

**GARIBALDI ORDINANCES  
ORDINANCE NO. 290**

**AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF  
ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON,  
IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND  
REPEALING ORDINANCE 107.**

**WHEREAS**, the City Council at their April 15, 1982 Regular Meeting determined that a Comprehensive Plan and Zoning Ordinance be enacted and created for and by the City of Garibaldi; and

**WHEREAS**, since that time numerous amendments have changed the ordinance and various errors have become codified into City law; and

**WHEREAS**, the City Council approved at their May 16, 2005 Regular Meeting to pursue a DLCD Comp Plan Update grant to help the City properly define economic and housing opportunities; and

**WHEREAS**, the City ultimately received the grant and the City Improvement Advisory Committee (CIAC) was formed at the October 17, 2005 Regular City Council Meeting to workshop the Comp Plan Update and additional projects; and

**WHEREAS**, between November 2, 2005 and May 15, 2006, the CIAC, Planning Commission and City Council (committees) held a total of nine public meetings to discuss changes to the City's Comp Plan, Zoning Ordinance and Subdivision Ordinance; and

**WHEREAS**, it was determined by these committees and staff that numerous scrivener's errors and policy changes needed to be amended; and

**WHEREAS**, due to the number of corrections it was determined that it would more efficient to repeal the old ordinance and adopt a new ordinance with all the corrections and changes; now, therefore,

**THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:**

1 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

SECTIONS

- 1 Repeal
- 2 Title
- 3 Codification
- 4 Severability
- 5 Adoption

**Section 1. REPEAL.** Garibaldi Ordinance No. 107 (Zoning Regulations in Conformance with the Comprehensive Plan) and all other ordinances and orders or parts of ordinances or orders, in conflict herewith, are hereby repealed.

**Section 2. TITLE.** These regulations shall be known as the "Zoning Ordinance No. 290," may be cited as such, and will be referred to herein as "this Ordinance."

**Section 3. CODIFICATION.** The following articles shall be codified in accordance with existing methodologies and a Table of Contents:

**"ARTICLE I.  
INTRODUCTORY PROVISIONS**

**Section 1.010. TITLE:** This ordinance shall be known as the Garibaldi Zoning Ordinance.

**Section 1.020. PURPOSE:** The purpose of this ordinance is: to encourage the orderly development of the City; to promote appropriate uses of land; to conserve and stabilize the value of property; to provide adequate light and air; to lessen congestion; to prevent undue concentration of population; to facilitate adequate provisions for community facilities such as water supply and sewerage; to protect and enhance the appearance of the City; and in general to promote the public health, safety, convenience, and general welfare. The City has prepared a comprehensive plan and zoning ordinance to encourage orderly growth and to promote the public health, safety convenience, and public welfare.

**Section 1.030. DEFINITIONS:** As used in this ordinance, the following words and phrases shall mean:

*Accessory Use and 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.

*Access:* Access to property is described as normal vehicular access, by which normal ingress and egress by automobiles or other vehicles and pedestrians may be obtained to private property from public or private right-of way.

*Aquaculture:* The propagation, planting, feeding, or growing and harvesting of fish, shellfish, plankton or aquatic plants.

2 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

physical space between individual plantings.

*Home Occupation:* A lawful occupation carried on by a resident of a dwelling as an accessory use on the same property, in connection with which there is no person employed other than a person residing on the premises; and there is no activity conducted in such manner as to give an outward appearance of a business in the ordinary meaning of the term, or disruption of the neighborhood.

*kennel:* A lot or building in which four or more dogs, cats or at least four animals of four months of age or older are kept commercially for board, propagation, training or sale.

*Land Use Zone (District):* The term "district" is often interchanged with term "zone" when referencing boundaries for the City's various land use areas.

*Lot:* A parcel or tract of land.

*Lot Area:* The total horizontal area within the lot lines of a lot exclusive of public and private streets and easements of access to other property.

*Lot Corner:* A lot abutting on two or more dedicated streets at their intersection.

*Lot Depth:* The average horizontal distance between the front lot line and the rear lot line.

*Lot Line:* The property line bounding a lot.

*Lot Line, Front:* The lot line separating the lot from the street, and in the case of a corner lot, the shortest lot line along a street.

*Lot Line, Rear:* The lot line that is opposite and most distant from the front lot line. In the case of an irregular, triangular, or other shaped lot, a line 10 feet in length within the lot parallel to and at a maximum distance from the front lot line.

*Lot Line, Side:* Any lot line not a front or rear lot line.

*Lot Width:* The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

*Lot Area Coverage:* The maximum amount of the lot which can be covered with structures, including carports, porches and other attachments, but not parking area, patios, decks or other surface level improvements.

*Manufactured dwelling:*

a. A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human

occupancy, is being used for residential purposes and was constructed before January 1, 1962.

b. A mobile house, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

c. A manufactured home, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction. "Manufactured dwelling" does not mean any building or structure subject to the Structural Specialty code adopted pursuant to ORS 455.100-455.450.

*Manufactured Dwelling Park:* Any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured home per lot if the subdivision was approved by the City of Garibaldi.

*Marina:* Publicly, or privately, owned commercial facilities that provide berthing, launching, storage, supplies, and a variety of services of recreational, commercial fishing and charter fishing marine craft. Marinas are differentiated from moorages by their larger scale, the provision of significant accessory landslide services and/or the use of solid breakwater (rock, bulkheading, etc).

*Minor Navigation Improvement:* Alterations necessary to provide water access to existing or permitted uses in conservation management units including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

*Mitigation:* The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 541.626).

*Mitigation Site:* An area identified in the Mitigation/Restoration Plan element of the Tillamook County Comprehensive Plan as a potential site for estuarine creation, restoration or enhancement, subject to applicable state and federal standards.

*Passive Restoration:* The use of natural processes, sequences, and timing that occurs after removal or reduction of adverse stresses without other specific positive remedial action.

*Shoreline Stabilization Structures:* The protection of the banks of tidal or non-tidal streams or rivers, estuarine waters or coastal lakes from flooding or erosion by vegetative means, or by structural means such as riprap, groins, or bulkheads, or dikes.

*Sign or Sign Related Definitions:*

- a. *Abandoned Sign:* A sign pertaining to a use or lot where the message of the sign no longer pertains to a use or activity occurring on the lot.
- b. *Awning Sign:* A sign that is placed on a temporary or moveable shelter supported entirely from the exterior wall of the building.
- c. *Bench Sign:* A sign painted on or attached to a bench.
- d. *Incidental Sign:* A sign, other than a temporary or lawn sign, which does not require a permit.
- e. *Lawn Sign:* A temporary freestanding sign made of rigid materials.
- f. *Permanent Sign:* A sign attached to a building, structure or the ground in some manner, having a sign face area of four square feet or more and made of materials intended for more than short term use.
- g. *Projecting Sign:* A sign attached to and projecting out from a building face or wall and generally at right angles to the building.
- h. *Readerboard Sign:* A sign that can accommodate changeable copy.
- i. *Sandwich Board Sign:* A sign not supported by a structure in the ground, nor attached to or erected against a structure, and capable of being moved.
- j. *Sign:* Any identification, description, illustration, symbol or device which is affixed upon a building, structure or land and whose primary purpose is to convey a message.
- k. *Site Frontage:* The length of the property line parallel to and along each public right-of-way.
- l. *Temporary Sign:* A sign not permanently attached to a building, structure or the ground.
- m. *Undeveloped Site:* A lot with no permanent structure that contains a use permitted by the zone in which it is located.
- n. *Wall Sign or Wall Graphics:* A sign attached to or erected against the wall of a building with the sign face in a parallel plane to the building wall, including a painting or other graphic art technique that is applied directly to the wall or the face of a building or structure.
- o. *Window Sign:* A sign permanently affixed to the window panes of a building.

*Street:* The entire width between the right of way lines of every way for vehicular and pedestrian traffic and includes the terms "road", "highway", "lane", "place", "avenue", "alley", and other similar designations.

*Staff:* Most commonly the Planner, Administrator, and/or Public Works Director or their assigns.

*Structure:* Something constructed or built, or any piece of work artificially built up or composed of parts joined together in some definite manner.

*Structural Alteration:* Any change to the supporting members of a structure including foundations, bearing walls or partitions, columns, beams, girders, or any structural change in the roof or exterior walls.

*Telecommunication facility.* A facility designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices including transmission towers, antennas and ancillary facilities. For purposes of this section [sic], amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

*Temporary Alteration:* Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include:

- a. Alterations necessary for federally authorized navigation projects (e.g.; access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);
- b. Alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations; and
- c. Minor structures (such as blinds) necessary for research and educational observation.

*Transportation facilities:* The physical improvements used to move people and goods from one place to another; i.e., streets, sidewalks, pathways, bike lanes, airports, transit stations and bus stops, etc.). Transportation facilities include the following:

- a. Normal operation and maintenance;
- b. Installation of improvements within the existing right-of-way;
- c. Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
- d. Landscaping as part of a transportation facility;
- e. Emergency measures;
- f. Street or road construction as part of an approved subdivision or partition;
- g. Transportation projects that are not designated improvements in the Transportation System Plan; and
- h. Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

**Section 2.040. ZONING MAP:** A zoning map or zoning map amendment adopted by Section 9.010 of this ordinance or by an amendment shall be prepared by staff and approved through ordinance by the City Council. The map or map amendment shall be dated with the effective date of the ordinance that adopts the Comprehensive Plan or Zoning Ordinance amendment. A certified print of the adopted map or map amendment shall be maintained in the office of the City Recorder as long as this ordinance remains in effect.

**Section 2.050. ZONE BOUNDARIES:** Unless otherwise specified, zone boundaries are section lines; subdivision lines; lot lines; center lines of street or railroad right of way or such lines extended.

**Section 2.060. ZONING OF ANNEXED AREAS:** Areas annexed to the City shall be the same as the County Zoning designation until the City zones it otherwise.

### ARTICLE 3 USE ZONES

**Section 3.010. MEDIUM-DENSITY RESIDENTIAL ZONE (R-1):** Purpose: The R-1 zone is intended to provide an area of primarily single family homes, duplexes and manufactured homes, with apartments allowed as a conditional use.

1. *Uses Permitted Outright:* In an R-1 zone, the following uses are permitted outright subject to the standards and criteria of subsection 3 below.

- A. Single-family dwellings, including modular housing.
- B. Duplexes or two family dwellings.
- C. Manufactured dwelling.
- D. Home occupations.
- E. Public parks and playgrounds.
- F. Family day care center.
- G. Residential home.
- H. Manufactured dwelling or recreational vehicle used during the construction of a permitted use for which a building permit has been issued, but not to exceed six months duration.
- I. Certain transportation facilities as defined in Sec. 1.030, specifically:

13 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

- (1) Normal operation and maintenance of transportation facilities;
- (2) Installation of transportation improvements within the existing right-of-way;
- (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
- (4) Landscaping as part of a transportation facility;
- (5) Emergency transportation facility measures;
- (6) Street or road construction as part of an approved subdivision or partition.

J. Storage of up to two boats and associated trailers, or two utility trailers, or a combination of one utility trailer and one boat with trailer, licensed by the property owner can be stored on a R-1 zoned lot if they:

- (1) are placed on the portion of the lot farthest from the street;
- (2) are placed on material such as a concrete pad, bark dust, gravel or similar packed material to assist with drainage;
- (3) do not contain or used to store any hazardous materials (except gasoline in the primary tank);
- (4) are not used for permanent or temporary habitation;
- (5) are no longer than 24-feet;
- (6) are removed from the property for repair;
- (7) the storage site and vehicles are approved by staff prior to use via a permit application. The use must be reviewed on an annual basis.

K. Accessory dwelling. An accessory dwelling is a small, secondary unit on a single-family lot, usually the size of a studio apartment. The additional unit can be a detached cottage, a unit attached to a garage, or in a portion of the existing house. See section 4.080 for standards pertaining to Accessory dwellings.

2. *Conditional Uses Permitted:* In an R-1 zone, the following uses are permitted subject to the provisions of Article 6, and subsection 3 below.

- A. Multifamily dwellings
- B. Manufactured dwelling parks.
- C. Schools, churches and community buildings
- D. Planned unit developments in accordance with Article 10.

14 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

uses such as stores, banks and offices in the central area of town. Large land users are intended to be located on the fringes of the commercial zone.

1. *Uses Permitted Outright:* In a C-1 zone the following uses and their accessory uses are permitted outright subject to the standards of subsection 3 below.

A. Primary retail activities, such as shops or stores engaged in the sale of retail merchandise, except establishments selling automobiles, manufactured dwellings or other large merchandise.

B. Consumer services such as banks, barber and beauty shops, repair shops, printing shops, laundries.

C. Eating and drinking establishments.

D. Indoor amusement activities and bowling alleys.

E. Business, government and professional offices.

F. Residential uses may be permitted within the Commercial Zone only when approved as part of a mixed use development. Mixed-use developments may include housing above non-residential uses (e.g., apartment lofts above offices), or housing side-by-side with non-residential uses. All mixed use developments shall comply with the following standards:

(1) No more than fifty percent of the ground floor space on each lot or parcel may be used for housing. A greater percentage may be approved for housing as part of a Master Planned Development when the master plan provides for development of more than one lot/parcel, and the overall percentage of ground floor space does not exceed fifty percent residential use for the entire site.

