

ORDINANCE NO. 767

AN ORDINANCE AMENDING STAYTON MUNICIPAL CODE TITLE 17, "LAND USE AND DEVELOPMENT CODE" REVISING THE PROCEDURES FOR DECIDING LAND USE ACTIONS; DELEGATING DECISION-MAKING TO THE PLANNING COMMISSION AND STAFF AND SEPARATING THE FEE SCHEDULE FROM THE DEVELOPMENT CODE; OTHER CHANGES.

WHEREAS, the City of Stayton Land Use and Development Code currently requires the City Council to make final decisions in certain land use actions; and

WHEREAS, the City Council finds that a procedure that allows the Planning Commission to make final decisions on most land use actions with appeal to the City Council and staff to make final decisions on some land use actions with appeal to the Planning Commission will provide for more efficient decision-making; and

WHEREAS, the fees charged for land use actions should be based on cost and revised periodically and not subject to the ordinance process;

NOW, THEREFORE the Stayton City Council hereby ordains as follows:

SECTION 1.: AUTHORITY

This ordinance is adopted under the authority of and pursuant to Oregon laws and the authority of the city under the charter of the City of Stayton.

SECTION 2.: INCORPORATION TO EXISTING ORDINANCES

This ordinance shall be incorporated into the City of Stayton Land Use and Development Code Adopted by the Stayton City Council 12 December 1989 by Stayton City Ordinance No. 670.

SECTION 3.: GENERAL PROVISIONS

City of Stayton Land Use and Development Code shall be revised as follows:

PROPOSED AMENDMENTS TO DEVELOPMENT CODE
(Which Incorporate the Decision Making Matrix - August 11, 1997)

CHAPTER 17.12

DEVELOPMENT APPROVAL PROCEDURES

SECTIONS

- 17.12.310 Purpose
- 17.12.320 Applications for Changes and Exceptions
- 17.12.330 Application Procedure
- 17.12.340 Multiple Applications
- 17.12.350 Staff Responsibility and Actions
- 17.12.360 Notice of Public Hearing
- 17.12.370 Decision Authority
- 17.12.375 Administrative Decision Procedure
- 17.12.380 Planning Commission Hearing and Decision Procedure
- 17.12.390 City Council Hearing and Decision Procedure
- 17.12.400 Appeals
- 17.12.410 Effective Dates and Deadlines for Actions
- 17.12.415 Notice of Decision
- 17.12.417 Substantial Changes In Application After Filing

- 17.12.440 Conditional Uses
- 17.12.450 Variances
- 17.12.470 Site Plan Review

17.12.310 PURPOSE

The purpose of this chapter is to provide clear and uniform procedures for the application for, review of, and decisions upon requests for land use and development permits.

17.12.320 APPLICATIONS FOR CHANGES AND EXCEPTIONS

All applications for land use and development approval actions as governed by the land use and development code are subject to the procedures and conditions set forth herein.

17.12.330 APPLICATION PROCEDURE

Any application for a land use or development approval action authorized in this title shall be filed in the following manner.

1. **FORMS:** The application shall be in writing on forms provided by the city staff, with supplementary maps and material as set forth herein.
2. **FILING LOCATION:** The application shall be filed with the city staff at city hall.
3. **PROPERTY OWNER AUTHORIZATION:** The application shall be accompanied by a notarized statement certifying the authority of anyone representing the owner(s) of property involved in the application, if the owner(s) are not the applicants. The application shall be signed by the property owner or authorized representative.
4. **SUPPLEMENTAL INFORMATION:** All documentation and information specified in those portions of this title governing the approval or action being requested shall accompany the application. The applicant shall be responsible for providing any and all information required to bring about an acceptable application.
5. **FEES**
 - a. **Basic Application Fees:** Basic application fees are intended to defray expenses incurred by the city staff to review and process the application. No application may be accepted by city staff unless it is accompanied by the appropriate filing fees, or an approved fee waiver pursuant to subsection d hereof.
 - b. **Engineering and Legal Fees Deposit:** An applicant for an annexation, comprehensive plan amendment, zoning map amendment, subdivision, planned unit development, manufactured home subdivision and manufactured home park shall pay a deposit to the City, as determined in the duly adopted Fee Schedule to cover the cost of an engineering and/or legal review of the

application and improvement plans. Upon final decision on the application, the city will determine the actual specific application costs incurred by the city for engineering and legal review of that specific application and/or plans and refund the unused portion of the deposit to the applicant. No applicant shall be charged for engineering or legal costs that are generic in nature or of citywide concern or importance notwithstanding that the costs were incurred as a part of a specific application.

