial to the curve.

(E) *Special setback requirements.*

(1) Accessory buildings shall have the same setbacks as the principal structure.

(2) Street centerline setbacks shall be:

(a) Sixty-five feet from Klamath Falls - Malin Highway centerline.

(b) Forty-five feet from any other street or road centerline.

(3) All uses shall have adequate area to meet the property line setback requirements and the off street parking space requirements of this chapter.

(4) All uses shall have a frontage on the street of a minimum of 75 feet.

(5) Small and large animals shall be set back 100 feet from the R Zone.

(6) Residential density - one dwelling per lot or parcel.

(F) *Parking regulations.*

(1) *Dwellings.* Two parking spaces shall be provided on the lot for each dwelling unit.

(2) *Uses other than dwellings.* See § 152.035.

(G) *Sanitation regulations.* Before any dwelling is occupied, it must be connected to the city sewer system.

(Ord. passed 11-8-05; Am. Ord. 308, passed 12-12-06)

***SUPPLEMENTARY PROVISIONS***

**§ 152.030 MAINTENANCE OF MINIMUM REQUIREMENTS.**

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

which is required by this chapter for one use shall be used as the required lot area, yard or other open space for another use.

(Ord. 301, passed 6-10-03)

**§ 152.031 ACCESS STANDARDS.**

Every lot shall abut a street, other than an alley, for at least 25 feet.

(A) *Vehicular access.* Vehicular access shall be provided to all lots or parcels from a dedicated street. Developments fronting on an arterial street or road may be required to provide a frontage or service road.

(B) *Director of Public Works Approval.* Access to property fronting upon a county or public road shall be subject to the approval of the Director of Public Works.

(Ord. 301, passed 6-10-03)

**§ 152.032 ESTABLISHMENT OF CLEAR-VISION AREAS.**

(A) In all zones, a clear-vision area shall be maintained on the corners of all property at the intersection of two streets. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half 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 feet above the grade.

(B) A clear-vision area shall consist of a triangular area two sides of which are lot lines measured from the 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. The following measurements shall establish clear-vision areas within the city.

<i>ROW WIDTH</i>	<i>CLEAR-VISION MEASUREMENT</i>
80 feet and more	20 feet
60 feet	30 feet
50 feet	40 feet

(Ord. 301, passed 6-10-03)

### § 152.033 PROJECTIONS FROM BUILDINGS.

Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, and flues shall not project more than three feet into a required yard, provided that the projection is not closer than three feet to a property line  
(Ord. 301, passed 6-10-03)

### § 152.034 AUTHORIZATION OF SIMILAR USES.

The Planning Commission may permit, by following the procedures outlined in § 152.050 a use not listed in a particular zone of this chapter, provided the use is of the same general type as the uses permitted there by this chapter. However, this section does not authorize a use in a zone where the use is specifically listed in another zone or which a use is of the same general type and is similar to a use specifically listed in another zone.  
(Ord. 301, passed 6-10-03)

### § 152.035 OFF-STREET PARKING REQUIREMENTS.

At the time of construction, reconstruction, or enlargement of a structure, or at the time a use is changed in any zone, off-street parking spaces shall be provided as follows unless other requirements are established. Where square feet of the structure or use are specified as the basis for the requirements, the area measured shall be the gross floor area primary to the functioning of the particular use of the property. When the requirements are based on the number of employees, the number counted shall be those working on the premises during the largest shift at peak season. Fractional space requirements shall be counted as a whole space.

USE	MINIMUM REQUIREMENTS
(A) Residential	
(1) One, two and three family dwelling	Two spaces per dwelling unit.
(2) Residential use containing four or more dwelling units	One and one-half spaces per dwelling unit.
(3) Rooming or boarding house	Spaces equal to 80% of the number of guests accommodations plus one additional space for the owner or manager.



- (B) Commercial Residential
  - (1) Hotel One space per two guest rooms plus one space per two employees.
  - (2) Motel One space per guest room or suite plus one additional space for the owner or manager.
- (C) Institutional
  - (1) Welfare or correctional institution One space per six beds for patients or inmates.
  - (2) Convalescent hospital, nursing home, sanitarium, rest home, home for the aged One space per four beds for patients or residents.
  - (3) Hospital One and one-half spaces per bed.
- (D) Place of Public Assembly
  - (1) Church One space per six seats or eight feet of bench length in the main auditorium or one space for each 75 square feet of floor area of main auditorium not containing fixed seats.
  - (2) Library, reading room One space per 400 square feet of floor area plus one space per two employees.
  - (3) Pre-school nursery, kindergarten Two spaces per teacher.
  - (4) Elementary or junior high school One space per classroom plus one space per administrative employee or one space per four seats or eight feet of bench length in the auditorium or assembly room whichever is greater.
  - (5) High school, college, commercial school for adults One space per classroom plus one space per administrative employee plus one space for each six students or one space for four seats or eight feet of bench length in the main auditorium or assembly room, whichever is greater.
  - (6) Other auditorium or meeting room One space per six seats or eight feet of bench length, or one space for each 75 square feet of floor area for assembly room not containing fixed seats.

- (E) Commercial Amusement
- (1) Stadium, arena, theater One space per four seats or eight feet of bench length.
  - (2) Bowling alley Five spaces per alley plus one space for two employees.
  - (3) Dance hall, skating rink One space per 100 sq. ft. of floor area plus one space per two employees.
- (F) Commercial
- (1) Retail store except as provided in division (F)(2) of this section One space per 300 square feet of floor area designated for retail sales.
  - (2) Service or repair shop, retail store handling exclusively bulky merchandise such as automobiles and furniture One space per 600 square feet of floor area.
  - (3) Bank, office (except medical and dental) One space per 600 square feet of floor area plus one space per two employees.
  - (4) Medical and dental clinic One space per 300 square feet of floor area plus one space per two employees.
  - (5) Eating or drinking establishment One space per 250 square feet of floor area.
  - (6) Mortuaries One space per six seats or eight feet of bench length in chapels.
- (G) Industrial
- (1) Storage warehouse, manufacturing establishment, rail or trucking freight terminal One space per employee.
  - (2) Wholesale establishment One space per employee plus one space per 700 square feet of patron-serving area.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.036 OFF-STREET PARKING AND LOADING.**

Buildings or structures to be built or substantially altered which receive and distribute materials and merchandise by trucks shall provide and maintain off-street loading areas in sufficient number and size to handle adequately the needs of the particular use. Off-street parking areas used to fulfill the requirements of these requirements shall not be used for loading and unloading operations except during periods of the day when not required to care for parking needs. General provisions are as follows:

(A) In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately.

(B) Owners of two or more uses, or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the city in the form of deeds, leases, or contracts to establish the joint use.

(C) Off-street parking spaces for dwellings shall be located on the same parcel with the dwelling. Other required parking spaces for residential uses shall be located not farther than 500 feet from the building or use they are required to serve, measured in a straight line from the building.

(Ord. 301, passed 6-10-03)

**§ 152.037 GENERAL PROVISIONS REGARDING ACCESSORY USES.**

An accessory use shall comply with the requirements for a principal use, except as this chapter specifically allows to the contrary.

(Ord. 301, passed 6-10-03)

**§ 152.038 FENCES.**

Fences are permitted in any zone and do not require a zoning permit for construction. Such fencing shall, however, be in compliance with the following provisions:

(A) Fences within the setback areas of yards shall not exceed six feet in height.

(B) Vision clearances areas on corner lots shall meet standards in § 152.032.

(C) Fences shall be maintained in good condition at all times and shall not create an unsightly or hazardous condition.

(D) All fences, or portions thereof, shall be located or constructed in such a way as to not prevent reasonable access to abutting properties for building maintenance or fire protection purposes.

(E) The height of a fence shall be measured from the ground level where located.

(F) The city may require that a survey be submitted.

(Ord. 301, passed 6-10-03)

**§ 152.039 MOBILE HOMES AND RESIDENTIAL TRAILERS PLACED IN MOBILE HOME PARKS.**

When a mobile home or residential trailer is installed in a mobile home park, it shall comply with the state installation standards. The mobile home or residential trailer shall comply with the following additional provisions.