(2) The maximum allowable density shall not exceed 12 units per acre.

G. Motels, hotels and tourist housing.

H. Churches, libraries or community meeting halls.

I. Health facilities such as clinics, nursing homes.

J. Arts and crafts studios or galleries.

K. Bus depot.

L. Parks and publicly owned recreation areas.

M. Family day care center and day care center.

N. Single family residences established prior to July 1, 1996.

I. Accessory structures.

O. Certain transportation facilities as defined in Sec. 1.030, specifically:

(1) Normal operation and maintenance of transportation facilities;

(2) Installation of transportation improvements within the existing right-of-way;

(3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;

(4) Landscaping as part of a transportation facility; and

(5) Emergency transportation facility measures.

P. Street or road construction as part of an approved subdivision or partition.

2. *Conditional Uses Permitted:* In a C-1 zone, the following conditional uses and accessory uses are permitted subject to the requirements of subsection 3 below, and Article 6.

A. Service stations, car lots, lumber yards, manufactured dwellings dealerships, public or private parking facilities, boat dealers, farm equipment dealers.

B. Cabinet or woodworking shops, plumbing, heating, electrical, paint or other contractor storage, repair or sales shops.

C. Wholesale warehouse or distribution establishments.

D. Tire re-treading, welding or machine shops.

E. Recreational vehicle park.

F. Mini-storage establishments.

G. Triplex or multifamily dwellings, subject to Section 4.042.

H. Telecommunication facilities.

- C. Certain transportation facilities as defined in Sec. 1.030, specifically:
  - (1) Transportation projects that are not designated improvements in the Transportation System Plan; and
  - (2) Transportation projects that are not designed and constructed as part of an approved subdivision or partition.
- 3. *Standards:* In an I-1 zone, the following standards shall apply:
  - A. *Lot Size:* No minimum lot size.
  - B. *Yards and Setbacks:* Industrial uses abutting a WD-1 or WD-2 zone shall be set back from the adjoining zone a minimum of 10 feet.
  - C. *Buffers and Landscaping:* Industrial uses shall establish a sight-obscuring fence or hedge around outdoor storage areas where such storage areas abut a WD-1 or WD-2 zone.
  - D. *Building Height:* Maximum building height shall be 30 feet.
  - E. All uses shall meet the noise, air quality and water quality requirements of the State Department of Environmental Quality (DEQ).
  - F. All uses shall meet the parking and sign requirements of this ordinance.
  - G. Estuary and Shoreland Standards contained in Section 4.110 shall apply.

**Section 3.050. WATER-DEPENDENT DEVELOPMENT ZONE (WD-1):** Purpose: The WD-1 zone is intended to provide an area in which primarily water dependent and water related uses are located for the support of the marine industry.

- 1. *Uses Permitted Outright:* In a WD-1 zone, the following uses are permitted subject to the standards and criteria of subsection 3 below.
  - A. Low intensity recreation, such as viewpoints or fishing areas.
  - B. Navigational aids.
  - C. Maintenance and repair of existing structures and facilities.
  - D. Water-dependent industrial uses including but not limited to:
    - (1) Land-based portions or piers, wharfs, and other terminal and transfer facilities for passengers or water-borne commerce such as fish, shellfish,

- timber or timber products, metal and port activities associated with such facilities;
- (2) Water intake and discharge facilities;
- (3) Facilities for the extraction of minerals, aggregate, petroleum, natural gas, earth products or geothermal resources (as defined by subsection 4. of ORS 533.10) which require access to water during the extraction procedure;
- (4) Water access structure or facilities which require access to a water body as part of the manufacture, assembly, fabrication or repair of marine equipment, due to the size or nature of the craft or equipment;
- (5) Seafood receiving and processing;
- (6) Other water-dependent uses.
- E. Water-dependent commercial uses, including but not limited to:
  - (1) Commercial marinas, docks and moorages and support facilities;
  - (2) Other water-dependent commercial uses.
- F. Water-dependent recreational facilities including private docks, moorages and waterfront parks.
- G. Water-dependent portions of aquaculture facilities.
- H. Structural shoreline stabilization.
- I. Landfalls and access corridors for submerged cable, sewer line, water line or other pipe line crossing.
- J. New dike construction, if required for a water-dependent use.
- K. A temporary use that involves minimal capital investment and no permanent structure or a use in conjunction with and incidental to a water-dependent use. Temporary uses shall comply with the following standards:

- (1) **Time Limit.**  
Authorization for a temporary use shall be valid for a period of (1) year after issuance. Prior to expiration, the applicant may request an extension. The Planning Commission, at its discretion, may extend authorization for an additional period of up to one year. In extending a temporary use, the Planning Commission may impose any conditions that it deems necessary to protect the interests of the community.
- (2) **Security.**

applied:

- (1) *Water Dependent:* A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water borne transportation, recreation, energy production or source of water;
  - (2) *Water Related:* Uses and activities that do not require direct water access (are not water dependent), but which:
    - a. Provide goods and/or services that are directly associated with other water dependent uses (supplying materials to, or using products of, or water dependent use), and
    - b. If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use).
- F. *Building Height:* Maximum building height shall be 30 feet.

G. *Agency Notification:* The following agencies shall be notified of proposed conditional uses and activities in the WD-1 zone:

The Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Wildlife Service, National Marine Fisheries, Environmental Protection Agency, U.S. Army Corps of Engineers and the Port of Garibaldi.

**Section 3.060. WATERFRONT DEVELOPMENT SUPPORT ZONE (WD-2):** Purpose: The WD-2 zone is intended to provide backup area for waterfront uses, and a location for non- water dependent and water-related uses in a waterfront setting.

1. *Uses Permitted Outright:* In a WD-2 zone, the following uses are permitted subject to the standards of subsection 3 below.
  - A. Uses permitted outright in a WD-1 zone.
  - B. Water-related industrial uses.
  - C. Water-related commercial uses.
  - D. Equipment, boat and trailer storage areas.
  - E. Certain transportation facilities as defined in Sec. 1.030, specifically:

- (1) Normal operation and maintenance of transportation facilities;
- (2) Installation of transportation improvements within the existing right-of-way;
- (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
- (4) Landscaping as part of a transportation facility;
- (5) Emergency transportation facility measures;
- (6) Street or road construction as part of an approved subdivision or partition.

F. Residential uses may be permitted within the WD-2 Zone when approved as part of a mixed use development, multi-family development or Planned Unit Development. Mixed-use developments may include housing above non-residential uses (e.g., apartment lofts above offices), or housing side-by-side with non-residential uses. All mixed use developments shall comply with the following standards:

- (1) No more than fifty percent of the ground floor space on each lot or parcel may be used for housing. A greater percentage may be approved for housing as part of a Master Planned Development when the master plan provides for development of more than one lot/parcel, and the overall percentage of ground floor space does not exceed fifty percent residential use for the entire site.
- (2) The maximum allowable density shall not exceed 12 units per acre.

2. *Conditional Uses Permitted:* In a WD-2 zone, the following uses are permitted subject to the provisions of Article 6, and subsection 3 below.

- A. Hotels or motels.
- B. Multi-family developments.
- C. Non-water dependent or related commercial uses.
- D. Support activities and uses necessary for marine industry and/or water-related recreation, including but not limited to:
  - (1) Recreation vehicle parking areas and camp grounds;
  - (2) Parking lots;
  - (3) Other accessory structures related to and necessary for operation of marine industrial and marine recreational uses.

necessary federal, state and local dredging and spoil disposal permits (approximately 90 days).

4. *Removal of Dredged Material Disposal Site Designation:* Sites may be removed by an amendment to the Comprehensive Plan and Zoning Ordinance in the following situations:

A. After a dredged material disposal site has been filled to capacity and is no longer available for additional dredged material disposal.

B. Removal of a dredged material disposal site designation before a site has been filled to capacity only if:

- (1) Provision is made for a replacement dredged material disposal site of suitable characteristics; or
- (2) The dredging need, for which the Priority I site was initially designated for dredged material disposal, is withdrawn or reevaluated.

5. *Agency notification:* The following agencies shall be notified of proposed uses and activities in the DMD overlay zone: The Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U.S. Fish and Wildlife Service, Environmental Protection Agency, U.S. Army Corps of Engineers and the Port of Garibaldi.

**Section 3.075. SENSITIVE BIRD HABITAT OVERLAY ZONE:**

1. *Purpose.* The purpose of the Sensitive Bird Habitat Overlay Zone is to ensure that habitat areas identified as critical for the Great Blue Heron, is protected from the effects of conflicting uses or activities. This objective shall be achieved through the development of site-specific management plans that ensure that proposed uses and activities will neither destroy or result in the abandonment of sensitive bird habit areas.

2. *Definition of Nest Sites.* All Great Blue Heron rookeries, identified in the Comprehensive Plan shall be subject to the requirements of the Sensitive Bird Habitat Overlay Zone. When additional sites are identified by the Oregon Department of Fish and Wildlife they shall be added to the Comprehensive Plan, and become subject to the requirements of the Sensitive Bird Habitat Overlay Zone.

3. *Development and Uses Permitted.* Uses permitted in the underlying zone(s) are permitted or conditionally permitted in the Sensitive Bird Habitat Overlay Zone subject to the additional procedure and requirements of Section 3.075(4). The Overlay Zone does not regulate forest practices. Requirements of the Forest Practices Act will be applied to sensitive bird habitat located on forest lands outside the urban growth boundary through

the requirements of the Oregon Department of Forestry.

4. *Development and Use Criteria.* The following review procedure and criteria shall apply:

A. The review procedure is initiated when Garibaldi receives a request for a permit that may affect a sensitive bird habitat.

B. A proposed use or activity involving road building or land clearing is considered to have the potential for affecting a sensitive bird habitat if it is located within 600 feet of a heron rookery. All other uses or activities are considered to have the potential for affecting a sensitive bird habitat if it is located within 300 feet of a heron rookery.

C. If a proposed use or activity meets the locational criteria of subsection 3.075(4)(B), Garibaldi shall notify the Oregon Department of Fish and Wildlife and the person proposing the use or activity.

D. Upon notification, the Oregon Department of Fish and Wildlife shall review the proposed use or activity and make a determination of whether the use or activity has the potential for adversely affecting a sensitive bird habitat area. In making this review and determination the Oregon Department of Fish and Wildlife shall consult with the affected landowner(s), the City of Garibaldi and appropriate state agencies. The determination shall be completed within ten working days of the receipt of notice from Garibaldi.

E. If the Oregon Department of Fish and Wildlife determines that the sensitive habitat will not be affected, it shall so notify the City of Garibaldi and the City may proceed with the processing of the permit application.

F. If the Oregon Department of Fish and Wildlife determines that a sensitive habitat would be affected, the person proposing the use or activity shall prepare a site-specific habitat protection plan. The plan shall demonstrate that the proposed development can be accomplished without conflicting with or jeopardizing the sensitive bird habitat area. The plan shall consider nesting trees, critical nesting periods, roosting sites and buffer areas. The habitat protection plan shall be prepared in cooperation with, and approved by, the Department of Fish and Wildlife.

G. The City shall incorporate the requirements of the Oregon Department of Fish and Wildlife approved habitat protection plan into any action it takes on the proposed development.

**Section 3.080. ESTUARY ZONES--GENERAL USE PRIORITIES AND AREAS INCLUDED:**

values, public facilities and uses existing as of October 7, 1977, and uses allowed by this zone.

- C. Water, sewer, gas or phone lines.
- D. Electrical distribution lines and line support structures.
- E. Active restoration and estuarine enhancement.
- F. Temporary low water bridges.
- G. Temporary alterations.
- H. Boat ramps for public use where no dredging or fill for navigational access is needed.
- I. Water intake structures for out-bay aquaculture.
- J. Transportation facilities as defined in Sec. 1.030, specifically:
  - (1) Normal operation and maintenance of transportation facilities;
  - (2) Installation of transportation improvements within the existing right-of-way;
  - (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
  - (4) Landscaping as part of a transportation facility;
  - (5) Emergency transportation facility measures;
  - (6) Street or road construction as part of an approved subdivision or partition;
  - (7) Transportation projects that are not designated improvements in the Transportation System Plan; and
  - (8) Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

4. *Regulated Activities:* The following regulated activities are permitted within the EN zone, provided that the requirements of Section 4.110 have been met. Regulated Activities shall be reviewed by the procedure provided in Section 4.120.