- c. **Additional Fees:** When the fee paid by the applicant is not sufficient to cover the amount of excess expenses incurred by the city in processing the application, then the city staff shall require the applicant to submit additional deposit(s) according to the fee schedule, to enable the city to proceed with the processing of the application or the city may require the applicant to reimburse the city for actual application specific engineering and legal costs incurred, in the city's sole discretion.
- d. **Waiver of Fees:** The council may, at its discretion, waive some or all fees for the processing of applications determined by the council to be in the public interest.

- 6. **FEE SCHEDULE:** The city shall periodically adopt a schedule of fees to be charged for land use matters. The fees shall be set so that they reasonably approximate either the actual cost, or the average cost of providing staff service to the application. A copy of the current Fee Schedule can be obtained from the Planning Department.

17.12.340 MULTIPLE APPLICATIONS

- 1. **PROCESSING:** Combined or multiple requests by the same applicant(s) for approvals of different land use and development permits which are governed by the provisions of this chapter and which affect the same property or properties, shall be considered concurrently by the city. In the case of different applications requiring planning commission final action for one and council final action for another, the council may act upon both together.
- 2. **FEES FOR MULTIPLE APPLICATIONS:** Multiple applications shall be assessed fees as provided in the duly adopted Fee Schedule (Section 17.12.330) for each individual application which is part of a multiple application.

17.12.350 STAFF RESPONSIBILITY AND ACTIONS

- 1. Upon receiving an application, the city staff will review the application within fourteen (14) working days after its initial submission by the applicant. The application shall be deemed acceptable upon determination by the city staff that all submittal requirements pursuant to this code have been satisfied. If the information

contained in the application is not sufficient for complete staff review, staff will return the application to the applicant with a written explanation disclosing what information, forms, or fees are missing. It shall be the responsibility of the applicant to revise or supplement the application as required by the city staff in order to make it an acceptable application. If appropriate, a written agreement from the applicant may be accepted by the city staff, explaining how the technical problems will be resolved or information prepared. Failure of the applicant to provide a complete application within thirty (30) days of the date of receipt of notification shall be grounds for the application being deemed by the city staff as incomplete for review and action, and may lead to denial of the application. Staff has a total of fourteen (14) working days to review the application for completeness. The 120 day decision period begins either the day after the fourteenth (14th) working day, beginning the day after the date received, or the day after the application is deemed complete. It shall be the duty of staff to notify the applicant within three (3) days of an application deemed complete.

2. For all cases in which city staff does not make the initial decision on an application, city staff shall refer the file, together with their report as required by this title, to the appropriate decision maker (planning commission or city council), and shall schedule a public hearing therefore at the next available, regularly scheduled meeting.
3. For purposes of planning coordination, the city staff shall make referrals of the request, with an explanation of the character of the proposal and an indication of potential city action, to local, state, and federal agencies likely to be impacted by the proposal or entitled to receive such notice under law. This referral will be made within five (5) days of application acceptance. Agencies so contacted will be requested to reply within twelve (12) days of mailing of the referral, and will be notified that failure to reply or participate in the hearing may be interpreted as no objection to the proposal.
4. For all applications other than a plan amendment, the city staff will prepare a written staff report on the proposed action within twenty (20) working days after the final, complete application is accepted, or seven calendar days before a duly scheduled public hearing, whichever occurs later. A written staff report on a proposed plan amendment shall be prepared within thirty (30) working days after acceptance of a complete application, or seven days before a duly scheduled public hearing, whichever occurs later.
5. For plan amendment and zone change applications, the city staff shall notify the Oregon Department of Land Conservation and Development of the proposed amendment pursuant to the requirements of ORS 197.610. Comments or objections received as a result of the notification shall be made a part of the staff report to the planning commission and/or the council.

6. The staff shall present their report on the application to the planning commission at the scheduled public hearing.

Upon having made a decision on an application, city staff will prepare written findings and conclusions based on the material contained in the application; the information presented at any public hearing; or on appeal; any agreements between the applicant and the city; and all pertinent discussion of the decision maker. City staff shall notify the applicant, and shall provide a short form notice of decision to all members of the planning commission and city council.