(A) The mobile home or residential trailer shall have an Oregon insignia. No reconstruction or equipment installation shall have been made to the mobile home unless it has been state approved as evidenced by an appropriate insignia. Before installation, the mobile home or residential trailer shall be inspected by the Building Official and installation shall be approved only if the Building Official determines the mobile home or residential trailer substantially meets the state standards for mobile home construction, and notwithstanding any deterioration which may have occurred.

(B) The mobile home or residential trailer shall be tied down with devices to meet state standards.

(C) The mobile home or residential trailer shall have a water closet, lavatory, and bathtub or shower.

(D) The mobile home or residential trailer shall have a kitchen area or room containing a sink.

(E) The mobile home or residential trailer plumbing shall be connected to the city water supply system and the city sewage disposal system.

(F) The mobile home or residential trailer shall have continuous fireproof skirting.

(G) Wheels of the mobile home or residential trailer shall be removed when the unit is installed.

(H) Except for a structure which conforms to the state definition of a mobile home accessory structure, no extension shall be attached to the mobile home or residential trailer. Accessory buildings shall be separated from the mobile home by not less than five feet.

(I) The mobile home or residential trailer shall contain at least 500 square feet of space as determined by measurement of the exterior dimensions of the unit, exclusive of any trailer hitch device.  
(Ord. 301, passed 6-10-03)

**§ 152.040 BED AND BREAKFAST FACILITIES DEVELOPMENT STANDARDS.**

A bed and breakfast facility approved as a conditional use in the residential zones of the city shall have the following approval standards.

(A) The structure shall retain the characteristics of a single-family dwelling.

(B) The number of guest rooms shall be limited to five.

(C) In addition to the required off-street parking for each residential use, one off-street parking space for each bed and breakfast guest shall be provided.

(D) Signs shall be limited to one non-illuminated sign, not exceeding one and one-half square feet. No off-premises signs are permitted.

(E) Submission of an acceptable site plan that meets off-street parking requirements and provides landscaping appropriate to a residential neighborhood.  
(Ord. 301, passed 6-10-03)

**§ 152.041 EARTH MOVEMENT AND REMOVAL.**

A written permit approved by the Planning Commission shall be required to remove 50 cubic yards or more of earth material from any individual property within a calendar year.  
(Ord. 301, passed 6-10-03)

**§ 152.042 SIGNS IN COMMERCIAL AND INDUSTRIAL ZONES.**

Any signs erected or to be erected in Commercial or Industrial zones shall be reviewed and approved by the Planning Commission and shall meet the standards outlined below. A sign application may be picked up at City Hall.

(A) *Principal signs.* A principal sign advertising the business may be a combination of freestanding, flush-mounted or projecting signs. Freestanding and projecting sign areas are computed by totaling both sides of the signs.

(B) *Sign area.* The amount of area of the sign is computed on a basis of one square foot of sign for each lineal foot of frontage the property or business on the public right-of-way in the city. In the case of multiple businesses within the same building, the amount of frontage of the business within the building will be the determining factor. In the case of a corner lot, the sign size facing each street shall

be limited to the amount of lineal frontage on each street. In no case shall the total signage area exceed 200 square feet for each business.

(C) *Prohibited signs.* The following signs are prohibited in the City of Malin:

(1) Any flashing, moving, animated, blinking or rotating signs whose illumination changes with time or which is designed in a manner to simulate motion. Time and temperature reader boards excluded.

(2) The sign would extend, such as a roof sign, above the roof line of the building to which it is to be attached.

(3) The Building or Zoning Official determines a sign to be in violation of O.R.S. 483.138, which applies to signs creating confusion with or interfering with the effectiveness of traffic or signals.

(4) The sign is placed on, affixed to or painted on a motor vehicle, vehicle or trailer and placed on public or private property for the primary purpose of providing a sign not otherwise permitted by this chapter.

(5) The sign is a private sign placed on, painted on or affixed to a utility pole, tree, or rock.

(6) The sign would bear or contain statements, words, or pictures of an obscene, indecent, or immoral character such as will offend the public morals or decency.

(7) Projecting or freestanding signs which would project into the public right-of-way.

(8) The sign advertises goods or services not available on the premises.  
(Ord. 301, passed 6-10-03)

#### § 152.043 WIRELESS TELECOMMUNICATIONS FACILITIES.

(A) *Application requirements.* An application for a wireless telecommunications facility shall comply with the following meeting, notice and submittal requirements.

(1) *Neighborhood Meeting.* Prior to scheduling a pre-application conference with the City Recorder, the applicant shall provide notice of and hold a meeting with interested owners of property nearby to a potential facility location. Notice shall be in writing and shall be mailed no less than ten days prior to the date set for the meeting to owners of record of property within 1,320 feet for a tower or monopole no greater than 100 feet in height, and 2,000 feet for a tower or monopole at least 100 feet and no higher than 150 feet in height. Such notice shall not take the place of notice required by § 152.100 of this chapter. A tower or monopole more than 150 feet shall require a variance as required

in § 152.070 of this chapter, but does not require additional notice requirements as set forth in division (A)(2) below of this section.

(2) *Pre-application conference.* The applicant shall attend a scheduled pre-application conference prior to submission of a land use application. An application for a wireless telecommunications facility permit will not be deemed complete until the applicant has had a pre-application conference with the City Recorder.

(3) *Submittal requirements.* An application for a conditional use permit for a wireless telecommunications facility shall include:

- (a) A copy of the blank lease form.
- (b) A copy of the applicant's Federal Communications Commission license.
- (c) A map that shows the applicant's search ring for the proposed site and the properties within the search ring, including locations of existing telecommunications towers or monopoles.
- (d) A copy of the written notice of the required neighborhood meeting and a certificate of mailing showing that the notice was mailed to the list of property owners falling within the notice area designated under division (A)(1) of this section.
- (e) A written summary of the neighborhood meeting detailing the substance of the meeting, the time, date, and location of the meeting and a list of the meeting attendees.
- (f) A site plan showing the location of the proposed facility and its components. The site plan shall also identify the location of existing and proposed landscaping, and any equipment shelter, utility connections, and any fencing proposed to enclose the facility.
- (g) A copy of the design specifications including proposed colors and elevation of an antenna array proposed with the facility.
- (h) An elevation drawing of the facility and a photographic simulation of the facility showing how it would fit into the landscape.
- (i) A copy of a letter of determination from the Federal Aviation Administration (FAA) or the Oregon Department of Aviation (ODA) whether or not aviation lighting would be required for the proposed facility.

(B) *Approval criteria.* An application for a wireless telecommunication facility will be approved upon findings that:

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(1) The facility will not be located on irrigated land.

(2) The applicant has considered other sites in its search area that would have less visual impact as viewed from nearby residences than the site proposed and has determined that any less intrusive sites are either unavailable or do not provide the communications coverage necessary. To meet this criterion, the applicant must demonstrate that it has made a good faith effort to co-locate its antenna on existing monopoles in the area to be served. The applicant can demonstrate this by submitting a statement from a qualified engineer that indicates whether the necessary service can or cannot be provided by co-location within the area to be served.

(3) The facility is sited using trees, vegetation, and topography to the maximum extent practicable to screen the facility from view of nearby residents.

(4) The applicant shall site the facility in a manner to minimize its impact on scenic views and shall site the facility using trees, vegetation and topography in order to screen it to the maximum extent practicable from view from protected roadways. Towers or monopoles shall not be sited in locations where there is no vegetative, structural or topographic screening available.

(5) A tower or monopole is finished with natural wood colors or other colors approved by the Planning Commission.

(6) A required aviation lighting is shielded to the maximum extent allowed by FAA and/or ODA.

(7) The form of lease for the site does not prevent the possibility of co-location of additional wireless telecommunication facilities at the site.

(8) Any tower or monopole shall be designed in a manner that it can carry the antennas of at least two additional wireless carriers. This criterion may be satisfied by submitting that statement of a licensed structural engineer licensed in Oregon that the monopole or tower has been designed with sufficient strength to carry such an additional antenna array and by elevation drawings of the proposed tower or monopole that identifies an area designed to provide the required spacing between antenna arrays of different carriers.

(9) An approval of a wireless telecommunication facility shall include a condition that if the facility is left unused or is abandoned by all wireless providers located on the facility for more than one year the facility shall be removed by the landowner, or as set forth in the lease between the landowner and the applicant.