A. Regulated activities for the purpose of on-site maintenance and repair of existing structures or facilities, limited to:

- (1) Dredging for on-site maintenance of:

- a. Drainage tiles;
- b. Drainage ditches;
- c. Tide gates;
- d. Bridge crossing support structures;
- e. Water, sewer, gas or phone lines;
- f. Electrical distribution lines;
- g. Outfalls.
- (2) Fill or rip-rap for on-site maintenance of:
  - a. Dikes
  - b. Bridge crossing support structures or other land transportation
- (3) Replacement of piling.
- B. Rip-rap for structural shoreline stabilization and protection of uses allowed in this zone.
- C. Piling installation for:
  - (1) Navigational aids;
  - (2) Aquaculture facilities;
  - (3) Bridge crossing support structures;
  - (4) Public boat ramps.
- D. Dredging for installation of:
  - (1) Water, sewer, gas or communication lines;
  - (2) Electrical distribution lines;
  - (3) Tide gates in existing dikes adjacent to EN zones;
  - (4) Water intake facilities.
- E. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.
- F. Regulated activities in conjunction with temporary alterations.
- G. Fill for installation of public boat ramps or bridge crossing support structures.
- H. Incidental dredging for harvest of benthic species or removal of in- water

- D. Storm water and treated sewer outfall;
- E. Bulkheads for structural shoreline stabilization;
- F. Temporary alterations;
- G. Minor navigational improvements.
- H. Transportation facilities as defined in Sec. 1.030, specifically:
  - (1) Normal operation and maintenance of transportation facilities;
  - (2) Installation of transportation improvements within the existing right-of-way;
  - (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
  - (4) Landscaping as part of a transportation facility;
  - (5) Emergency transportation facility measures;
  - (6) Street or road construction as part of an approved subdivision or partition;
  - (7) Transportation projects that are not designated improvements in the Transportation System Plan; and
  - (8) Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

4. *Regulated Activities:* The following regulated activities are permitted within the EC-1 zone, provided that the requirements of Section 4.110 have been met. Regulated Activities shall be reviewed by the procedure provided in Section 4.120.

A. Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:

- (1) Dredging for on-site maintenance of:
  - a. Drainage tiles.
  - b. Drainage ditches.
  - c. Tide gates.
  - d. Bridge crossing support structures.
  - e. Water, sewer, gas or phone lines.
  - f. Electrical distribution lines.
  - g. Outfalls.

- (2) Fill or rip-rap for on-site maintenance of:
  - a. Dikes.
  - b. Bridge crossing support structures or other land transportation facilities.
- (3) Replacement of Piling, Piling installation for:
  - a. Water-dependent recreational facilities.
  - b. Aquaculture facilities.
  - c. Navigational aids.
  - d. Bridge crossing support structures or other land transportation facilities.
  - e. Bulkheads.
- C. Rip-rap for structural shoreline stabilization and protection of uses allowed by this zone.
- D. Dredging for:
  - (1) Bridge crossing support structure installation.
  - (2) Storm water or treated sewage outfall installation.
  - (3) Tide gate installation in existing functional dikes adjacent to EC-1 zones.
  - (4) Water, sewer, gas or phone line installation.
  - (5) Electrical distribution line installation.
  - (6) Mining or mineral extraction.
  - (7) Water intake facilities.
  - (8) Boat ramps.
  - (9) Minor navigational improvements.
  - (10) Water-dependent portions of aquaculture facilities.
- E. Fill for:
  - (1) Bridge crossing support structures.
  - (2) Structural shoreline stabilization.
  - (3) Boat ramps.
  - (4) Water-dependent portions of aquaculture facilities.
- F. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project.

seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area.

C. Water-dependent industrial facilities not requiring the use of dredging or fill, including:

- (1) Piers, wharfs and other terminal transfer facilities for passengers or water-borne commerce, such as fish, shellfish, metal, timber or timber products.
- (2) Water intake and discharge structures.
- (3) Water access structures of facilities that require access to a water body as part of the manufacturing, assembly, fabrication or repair of marine craft or marine equipment, due to the size of the craft or equipment.

D. Other water-dependent uses not requiring the use of dredging or fill. A use is determined to be water-dependent when it can be carried out only on, in or adjacent to water, and the location or access is needed for:

- (1) Water-borne transportation.
  - (2) Recreation.
  - (3) A source of water (such as energy production, cooling of industrial equipment or waste water, or other industrial processes).
- E. Navigational structures, limited to floating breakwaters.
- F. Mining and mineral extraction.
- G. Storm water and sewer outfalls.
- H. Bulkheads for structural shoreline stabilization.
- I. Water-dependent portions of aquaculture facilities requiring dredging or fill.
- J. Temporary alteration.
- K. Minor navigational improvements.
- L. Transportation facilities as defined in Sec. 1.030, specifically:
- (1) Normal operation and maintenance of transportation facilities;
  - (2) Installation of transportation improvements within the existing right-of-

way;

- (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
- (4) Landscaping as part of a transportation facility;
- (5) Emergency transportation facility measures;
- (6) Street or road construction as part of an approved subdivision or partition;
- (7) Transportation projects that are not designated improvements in the Transportation System Plan; and
- (8) Transportation projects that are not designed and constructed as part of an approved subdivision or partition.

4. *Regulated Activities:* The following regulated activities are permitted within the EC-2 zone, provided that the requirements of Section 4.110 have been met. Regulated Activities shall be reviewed by the procedure provided in Section 4.120.

A. Regulated Activities in association with on-site maintenance and repair of existing structures or facilities limited to:

- (1) Dredging for on-site maintenance of:
    - a. Drainage tiles.
    - b. Drainage ditches.
    - c. Tide gates.
    - d. Bridge crossing support structures.
    - e. Water, sewer, gas or phone lines.
    - f. Electrical distribution lines.
    - g. Outfalls.
  - (2) Fill or rip-rap for on-site maintenance of:
    - a. Dikes.
    - b. Bridge crossing support structures or other land transportation facilities.
    - c. Shoreline stabilization structures.
  - (3) Replacement of pilings.
- E. Fill for:
- (1) Bridge crossing support structures.
  - (2) Structural shoreline stabilization.

R. Other water-dependent uses: A use is determined to be water-dependent when it can be carried out only on, in or adjacent to water, and the location or access is needed for:

- (1) Water-borne transportation;
- (2) Recreation;
- (3) A source of water (such as energy production, cooling of industrial equipment or waste water, or other industrial processed).

3. *Conditional Uses:* The following uses are conditional within the ED zone, and may be permitted by the Planning Commission subject to the provisions of Article 6, the procedures of Section 4.120 and the development standards in Section 4.110, and only after a finding that the proposed facility does not preclude or unduly conflict with water-dependent use on the site or in the adjacent water-dependent development shorelands.

A. Water related industrial uses not requiring the use of fill, including but not limited to:

- (1) Fish or shellfish processing plants.
- (2) Warehouse and/or other storage areas for marine equipment or water borne commerce.

B. Water-related commercial uses not requiring the use of fill, including but not limited to:

- (1) Fish or shellfish retail or wholesale outlets.
- (2) Marine craft or marine equipment sales establishments.
- (3) Sport fish cleaning, smoking or canning establishments.
- (4) Charter fishing offices.
- (5) Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water dependent use.
- (6) Restaurants which provide waterfront views and are in conjunction with a water-dependent or water-related use such as a seafood processing plant or charter office.

C. In-water sorting, storage and handling of logs in association with water-borne transportation of logs.

D. Other water-related uses not requiring the use of fill. A use is determined to be water-related when the use:

- (1) Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses).
- (2) If not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality will involve a subjective consideration of economic, social and environmental consequences of the use.

E. Accessory uses or structures in conjunction with a conditional use listed in A-D above, limited in size to a maximum of 10% of the lot or parcel size.

F. Mining and mineral extraction.

G. Storm water and sewer outfalls.

H. Non-water dependent and non-water related uses not requiring the use of fill.

I. New dike construction if:

J. Temporary alterations

- (1) Required for a water-dependent use for which there is a public need and for which no practicable upland locations exist.
- (2) Adverse impacts are avoided or minimized to be consistent with the resource capabilities and purposes of the area.

K. Transportation facilities as defined in Sec. 1.030, specifically:

- (1) Normal operation and maintenance of transportation facilities;
- (2) Installation of transportation improvements within the existing right-of-way;
- (3) Projects identified in the adopted Transportation System Plan not requiring future land use review and approval;
- (4) Landscaping as part of a transportation facility;
- (5) Emergency transportation facility measures;
- (6) Street or road construction as part of an approved subdivision or partition;
- (7) Transportation projects that are not designated improvements in the

4. *Procedure.* The requirements of the Hillside Overlay Zone shall be met prior to the issuance of a building permit. The requirements of this Section shall also be met in conjunction with any request for approval of a subdivision, or a major, or minor partition, or planned unit development. Where the requirements of the Hillside Overlay Zone are met as part of the review and approval of a subdivision, major partition, or minor partition, or planned unit development, no further review, prior to the issuance of a building permit, will be required for property located within an approved subdivision, major partition or minor partition, or planned unit development.

5. *Development and Use Criteria.*

A. The City Planner, at the direction of the City Council, shall require the following reports to be provided by an applicant who proposes to develop land within the Hillside Overlay Zone. The cost of all reports shall be borne by the applicant.

- (1) *Geologic Site Investigation.* This report shall include an adequate description, as defined by the Building Official, of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and recommendations on specific engineering or construction methods which will eliminate or minimize to an acceptable level any identified geologic hazards. The report shall be prepared by a registered geologist.
- (2) *Grading Plan.* This plan shall include the following information:
  - a. Existing and proposed contours (five-foot intervals) of property;
  - b. Details of terrain and area drainage;
  - c. Location of any existing buildings or structures on the property where the work is to be performed, the location of any existing buildings or structures on land of adjacent owners that are within 15 feet of the property or that may be affected by the proposed grading operations, and proposed or approximate locations of structures relative to adjoining topography;
  - d. The direction of drainage flow and the approximate grade of all streets;
  - e. Limiting dimensions, elevations, or finish contours to be achieved by the grading, including all cut and fill slopes, proposed drainage channels, and related construction; and
  - f. Detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, storage reservoirs, and other protective devices to be constructed with, or as a part of, the proposed work, together with a map showing drainage area, the complete drainage network, including outfall lines and natural drainage ways which may be affected by the proposed development, and the estimated runoff of the area served by

the drains.

The grading plan shall be prepared by a registered civil engineer.

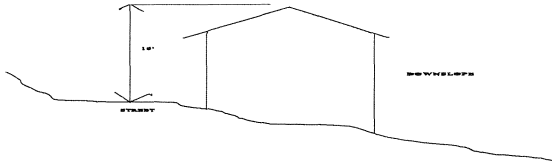
- (3) *Erosion Control Plan.* This plan shall describe measures to be taken to stabilize slopes and minimize soil erosion during construction.

B. The following requirements are applicable to geologic site investigations:

- (1) The burden of proof shall be upon the applicant to show construction feasibility in hazardous areas. A proposed use will only be permitted where:
  - a. The site investigation indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity.
  - b. The site investigation specifies engineering or construction methods that will eliminate or minimize to an acceptable level the identified hazard.
- (2) Where a site investigation report concludes that an engineering solution will solve an indicate problem, the Building Official shall require that the additional standards and requirements set forth in the geologic hazard report be a requirement of the building permit.
- (3) Where the proposed development includes grading, the site investigation report shall include conclusions and recommendations concerning grading procedures as well as conclusions and recommendations concerning the adequacy of sites and streets to be developed by the proposed grading.
- (4) The City Planner may recommend to the City Council/Planning Commission an independent review of the site report, particularly where the geologist or engineer has a financial interest in the property to be developed. The Council/Commission may require the preparation of such a report prior to issuance of a building permit. The cost of the independent review shall be borne by the property owner or developer.
- (5) The degree of protection from problems caused by geologic hazards required by this section is considered reasonable for regulatory purposes. This Ordinance does not imply that uses permitted will be free from geologic hazards. This Ordinance shall not create liability on the part of the City or by any officers, employee or official thereof for any damages due to geologic hazards that result from reliance on this Ordinance or any administrative decision lawfully made.

C. The following requirements are applicable to activities undertaken in conjunction with a grading plan.

- (1) *Cuts.*



(Note: Measurements shall be taken at the midpoint of the structure at its highest point perpendicular to the street.)

J. Uncovered vehicle access structures such as bridges may be located in the front yard setback.

**Section 3.130. LIMITED USE OVERLAY (LUO) ZONE:**

1. *Purpose:* To regulate the timing or size of development of a specific parcel of land or to define the uses allowable on a specific parcel of land more narrowly than allowed by the underlying zone.
2. *Application.*
  - A. Uses permitted in the underlying zone shall be limited to those uses specifically referenced in the Limited Use Overlay.
  - B. The following limitations shall apply to application of the Limited Use Overlay:
    - (1) The application of the Limited Use Overlay is consistent with policies of the Comprehensive Plan.
3. *Procedure.*
  - A. The Limited Use Overlay shall be applied through the zone change process at the time the underlying zone is changed.
  - B. The order adopting the zone change involving a “reasons” exception shall specify the permitted use(s) approved and shall specify the application of the Limited Use Overlay.
  - C. The permitted use, or description thereof, shall be qualified as necessary to achieve the intent of the Limited Use Overlay.
4. *Official Plan/Zoning Map.* The official plan/zoning map shall be amended to note the application of the Limited Use Overlay to the applicable parcel.
5. *Other Requirements.*
  - A. In addition to limiting the uses permitted through the zone change, site plan approval shall be required to ensure compatibility of the use(s) allowed with other existing uses in the area.
  - B. Site plan requirements may be added by specific reference to the adopting order.
  - C. All other requirements of the underlying zone remain in effect unless specifically altered by site plan approval incorporated in the adopting order.

aesthetic character of Garibaldi.

2. *Conformance:* No sign may be erected unless it conforms with the regulations of this section. Sign permits, as required by Section 4.050 (5) must be approved prior to the placement of the sign.