7. For all cases in which the planning commission has become involved in a case as a decision maker (for either final decision or as a recommendation to the council) on an application, city staff shall refer the file, together with their report on the action of the planning commission, to the city council. In the event a public hearing is required by this title, or requested by the city council, city staff shall schedule the public hearing for the next available, regularly scheduled meeting. City staff shall provide notice for the public hearing as required by this title.

It shall be the duty of city staff to monitor the 120 day decision period and to notify the Planning Commission and City Council in a timely manner to allow completion of the prescribed process within the 120 day period.

17.12.360

NOTICE OF PUBLIC HEARING

1. Public notice of any public hearing before the planning commission or city council shall include the following information:
 - a. Identification of the application by city file number.
 - b. Identification of the property involved in the request by ownership and tax map and tax lot numbers, and street address if available.
 - c. Identification of the property owner and applicant.
 - d. Date, time, place of the hearing and the decision authority to conduct the hearing.
 - e. A brief description of the nature of the application and the proposed activities or uses which could be allowed by a favorable decision.
 - f. List the applicable criteria from the comprehensive plan and its implementing ordinances that apply to and govern the decision on the application under consideration.

- g. The name of the city staff or designee and a telephone number to contact where information may be obtained.
 - h. A statement that the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at the office of the city staff and that copies will be provided at reasonable cost.
 - i. A statement that the staff report on the application will be available for inspection at the office of the city staff and that copies will be provided at reasonable cost within seven (7) days of the hearing.
 - j. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 - k. A statement that the failure to raise an issue in person or by letter during the open record period, or failure to provide sufficient specificity to afford the city an opportunity to respond to the issue precludes appeal to LUBA on that issue.
 - l. A statement that indicates the day in which the application was deemed complete.
 - m. If the hearing is an appeal, identification of the appellant's name if different than the property owner's name or applicant's name.
2. Notices of public hearing shall be mailed to each property owner of record within the affected area not later than twenty (20) days prior to the first public hearing on a case, and not later than ten (10) days prior to any additional public hearings on the same case. The notification area shall be for all properties located a minimum of 300 feet from the exterior boundaries of the property which is the subject of the notice. Failure to receive such notice shall not affect the validity of the proceedings.
 3. The applicant shall be required to post the property, ten (10) days prior to the hearing date, with a sign or placard provided by the city. The applicant shall file written certification or affidavit of such posting with the city staff prior to the hearing date. Posting shall be placed as near to a public street as possible, and shall be done in such a manner that the notice sign is easily visible from a public street.
 4. In addition, notice of each public hearings shall be published in a newspaper of general circulation not later than ten (10) days prior to the public hearing.

1. **AUTHORITY:** The decision authority on applications shall be as follows:
 - a. **Staff Decisions:** City staff shall be required and empowered to review, evaluate and render decisions on the following land use applications:
 - (1) Commercial site plan reviews of 1 acre or less that are currently served by utilities and front an improved public street which meets city standards.
 - (2) Industrial site plan reviews of 3 acres or less that are currently served by utilities and front an improved public street which meets city standards.
 - (3) Variances.

In their sole discretion, city staff may elect to refer consideration and decision in any particular application to the Planning Commission or City Council. Upon referral, all of the applicable rules for Planning Commission or City Council decision contained in this code shall apply to decision on the referred application.
 - b. **Planning Commission Decisions:** The Planning Commission shall be empowered to review, evaluate and render final decisions on all land use applications in the city, except for applications involving any change to the development code, zone map, text or map of the comprehensive plan, or any annexations.

In their sole discretion, the Planning Commission may elect to refer consideration and decision in any particular application to the City Council. Upon referral, all of the rules for City Council decision contained in this code shall apply to decision on the referred application.
 - c. **Planning Commission Recommendations:** The Planning Commission shall be required to review, evaluate, and make recommendations to the City Council on all land use applications involving any change to the development code, zone map, text or map of the comprehensive plan, or any annexation.
 - d. **City Council Decisions:** The council shall be required and empowered to review, evaluate, and render final decisions on all land use applications involving any change to the development code, zone map, text or map of the comprehensive plan, or any annexation.
 - e. **City Council Authority:** In addition to the decisions set forth above, the council shall have at its sole discretion the authority to review and consider any other land use action of the staff or planning commission.