(Ord. 301, passed 6-10-03)



§ 152.044 DOWNTOWN DEVELOPMENT CODE.

The purpose of this section is to establish a downtown business district to instill a positive and lasting first impression of Malin to persons passing through and an inviting friendly atmosphere that beckons people to stop, shop and return to our community. To obtain this goal this section will establish appearance standards for buildings and businesses located within this district establishing a homogeneous appearance and the feeling and appearance of an early 20th century rural town.

(A) This district will consist of all commercial properties abutting Main Street, Rush Avenue, and Broadway.

(B) Buildings existing within this district at the time of its creation will be exempted from this until they are updated, remodeled, replaced or otherwise changed in appearance or usage.

(C) Building facades.

(1) Facades shall be constructed of masonry, stucco, wood, or a combination of these materials.

(2) Facades shall be consistent with the theme of an early 20th century small rural community.

(D) Sidewalks and parking requirements.

(1) Buildings shall abut the sidewalk except in those cases where they contain a plaza, courtyard, or other area located between the sidewalk and the business but in no case shall there be any facility for the parking or driving of any vehicle between the building and the sidewalk.

(2) Businesses shall use their alley access or side street for delivery of inventory and supplies as well as the pickup of shipped product and garbage.

(3) Sidewalks shall be at least six feet wide.

(4) Sidewalks shall be inset three feet from the roadway and the area between the sidewalk and road shall be planted with grass or shrubbery and maintained by the landowner. This area shall be available for the placement of trees and/or street lights.

(5) Parking will be permitted on street only.

(E) Awnings.

(1) Awnings will be permitted.

(2) Awnings may not exceed six feet.

(F) Balconies. Balconies will be permitted.

(G) Residential use. Residential use where permitted shall have the following restrictions in addition to all others imposed by this and other ordinances.

- (1) Access and egress from permitted residential use shall not be visible from the street.
- (2) Parking as required shall not be visible from the street.
- (3) No sign of residential use shall be visible from the street.

(H) Color code. Color is a very important ingredient for enlivening and enhancing the built environment. A building's color should accentuate and harmonize with its architecture, as well as complement surrounding structures. To achieve these ends, applicants should use color that is compatible with the existing built environment. A building's color should not compete for attention with neighboring buildings. The color and intensity of color of all building materials is subject to city approval.

(1) In general, subdued colors typical of the muted native grasses, wood, rocks, and soil of the high desert plains and Malin's natural setting are to be used as the primary colors.

(2) The use of warm and darker tones with low reflectivity is recommended. Soft browns, ambers, muted greens and gold, buffs, terra cottas and taupe are examples of earth and rock colors that are indigenous of this general area.

(3) Accent and trim colors must complement and enhance the effect of the primary building color.

(4) Bold, brash, intense, bright, fluorescent, black, or metallic accent colors are prohibited unless approved by the city in very limited application.

(5) Darker colors are recommended for roofs, with the exception of flat roofs where lighter colors will reduce the effect of solar gain. The color of flat roofs must be visually harmonious and unobtrusive.

(6) The use of any strong or intense color is limited to signage and the approval from the city.

(7) Colors chosen from a color selection chart which is available for review in the City Hall, shall be non-reflective, and conform to and blend with the surrounding area. Colors not shown on the chart will be subject to review by the Malin Planning Commission for compliance with the purpose of the zone. Submission of samples for review of materials and colors to be utilized may be required.

(Ord. 317, passed 8-11-09)

*CONDITIONAL USES***§ 152.050 AUTHORIZATION TO GRANT OR DENY CONDITIONAL USES.**

(A) *General.* Conditional uses listed in this chapter may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission in accordance with the standards and conditions in this section. In permitting a conditional use or the modification of a conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by this chapter, any additional conditions which the Planning Commission considers necessary to protect the best interest of the surrounding property or the city as a whole.

(B) *Standards for conditional uses.*

(1) The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies of the city.

(2) Taking into account location, size, design and operation characteristics, the proposal will have minimal adverse impact on the:

(a) Livability;

(b) Value; and

(c) Appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.

(3) The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrants.

(4) The proposal will preserve assets of particular interest to the community.

(5) The applicant has a bona fide intent and capability to develop and use the land as proposed and has some appropriate purpose for submitting the proposal, and is not motivated solely by such purposes as the alteration of property values for speculative purposes.

(C) *Placing conditions on a permit.* In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose conditions, which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the community as a whole. These conditions may include the following:

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- (1) Increasing the required lot size or yard dimension;
- (2) Limiting the height, size or location of buildings;
- (3) Controlling the location and number of vehicle access points;
- (4) Increasing the street width;
- (5) Increasing the number of required off-street parking spaces;
- (6) Limiting the number, size, location and lighting of signs;
- (7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property;
- (8) Designating sites for open space;
- (9) Requiring proper drainage and pest control; and
- (10) Placing time limits on the use and requiring periodic reviews.

(D) *Procedure for taking action on a conditional use application.*

(1) *Application for a conditional use.* A property owner may initiate a request for a conditional use or the modification of a conditional use by filing an application with the City Recorder. The Planning Commission may require other drawings or information necessary to an understanding of the proposed uses and its relationship to surrounding properties.

(2) *Public hearings on conditional use.* Before the Planning Commission may act on a request for a conditional use, it shall hold a public hearing following the notice procedures of § 152.100.

(3) *Notification action.* Within 10 days after a decision has been rendered by the Planning Commission with reference to a request for conditional use, the city shall provide the applicant with written notice of the decision of the Council.

(4) *Time limit on a permit for conditional use.* Authorization of a conditional use shall be void after six months, unless substantial construction pursuant thereto has taken place. However, the Planning Commission may, at its discretion, extend authorization for an additional six months on request.

(E) *Resubmittal.* If a request is denied by the City Recorder or hearing body and no appeal is filed, or if upon review or appeal the denial is affirmed, no new request for the same or substantially similar

proposal shall be filed within six months after the date of final denial. An application may be denied without prejudice and a waiver of the six-month restriction granted. If conditions have changed to an extent that further consideration of an application is warranted, the hearing body, on its own motion, may consider new evidence and waive the six-month restriction.

(F) *Final action.* Except as provided for under O.R.S. 227.178, the city shall take final action on conditional use permits and variances, including the resolution of all appeals to the Planning Commission under O.R.S. 227.180, within 120 days from the date a complete application is submitted to the city. Within 30 days of receipt of an application, the city will review the application to determine whether it is complete. The applicant will be notified of any missing materials within the 30-day period. The 120-day time period will commence on the date the application is deemed complete.

(G) *Existing land uses.*

(1) Land uses which lawfully existed at the time of the adoption of this chapter and which would be considered as conditional uses in this chapter shall be considered as existing conditional uses.

(2) An expansion, enlargement or change of use to another listed conditional use shall be required to be approved by the Planning Commission in accordance with this chapter.

(H) *Revocation of conditional use permit.*

(1) Any conditional use permit shall be subject to denial or revocation by the Planning Commission if the application includes or included any false information, or if the conditions of approval have not been complied with or are not being maintained.

(2) In order to consider revocation of a conditional use permit, the Planning Commission shall hold a public hearing as prescribed under § 152.050 of this chapter in order for the holder of a conditional use permit to show cause why the permit should not be revoked.

(3) If the Planning Commission finds that the conditions of approval have not been complied with or are not being maintained, a reasonable time shall be given for making corrections. If corrections are not made, revocation of the conditional use permit shall become effective ten days after the time specified.

(4) Reapplication for a conditional use which has been revoked cannot be made within one year after the date of the Planning Commission's action, except that the Planning Commission may allow a new application to be considered if new evidence or a change in circumstances warrant it.  
(Ord. 301, passed 6-10-03)

***SUBDIVISIONS AND PARTITIONING*****§ 152.060 PURPOSE.**

It is the purpose of this section, in accordance with the provisions of O.R.S. Chapters 92 and 227, to provide for minimum standards governing the approval of land divisions within the city, including subdivision and land partitionings, as necessary to carry out the city's needs and policies for traffic movement, water supply, sewage disposal, drainage and other community facilities, to improve land records and boundary monuments, and to ensure equitable processing of subdivision, partitioning and other land division activities.