3. *Exempt Signs:* The following signs are exempt from the provisions of this Section:

A. Signs within a building not intended to be visible from the exterior of a building.

B. Signs legally erected in a street right-of-way.

C. Three flags of national or state governments.

4. *General Sign Regulations:* The following general provisions shall govern all signs, in addition to all other applicable provisions pertaining to signs:

A. *Sign Face Area.*

(1) The area of sign faces enclosed in frames or cabinets is determined by the outer dimensions of the frame or cabinet surrounding the sign. Sign area does not include foundations, supports and other essential structures that do not serve as a backdrop or border to the sign. Only one side of a double-faced sign is counted in measuring the sign face area. (To be considered a double-faced sign, the sides of the sign must be flush.)

(2) When signs are constructed of individual pieces the sign area is determined by a perimeter drawn around all the individual pieces taken.

(3) For sign structures containing multiple sign modules oriented in the same direction, the sum of the sign area of the individual sign modules are counted as one sign face.

(4) The area of a sign shall be determined according to the following:

- a. Rectangle or square: length x width.
- b. Triangle: length x width divided by two.
- c. Circle:  $3.14 \times R^2$ , where R is the sign's radius.
- d. Oval: the area contained within a rectangle whose length times width does not exceed 30 square feet.
- e. The City shall measure other sign shapes, not listed above, according to the formula it determines to be most appropriate.

B. *Height of Signs.* Signs shall conform to the height requirement of the zone in

which they are located. The height of a sign or sign supporting structure is measured from the existing grade directly below the sign to the highest point of the sign or sign supporting structure.

C. *Clearances.* Clearances are measured from the existing grade directly below the sign to the bottom of the sign structure enclosing the sign face.

D. *Sign Placement.*

(1) *Placement.* All signs and sign structures shall be erected and attached totally within the site except where permitted to extend into a street right-of-way.

(2) *Frontages.* Signs allowed based on the length of one site frontage may be placed on another site frontage.

(3) *Vision Clearance Areas.* No sign may be located within a vision clearance area as defined in Section 4.020.

(4) *Vehicle Area Clearances.* When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure shall be at least 14 feet above the ground. Vehicle areas include driveways, parking lots, and loading and maneuvering areas.

(5) *Pedestrian Area Clearances.* When a sign extends over sidewalks, walkways or other spaces accessible to pedestrians, the bottom of the sign structure shall be at least 8 feet above the grade.

(6) *Projecting Signs.* Signs shall not project into a public right-of-way, except over a sidewalk. Where a sign projects over a sidewalk, it may project within two feet of the outside edge of the sidewalk.

E. *Signs Not to Constitute a Traffic Hazard.* Signs or sign supporting structures shall not be located so as to detract from a motorist's view of vehicular or pedestrian traffic or a traffic sign.

F. *Glare.* All signs shall be so designed and located so as to prevent the casting of glare or direct light from artificial illumination upon adjacent publicly dedicated streets and surrounding public or private property.

G. *Prohibited Signs.* The following signs are prohibited:

(1) Signs that contain flashing elements.

(2) Signs that contain moving, rotating or otherwise animated parts.

H. *Maintenance.* All signs, together with their supporting structures, shall be kept in good repair and maintenance. Signs shall be kept free from corrosion, peeling paint or other surface deterioration. The display surfaces of all signs shall be kept in a

in a public right-of-way.

- (3) *Types of signs.* The following types of signs are permitted: permanent, freestanding, wall, projecting, window, awning, bench, sandwich board, reader board, temporary, incidental, and lawn signs.

B. *Medium Density Residential (R-1), and Resource Open Space (R-O) Sign Requirements.* For all lots in the R-1 and R-O zones, the following number, sizes, and types of signs are allowed. All allowed signs must also be in conformance with the regulations of Section 4.050 (3).

- (1) *Total Sign Square Footage Permitted.* The total square footage of signage associated with a lot shall not exceed 10 square feet.
- (2) *Individual Signs.* The maximum sign face area for an individual sign shall be no more than 6 square feet.
- (3) *Types of Signs Permitted.* The following types of signs are permitted: permanent incidental, freestanding, wall, projecting, window, temporary, and lawn signs.

C. *Estuarine Zones (EN), (EC-1), (EC-2), and (ED) Sign Requirements.* Signs shall be reviewed by the Planning Commission to determine the applicable site frontage to be used. After the site frontage determination, the standards of Section 4.050 (4) (A) shall be applied.

6. *Sign Permits:*

A. *Sign Permit Required.* A sign permit is required for the placement of any new permanent sign with a sign face area of four square feet or more or the alteration of the structure of an existing permanent sign in the C-1, I-1, WD-1, WD-2, ED, EC-1 or EC-2 zones. A structural building permit may be required in addition to a sign permit at the discretion of the Building Official.

B. *Required Information for a Sign Permit.* For purposes of review by the City, a scale drawing of the proposed sign shall be submitted. The drawing shall indicate the dimensions of the sign, location of the sign, any structural elements of the proposed sign, the size and dimensions of any other sign(s) located on the applicant's building or property, and the material of which the sign is to be constructed.

C. *Sign Permit Fee.* The fee for a sign permit shall be set by resolution.

7. *Variances:* Variances to the sign requirements of this section may be approved by the Planning Commission following the procedures of Article 11 where the Planning Commission finds that the variance meets the following criteria:

- A. The variance would permit the placement of a sign with an exceptional

design, or when there are exceptional circumstances applicable to the lot.

- B. The granting of the variance would not be detrimental to abutting properties.

- C. The granting of the variance would not create a traffic or safety hazard.

8. *Nonconforming Signs:* For the purpose of this section, a nonconforming sign shall be defined as a sign existing at the effective date of this section which could not be erected under the terms of this section. The following requirements shall apply to nonconforming signs (the requirements of Article 7 are not applicable):

- A. A nonconforming sign may continue to be used.

- B. No nonconforming sign may be enlarged in any manner.

- C. A nonconforming sign that is damaged or destroyed by any means other than the action of the owner of the sign may be replaced with a new sign provided that the new sign conforms to the dimensions of the previous sign.

9. *Abandoned Signs or Signs in Disrepair:* The city shall notify the owner of the real property, where a sign has been abandoned or allowed to fall into disrepair, and shall require reasonable repair, replacement, or removal within 30 days. If compliance does not occur, the city shall cause removal or repair of such signs, pursuant to the city's nuisance ordinance. Expenses incurred in the enforcement of the provision shall be paid by the owner of the real property from which it was removed.

10. *Administration and Enforcement:*

- A. The City shall provide each business license applicant with a current copy of its sign requirements.

- B. A business license must be obtained before any sign for a business may be erected.

- C. Signs may be transferable if the ownership of a business is changed.

**4.060 Automobile Parking Standards.**

**Sections:**

**4.061 Purpose**

**4.062 Applicability**

<b>Use Categories</b>	<b>Minimum Parking per Land Use</b> <i>(fractions rounded down to the closest whole number)</i>
	<i>Health Clubs, Gyms, Continuous Entertainment (e.g., bowling alleys): 3 space per 1,000 sq. ft.</i>
	<i>Lodging (hotels, motels, inns), (see also Bed and Breakfast Inns): 0.75 per rentable room; for associated uses, such as restaurants, entertainment uses, and bars, see above</i>
	<i>Theaters and Cinemas: 1 per 6 seats</i>
<i>Self-Service Storage</i>	<i>No standard</i>
<b>Industrial Categories</b>	
<i>Industrial Service (See also Drive-Up Uses)</i>	<i>1 space per 1,000 sq. ft. of floor area</i>
<i>Manufacturing and Production</i>	<i>1 space per 1,000 sq. ft. of floor area</i>
<i>Warehouse and Freight Movement</i>	<i>0.5 space per 1,000 sq. ft. of floor area</i>
<i>Waste-Related</i>	<i>per CU review</i>
<i>Wholesale Sales</i>	
- <i>fully enclosed</i>	<i>1 space per 1,000 sq. ft.</i>
- <i>not enclosed</i>	<i>per CU review</i>
<b>Institutional Categories</b>	
<i>Basic Utilities</i>	<i>None</i>
<i>[Colleges]</i>	<i>[per CU review</i>
<i>Community Service</i>	<i>1 space per 200 sq. ft. of floor area</i>
<i>Daycare, adult or child day care; does not include Family Daycare (12 or fewer children) under ORS 657A.250</i>	<i>1 space per 500 sq. ft. of floor area</i>
<i>Parks and Open Space</i>	<i>Determined per CU review for active recreation areas, or no standard</i>

<b>Use Categories</b>	<b>Minimum Parking per Land Use</b> <i>(fractions rounded down to the closest whole number)</i>
<i>Religious Institutions and Houses of Worship</i>	<i>1 space per 75 sq. ft. of main assembly area; or per CU review, as applicable</i>
<i>Schools</i>	<i>Grade, elementary, middle, junior high schools: 1 space per classroom, or per CU review</i>
	<i>High schools: 7 per classroom, or per CU review</i>
<b>Other Categories</b>	
<i>Accessory Uses (with a permitted use)</i>	<i>No standard, except some uses may be required to provide parking under the minimum standards for primary uses, as determined by the decision body through Land Use Review, Conditional Use Permit review, or Site Design Review.</i>
<i>Agriculture – Animals</i>	<i>None, or per CU review</i>
<i>Agriculture – Nurseries and similar horticulture</i>	<i>See Retail Sales and Wholesale, as applicable</i>
<i>Mining</i>	<i>Determined per CU review</i>
<i>Radio Frequency Transmission Facilities</i>	<i>None</i>
<i>Rail Lines and Utility Corridors, except those existing prior to effective date of Development Code are allowed.</i>	<i>None</i>
<i>Transportation Facilities (operation, maintenance, preservation, and construction [in accordance with the City's Transportation System Plan])</i>	<i>None</i>

B. *Vehicle Parking - Minimum Accessible Parking*

- (1) Accessible parking shall be provided for all uses in accordance the

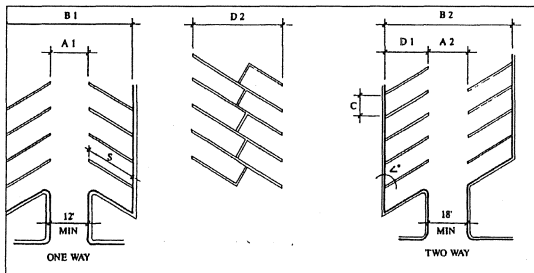
indicating that all parking on the site is available only for residents, customers, and/or employees. Signs shall conform to the standards of Section 4.050.

- (4) Lighting. Parking areas shall have lighting to provide at least 2 foot-candles of illumination over parking spaces and walkways. Light standards shall be directed downward only and shielded to prevent lighting spillover into any adjacent residential district or use.
- (5) Screening of Parking Areas. Parking spaces shall be located or screened so that headlights do not shine onto adjacent residential uses.

G. Parking Stall Design and Minimum Dimensions. All off-street parking spaces shall be improved to conform to City standards for surfacing, stormwater management, and striping. Standard parking spaces shall conform to the following standards and the dimensions in Figures 4.060 (3) "Parking Area Layout" and (4) "Disabled Person Parking Requirements", and Table 4.060 (6) "Minimum Required Bicycle Parking Spaces":

- (1) Motor vehicle parking spaces shall measure eight (8) feet six (6) inches wide by eighteen (18) feet long or by sixteen (16) feet long, with not more than a two (2) foot overhang when allowed;
- (2) All parallel motor vehicle parking spaces shall measure eight (8) feet six (6) inches by twenty-two (22) feet;
- (3) Parking area layout shall conform to the dimensions in Figure (3) and (4), and Table (5) "Parking Area Layout", below;
- (4) Parking areas shall conform to Americans With Disabilities Act (ADA) standards for parking spaces (dimensions, van accessible parking spaces, etc.). Parking structure vertical clearance, van accessible parking spaces, should refer to Federal ADA guidelines; and
- (5) Bicycle parking shall be on a two (2) feet by six (6) feet minimum concrete pad per bike, or within a garage or patio of residential use.

Figure 4.060 (3) - Parking Area Layout



5.1 – Variances

Use Categories	Specific Uses	Long-term Spaces (covered or enclosed)	Short-term Spaces (near building entry)
	Grades 6-12	2 per classroom, or per CU review	4 per school, or per CU review
Colleges	Excluding dormitories (see Group Living, above)	2, or 1 per 20,000 sq. ft. of net building area, or per CU review	2, or 1 per 10,000 sq. ft. of net building area, or per CU review
Medical Centers		2, or 1 per 70,000 sq. ft. of net building area, or per CU review	2, or 1 per 40,000 sq. ft. of net building area, or per CU review
Religious Institutions and Places of Worship		2, or 1 per 4,000 sq. ft. of net building area	2, or 1 per 2,000 sq. ft. of net building area
Daycare		2, or 1 per 10,000 sq. ft. of net building area	None
<b>Other Categories</b>			
Other Categories	Determined through Land Use Review, Site Design Review, or CU Review, as applicable		

B. *Exemptions.* This Section does not apply to single-family and multi-family housing (attached, detached, or manufactured housing), home occupations, agriculture and livestock uses.