- f. The council shall also have the authority to empower the city staff to act at its direction in the acceptance of final land division plats pursuant to Chapter 17.24 of this title.
 - g. **Combined Authority.** At the discretion of the council, proceedings of the council and planning commission may be combined in the form of mutual or joint public meetings, work sessions, or hearings. Unless otherwise determined by the council, decisions or actions taken on applications subject to or following such proceedings shall have the status of final council decisions or actions.
- 2. **STANDARDS:** In order to approve proposed action, the applicant shall provide evidence which allows the city to make findings that the proposal is in conformance with applicable standards of the comprehensive plan, this title, and other state and local law; and that the specific approval criteria for the application, as contained within applicable sections of this code, have been satisfied.
 - 3. **BURDEN OF PROOF:** The applicant has the burden of proof for any land use action before the City of Stayton. According to law, the applicant must present to the decision maker facts, evidence, analysis, and justification for each and every decisional criteria in order to carry that burden of proof. The burden of proof lies with the applicant to prove why their proposal complies with the Stayton Comprehensive Plan and the city's land use ordinances. There is no assumption that the applicant is entitled to an approval from the City of Stayton and the burden of proof does not lie with the City of Stayton, staff, appointed or elected officials.

17.12.375

ADMINISTRATIVE DECISION PROCEDURE

- 1. **ADMINISTRATIVE STAFF EVALUATION:** In addition to those standards and criteria specified by this title for any application before it, the city staff shall also consider the following matters in evaluating and reaching a decision on the application:
 - a. Consistency of the proposed action with the mandatory approval criteria for the application; the objectives of this title and other applicable ordinances and policies of the city.
 - b. Staff's own analysis and evaluation of the proposal; including all facts submitted relevant to the application, and any other information that is of general knowledge.
- 2. **ADMINISTRATIVE STAFF ACTION:** On any application for which the city staff is empowered to make the initial decision pursuant to 17.12.370.1(a), staff may:

- a. Approve the proposal as submitted, including the establishment of conditions of approval as may be deemed appropriate.
 - b. Request that the proposal be modified in order to comply with city land use regulations before making a decision.
 - c. Deny the proposal.
 - d. Refer the application to the planning commission for decision in accordance with 17.12.380.
3. **TIMING OF DECISION:** If additional information is required to allow completion of action by the city staff, the applicant shall be given written notice of the items which must be submitted and granted up to thirty (30) days to submit the required information. Staff must ask for additional information within the first fourteen (14) days. Staff shall have 5 days to review additional information once submitted. After submittal of the additional materials, the 120 day decision period begins and the letter deeming the application complete is sent.
 4. **FORM OF ADMINISTRATIVE ACTION:** The administrative decision shall be in the form of a written Notice of Decision, which shall be distributed pursuant to 17.12.415.
 5. **EFFECTIVE DATE OF ADMINISTRATIVE DECISION:** Unless appealed or called up by the council, an administrative decision shall become final fourteen (14) days following the date of mailing of the Notice of Decision.

17.12.380

PLANNING COMMISSION HEARING AND DECISION PROCEDURE

1. **TIMING:** The staff report shall be placed before the planning commission no less than seven (7) days prior to the scheduled public hearing or meeting. The planning commission shall hold at least one public hearing on the proposal unless otherwise provided by this title. A work session(s) open to the public may also be held at the commission's discretion.
2. **RULES OF PROCEDURE:** All public hearings shall be conducted in accordance with Stayton City Land Use Hearings Rules of Procedure, as amended. Copies of the Rules of Procedure shall be made available to applicants and other participants at the hearings.
3. **EVIDENCE:** Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs, and shall become part of the record for the application. Evidence shall address the mandatory approval criteria listed in the notice of hearing. The decision maker may reject any evidence that is

immaterial or irrelevant to the approval criteria. Evidence that has been rejected shall be kept with the record on the application, but shall be noted on the face of that evidence that it was rejected, and the basis for the rejection.

4. **PLANNING COMMISSION EVALUATION:** In addition to those standards and criteria specified by this title for any application before it, the planning commission shall also consider the following matters in evaluating and reaching a decision on the application:
 - a. Consistency of the proposed action with the mandatory approval criteria for the application; the objectives of this title and other applicable ordinances and policies of the city.
 - b. Staff analysis and evaluation of the proposal.
 - c. The Commission's own analysis and evaluation of the proposal; including all facts submitted relevant to the application, and any other information that is of general knowledge.