(Ord. 301, passed 6-10-03)

**§ 152.061 APPLICABILITY.**

No person may subdivide, partition or otherwise divide land, or create a planned unit or cluster development, or create a street for the purpose of developing land except in accordance with the provisions of this section, this chapter, and O.R.S. Chapter 92.

(Ord. 301, passed 6-10-03)

**§ 152.062 LAND PARTITIONING.**

(A) *Applicability of regulations.* As defined in this section and this chapter, all land partitioning within the city, except as set forth in division (B) of this section, must be approved by the city as provided for in this section.

(B) *Exemptions.* The following land divisions shall be exempt from the land partitioning requirements set forth by this section and this chapter:

(1) The partitioning of a tract of land in which not more than one parcel is created and said parcel is being transferred to a public or semi-public agency for the purpose of a public road, street, canal, or utility right-of-way, or for public park, school, recreation facility, trail, bikeway, or other similar public purpose.

(2) The transfer of one parcel between two adjoining ownerships where an additional parcel is not created and where no new or additional dwellings or other structures are involved, and where the existing ownership reduced in size by the transfer is not reduced below the applicable minimum lot size.

(C) *Filing procedures and requirements.* Any person proposing a land partitioning, or the authorized agent or their representative, shall prepare and submit ten copies of the tentative plan for the proposed partitioning, together with the prescribed application form and required filing fee, to the City Recorder.

(1) The tentative plan of a proposed partitioning shall be drawn on a sheet 18 x 24 inches in size at a scale of one inch equals 50 feet.

(2) The plan shall include the following:

(a) A vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways, properties, and land use patterns;

(b) A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel, and the names, right-of-way widths and improvement standards of existing roads;

(c) Names and addresses of the landowner, the partitioner, the mortgagee if applicable, and the land surveyor employed (or to be employed) to make necessary surveys and prepare the final partitioning map;

(d) A statement regarding provisions for water supply, sewage disposal, solid waste disposal, fire protection, access, utilities, etc.;

(e) North point, scale and date of map, and the property identification by tax lot, map number, section, township and range, subdivision lot and block or other legal description; and

(f) Statement regarding past, present and proposed use of the parcel(s) to be created, or the use for which the parcel(s) is to be created.

(D) *Partitioning*. An application and tentative plan for a partitioning shall be referred to the Planning Commission for review and action within 30 days of its receipt by the Planning Commission. The Planning Commission may approve the application as submitted, approve with modifications or conditions, or deny the application.

(E) *Requirements for approval-partitioning*. No partitioning shall be approved unless the following requirements are met:.

(1) Proposal is in compliance with the city's comprehensive plan and the applicable zoning regulations.

(2) Each parcel is suited for the use intended or to be offered, including but not limited to sewage disposal, water supply, guaranteed access, and utilities.

(3) All public services deemed necessary are reasonably available or are proposed to be provided by the partitioner.

(4) Proposal will not have any identifiable adverse impacts on adjoining or area land uses, public services and facilities, resource carrying capacities, or on any significant resources.

(5) An approved water rights plan as applicable.

(F) *Survey and improvement requirements.* In the approval of any land partitioning, the need for a survey, and the need for street and other public facility improvements shall be considered and such may be required as a condition of approval. Any survey and/or improvement requirements that may be required for a subdivision or other land development may be required for a partitioning, including bonding or other assurance of compliance.

(G) *Final map requirements.* Within 45 days of the approval of a partitioning, the partitioner shall have prepared and submitted to the Planning Commission a final partitioning map prepared by a licensed surveyor and any other materials or documents required by the approval. The final map shall provide a certificate for approval of the subject partitioning by the Planning Commission. Upon such approval, the petitioner shall file a copy of the final map with the City Recorder, the County Clerk, the County Surveyor, and the County Assessor. A final partitioning map prepared for this purpose shall comply with the recording requirements applicable to a final plat for a subdivision.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

*Statutory reference:*

*Approval of subdivision plat names, see O.R.S. 92.090*

**§ 152.063 SUBDIVISIONS.**

(A) *Application.* Any person proposing a subdivision, or their authorized agent or representative, shall submit an application for a subdivision to the City Recorder. Said application shall be accompanied with ten copies of either an outline development plan as provided for in division (B) of this section, or a tentative plan as set forth in division (C) of this section, together with improvement plans and other supplementary material as may be required, and the appropriate filing fee as established by the City Council. The time of filing shall be construed to be the time when all of the foregoing materials are received by the appropriate city official and are certified as being complete.

(B) *Outline development plan (optional).* The submittal of an outline development plan in the subdivision application process is at the option of the applicant and/or developer. If an outline development plan is prepared and submitted with the application for a subdivision, it shall include both maps and written statements as set forth in this division (B).

(1) The map(s) which are part of an outline development plan may be in schematic form, but shall be to scale and shall contain the following information:

(a) The existing topographic character of the land;



(b) Existing and proposed land uses and the approximate location of buildings and other structures on the project site and adjoining lands;

(c) The character and approximate density of the proposed development;

(d) Public uses including schools, parks, playgrounds and other public spaces or facilities proposed;

(e) Common open spaces and recreation facilities and a description of their use;

(f) Landscaping, irrigation and drainage plans; and

(g) Road, street and other transportation facility schematic plans and proposals.

(2) Written statements which shall be part of the outline development plan submittal shall contain the following information:

(a) A statement and description of all proposed onsite and offsite improvements;

(b) A general schedule of development and improvements;

(c) A statement setting forth proposed types of housing and other uses to be accommodated, and a projection of traffic generation and population;

(d) A statement relative to the impact on the carrying capacities of public facilities and services including water and sewer systems, schools, serving utilities and streets, etc.; and

(e) A statement relative to compatibility with adjoining land uses, present and future, environmental protection and/or preservation measures, and impacts on natural resource carrying capacities of the site and surrounding/adjacent areas.

(3) Planning Commission approval of an outline development plan for a subdivision shall constitute only a conceptual approval of the proposed development for "general" compliance with the city comprehensive plan, applicable zoning and development standards.

(4) Planning Commission review and action on an outline development plan shall be completed within 45 days from the date of submittal and certification of a complete application.

(C) *Tentative plan required.* Following submittal and approval of an outline development plan and subdivision application, or of an initial subdivision application, any person proposing a subdivision shall

submit a tentative plan, together with the required application, accompanying information and supplemental data, and required filing fee, prepared and submitted in accordance with the provisions of this division.

(1) *Scale of tentative plan.* The tentative plan of a proposed subdivision shall be drawn on a sheet 18 x 24 inches in size or multiples thereof at a scale of one inch equals 100 feet or multiples thereof as approved by the City Planning Commission.

(2) *Information requirements.* The following information shall be shown on the tentative plan or provided in accompanying materials. No tentative plan submittal shall be considered complete unless all such information is provided unless approved otherwise by the Planning Commission.

(a) *General information required.*

1. Proposed name of the subdivision.
2. Names, addresses and phone numbers of owner of record and subdivider, authorized agents or representatives, surveyor, and any assumed business names filed or to be filed by the owner or subdivider in connection with the development.
3. Date of preparation, north point, scale and gross area of the development.
4. Identification of the drawing as a tentative plan for a subdivision.
5. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets.

(b) *Information concerning existing conditions.*

1. Location, names and widths of existing improved and unimproved streets and roads within and adjacent to the proposed development.
2. Location of any existing features such as section lines, section corners, city and special district boundaries, and survey monuments.
3. Location of existing structures, fences, irrigation canals and ditches, pipelines, waterways, railroads, and natural features such as rock outcroppings, marshes, geological features and natural hazards.
4. Location and direction of water courses, and the location of areas subject to erosion, high water tables, storm water runoff, and flooding.

5. Location, width and use or purpose of any existing easements or right-of-ways within and adjacent to the proposed development.

6. Existing and proposed sewer lines, water mains, culverts, and underground or overhead utilities within and adjacent to the proposed development, together with pipe sizes, grades and locations.

7. Contour lines related to some established bench mark or other acceptable datum and having minimum intervals of not more than 20 feet.