C. *Location and Design.* Bicycle parking should be no farther from the main building entrance than the distance to the closest vehicle space, or 50 feet, whichever is less. Long-term (i.e., covered) bicycle parking should be incorporated whenever possible into building design. Short-term bicycle parking, when allowed within a public right-of-way, should be coordinated with the design of street furniture, as applicable.

D. *Visibility and Security.* Bicycle parking for customers and visitors of a use shall be visible from street sidewalks or building entrances, so that it provides sufficient security from theft and damage;

E. *Options for Storage.* Long-term bicycle parking requirements for multiple family uses and employee parking can be met by providing a bicycle storage room, bicycle lockers, racks, or other secure storage space inside or outside of the building;

F. *Lighting.* For security, bicycle parking shall be at least as well lit as vehicle parking.

G. *Reserved Areas.* Areas set aside for bicycle parking shall be clearly marked

and reserved for bicycle parking only.

H. *Hazards.* Bicycle parking shall not impede or create a hazard to pedestrians. Parking areas shall be located so as to not conflict with vision clearance standards (Section 3.1, Access and Circulation).

**5. Loading Areas.**

**Background:** The Loading Area provisions are typical, except that subsection E allows for the use of a street right-of-way loading area under certain conditions. This exception is meant to conserve land for employment uses, particularly in the downtown and main street zones. Some cities' codes prohibit vehicles backing onto a public right-of-way (except single family uses), so it is important to check for that restriction and allow reasonable exceptions.

A. *Purpose.* The purpose of this section is to provide standards (1) for a minimum number of off-street loading spaces that will ensure adequate loading areas for large uses and developments, and (2) to ensure that the appearance of loading areas is consistent with that of parking areas.

B. *Applicability.* Section 4.060 C7 applies to residential projects with 50 or more dwelling units, and non-residential and mixed-use buildings with 20,000 square feet or more total floor area.

C. *Number of Loading Spaces.*

(1) Residential buildings. Buildings where all of the floor area is in residential use shall meet the following standards:

- (a) Fewer than 50 dwelling units on a site that abuts a local street: No loading spaces are required.
- (b) All other buildings: One space.

(2) Non-residential and mixed-use buildings. Buildings where any floor area is in non-residential uses shall meet the following standards:

- (a) Less than 20,000 square feet total floor area: No loading spaces required.
- (b) 20,000 to 50,000 square feet of total floor area: One loading space.
- (c) More than 50,000 square feet of total floor area: Two loading spaces.

D. *Size of Spaces.* Required loading spaces shall be at least 35 feet long and 10 feet wide, and shall have a height clearance of at least 13 feet.

E. *Placement, setbacks, and landscaping.* Loading areas shall conform to the setback and perimeter landscaping standards in Articles 2 and 3. Where parking areas are prohibited between a building and the street, loading areas are also prohibited. The

5.1 – Variances

3. All other accessory structures, including attached or detached garages and guest houses without kitchen facilities, shall comply with the standards of the Zone in which they are located and with the Uniform Building Code.

4. In the Commercial (C-1) zone, accessory structures shall not be used for human habitation.

**Section 4.090. HOME OCCUPATIONS:** The home occupation provision is included in recognition of the needs of many people who are engaged in small-scale business ventures which could not be sustained if it were necessary to lease commercial quarters for them, or which, in the nature of the home occupation, cannot be expanded to full-scale enterprise.

It is the intent of this section that home occupations be allowed which are unobtrusive by nature, which do not cause disruption of the surrounding neighborhood or have an adverse effect on the adjacent properties or environment.

1. *Standards:* A home occupation shall mean any occupation or profession carried on by a person residing on the premises provided the following conditions are satisfied:

- A. No sign is used other than a nameplate not over ten square feet in area;
- B. There is no display of outside storage that would indicate that the lot is being used in whole or primarily for purposes other than residential;
- C. The lot, including the building, retains the characteristics of a residential zone.

2. *Complaint Procedures:* The Planning Commission shall review home occupations upon receipt of two written complaints from two separate households located within 250 feet of the boundary of the affected property, or a complaint from the city Building Official. Complaints shall set forth the nature of the objection. The complaints shall be considered by the Planning Commission at a public hearing. The hearing procedure shall be the same as outlined in Article 11.

Criteria for judging objections shall include:

- A. Generation of excessive traffic.
- B. Monopoly of on-street parking areas.
- C. Frequent deliveries and pickups by motor freight.

D. Noise in excess of that created by normal residential use (either in terms of volume or hours of occurrence).

E. Smoke, fumes, or odors in-excess of those created by normal residential use.

F. Other offensive activities not in harmony with a residential neighborhood.

3. *Action by the Planning Commission.* The Commission upon hearing the evidence may:

A. Approve the use as it exists.

B. Require the use to be terminated.

C. Impose appropriate restrictions, such as limiting hours of operation, establishing a phasing out of the use, or other measures insuring compatibility with the neighborhood.

D. The determination of the Commission becomes final 10 days after the date of decision unless appealed in accordance with Article 11.

**Section 4.095. BED AND BREAKFAST ESTABLISHMENTS:**

1. The number of guest bedrooms shall be limited to four.

2. The dwelling shall be owner occupied.

3. In addition to required off-street parking for the dwelling, one off-street parking space for each guest bedroom shall be provided. In residential zones only, boat trailers and other towed vehicles shall be prohibited from designated parking spaces.

4. Except as otherwise approved by the Planning Commission, in residential zones only, signs shall be limited to one non-illuminated sign not to exceed six square feet in area. The design, size and placement of the sign shall be approved by the Planning Commission.

5. In residential zones only, bed and breakfast establishments shall not be located within 200 foot radius of each other, when such placement would adversely affect the residential character, the property values, health, safety and welfare of the affected area.

6. Bed and breakfast establishments with more than two guest bedrooms shall be licensed and inspected by the State Health Division.

5.1 – Variances

H. The manufactured dwelling shall bear a HUD label of compliance with the Manufactured Housing Construction and Safety Standards Code verifying that the manufactured dwelling is not older than five years at the time of placement.

I. The owner of the property agrees, in writing, to remove the foundation and all additions to the manufactured dwelling and to permanently disconnect sewer, water and other utilities if the manufactured dwelling is removed from its foundation. The agreement authorizes the city to perform the work and to place a lien against the property for the cost of the work in the event the owner fails to accomplish the work within 90 days from the date on which the manufactured dwelling is moved from its foundation. This condition shall not apply in the event the manufactured dwelling is replaced on the original foundation, or on the original foundation as modified by another approved manufactured dwelling within 90 days of the original unit's removal.

**Section 4.106. MANUFACTURED DWELLING PARKS:**

1. Spaces in manufactured dwelling parks shall be sized as follows:

A. Spaces for double-wide units (units with a width of 16 feet or greater) shall be a minimum of 5,000 square feet.

B. Spaces for single-wide units (units with a width greater than eight feet) shall be a minimum 3,500 square feet.

C. Spaces for park model units (park model units are defined as small manufactured dwellings designed for permanent occupancy and do not include recreational vehicles) shall be a minimum of 3,000 square feet.

2. Manufactured dwellings shall be located within their designated spaces in such a way that there shall be a minimum of ten feet between manufactured dwellings or between any manufactured dwelling and any other building in the manufactured dwelling park other than structures accessory to an individual manufactured dwelling.

3. Manufactured dwellings shall be located a minimum of ten feet from any street or road and conform to the clear vision requirements of Section 4.020.

4. Manufactured dwellings shall be located no less than ten feet from any property line. The perimeter of the manufactured dwelling park shall be screened. This screening can take the form of a fence six feet in height or vegetation that attains a maximum mature height of eight feet.

5. Ingress points shall be located to minimize impact on any adjacent residential

uses.

6. Interior access drives shall be provided within the park, shall be continuous unless provided with adequate turn-around area or cul-de-sac, and shall have a minimum width of 24 feet.

7. All access drives within the manufactured dwelling park shall be surfaced according to standards established by the City.

8. Each manufactured dwelling space shall have a pad with adequate base, with crushed rock or better surface. The pad shall have a minimum area equal to that of the manufactured dwelling, which will be located on the space.

9. Off-street parking shall be provided with a minimum of two parking spaces for each manufactured space. Parking spaces shall be of crushed rock or better surfacing. Required access drives shall not be considered as fulfilling this requirement.

10. Provisions for storage shall be made as follows:

A. A storage building with a minimum floor area of 96 square feet shall be provided for each manufactured dwelling space; and

B. A centralized storage area for such items as boats, trailers and camping vehicles shall be provided. Such a storage area shall contain a minimum of 100 square feet for each manufactured dwelling space and be enclosed by a sight-obscuring fence or a vegetative buffer approved by the Planning Commission.

11. All manufactured dwelling parks shall be served by the City's sewer and water system. The design and layout of sewer and water lines is subject to the review and approval of the Superintendent of Public Works.

**Section 4.110. ESTUARY AND SHORELINE STANDARDS:**

1. *Aquaculture Facilities:*

A. Evidence shall be provided by the applicant and findings made by the City that aquaculture facilities do not prevent access to navigation channels, and that obstruction of access to publicly owned lands and recreation use areas is minimized.

B. Aquaculture facilities should be designed to minimize their visual impact (view obstruction). Whenever feasible, submerged structures are preferred over floating structures.

5.1 – Variances

3. *Docks and Moorages:*

A. Docks and Moorages policy requirements in the Garibaldi Comprehensive Plan shall be met.

B. When new construction or expansion of docks and moorages is proposed, evidence shall be provided by the applicant and findings made by the City that:

- (1) The size of the facility is the minimum necessary to accommodate the number and size of boats using the facility. Maximum size limit for single purpose private dock (excluding walkways) shall be 150 square feet.
- (2) Alternatives such as dry-land storage, launching ramps or mooring buoys are impracticable.

C. To ensure that consideration is given to the beneficial economic and social impacts or moorages on local communities, proposals for new or expanded moorages should include statements on the impacts to local communities derived from increases in employment or increases in commercial or recreational activity.

D. Open pile piers or secured floats shall be used for dock construction. Piers and floats shall extend no further out into the water than is needed to provide navigational access.

E. Floating docks shall be designed so that they do not rest on the bottom at low water.

F. Single purpose docks shall be permitted if evidence is provided by the applicant and findings made by the City that cooperative use facilities (marinas or community docks or mooring buoys) are unavailable, impractical or will not satisfy the need.

G. Covered or enclosed moorages shall be limited to 10% (in number) of the total moorage spaces of a given moorage.

H. To avoid contamination of estuarine waters, intertidal areas or tidal wetlands, public docks and moorages should provide enclosed facilities on shorelands for public dumping of oil and emptying of holding tanks.

I. When docks and moorages are proposed in Estuary Conservation 1 or Estuary Conservation 2 zones, evidence shall be presented by the applicant and findings made by the City that the proposed dock or moorage is consistent with the

resource capabilities of the area and the long-term use of renewable resources and does not constitute a major alteration to the estuary. In assessing the resource capabilities of an area, consideration shall be given to the size or intensity of the proposed facility, and its location with respect to adjacent resources.

J. Docks and moorages in shoreland zones or other areas within the Shoreland Overlay zone shall be subject to shoreland development standards. *[NOTE: The Shoreland Overlay Zone originally in Ord. 107 was deleted by Ord. 170, enacted 2/13/90, eff. upon passage; what was the Shoreland Overlay Zone became the Dredge Material Disposal Overlay Zone, with more limited uses.]*

K. Moorages with a capacity greater than 25 boats shall be subject to port facility and marina standards.

L. Dredging, fill, piling/dolphin installation, shoreland stabilization or other activities in conjunction with the construction of docks and moorages shall be subject to the respective standards for these activities.

4. *Dredge Material Disposal:*

A. Dredged material disposal shall occur only in approved dredged material disposal sites, or for fill of development sites that have received appropriate local, state and federal permits. All dredged material disposal policy requirements and fill standards shall apply.

B. State and federal water quality standards shall be met during all phases of dredged material disposal. Water quality policies shall apply.

C. The timing of dredged material disposal shall be coordinated with state and federal resource agencies to ensure adequate protection of wildlife habitat, bird nesting areas, fish runs and fish spawning activity and to minimize interference with fishing activities.

D. Ocean disposal of dredged material shall be permitted only in an ocean disposal site approved by the U.S. Army Corps of Engineers and the Environmental Protection Agency.

E. With regard to in-water disposal in the river, estuary and ocean:

- (1) Consideration shall be given to the need for the proposed disposal, and the availability and desirability of alternate sites and methods of disposal that might be less damaging to the environment.

5.1 – Variances

K. Disposal of dredged material should occur on the smallest practicable land area consistent with the use of the property and the characteristics of the dredged material. Clearing of the land should occur in stages on an as-needed basis. Reuse of existing disposal sites is preferred over creation of new sites in order to minimize the total land area covered by dredged material.

L. Before dredged materials are disposed of on land areas for use as fill in approved fill projects, a determination shall be made that the structural characteristics of the material are suitable for this use.

M. The use of agricultural lands for dredged material disposal shall occur only when the sponsor of the dredging project can demonstrate that the soils can be restored to agricultural productivity after disposal use is completed. In cases where this demonstration cannot be made, an exception to the Agricultural Lands Goal must be taken and included as an amendment to the Comprehensive Plan prior to the use of the site for dredged material disposal.