5. **PLANNING COMMISSION ACTION:** On any application except those requiring final action by the city council, following public hearing and other commission action, the commission shall make a decision. The commission may:
 - a. Approve the proposal as submitted, including the establishment of conditions of approval as may be deemed appropriate by the commission.
 - b. Request that the proposal be modified in order to comply with city land use regulations before making a decision.
 - c. Remand the application back to the city staff.
 - d. Deny the proposal.
 - e. Refer the matter on to the City Council without action, hearing, or recommendation, if in the discretion of the Planning Commission administration of this code necessitates referral without action.
 - f. On those actions requiring final approval by the council, the commission shall perform the same function as described in a. through c. of this section, except the commission action shall be in the form of a recommendation to the council rather than a final decision.

- g. If additional information is required to allow completion of action by the commission, it shall be prepared within one (1) week, if possible, and brought before either a special meeting or the next regularly scheduled meeting of the commission.
 - h. If so requested by a participant, the record of the hearing shall be held open for at least seven (7) days after the hearing is completed.
- 6. **PLANNING COMMISSION REVIEW OF ADMINISTRATIVE DECISIONS:** For those actions where a Notice of Decision has been issued by the staff any individual member of the Planning Commission may elect to call-up the application to further consider the decision. A call up must be made within the appeal period set forth in this code, and shall be in writing on forms provided by city staff. On decisions which are called-up, the Planning Commission may elect to hold a public hearing, or refer the case back to the city staff with directions on how to proceed.
 - 7. **FORM OF ACTION:** Commission action shall be in the form of a Notice of Decision, which shall be signed by the presiding officer of the planning commission, and shall be distributed pursuant to 17.12.415.
 - 8. **REFERRAL OF ACTION:** For those actions in which the planning commission is called upon to make only a recommendation to the council, the record of the matter, including commission orders and findings, and all information received by the planning commission shall be referred to the city council for review and further action.
 - 9. **EFFECTIVE DATE OF DECISION:** Unless appealed or called up by the council, a decision of the planning commission shall be come final fourteen (14) days following the date of the Notice of Decision.

17.12.390

CITY COUNCIL HEARING AND DECISION PROCEDURES

- 1. **COUNCIL HEARING REQUIRED:** For zone changes, plan amendments, and certain annexations where a public hearing is required by state law, the council shall conduct at least one public hearing on the application. Notice of public hearing shall be given pursuant to the procedures of Section 17.12.360 of this chapter.
- 2. **COUNCIL HEARING OPTIONAL:** For any application, other than plan amendments and certain annexations, which is before the council for decision, a public hearing may be held if so requested by the council in its sole discretion.

3. **COUNCIL DELEGATION (Final Plat):** For acceptance of final subdivision plats and planned unit development plats, the council may authorize approval of said plat by city staff, subject to the applicant's compliance with all conditions of approval as specified in the final decision. The council may, at its discretion, hold one or more public hearings on the matter of approval of the final plat. Notice of public hearing shall be given pursuant to the procedures of Section 17.12.360 of this chapter for this hearing.
4. **COUNCIL REVIEW OF ADMINISTRATIVE AND PLANNING COMMISSION DECISIONS:** For those actions where a Notice of Decision has been issued by either the staff or planning commission, any member of the council may elect to call-up the application to further consider the decision. A call up must be made within the appeal period set forth in this code, and shall be in writing on forms provided by city staff. On decisions which are called-up, the council may elect to hold a public hearing, or refer the case back to the original decision-maker with directions on how to proceed. Once a case is called up, staff and/or the planning commission lose jurisdiction to further consider the matter until and unless so directed by the council.
5. **HEARINGS:** For those matters specified by this title as requiring city council decision, the council will consider recommendations of the planning commission and other information related to the application before the council in the form of a de novo procedure. Hearings on appeals only may be de novo or on the record, as the council deems appropriate. In cases heard on the record, no new evidence shall be allowed, however the applicant or appellant as the case may be, shall be afforded a brief opportunity to argue the merits of the case to the council, so long as no new evidence is presented.
6. **PROCEDURES:** Conduct and procedures of the hearing and matters to be considered by the council shall be the same as those prescribed for the planning commission hearing as described in Section 17.12.380 of this chapter.
7. **COUNCIL ACTION:** As the final decision maker for all city business, the council shall have the right to take whatever action it deems necessary on any land use case brought before it. The power and the authority of the council in this regard is not limited in any way.
8. **FORM OF ACTION:** Any decision or action by the council on a land use case shall be by Order, except for annexations, zone changes and plan amendments which shall be by Ordinance. The Order and/or Ordinance shall contain detailed findings of fact and conclusions as to whether or not the facts satisfy the approval criteria. The decision shall contain the effective date of the decision, and the appeal rights of the parties. If the application is approved, the Order/Ordinance shall specify any conditions found to be necessary. The council decision shall be mailed to all persons who are entitled to receive the Notice of Decision as specified in 17.12.415.