(c) *Information concerning proposed subdivision.*

1. Location, names, width, typical improvements, cross-sections, approximate grades, curve radii, and length of all proposed streets, and the relationship to all existing and projected streets.

2. Location, width and purpose of all proposed easements or right-of-ways, and the relationship to all existing easements or rights-of-way.

3. Location of at least one temporary bench mark within the proposed subdivision boundary.

4. Location, approximate area and dimensions of each lot, and proposed lot and block numbers.

5. Location, approximate area and dimensions of any lot or area proposed for public, community or common use, the use proposed and plans for improvements and/or development.

6. Proposed use, location, area and dimensions of any lot which is intended for nonresidential use and the intended use.

7. An outline of the area proposed for partial recording on a final plat if phased development and recording is contemplated or proposed.

8. Source, method and preliminary plans for domestic water supply, sewage disposal, solid waste collection and disposal, and all utilities.

9. Storm water and other drainage plans.

(D) *Master development plan.* An overall master development plan shall be submitted for all developments planning to utilize phase or unit development. Said plan shall include, but not be limited to the following elements:

- (1) Overall development plan, including phase or unit sequences;
- (2) Schedule of improvements initiation and completion;
- (3) Sales program timetable projection;
- (4) Development plans of any common elements or facilities; and
- (5) Financing plan for all improvements.

(E) *Supplemental information required.* The following supplemental information shall be submitted with the tentative plan for a subdivision:

- (1) Proposed deed restrictions or protective covenants, if such is proposed to be utilized for the proposed development; and
- (2) Reasons and justifications for any variances or exceptions proposed or requested to the provisions of this section, the applicable zoning regulations, or any other document, ordinance or regulation.

(F) *Tentative plan review procedures.*

- (1) Within ten days of the receipt of a completed tentative plan filing, the City Recorder shall provide each Planning Commission member with a copy of the subject plan for review.
- (2) Within five working days of the receipt of a completed tentative plan filing, the City Recorder shall notify the Superintendent of Public Works, the Fire Chief, the City Engineer, representatives of any affected special district, utilities, school district, and any other identifiable public or private agency persons that the plan has been filed and provide an opportunity for each such person or party to review the plan.
- (3) Such persons or parties shall be provided not less than ten days nor more than 20 days to prepare and submit written reviews and recommendations regarding the subject proposed plan.
- (4) Within 45 days of receipt of notification of such filing by the City Recorder, the Planning Commission shall conduct a public hearing on the proposed development plan in accordance with the notification and public hearing procedure requirements of § 152.104. Within 15 days of such hearing the Planning Commission shall either approve, approve with modifications, conditionally approve, or disapprove the subject development plan, and set forth the findings, conclusions and reasoning for the decision. The Planning Commission may recess or continue the hearing for good cause for a period not to exceed 35 days. If no action is taken by the Planning Commission within 120 days from the date of

the notification of the Planning Commission of the receipt of a completed application, the tentative plan as filed shall be deemed to be approved, and it shall be the duty of the City Recorder to certify such approval. On agreement of the applicant and/or developer, however, the 120-day limitation may be extended.

(5) Following Planning Commission approval of a tentative plan, said plan, together with the Planning Commission's written decision and all accompanying information shall be forwarded to the City Council for informational review.

(G) *Tentative plan approval relative to final plat.* Approval of the tentative plan shall not constitute final acceptance of the final plat of the proposed subdivision for recording. However, approval of the tentative plan shall be binding upon the city for preparation of the final plat, and the city may require only such changes as are necessary for compliance with the terms of its approval of the tentative plan.

(H) *Re-submission of denied tentative plan.* If the tentative plan for a subdivision is denied, re-submittal of an application for a subdivision of the subject property shall not be accepted by the city for a period of six months after the date of the final action denying said plan. Re-submittal shall be considered a new filing, but shall require the applicant to consider all items for which the prior denial was based, in addition to the other filing requirements set forth by this chapter.

(I) *Requirements for approval.* The Planning Commission shall not approve an outline development plan or a tentative plan for a subdivision unless the Planning Commission finds, in addition to other requirements and standards set forth by this chapter and other applicable city ordinances, that:

(1) The proposed development is consistent with applicable goals, objectives and policies set forth by the city's comprehensive plan;

(2) The proposal is in compliance with the applicable zoning regulations applicable thereto;

(3) The subdivision will not create an excessive demand on public facilities and services required to serve the proposed development, or that the developer has proposed adequate and equitable improvements and expansions to such facilities with corresponding approved financing to bring such facilities and services up to an acceptable capacity level (GOAL 11);

(4) The development provides for the preservation of significant scenic, archaeological, natural, historic and unique resources (GOAL 5);

(5) The proposed name of the subdivision is not the same as, similar to or pronounced the same as the name of any other subdivision in the city or within a six-mile radius thereof, unless the land platted is contiguous to and platted as an extension thereof;

(6) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern;

(7) Streets and roads for public use are to be dedicated to the public without any reservation or restriction;

(8) Street and roads for private use are approved by the city as a variance to public access requirements;

(9) Adequate mitigation measures are provided for any identified adverse impacts on or by neighboring properties or their uses or on the natural environment;

(10) Provisions are made for access to abutting properties that will likely need such access in the future, including access for vehicular and pedestrian traffic, public facilities and services, and utilities; and

(11) Provisions of the proposed development to provide for a range of housing needs, particularly those types identified needed or being in demand. (Goal 10)

(J) *Final plat for a subdivision.*

(1) *Submission of final plat.*

(a) Time requirement. Within one year after date of approval of the tentative plan, the subdivider shall prepare and submit the final plat that is in conformance with the tentative plan as approved and with all applicable conditions. The subdivider shall submit not less than ten prints of the original drawing and any supplemental information or material required by this chapter and by the tentative plan approval. Said filing shall be to the City Recorder. If the subdivider fails to file the final plat before the expiration of the one year period, the tentative plan approval shall be declared null and void and a new submittal required if the subdivider wishes to proceed with the development.

(b) Form of final plat. The final plat shall be made in permanent black India type ink or silver having permanent photocopy, upon material 18 x 24 inches in size, that is suitable for binding and copying, and that has acceptable characteristics of strength and permanency. Applicable standards set forth by state statute shall be complied with.

(2) *Requirements of survey and plat of subdivision.*

(a) The survey for the plat of a subdivision shall be of such accuracy that the error of closure shall not exceed one foot in 4,000 feet.

(b) The survey and plat shall be made by a registered professional land surveyor.

(c) The plat shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown.

(d) The locations and descriptions of all monuments shall be recorded upon all plats and the proper courses and distances of all boundary lines shown.

(3) *Monument requirements.* Monumentation of all subdivisions and plats therefore shall be in compliance with the provisions of O.R.S. 92.060 and 92.065.

(4) *Information required on final plat.* In addition to that required by the tentative plan approval or otherwise required by law, the following information shall be shown on the final plat:

(a) All survey reference information;

(b) Tract, block and lot boundary lines and street right-of-way and centerlines, with dimensions, bearings or deflection angles. Tract boundaries and street bearings shall be to the nearest second; Distances to the nearest 0.01 feet. No ditto marks are permitted;

(c) Width of streets being dedicated. Curve data based on centerlines for streets on curvature; the radius, central angle and length of curve shown;

(d) Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference;

(e) Lot numbers beginning with the number "1" and numbered consecutively in each block; and

(f) Block numbers beginning with the number "1" with no omission or duplication.

(5) *Certificates required on final plat.* The following certificates are required on the final plat:

(a) Certificate signed and acknowledged by all parties having record title interest in the land, consenting to the preparation and recording of the plat;

(b) Certificate signed and acknowledged as above dedicating all land intended for public use;

(c) Certificate with the seal of and signed by the land surveyor responsible for the survey and the final plat preparation;

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- (d) Certificate for execution by the County Surveyor;
- (e) Certificate for execution by the Mayor;
- (f) Certificate for execution by the County Tax Collector;
- (g) Certificate for execution by the County Assessor;
- (h) Other certificates required by state law; and
- (i) Certificate for approval for execution by the Planning Commission.