N. Dredging project proposals shall provide at least a five-year program for disposal of dredged material, consistent with the standards listed above. Disposal programs shall provide a mechanism for establishing stockpile sites of fill material suitable for use in approved fill projects.

5. *Dredging in Estuarine Water, Inter-tidal Areas and Tidal Wetlands:*

A. The following standards shall apply only to dredging in excess of 50 cubic yards within a 12-month period, or dredging of 50 cubic yards or less, which requires a Section 10 permit from the U.S. Army Corps of Engineers.

B. When dredging in estuarine water, inter-tidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the City that:

- (1) The dredging is necessary for navigation or other water dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and
- (2) A need (*i.e.*, a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- (3) If no feasible alternative upland locations exist; and
- (4) If adverse impacts are minimized.

C. Dredging projects shall meet all requirements of the State Fill and Removal Law (ORS 541.605-541.665), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over dredging projects.

D. Existing water quality, quantity and rate of flow shall be maintained or improved. Minimum stream flow requirements shall be maintained. Water quality policies shall apply.

E. Flushing capacity of estuaries shall be maintained. A hydrologic report from a professional registered hydrologist or engineer may be required by the Planning Commission to ensure that this standard has been met.

F. Dredging shall be timed in order to minimize the effects of sedimentation and turbidity and to minimize impacts on fish, shellfish and recreational and commercial fishery activities. The work periods specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* (ODFW, 1976) shall be followed unless approval of alternative work periods has been obtained from ODFW.

G. Evidence shall be provided by the applicant and findings made by the City that projects requiring dredging are sited and designed so that initial and maintenance dredging are minimized.

H. Dredging proposals shall provide at least a five-year program for disposal of dredged materials. Programs for disposal of dredged material shall be consistent with dredged material disposal standards.

I. Dredging proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.

J. New dredging projects shall not be allowed in areas where insufficient data is available to assess the relative biological value. Under these circumstances, the applicant may arrange to provide the necessary information with the technical assistance of state and federal resource agencies.

K. When dredging for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be presented by the applicant and findings made by the City that:

- (1) The dredging is necessary to maintain proper operation of the facility; and
- (2) The amount of dredging proposed is confined to the geographic area of the existing facility, and is the minimum amount necessary to fulfill the

5.1 – Variances

Development (ED) zones, evidence shall be provided by the applicant and findings made by the City that the proposed facility will not preclude the provision or maintenance of navigation and other public, commercial and industrial water-dependent uses.

I. Storm water and sewer outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tideflats or intertidal wetlands. Effluent from outfalls must meet DEQ and EPA water quality standards. Water quality policies shall apply.

J. Dredge, fill, shoreline stabilization or other activities in conjunction with construction of energy facilities or utilities shall be subject to the respective standards for these activities.

K. Energy facilities and utilities shall be sited so that they do not and will not require structural shoreline stabilization methods.

7. *Fill in Estuarine Waters, Intertidal Areas and Tidal Wetlands:*

A. The following standards shall apply only to fill in excess of 50 cubic yards or fill of less than 50 cubic yards that requires a Section 10 or 404 permit from the U.S. Army Corps of Engineers.

B. When fill in estuarine water, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the city that:

- (1) The fill is necessary for navigation or other water-dependent uses that require an estuarine location, or is specifically allowed by the management unit or zone; and
- (2) A need (*i.e.*, a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- (3) If no feasible alternative upland locations exist; and
- (4) If adverse impacts are minimized.

C. When fill for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be provided by the applicant and findings made by the city that:

- (1) There are no alternatives to fill to maintain proper operation of the facility; and
- (2) The amount of fill proposed is confined to the geographic area of the

existing facility, and is the minimum amount necessary to fulfill the need.

D. Where existing public access is reduced, suitable access as part of the development project shall be provided.

E. The fill shall be placed at a time that will minimize sedimentation and turbidity. The work periods specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* (ODFW 1976) shall be followed unless approval of alternative work periods has been obtained from the ODFW.

F. Only non-polluted materials may be used for fill. Materials that would create water quality problems are not permitted.

G. The perimeters of the fill shall be provided with erosion prevention measures, consistent with shoreline stabilization standards.

H. Fills shall be placed so that adjacent or nearby property is not adversely impacted by increased erosion, shoaling and flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment required in Section 3.120.

I. Fill proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.

J. Fill in estuarine waters, intertidal areas and tidal wetlands shall be subject to the requirements of the State Fill and Removal Law (ORS 541.605-541.665), the Rivers and Harbors Act of 1899, the Clean Water Act of 1977 (PL 95-217), and other applicable state and federal agencies with regulatory over fill projects.

K. An impact assessment shall be conducted during the local, state, and federal review of permit applications for fill in estuarine waters, intertidal areas or tidal wetlands according to the provision outlined in Section 4.120. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

8. *Forestry and the Forest Products Industry:*

A. Log storage, sorting and processing areas in shorelands adjacent to estuaries or waterways shall be designed, constructed and operated to control leakages and prevent the loss of bark, chips, sawdust and other wood debris into public waters.

B. In-water log handling, sorting, and storage areas, and log storage, sorting

5.1 – Variances

G. When water-dependent industrial and commercial uses are proposed in Estuary Conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

H. When water-related or non-dependent, non-related industrial or commercial uses are proposed in Estuary Development (ED) zones, evidence must be presented that:

- (1) The use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses; and
- (2) The use will not preempt the use of shorelands especially suited for water-dependent development; and
- (3) Non-water dependent and non-water related uses which permanently alter estuarine resources and values shall include evidence of the public benefits derived from the project, which shall include:
  - a. The beneficial economic impacts generated by increases in employment; and/or
  - b. Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.

I. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.

J. Dredging, fill, piling/dolphin installation, shoreline stabilization, disposal of dredged material or other activities in conjunction with industrial and commercial uses shall be subject to the respective standards for these activities.

10. *Land Transportation Facilities:*

A. Proposals for new county or state highways, or for railroads, shall provide an evaluation of the proposed project on the following:

- (1) Land use patterns;
- (2) Energy use;

- (3) Air and water quality;
- (4) Estuarine habitat, functions and processes;
- (5) Existing transportation facilities;
- (6) Physical and visual access to estuaries and shorelands.

B. Evidence shall be provided by the applicant and findings made by the City that the siting, design, construction and maintenance of land transportation facilities will be conducted to avoid mass soil wasting or excessive surface erosion.

C. Land transportation facility proposals shall include a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Site rehabilitation plans shall provide for replacement of riparian vegetation.

D. Vegetated buffer strips shall be maintained, whenever practicable, along roadways to manage storm drainage runoff.

E. When culverts are used in association with bridge crossings, spring line natural bottom culverts are preferred over box culverts.

F. All bridge crossings and culverts shall be positioned and maintained to allow fish passage, avoid interference with anadromous (a-nad-ro-mous; *Pertaining to animals that live their lives in the sea and migrate to a freshwater river to spawn.*) fish runs and to prevent any constriction of natural streams which would result in increases in flood or erosion potential. When culverts are used, no fill shall be allowed in streams, rivers or estuaries.

G. When new bridge crossing support structures are proposed in Estuary Natural (EN) zones, evidence shall be provided by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities and purposes of the area.

H. When new land transportation facilities are proposed in Estuary Development (ED) zones, evidence shall be presented by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities of the area and that the use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.

I. Dredging, fill, piling/dolphin installation, shoreline stabilization, dredged material disposal or other activities in conjunction with land transportation facilities shall be subject to the respective standards for these activities.

11. *Mining and Mineral Extraction:*

5.1 – Variances

B. When floating breakwaters are proposed in Estuary Conservation 1 (EC-1) and Estuary Conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the City that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.

C. Navigational structures shall meet all applicable U.S. Army Corps of Engineers engineering standards. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards have been met.

D. An impact assessment shall be conducted during local, state and federal review of permit applications for navigational structures. The impact assessment shall follow the procedures outlined in Section 4.120. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purpose of the area.

E. Dredging, fill or other activities in conjunction with navigational structures and navigational aids shall be subject to the respective standards for these activities.

14. *Piling/Dolphin Installation:*

A. When piling or dolphin installation is proposed, evidence shall be provided by the applicant and findings made by the City that:

- (1) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;
- (2) The project will not unduly interfere with the normal public use of fishery, recreational or water resource; and
- (3) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Commission as a result of the impact assessment required in Section 4.120.

B. When new piling or dolphin installation is proposed in Estuary Natural (EN), Estuary Conservation 2 (EC-2) or Estuary Conservation 1 (EC-1) zones, evidence shall be provided by the applicant and findings made by the City that the project is consistent with the resource capabilities and purposes of the area.

C. When proposals for new piling or dolphin installation in conjunction with

a non-water-dependent or non-water-related use within Estuary Development (ED) zones are made, evidence shall be presented by the applicant and findings made by the City that the project is consistent with the maintenance of navigation and needed public, commercial and industrial water-dependent uses.

D. Piling/dolphin replacement and new installation shall meet all applicable U.S. Army Corps of Engineers engineering standards and permit requirements. The U.S. Army Corps of Engineers shall be responsible for determining that these engineering standards and permit requirements have been met.

E. An impact assessment shall be conducted during local, state and federal review of permit applications for piling/dolphin installation. The impact assessment shall follow the procedures outlined in Section 4.120. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

15. *Restoration:*

A. Restoration policy requirements in the Garibaldi Comprehensive Plan shall be met.

B. Proposals for restoration projects shall present evidence that:

- (1) The restored area is a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed; and
- (2) The restored area may not have been a functioning part of the estuarine system when alteration work begins; and
- (3) The restored area is revitalizing, returning or replacing original attributes and amenities which have been diminished or lost by past alterations, activities, or catastrophic events.

C. All Estuarine enhancement project proposals shall identify:

- (1) The original conditions to be restored;
- (2) The cause of the loss or degradation; and
- (3) The location and extent of actions necessary to achieve the restoration objective.

D. When active restoration or estuarine enhancement projects are proposed in Estuary Natural (EN) zones, evidence shall be provided by the applicant and findings made by the City that the project is consistent with the resource capabilities of the area and with the protection of significant fish and wildlife habitats, biological productivity,

5.1 – Variances

F. Proposals for expansion or creation of port and marina facilities shall be accompanied by a demonstration of the public benefits derived from the project, which shall include:

- (1) Information on why the capacity of existing facilities is inadequate; and
- (2) The beneficial economic impacts to local communities derived from increases in employment; and/or
- (3) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.

G. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, waste water and organic wastes, and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.

H. When marina expansion or development is proposed in Estuary Conservation 2 (EC-2) zones, evidence shall be provided by the applicant and findings made by the City that the project is consistent with the resource capabilities of the area and the long-term use of renewable resource and does not cause a major alteration of the estuary.

I. Dredge, fill, piling/dolphin installation, navigational structures, shoreline stabilization or other activities in conjunction with expansion or creation or new port facilities and marinas shall be subject to the respective standards for these activities.

17. *Shoreline Stabilization:*

A. Within estuarine waters, intertidal areas and tidal wetlands, and along shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:

- (1) Proper maintenance of existing riparian vegetation;
- (2) Planting of riparian vegetation;
- (3) Vegetated rip-rap;
- (4) Groins, bulkheads or other structural methods.

Shoreline protection proposals shall include justification for the use of a lower priority method over a higher priority method.

B. Vegetative shoreline stabilization shall utilize native species, or non-native

species approved by the Soil Conservation Service. Reference shall be made to the Inter-Agency Seeding manual prepared by the Soil Conservation Service.

C. When structural shoreline stabilization methods are proposed, evidence shall be presented the applicant and findings made by the City that:

- (1) Flooding or erosion is threatening an established use on a subject property; or
- (2) There is a demonstrated public need in conjunction with navigation or a water-dependent use; and
- (3) Land use management practices or non-structural solutions are inappropriate or will not meet the need; and
- (4) The proposed structural stabilization method is the minimum size needed to accomplish the desired stabilization;
- (5) The proposed project will not restrict existing public access to publicly owned lands or interfere with the normal public use of fishery, recreation or water resources; and
- (6) The proposed project will not adversely impact adjacent aquatic areas or nearby property through increased erosion, sedimentation, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer, hydrologist, or geologist may be required by the Planning Commission as a result of the impact assessment required in Section 4.120.

A brief statement from the local Soil and Water Conservation Service may serve as evidence that standards C(3) and C(4) have been met.

D. Shoreline stabilization projects shall be timed to minimize impacts on aquatic life.

E. Proposals for rip-rap shall include evidence that the rock to be used will be effective, and will provide justification for use of a slope steeper than 1-1/2 feet horizontal to one foot vertical.

F. When bulkheads are proposed, evidence shall be provided by the applicant and findings made by the City that other forms of structural stabilization are inappropriate or will not meet the need. Bulkheads should be designed to be permeable to groundwater and runoff. Fill policies and standards shall apply to bulkhead projects which involve fill within estuarine waters, intertidal areas or tidal wetlands.

G. When rip-rap is proposed in Estuary Natural (EN) zones, evidence shall

5.1 – Variances

aesthetic use, navigation and other existing and potential uses of the estuary.