9. **REMAND TO PLANNING COMMISSION:** The council may remand any land use case to the planning commission for further proceedings, including conducting a new public hearing and making a new decision or recommendation. In the event of remand, the application shall be processed just as if it was a new application.

17.12.400

APPEALS

1. **APPEAL OF ADMINISTRATIVE DECISION:** An administrative decision of the city staff may be appealed to the planning commission by an affected party within fourteen (14) days of the action. The notice of appeal shall indicate the nature of the decision that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this title.
2. **APPEAL OF PLANNING COMMISSION DECISION:** Following the decision of the planning commission, any person aggrieved by the decision of the commission has the right to file within fourteen (14) days of mailing of notice of the decision, an appeal of that decision. The appeal shall be in writing and shall clearly state the issue being appealed and the grounds for the appeal. The appeal shall be placed before the city council. The council will consider the appeal and either accept the appeal and set a date for public hearing, or elect to deny the appeal based on the record. If the council accepts an appeal of a commission action, the council may at its discretion remand the decision back to the commission for further consideration and findings which will then be reported to the council prior to a final council decision on the appeal.
3. **SPECIFICITY:** Issues of appeal must be raised with sufficient specificity before the appeal body to have afforded the decision authority and the applicant, if appropriate, an adequate opportunity to respond to and resolve each issue.
4. **STAY OF PROCEEDINGS:** When an appeal is filed, it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal is completed.
5. **FEE:** An appeal pursuant to subsection 1. of this section shall be accompanied by an application fee and deposit as required by the duly adopted Fee Schedule.

17.12.410

EFFECTIVE DATES AND DEADLINES FOR ACTIONS

1. **EFFECTIVE DATE:** A final decision on a quasi-judicial land use action is intended to provide certainty to the applicants and all parties participating in the process. If Unless a decision is appealed pursuant to the provisions of this title, the decision becomes final.

2. **EVIDENTIARY MATERIAL SUBMITTED:** All documents or evidence relied upon by the applicant shall be submitted to the city staff at least twenty (20) days prior to the first decision authority evidentiary hearing on the matter.
3. **DEADLINES EXCEPT FOR PLAN AMENDMENT:** The city shall take final action on an application, excluding a plan amendment case, including resolution of all appeals under Section 17.12.330 of this chapter within 120 days after the application is submitted and deemed complete.
4. **MINIMUM TIME FOR REAPPLICATION:** An application denied after due consideration pursuant to this title may not be resubmitted in less than one year's time unless the applicant can demonstrate that the factual circumstances which brought about the denial no longer exist or are no longer applicable to the proposal.
5. **WAIVER:** The applicant may elect to waive or grant an extension to the 120-day time requirement stated in subsection 3. of this section by oral consent at public hearing or by written statement to the city staff. Such waiver requests shall be made a part of the record on the application.
6. **APPEAL FORM:** In order to be properly considered, an appeal shall be submitted on an appeal form created by the city. Appeal forms shall be readily available to members of the public at no cost for the form. The appeal shall be filed with the city recorder.
7. **TIME CALCULATIONS:** Unless otherwise specified, where ever this code refers to "days", that reference is to calendar days, not working days. To calculate the last day for appeal, the date of the notice should be excluded, and the last day of the appeal period should be included. The last day concludes at 5:00 p.m. If the last day falls on a legal holiday, or a weekend, the last day shall be the next regularly scheduled workday thereafter. To be effective, appeals must be physically received in the planning office.
8. **JURISDICTIONAL DETERMINATION:** In order for the appeal to be jurisdictionally adequate, and therefore able to be considered by the appropriate appellate authority, the appeal must meet all of the prerequisites-requisites set forth herein. These include specificity; use of proper form (properly filled out); payment of the fee; and timely filing.