(6) *Supplemental information with final plat.* The following data, in addition to any other data required as a part of the tentative plan approval, shall be submitted with the final plat:

(a) Title report. A preliminary title report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary, and evidence of a clear and marketable title;

(b) A copy of any deed restrictions or protective covenants applicable to the subdivision;

(c) A copy of any dedication requiring separate documents such as for parks, playgrounds, etc.;

(d) A copy of any homeowner's association agreements proposed or required for the development;

(e) Improvements. For any and all improvements such as streets, sewer, water, utilities, etc. that are required or proposed as a part of the tentative plan approval, the following shall be required to be submitted with the final plat, and such shall be prepared by a licensed surveyor or engineer:

1. Cross-sections of proposed streets, widths of roadways, types of surfacing, curb locations and specifications, width and location of sidewalks, other pedestrian ways and/or bikeways;

2. Plans and profiles of proposed sanitary sewers, location of manholes, and proposed drainage facilities;

3. Plans and profiles of proposed water distribution systems showing pipe sizes, location of valves and fire hydrants as applicable;

4. Specifications for the construction of all proposed utilities; and



5. Proof of guaranteed access to the primary serving street or highway, state, county or city street or highway.

(7) *Technical review of final plat.* Within five working days of receipt of the final plat submittal, the City Recorder shall initiate a technical review of said submittal as provided below:

(a) Notification of the receipt of and opportunity for review shall be given to the Superintendent of Public Works, the Fire Chief, City Engineer, City Attorney, representatives of any serving special districts, utility companies, and any other affected agencies. Said parties shall complete such technical plat review within ten days of such notice and shall submit findings to the City Council.

(b) Based on such review, should the City Council determine that full conformity has not been made, the subdivider shall be advised of the needed changes or additions and shall be afforded a reasonable opportunity (not to exceed 30 days) to make such changes or additions.

(8) *Council review and approval of final plat.* Within 30 days following the receipt of the final plat with the results of the technical plat review, the City Council shall determine whether or not the submittal complies with this chapter and the tentative plan approval. If the City Council does not approve the final plat, it shall advise the subdivider of the reasons, and shall provide an opportunity to make corrections. If the Council approves the final plat, approval shall be indicated by the signature of the Mayor on said plat.

(9) *Final plat approval requirements.* No final plat for a proposed subdivision shall be approved unless it is found to comply with the following minimum standards:

(a) The final plat is found to be in strict compliance with the tentative plan approval and all conditions set forth.

(b) Streets and roads for public use are dedicated without any reservation or restriction.

(c) Streets and roads held for private use are clearly indicated.

(d) The plat contains a donation to the public of all common improvements and public uses proposed or required as a condition of approval of the tentative plan.

(e) All proposed or required improvements have either been completed and approved by the city, or that a bond, contract, or other assurance has been provided for and approved by the Planning Commission.

(10) *Recording of final plat.* The subdivider shall, without delay, submit the final plat for the approval and signatures of other public officials required by law. Approval of the final plat shall be null

and void if the plat is not recorded within 45 days after the date of approval of the City Council. After obtaining all required approvals and signatures, the subdivider shall file the plat and an exact copy in the County Clerk's office. Not less than five copies of the recorded plat shall be provided to the City Recorder at the developer's expense.

(a) No plat shall be recorded unless all ad-valorem taxes and special assessments, fees, or other charges required by law to be placed upon the tax rolls which have become a lien or which will become a lien during the calendar year on the subdivision have been paid.

(b) No plat shall be recorded without a statement of water rights and a copy of the acknowledgment from the State Department of Water Resources under O.R.S. 92.122. (Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

*Statutory reference:*

*Application for approval of subdivision or partition, see O.R.S. 92.040*

*Application for zone change, see O.R.S. 227.175*

*Approval of subdivision plat names, see O.R.S. 92.090*

*Certificates required on final plats, see O.R.S. 92.070 through 92.120*

*City planning responsibility, see O.R.S. 197.175*

*Final action on certain applications required within 120 days, see O.R.S. 227.178*

*Marking plats with monuments, see O.R.S. 92.060*

*Monumenting certain subdivision corners after recording plat, see O.R.S. 92.065*

*Needed housing, see O.R.S. 197.303 through 197.307*

*Preparation of plat, see O.R.S. 92.080*

*Recording plats, see O.R.S. 92.120*

*Requirements of survey and plat, see O.R.S. 92.050*

*Time limit for final action by city on tentative plan, see O.R.S. 92.105*

### **EXCEPTIONS AND VARIANCES**

#### **§ 152.070 NONCONFORMING USES.**

(A) A nonconforming use or structure may be continued but may not be altered or expanded. The expansion of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of this chapter is not an enlargement or expansion of a nonconforming use. A non-conforming structure, which conforms with respect to use, may be altered or expanded if the alteration or expansion does not cause the structure to deviate further from the standards of this chapter. A nonconforming use that does not conform with respect to use, may be reconstructed, altered, replaced in the same location as long as the construction does not cause the structure to deviate any further from the standards of this ordinance than the original structure.

(B) If a nonconforming use is discontinued for a period of one year, further use of the property shall conform to this chapter.

(C) If a nonconforming use is replaced by another use, the new use shall conform to this chapter.

(D) Nothing contained in this chapter shall require any change in the plans, construction, alteration or designated use of a structure for which a permit has been issued by the city and construction has commenced prior to the adoption of this chapter provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time the permit is issued. (Ord. 301, passed 6-10-03)

**§ 152.071 GENERAL EXCEPTIONS TO BUILDING HEIGHT LIMITATIONS.**

Vertical projections such as chimneys, spires, domes, elevator shaft housing, towers, cell towers, aerials, flagpoles, and similar objects not used for human occupancy are not subject to the building height limitations of this chapter. (Ord. 301, passed 6-10-03)

**§ 152.072 AUTHORIZATION TO GRANT OR DENY VARIANCES.**

The Planning Commission may authorize a variance from the requirements of this chapter where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of the chapter would cause an undue or unnecessary hardship. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or vicinity and otherwise achieve the purposes of this chapter. (Ord. 301, passed 6-10-03)

**§ 152.073 CIRCUMSTANCES FOR GRANTING A VARIANCE.**

A variance may be granted only in the event that all of the following circumstances exist.

(A) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography or other circumstances over which the owners of property since enactment of this chapter have had no control.

(B) The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.

(C) The variance would not be materially detrimental to the purposes of this chapter, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy.

(D) The variance requested is the minimum variance which would alleviate the hardship.

(E) The variance is not self-imposed, nor results from a violation of this chapter.  
(Ord. 301, passed 6-10-03)

#### § 152.074 PROCEDURE FOR GRANTING A VARIANCE.

(A) *Application for a variance.* A property owner may initiate a request for a variance by filing an application with the City Recorder.

(B) *Public hearing on a variance.* Before the Planning Commission may act on a request for a variance, it shall hold a public hearing following the notification and public hearing procedures of this section.

(C) *Notification of decision.* Within ten days after a decision has been rendered by the Planning Commission with reference to a request for a variance, the City Recorder shall provide the applicant with the notice of the decision of the Planning Commission.

(D) *Time limit for a permit for a variance.* Authorization for a variance shall be void after six months, unless substantial construction pursuant thereto has taken place. However, the Planning Commission may, at its discretion, extend the authorization for an additional six months on request.

(E) *Resubmittal.* If a request is denied by the City Recorder or hearing body and no appeal is filed, or if upon review or appeal the denial is affirmed, no new request for the same or substantially similar proposal shall be filed within six months after the date of final denial. An application may be denied without prejudice and a waiver of the six-month restriction granted. If conditions have changed to an extent that further consideration of an application is warranted, the hearing body, on its own motion, may consider new evidence and waive the six-month restriction.

(F) *Final action.* Except as provided for under O.R.S. 227.178, the city shall take final action on conditional use permits and variances, including the resolution of all appeals to the Planning Commission under O.R.S. 227.180, within 120 days from the date a complete application is submitted to the city. Within 30 days of receipt of an application, the City Recorder will review the application to determine whether it is complete. The applicant will be notified of any missing materials within the 30-day period. The 120-day time period will commence on the date the application is complete.  
(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.075 ADMINISTRATIVE VARIANCES.**

An administrative variance may be granted by the City Recorder without the normal public hearing before the Planning Commission, provided:

(A) The variance requested is for relief of a physical or spatial requirement, not including lot size, of this chapter, and the variance is 10% or less of the specified requirement.