D. The methods that could be employed to avoid or minimize adverse impacts.

6. *Requirements for Resource Capability Determinations:* Uses and activities for which a resource capability determination is required by Section 4.110, shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposes of the zone(s) in which they are to be located. An activity will be found to be consistent with the resource capability of the Estuary Natural Zone (as described in Section 2 of the Estuarine Resources Element of the Tillamook County Comprehensive Plan) when either (1) the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or; (2) that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.

An activity will be found to be consistent with the resource capability of Estuary Conservation 1 and Estuary Conservation 2 zones when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant, or that the resources of the area are able to assimilate the use and activity and their effect and continue to function in a manner which conserves long-term renewable resources, natural biological productivity, recreational and aesthetic values and aquaculture.

7. *Significant Degradations or Reductions of Estuarine Natural Values:*

A. *Definition:* Significant degradations or reductions of estuarine natural values include dredging, fill, and other activities which will cause significant offsite impacts as determined by the impact assessment.

B. *Requirements:* Dredging and fill must comply with the standards in Section 4.110. Other reductions and degradations of estuarine natural values shall be allowed only if:

- (1) A need (*i.e.*, a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- (2) No feasible alternative upland locations exist; and
- (3) Adverse impacts are minimized as much as feasible.

8. *State and Federal Reviewing Agency Comments:* Where the review of regulated

activities involves a resource capability and purpose determination or an impact assessment or a request for a single purpose dock or pier the City shall notify the following agencies:

Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Army Corps of Engineers.

Notice will be mailed within 7 days of City receipt of the state or federal permit notice. The notice will include permit reference, identification of the local decisions to be made, references to applicable policies and standards, and notification of comment and appeal periods. The City shall consider any comments received no later than seven days before the closing date for comments on the state and federal permit notice.

9. *Appeals:* Planning Commission decisions on regulated activities may be appealed according to the requirements of Section 11.050. Planning Commission decisions on regulated activities that involve a conditional use may be appealed according to the requirements of Section 11.050. If the decision of the Planning Commission is appealed, the City shall notify the appropriate state and federal permitting agencies and shall request an extension to the comment period to allow for the local appeals process.

**Section 4.130. RIPARIAN VEGETATION:** Riparian vegetation adjacent to Tillamook Bay and the streams in Garibaldi shall be protected in accordance with the following provisions:

1. The following areas of riparian vegetation are defined:

A. Fifteen feet on either side of Cannery Creek, Johnson Creek, School Creek, Whitney Brook, Hill Creek, Hobson Creek, Lagler Creek.

B. Twenty-five feet adjacent to Tillamook Bay in those areas described in the Comprehensive Plan V #4 and XII #2 where riparian vegetation has been identified.

The distance is measured from the bank of a stream and from the mean higher high water line adjacent Tillamook Bay.

2. All structures and uses shall be located outside of areas listed in (1) above with the following exceptions:

A. Where direct water access is required in conjunction with a water-dependent use; or

**Section 5.050. GENERAL EXCEPTION TO LOT SIZE REQUIREMENTS:** If a lot or the aggregate of contiguous lots held in a single ownership as recorded in the office of the County Clerk at the time of the passage of this ordinance has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the holdings may be occupied by a use permitted in the zone subject to the other requirements of the zone, provided that, if there is an area deficiency, residential use shall be limited to a single family dwelling or to the number of dwelling units consistent with the density requirements of the zone.

**Section 5.060. GENERAL EXCEPTION TO YARD REQUIREMENTS:**

1. The following exceptions to the front yard requirements for a dwelling are authorized for a lot in any zone.

A. The required front yard for a dwelling need not exceed the average depth of the nearest front yards of dwellings within 100 feet on both sides of the proposed dwelling on the same side of the street.

B. The setback of a building from the bay shore shall be the average of the setbacks of the structures on either side up to a distance of 200 feet, but in no case beyond the surveyed property line. If no structures are within this distance, the setback shall conform to the general oceanfront building line as described in the Comprehensive Plan.

**Section 5.070. GENERAL EXCEPTION TO BUILDING HEIGHT LIMITATIONS:** Projections such as chimneys, aerials, flagpoles, and other similar objects not used for human occupancy, no more than 48 inches in width, are not subject to the building height limitations of this ordinance.

**ARTICLE 6.  
CONDITIONAL USES**

**Section 6.010. AUTHORIZATION TO GRANT OR DENY CONDITIONAL USES:** Conditional uses listed in this ordinance may be permitted, enlarged or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth in Section 6.010 through 6.030.

In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform to the requirements dealing with conditional uses.

In permitting a conditional use or the modification of a conditional use other than a

housing type (e.g., multi-family structure, manufactured dwelling park), the Planning Commission may impose in addition to those standards and requirements expressly specified for that use, other conditions which are necessary to protect adjacent property, an identified resource, or the City as a whole.

**Section 6.020. CONDITIONAL USE REVIEW CRITERIA:** Before a conditional use is approved findings will be made that the use will comply with the following standards:

1. The proposed use is consistent with the policies of the Comprehensive Plan.
2. The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties.
3. The use will not generate excessive traffic when compared to the traffic generated by uses permitted outright and adjacent streets have the capacity to accommodate the traffic generated.
4. Public facilities and services are adequate to accommodate the proposed use.
5. The site's physical characteristics in terms of topography, soils and other pertinent considerations are appropriate for the intended use.
6. The site has adequate area to accommodate the proposed use. The site layout has been designed to provide appropriate access points, on-site drives, parking areas, loading areas, storage facilities, setbacks, buffers, utilities or other facilities which are required by City ordinances or desired by the applicant.

**Section 6.030. CONDITIONAL USE PROCEDURE:** The following procedures shall be observed in applying for and acting on a conditional use:

1. 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 using a form prescribed pursuant to Section 11.010. The Planning Commission may require other drawings or information necessary to an understanding of the proposed use and its relationship to surrounding properties.
2. The procedure is as follows:
  - A. Public notice shall be given in accordance with Section 11.020.
  - B. A public hearing shall be held in accordance with Section 11.040.
  - C. A decision on the conditional use application shall be made in accordance

**ARTICLE 7.  
EXCEPTIONS TO CODE STANDARDS**

**7.010 Variances**

**Sections:**

**7.011 Variances - Purpose**

**7.012 Variances - Applicability**

**7.013 Class A Variances**

**7.014 Class B Variances**

**7.015 Class C Variances**

**7.016 Variance Application and Appeals**

**Background:** Article 7 (Exceptions to Code Standards) is primarily derived from the Oregon State Model Code. The model code is designed to be more flexible than conventional zoning; and frequently allows outright, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the model code provides flexibility in lot sizes and setbacks, as well as minimum parking ratios that are below the minimums of some codes. It also allows reductions to required off-street parking if an applicant can demonstrate through a parking study that less parking would be sufficient.

Typical variance procedures require the property owner to demonstrate that a hardship exists which is not self-imposed; there are unusual or extraordinary circumstances related to the site; and rights that others in the vicinity enjoy would be denied without a variance. In contrast, the three variance options in Section 7.010 provide a range of standards and approval criteria based on the specific type of variance requested. For example, it should be fairly easy to modify a yard setback in order to protect significant trees or to provide other amenities if all applicable building and fire codes are met.

**Section 7.011. VARIANCES – PURPOSE:**

This Chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code as exceptions to code standards. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Section provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met.

**Section 7.012. VARIANCES – APPLICABILITY:**

A. *Exceptions and Modifications versus Variances.* A code standard or approval criterion ("code section") may be modified without approval of a variance if the applicable code section expressly allows exceptions or modifications. If the code section does not expressly provide for exceptions or modifications, then a variance is required

to modify that code section and the provisions of this chapter apply.

B. *Combining Variances With Other Approvals; Permit Approvals by Other Agencies.* Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.

C. *Types of Variances.* As provided in Article 7, there are three types of variances (Class A, B, or C); the type of variance required depends on the extent of the variance request and the discretion involved in the decision making process.

**Section 7.013. CLASS A VARIANCES:**

A. *Applicability.* The following variances are reviewed using an administrative procedure outlined in this Code using the approval criteria in Subsection B, below:

- (1) Front yard setbacks. Up to a 10 percent change to the front yard setback standard in the land use district.
- (2) Interior setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.
- (3) Lot coverage. Up to 10 percent increase of the maximum lot coverage required in the base zone.
- (4) Landscape area. Up to 10 percent reduction in landscape area (overall area or interior parking lot landscape area).

B. *Approval criteria.* A Class A Variance shall be granted if the applicant demonstrates compliance with all of the following criteria:

- (1) The variance requested is required due to the lot configuration, or other conditions of the site;
- (2) The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;
- (3) The variance will not result in violation(s) of any other adopted ordinance or code standard; each code standard to be modified shall require a separate variance request.

5.1 – Variances

E. *Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features.* The City may grant a variance to the applicable setback requirements of this Code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.

F. *Variances to Transportation Improvement Requirements.* The City may approve, approve with conditions, or deny a variance to a transportation improvement standard pursuant to the Transportation System Plan when the variance does not exceed 10 percent of the standard. When a variance request to the standards exceeds 10 percent, then the request shall be reviewed as a Class C variance.

**Section 7.015. CLASS C VARIANCES:**

A. *Applicability.* Class C variance requests are those that do not conform to the previous two sections and that meet the criteria in Subsections 1-4 below, Class C variances shall be reviewed using the Planning Commission Public Hearings procedure.

- (1) The Class B variance standards apply to individual platted and recorded lots only.
- (2) The Class C variance procedure may be used to modify a standard for 3 or fewer lots, including lots yet to be created through a partition process.
- (3) An applicant who proposes to vary a standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure. Approval of a Master Planned Development shall be required to vary a standard for lots yet to be created through a subdivision process, where a specific code section does not otherwise permit exceptions.
- (4) A variance shall not be approved that would vary "permitted uses" or "prohibited uses" outlined in the criteria of the individual land use zones.

B. *Approval Process.* Class C variances shall be processed using the Planning Commission Public Hearings procedure and using the approval criteria in subsection C (d), below. In addition to the application requirements, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection C (d).

C. *Approval Criteria.* The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

- a. The proposed variance will not be materially detrimental to the purposes of

this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;

- b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone);
- c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
- d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
- e. The hardship is not self-imposed; and
- f. The variance requested is the minimum variance that would alleviate the hardship.

**Section 7.016. VARIANCE APPLICATION AND APPEALS:**

A. *Application.* The variance application shall conform to the requirements of this Code, as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

B. *Appeals* to variance decisions shall be processed in accordance with the provisions of this Code.

**Section 7.030 Lots of Record**

**Sections:**

**7.031 Lots of Record - Purpose**

**7.032 Lots of Record - Applicability**

**7.033 Lots of Record - Procedure**

**7.031. LOTS OF RECORD – PURPOSE:**

The purpose of this section is to establish criteria and a process for determining when a lot of record exists.

**7.032. LOTS OF RECORD – APPLICABILITY:**

A lot of record is a plot of land that was not created through an approved subdivision or partition, was created and recorded before the effective date of the City’s Subdivision Ordinance No. 215 on November 16, 1994, and for which the deed, or other instrument dividing the land, is recorded with Tillamook County. A lot of record shall be entitled to development of no less than one single family dwelling and, provided all applicable Code standards are met, additional land use or development may be approved.

**7.033. LOTS OF RECORD – PROCEDURE:**

A lot of record determination shall be made by the City’s Planning Official through a procedure outlined in this code. It shall be the property owner’s responsibility to demonstrate that his or her plot of land is meets the lot of record criteria in Section 7.032.

**ARTICLE 8.  
[OPEN]**

**ARTICLE 9.  
LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

**Sections:**

**9.010. Amendments - Purpose**

**9.020. Legislative Amendments**

**9.030. Quasi-Judicial Amendments**

**9.040. Conditions of Approval on Quasi-Judicial Amendments**

**9.050. Record of Amendments**

**9.060. Transportation Planning Rule Compliance**

**9.010. Amendments – Purpose:** The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the land use district map. These will be referred to as “map and text amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

125 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

**9.020. Legislative Amendments:** Legislative amendments are policy decisions made by City Council. They are reviewed by the Planning Commission and City Council and shall conform to the Transportation Planning Rule provisions in Section 9.060, as applicable.

**9.030. Quasi-Judicial Amendments:**

1. **Applicability of Quasi-Judicial Amendments:** Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or Code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial district map amendments shall follow the public hearing procedure, as governed by the Zoning Ordinance. The approval authority shall be as follows:

A. The Planning Commission shall review and recommend land use district map changes that do not involve comprehensive plan map amendments;

B. The Planning Commission shall make a recommendation to the City Council on an application for a comprehensive plan map amendment. The City Council shall decide such applications; and

C. The Planning Commission shall make a recommendation to the City Council on a land use district change application that also involves a comprehensive plan map amendment application. The City Council shall decide both applications.

2. **Criteria for Quasi-Judicial Amendments:** A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

A. Approval of the request is consistent with the Statewide Planning Goals;

B. Approval of the request is consistent with the Comprehensive Plan;

C. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided in the planning period; and

D. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application; and

E. The amendment conforms to the Transportation Planning Rule provisions under Section 9.060

**9.040. Conditions of Approval for Quasi-Judicial Amendments:** A quasi-judicial decision may be for denial, approval, or approval with conditions; conditions shall be based on applicable regulations and factual evidence in the record. A legislative

126 - AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS FOR THE CITY OF GARIBALDI, OREGON, IN CONFORMANCE WITH THE COMPREHENSIVE PLAN, AND REPEALING ORDINANCE 107.

**9.080. CHANGE OF ZONE FOR MANUFACTURED DWELLING PARKS:** If an application would change the zone of property which includes all or part of a manufactured dwelling park as defined by ORS 446.003, the City shall give written notice by first class mail to each existing mailing address for tenants of the manufactured dwelling park at 20 days but not more than 40 days, before the date of the first hearing on the application. The failure of a tenant to receive notice which was mailed shall not invalidate any zone change.

**ARTICLE 10.  
PLANNED UNIT DEVELOPMENT**

**Section 10.010. INTENT:** This Article is intended to provide for developments incorporating a single type or a variety of housing types and related uses that are planned and developed as a unit. Such developments may consist of individual lots as part of a larger holding or as common building sites. Commonly owned land which is an essential and major element of the plan should be related to and preserve the long term value of the homes and other development. It is the intent of this section to foster a more innovative approach to land development than is possible under the traditional lot-by-lot methods.

**Section 10.020. PURPOSE:** The purpose of this article is to provide a more desirable environment through the application of flexible and diversified land development standards following an overall comprehensive site development plan.

**Section 10.030. PERMITTED BUILDING AND USES:** The following buildings and uses may be permitted either singly or in combination provided the overall density of the planned unit development does not exceed the density of the parent zone as provided in this ordinance.

1. Single family dwellings including detached, attached, or semi-attached units, row houses, atrium or patio houses provided each has its own separate plot.
2. Duplexes and multiple family dwellings.
3. Accessory buildings and uses.
4. Commercial uses only when supported mainly by the planned unit development and only when economic feasibility can be shown.
5. Buildings or uses listed as permitted outright or conditionally in the parent zone on which the planned unit development is located.

**Section 10.040. DEVELOPMENT STANDARDS:**

1. **Minimum Site Size:** Planned unit developments shall be established only on parcels of land which are suitable for the proposed development and are determined by the Planning Commission to be in keeping with the intent of this ordinance.

2. **Open Space:** In all residential developments, or in combination residential commercial developments, area should be devoted to open space. Of this area, 25% of said open space may be utilized privately by individual owners or users of the planned unit development; however, 75% of this area should be common or shared open space. The Planning Commission may increase or decrease the open space requirement depending on the particular site and the needs of the development. In no case should the open space be less than 25% of the site.

3. **Density:** The density of a planned development shall not exceed the density of the parent zone except as more restrictive regulations may be prescribed as a condition of a planned unit development permit. When calculating density, the gross area is used (total area including street dedications). Areas of public use may be included in calculating allowable density.

4. **Subdivision Lot Sizes:** Minimum area, width, depth, and frontage requirements for subdivision lots in a planned unit development may be less than the minimums set forth elsewhere in City ordinances, provided that the overall density is in conformance, and that lots conform to the approved preliminary development plan.

5. **Off-Street Parking:** Parking spaces shall conform to all provisions of this ordinance, except that the Planning Commission may authorize exceptions where warranted by unusual circumstances.

6. **Signs:** All signs of any type within a planned unit development are subject to approval of the Planning Commission. They shall consider each sign on its merits based on its aesthetic impact on the area, potential traffic hazards, potential violation of property and privacy rights of adjoining property owners, and need for said sign.

7. **Height Guidelines:** The same restrictions shall prevail as permitted outright in the zone in which such development occurs, except that the Planning Commission may allow a variance of heights where it is determined that the surrounding property will not be harmed.

8. **Streets and Roads:** Necessary streets and roads within the planned unit development shall be dedicated to the public and constructed to standards determined by the Planning Commission and City Engineer.

9. **Dedication and Maintenance of Facilities:** The Planning Commission may, as a condition of approval for a planned unit development, require that portions of the tract

- B. Grading plan showing future contours if existing grade is to be changed more than 8 feet.
- C. Existing and proposed utility lines.
- D. Preliminary subdivision plan if property is to be subdivided.
- E. Location and dimensions of pedestrian way, roads, malls, common open space, recreation area and parks.
- F. Location, dimensions, and arrangement of off-street parking including width of aisles, spaces, and other design criteria.
- G. Preliminary planting and landscaping plan.
- H. Preliminary architectural plans and elevations of typical structures.
- I. The applicant shall also submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the planned unit development be followed.

2. Upon receipt of the final development plan, the Planning Commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved preliminary development plan, or requires such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and re-submit it as a final development plan within 30 days.

3. After final approval by the Planning Commission, the planned unit development application will be considered approved unless appealed to the City Council pursuant to Section 11.050.

**Section 10.070. MAPPING:** An approved planned unit development shall be identified on the zoning map with the letters "PUD" in addition to the abbreviated designation of the parent zone.

**Section 10.080. ADHERENCE TO APPROVED PLAN AND MODIFICATION THEREOF:**

1. Building permits in a planned unit development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the

Planning Commission for processing as an amendment to this ordinance.

2. A performance bond may be required, in an amount to be determined by the Planning Commission, to insure that a development proposal is completed as approved and within the time limits agreed to.

3. The developer shall show to the satisfaction of the Planning Commission that the proposal will be carried out in such a way that no significant damage will be done to the lakes, streams, beaches or wetlands in the city. Special attention will be paid to the impact of the planned unit development on slide-prone hillsides to insure that damage will not be caused to surrounding property.

**ARTICLE 11.  
ADMINISTRATIVE PROVISIONS**

**Section 11.010. APPLICATION INFORMATION AND PROCEDURES:**

1. An application for a permit or zone change provided for in this Ordinance shall consist of:

A. A complete application form.

B. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.

2. If the application is complete when first submitted, or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

3. If an application for a permit or zone change is incomplete, the City shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete upon receipt of additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete on the 31st day after the governing body first received the application.

4. All documents or evidence provided by the applicant shall be submitted to the City and be made available to the public at the time the notice of public hearing required by Section 11.020 is provided.

5. Where a proposed development requires more than one permit, or zone change

requiring the notice.

**Section 11.030. DATE OF PUBLIC HEARING:** The Planning Commission shall hold a public hearing within 60 days of the filing of a complete application unless the applicant grants an extension.

**Section 11.035. AVAILABILITY OF STAFF REPORTS:** Any staff report to be used at a public hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. This continuance period shall not be counted as part of the 120 day time limit in Section 11.060.

**Section 11.040. PUBLIC HEARING PROCEDURE AND REQUIREMENTS:**

1. Public hearings conducted under this Ordinance shall follow the procedures and requirements of this section.
2. [Procedural Entitlements.] The following Procedural Entitlements shall be provided at the public hearings:
  - A. An impartial review as free from potential conflicts of interest and pre-hearing ex-parte contact as is reasonably possible:
    - (1) No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:
      - a. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
      - b. The member owns property within the area entitled to receive notice of the public hearing.
      - c. The member has a direct private interest in the proposal.
      - d. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.
    - (2) Disqualifications due to a conflict of interest or personal bias may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motions.
    - (3) Hearing body members shall reveal any pre-hearing or ex-parte contacts with regard to any matter at the commencement of the first public hearing

following the pre-hearing or ex-parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations. Disqualifications due to ex-parte contact may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

- (4) A party to a hearing may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, ex-parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion.
  - (5) A party to a hearing may rebut the substance of the communication that formed the basis for an ex-parte contact declared by a member of the hearing body.
  - (6) No officer or employee of the City who has a financial or other private interest in proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest.
    - B. A reasonable opportunity for those persons potentially affected by the proposal to present evidence.
    - C. A reasonable opportunity for rebuttal of new material.
3. *Rights of Disqualified member of the Hearing Body.*
    - A. An abstaining or disqualified member of the hearing body may be counted for the purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.
      - B. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.
  4. *Burden and Nature of Proof.* Except for a determination, the burden of proof is upon

- (3) In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate the facts in the record that support denial.

C. The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.

7. *Record of Proceedings.* The secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded stenographically or electronically.

A. Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.

B. The hearing body shall, where practicable, retain as part of the hearing records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.

C. The finding shall be included in the record.

D. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

8. *Notice of Decision.* Notice of a decision by a hearing body shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of the decision shall include:

A. A brief description of the decision reached.

B. A statement that the decision may be appealed by filing, with the City, an appeal within 10 calendar days of the date that the final order was signed.

C. A description of the requirements for an appeal.

D. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing.

E. A statement that the complete case, including the final order is available for review at the City.

**Section 11.050. REQUEST FOR REVIEW OF A DECISION (APPEALS):**

1. A decision of a City administrative officer regarding a requirement of this ordinance may be appealed to the Planning Commission by an affected party by filing an appeal with the City Recorder within 10 days of the notice of decision. The notice of appeal that is filed with the City shall indicate the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this ordinance.

2. A decision of the Planning Commission may be appealed to the City Council by a party to the hearing by filing an appeal within 10 days of the date the final notice is signed. The notice of appeal filed with the City shall contain the information outlined in Section 11.050(3).

3. *Request for Appeal of a Planning Commission Decision.* An appeal of a Planning Commission decisions shall contain:

A. An identification of the decision sought to be reviewed, including the date of the decision.

B. A statement of the interest of the person seeking review and that he was a party to the initial proceedings.

C. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the Planning Commission hearing.

4. *Scope of Review.* The reviewing body may determine, as a nonpublic hearing item, that the scope of review, on appeal, will be one of the following:

A. Restricted to the record made on the decision being appealed.

B. Limited to the admission of additional evidence on such issues as the reviewing body determines for a proper resolution of the matter;

C. Remand the matter to the hearing body for additional consideration;

D. *A de novo* hearing on the merits.

5. *Review On The Record.*

A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this

6. Premises may not be occupied unless furnished with sewer and water facilities.
7. The building permit shall be on forms prescribed by the City.

**Section 11.090. AUTHORIZATION OF SIMILAR USES:** The Planning Commission may permit, in a particular zone, a use not listed in the ordinance, provided the use is of the same general type as the uses permitted there by this ordinance. However, this section does not authorize the inclusion in a zone, where it is not listed, of a use specifically listed in another zone.

**Section 11.095. TRAFFIC IMPACT STUDY:**

A. *Purpose.* The purpose of this Section is to implement Section 660-012-0045 (2) (e) of the State Transportation Planning Rule that requires the City to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This Section establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a Traffic Impact Study; and who is qualified to prepare the Study.

B. *Typical Average Daily Trips.* Standards by which to gauge average daily vehicle trips include: 10 trips per day per single family household, 5 trips per day per apartment; and 30 trips per day per 1,000 square feet of gross floor area such a new supermarket or other retail development.

C. *When Required.* A Traffic Impact Study may be required to be submitted to the City and ODOT with a land use application, when the following conditions apply:

- (1) The development application involves one or more of the following actions:
  - a. A change in zoning or a plan amendment designation;
  - b. Any proposed development or land use action that ODOT states may have operational or safety concerns along a state highway;
  - c. The development shall cause one or more of the following effects, which can be determined by field counts, site observation, traffic impact analysis or study, field measurements, crash history, Institute of Transportation Engineers Trip Generation manual; and information and studies provided by the local reviewing jurisdiction and/or ODOT:
    - (i) An increase in site traffic volume generation by 150 Average Daily Trips (ADT) or more; or
    - (ii) An increase in ADT hour volume of a particular movement to and from the State highway by 20 percent or more; or
    - (iii) An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day; or

- (iv) The location of the access driveway does not meet minimum site distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard; or
- (v) A change in internal traffic patterns that may cause safety problems, such as back up onto the highway or traffic crashes in the approach area.

- (2) As requested by the Planning Commission, acting on the recommendation of City staff.

D. *Traffic Impact Study Requirements.*

- (1) *Preparation.* A Traffic Impact Study shall be prepared by a professional engineer in accordance with OAR 734-051-180.
- (2) *Review of Plan and Land Use Regulation Amendments for Effect on Transportation Facilities.* Where and when required, a Traffic Impact Study shall review a proposed plan or land use regulation amendment for its effect upon transportation facilities, pursuant to Section 9.028 of this Ordinance.

E. *Approval Criteria.*

- (1) *Criteria.* When a Traffic Impact Study is required, approval of the development proposal requires satisfaction of the following criteria:
  - a. The Traffic Impact Study was prepared by a professional engineer in accordance with OAR 734-051-180; and
  - b. If the proposed development shall cause one or more of the effects in subsection C(1)(c) of this Section, or other traffic hazard or negative impact to a transportation facility, the Traffic Impact Study shall include mitigation measures satisfactory to the City of Garibaldi, and ODOT when applicable; and
  - c. The proposed site design and traffic and circulation design and facilities, for all transportation modes, including any mitigation measures, are designed to:
    - (i) Have the least negative impact on all applicable transportation facilities; and
    - (ii) Accommodate and encourage non-motor vehicular modes of transportation to the extent practicable; and
    - (iii) Make the most efficient use of land and public facilities as practicable; and
    - (iv) Provide the most direct, safe and convenient routes practicable between on-site destinations, and between on-site and off-site destinations; and