(B) Notice to affected property owners shall be required as specified in § 152.084 of this chapter.

(1) At the end of the ten-day period provided for review, the City Recorder shall render a decision based upon the appropriate approval criteria for variances or conditional uses and prepare a written decision together with the findings of fact on which the decision is based.

(2) Anyone may appeal the City Recorder's decision to the Planning Commission. Such appeal must be filed with the City Recorder within ten days of the mailing of the decision. (Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

***AMENDMENTS***

**§ 152.080 FORMS OF AMENDMENTS.**

There are two types of amendments to this chapter:

(A) Amendment to the text. (Legislative Revision).

(B) Amendment to the map. (Legislative Revision or Quasi-Judicial Change). (Ord. 301, passed 6-10-03)

**§ 152.081 LEGISLATIVE REVISIONS.**

(A) Proposed amendments to this chapter shall be deemed legislative revisions if:

(1) The proposed amendment involves the text of this chapter; and/or

(2) The proposed amendment involves the map, when such an amendment would have widespread and significant impact beyond the immediate area of the proposed amendment.

(B) Legislative revisions shall be initiated by:

- (1) A majority vote of the Planning Commission;
- (2) A majority vote of the City Council; or
- (3) A request by the City Attorney or City Recorder.

(Ord. 301, passed 6-10-03)

#### **§ 152.082 QUASI-JUDICIAL REVISIONS.**

(A) A proposed amendment to this chapter shall be deemed a quasi-judicial change if the proposed amendment involves the zoning map and does not have widespread and significant impact beyond the immediate area of the proposed amendment.

(B) Quasi-judicial changes may be initiated by:

- (1) Property owners or contract purchaser or an authorized agent;
- (2) A majority vote of the Planning Commission;
- (3) A majority vote of the City Council; or
- (4) A request by the City Attorney or City Recorder.

(C) In case of a controversy as to whether an amendment be deemed a legislative or quasi-judicial matter, the City Recorder shall make the initial determination. The City Recorder's decision may be appealed to the Planning Commission.

(Ord. 301, passed 6-10-03)

#### **§ 152.083 HEARING REQUIREMENTS FOR LEGISLATIVE OR QUASI-JUDICIAL REVISIONS TO THE ZONING ORDINANCE.**

Public hearings, under the provisions of § 152.084, shall be required for both legislative and quasi-judicial amendments to the zoning ordinance. A public hearing before the Planning Commission is mandatory. A public hearing before the City Council is optional. (See procedures in § 152.085 below). The City Council shall use the same procedures as set forth for the Planning Commission.

(Ord. 301, passed 6-10-03)

**§ 152.084 NOTICE REQUIREMENTS.**

For both legislative and quasi-judicial revisions to the zoning ordinance, a series of public notices are required. These notices are as follows:

(A) *Post-acknowledgement plan amendment notice to DLCD.* The Department of Land Conservation and Development requires notice of the first evidentiary hearing on a proposed amendment to a jurisdiction's zoning ordinance to be submitted to the Department on their forms at least 45 days in advance of the first hearing. Notice must be in the Salem office 45 days or earlier than the date of the proposed hearing before the Planning Commission.

(B) *Notices of both legislative and quasi-judicial hearings.* Notices of both legislative and quasi-judicial hearings must be published in the local newspaper following the requirements of § 152.084 of this chapter.

(C) *Legislative revisions-Ballot Measure 56.* Ballot Measure 56, passed by general vote in the 1998 election, requires specific notices be mailed to all affected landowners in the instance of a legislative revision in which a rezoning will occur. These must be mailed not more than 40 nor less than 20 days from the date of the first hearing.

(D) *Quasi-judicial hearings.* Quasi-judicial hearings require notices to all affected property owners within 100 feet of the subject property be mailed at least ten days before each hearing on the proposed amendment.

(Ord. 301, passed 6-10-03)

**§ 152.085 LEGISLATIVE OR QUASI-JUDICIAL AMENDMENT PROCEDURAL PROCESS.**

The Planning Commission shall conduct a public hearing on the proposed amendment. Within 45 days after the hearing, the Planning Commission shall render a decision. The Planning Commission must take final action on an amendment request. Amendments shall be made by ordinance.

(Ord. 301, passed 6-10-03)

**§ 152.086 LEGISLATIVE AMENDMENTS.**

Legislative amendments are broad-based amendments which impact the whole city not just a specific neighborhood or area. Most text amendments are legislative. No specific hearing procedure is required. The Planning Commission is acting as legislators, making new law for the city. It is suggested, in order to provide a sound format for the hearing process, that the quasi-judicial procedure be followed.

(Ord. 301, passed 6-10-03)

**§ 152.087 QUASI-JUDICIAL HEARING REQUIREMENTS.**

(A) The following criteria must be followed in deciding upon a quasi-judicial proceeding.

(1) The burden in all land use proceedings is upon the applicant, whether a zone change, conditional use or variance is the subject of the hearing.

(2) The requested zone change or conditional use must be justified by proof that:

(a) The change is in conformance with the comprehensive plan and also the goals and policies of the plan.

(b) The showing of public need for the rezoning and whether that public need is best served by changing the zoning classification on that property under consideration.

(c) The public need is best served by changing the classification of the subject site in question as compared with other available property.

(d) The potential impact upon the area resulting from the change has been considered.

(3) Approval criteria for amendments.

(a) The applicant must show that the proposed change conforms with the comprehensive plan.

(b) A plan or land use regulation amendment significantly affects a transportation facility if it:

1. Changes the functional classification of an existing or planned transportation facility;

2. Changes standards implementing a functional classification system; or

3. Allows types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility.

(B) The courts will require a "graduated burden of proof" depending upon the drastic nature of the proposed rezoning.

(C) Procedural process of a quasi-judicial hearing.

(1) Parties at a rezoning hearing must have an opportunity to be heard, to present and rebut evidence.



(2) There must be a record which will support the findings made by the decision makers.

(3) Pre-hearing contact with concerned parties to the action must be disclosed by the decision-makers at the outset of the public hearing.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.088 NOTIFICATION OF DECISION.**

Within five working days after a final decision on an amendment to the comprehensive plan, zoning ordinance text or plan/zone map, the City Recorder shall provide the applicant and the Department of Land Conservation and Development a complete copy of the Planning Commission decision. Within five working days after a final decision, the City Recorder shall also provide notice of the decision to all persons who participated in the local proceedings and requested in writing that they be given notice. The notice shall meet the requirements of O.R.S. 197.615.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.089 LIMITATION OF RE-APPLICATIONS.**

No application of a property owner for an amendment to a zone boundary shall be considered by the Planning Commission within the one-year period immediately following a previous denial of such request, except the Planning Commission may permit a new application if, in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.

(Ord. 301, passed 6-10-03)

**§ 152.090 RECORD OF AMENDMENTS.**

The Recorder shall maintain records of amendments to this chapter.

(Ord. 301, passed 6-10-03)

***ADMINISTRATIVE PROVISIONS***

**§ 152.100 ADMINISTRATION.**

The City Recorder is appointed by the City Council and shall have the power and duty to enforce the provisions of this chapter. An appeal from a ruling by the City Recorder regarding a requirement of the chapter may be made only to the Planning Commission.

(Ord. 301, passed 6-10-03)

**§ 152.101 BUILDING PERMIT REQUIRED.**

Prior to the erection, movement, reconstruction, extension, enlargement, or alteration of any structure, a permit for such erection, movement, reconstruction, extension, enlargement, or alteration shall be obtained from the City Recorder. The applicant shall pay a fee as established by city ordinance or resolution at the time the application is filed.

(Ord. 301, passed 6-10-03)

**§ 152.102 FORM OF PETITIONS, APPLICATIONS AND APPEALS.**

All petitions, applications, and appeals provided for in this chapter shall be made on the forms provided by City Recorder.

(Ord. 301, passed 6-10-03)

**§ 152.103 REVIEW PROCESS.**

(A) An administrative review may be processed by the City Recorder for the review and approval of land use activities, such as plan review, which are not required to proceed through a public hearing process. The City Recorder may forward any application to the Planning Commission for a public hearing.

(B) The Planning Commission shall review all applications that require a public hearing, and any applications forwarded to the Commission by the City Recorder.

(C) At least ten copies of a completed application form with the proposed site plan, landscaping plan, and grading and drainage plan, if required, shall be submitted to the City Recorder's office.

(Ord. 301, passed 6-10-03)

**§ 152.104 PUBLIC HEARING NOTICE.**

(A) The city shall provide notice to all persons and agencies as required by this section. Klamath County will receive notice for all activities outside the city limits and inside the Urban Growth Boundary. ODOT will receive notice of any activity that is adjacent to the state highway or activities that may impact the state highway.

(B) Each notice of hearing authorized by this chapter shall be published in a newspaper of general circulation in the city and posted at the City Hall and two other conspicuous places in the city at least ten days prior to the date of hearing.

(C) In addition, a notice of hearing on a conditional use, a variance, or an amendment to a zone boundary shall be mailed to owners of property within 100 feet of the property for which the variance, conditional use or zone boundary amendment has been requested. The notice of hearing shall be mailed at least ten days prior to the date of the hearing. Said notice shall contain the following:

- (1) Explain the nature of the application and the proposed use or uses which could be authorized;
- (2) List the applicable criteria from the ordinance and the plan that apply to the application;
- (3) Set forth the street address or other easily understood geographical reference to the subject property;
- (4) State the date, time, and location of the hearing;
- (5) State that failure to raise an issue by the close of the record at or following the final evidentiary hearing, in person or by letter, precludes appeal to LUBA based on that issue;
- (6) State that failure to provide sufficient specificity to afford the decision maker an opportunity to respond to an issue that is raised precludes appeal to LUBA based on that issue;
- (7) Include the name of a local government representative to contact and a telephone number where additional information may be obtained;
- (8) State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
- (9) State that a copy of the City Recorder/Staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
- (10) Include a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

(D) If a proposed zone boundary amendment has been initiated by the Planning Commission and is declared by the Planning Commission to be a legislative land use decision as set forth in § 152.084, the mailing of individual notice shall follow the requirements in § 152.084.

(E) All documents or evidence relied upon by the applicant shall be submitted to the City Recorder ten days prior to the hearing date, and be made available to the public the following business day. Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional

documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of § 152.106 of this chapter.

(F) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(1) Lists the applicable substantive criteria;

(2) States that testimony and evidence must be directed toward the criteria described in division (E) of this section or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(3) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes any appeal based on that issue.

(G) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of O.R.S. 215.428 or 227.178.

(H) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(I) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

*Statutory reference:*

*Conduct of local quasi-judicial land use hearings, see O.R.S. 197.763*

## § 152.105 NOTICE OF DECISION.

Within five working days after a final decision by the City Recorder, Planning Commission, or City Council on a land use application the City Recorder shall provide the applicant a notice of final decision. The city shall also provide notice of the decision to all persons who participated in the local proceedings or requested in writing that they be given notice. A sign-up sheet for requesting such notification will be available at the hearing. The notice of final decision shall summarize the action taken and the procedure to appeal the decision.

(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.106 APPEAL FROM DECISION OF THE CITY RECORDER.**

(A) An appeal from a decision of the City Recorder may be filed with the City Recorder.

(B) An appeal from a decision of the City Recorder may only be initiated by filing a notice of intent to appeal.

(C) The decision of the City Recorder shall be final, unless a written notice of intent to appeal is filed with the City Recorder within 15 days of the date of the decision.

(D) The notice of intent to appeal shall contain a copy of the application for the permit and a copy of the City Recorder's decision.

(E) The notice of intent to appeal shall state the specific issues which are the basis for the appeal and the specific reasons the appellant contends the decision of the City Recorder is not in conformance with the applicable criteria and standards set forth in the city zoning ordinance.

(F) A notice of intent to appeal shall be accompanied by the required fee as set by City Council resolution or ordinance.

(G) An appeal of a decision of the City Recorder shall be heard by the Planning Commission following the procedures of § 152.104, public hearings. Notice to affected property owners, if appropriate, shall be submitted.  
(Ord. 301, passed 6-10-03)

**§ 152.107 APPEAL OF DECISIONS OF THE PLANNING COMMISSION.**

(A) The applicant, or any person who provided testimony, either in person or in writing, at the hearing before the Planning Commission, may appeal the decision of the Planning Commission to the City Council.

(B) The appeal of a decision of the Planning Commission may only be initialized by filing a notice of intent of appeal, as set forth in this section.

(C) The decision of the Planning Commission shall be final, unless a written notice of intent of appeal is filed with the City Recorder within 15 days from the date it was signed by the Chair, unless the City Council, on its own motion, orders a review of the decision within 15 days of the date of the recorded decision.

(D) Every notice of intent appeal shall contain:

(1) A copy of the application or adequate reference to the matter sought to be appealed and the date of the decision of the Planning Commission;

(2) A statement that the appellant either participated in the hearing in person or in writing or that the appellant is the applicant;

(3) The specific issues which are the basis for the appeal and the specific reasons the appellant contends the decision of the hearing body is not in conformance with the comprehensive plan, zoning ordinance, subdivision or Oregon Revised Statutes. Such issues shall be raised with sufficient specificity so as to afford the City Council an adequate opportunity to respond to each issue; and

(4) A notice of intent to appeal shall be accompanied by the required fee as set by City Council by resolution or ordinance.

(5) Hearings before the City Council shall be conducted in compliance with § 152.104, Public Hearings.

(E) The City Council's consideration of the Planning Commission's decision may be confined to the record of the proceeding before the Planning Commission, or, the Council may hear the material de novo (new hearing). The record shall include:

(1) All materials, memorandum, stipulations, exhibits and motions submitted during the proceeding and received or considered by the Planning Commission;

(2) All materials submitted by the City Recorder with respect to the application;

(3) The minutes of the hearing before the Planning Commission;

(4) The written decision of the Planning Commission;

(5) The notice of intent to appeal; and

(6) Oral and written argument; if any, by the hearing participants, their legal representatives, City Recorder or staff, made at the time of the hearing before the City Council.

(F) The City Council may affirm, reverse or modify the action of the Planning Commission in full or in part. The City Council may also remand the matter back to the Planning Commission for further consideration.

(G) The City Council shall adopt a written decision that clearly states the basis for its decision within 30 days of the close of the hearing. When an application is approved, the term of approval shall be specified, including any restrictions and conditions. A proposed decision submitted by the City Recorder or any other person may be adopted by the City Council as submitted, or as amended by the City Council.

(H) An appeal of the City Council decision must be filed with the Land Use Board of Appeals (LUBA) within 21 days of the notice of the city's final decision.  
(Ord. 301, passed 6-10-03; Am. Ord. passed 9-12-06)

**§ 152.108 FILING FEES.**

(A) The filing fees for each land use action are established by the City Council by resolution or ordinance.

(B) The city, like many cities in Oregon, is faced with a severely reduced budget for the administration of the city's ordinances. The land use planning process in the State of Oregon has become increasingly complex. To properly process a land use application, the city may rely upon professional consultants to assist in preparing the legal notices, conducting on-site inspections, preparation of City Recorder reports and, in some cases, actual attendance at the Planning Commission and/or City Council meeting. The city utilizes a consultant to ensure land use applications are processed fairly and promptly. Because of the reduced budgets, the city finds it necessary to transfer those administrative costs to the applicant, as a part of the land use planning process. These administrative costs shall be limited to \$1,500 without written approval by the applicant.  
(Ord. 301, passed 6-10-03)

***GENERAL PROVISIONS***

**§ 152.115 INTERPRETATION.**

Where a provision of this chapter is less restrictive than another ordinance or requirement of the city, the provision or requirement which is more restrictive shall govern.  
(Ord. 301, passed 6-10-03)

**§ 152.116 SEVERABILITY.**

The provisions of this chapter are severable. If a section, sentence, clause or phrase of this chapter is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this chapter.

(Ord. 301, passed 6-10-03)

**§ 152.117 ABATEMENT AND PENALTY.**

(A) Violation of any provision of this chapter or of any amendment of this chapter is punishable upon conviction by a fine of not more than \$100 for each day of violation where the offense is a continuing offense.

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

(Ord. 301, passed 6-10-03)