17.12.415 NOTICE OF DECISION

All administrative and planning commission decisions shall be reduced to writing in a Notice of Decision. This Notice of Decision shall contain at a minimum, the following information:

1. A brief description of the proposal contained in the application.

2. A summary of the facts found to be relevant to the decision.
3. A summary of the conclusions reached regarding application of the facts to the mandatory approval criteria governing the case.
4. The nature of the decision, including conditions of approval if any.
5. The number and a summary of comments received on the application, if any.
- 6.. The effective date of the decision.
7. Rights of appeal from the decision

This Notice of Decision shall be mailed to the applicant; all persons within the notification area; anyone who has requested a copy of the decision; all members of the planning commission and city council; and shall be posted at City Hall.

17.12.417 SUBSTANTIAL CHANGES IN APPLICATION AFTER FILING

In the event at the city council level, the applicant proposes changes to the land use application under consideration that make the application substantially different from that proposal that was considered by the planning commission, the city council shall remand the case to the planning commission for consideration by the planning commission of the additional changes. Changes that shall constitute making the application substantially different include, but are not limited to substantial shanges to the following:

1. Change in access, including size, number and location.
2. Elimination of landscaping.
3. Change in the size or configuration of the subject property.
4. Increase in the density of the proposal.
5. Change in the location of parking areas.

In the event applicant does not waive or appropriately extend the 120 day application completion requirement of Oregon Revised Statutes prior to further consideration by the city, the application must be considered without the proposed changes.

1. **DEFINITION.** A conditional use is an activity which is basically consistent with other uses permitted in the zone, but due to some of the characteristics of the activity which might not be entirely compatible with the zone, such use requires city review to determine and/or control potential adverse impacts.
2. **METHOD OF ADOPTION:** ~~Conditional uses shall be adopted pursuant to the requirements of Sections 17.12.370 through 17.12.390. the decision maker shall adopt, by order, conditional use approvals. All proceedings decisions shall be made shall be conducted in accordance with this title.~~
3. **SUBMITTAL REQUIREMENTS:** In order to be accepted as complete and processed in a timely manner by the city, requests for approval of conditional uses shall include the following materials and information:
 - a. Completed application forms as supplied by the city planner.
 - b. One reproducible master and two copies of a site plan, drawn to scale, showing the property for which the conditional use is requested, surrounding properties, neighboring streets and roads, existing uses of the property, and proposed development and improvements of the property pursuant to the conditional use request.
 - c. A narrative statement fully explaining the request and fully addressing the criteria for approval of a conditional use.
 - d. Other additional information as may be deemed appropriate and suitable by the city planner prior to acceptance of the application.
4. **APPROVAL CRITERIA:** In order to approve a conditional use request, the following affirmative findings concerning the action must be able to be made by the decision authority.
 - a. The proposed conditional use is compatible with the surrounding area, as measured by factors such as noise, odors, appearance, traffic congestion, hazards to the public, generation of waste products, scale of development, excessive glare of lighting, and demand on public services and facilities.
 - b. The proposed conditional use is compatible with the purposes and standards of the zoning district in which it is proposed.
 - c. Identified adverse impacts may be mitigated or eliminated through the imposition of special conditions on the proposed use or by modifying the proposed use.
 - d. There will be no adverse affects on the normal flow or movement of traffic in the immediate area.
 - e. There are available urban services to the property.
 - f. Other property in the city that would allow the proposed use outright is not reasonably available.
5. **IMPOSITION OF RESTRICTIONS AND CONDITIONS**
 - a. The decision authority may prescribe restrictions or limitations for the proposed conditional use as it deems necessary to fulfill the purpose and intent of the zoning district in which the use is being proposed and the requirements of this code. Such restrictions or limitations shall be based on evidence and analysis presented during the course of evaluation of the request, and shall be made a part of the approval action. Conditions may limit the time or duration of the use.
 - b. Any reduction or change of the requirements of the zoning regulations must be considered as varying those regulations, and must be processed as a variance pursuant to Section 17.12.450 of this chapter.
6. **RIGHT MUST BE EXERCISED:** Conditional uses granted under these provisions shall be effective only when the exercise of the right granted therein is commenced within one year of the effective date of that decision, unless

a longer period be specified or thereafter allowed by the decision authority. In case such right has not been exercised or extension obtained the approval shall be void. A written request for an extension of time filed with the city administrator at least thirty (30) days prior to the expiration date of the conditional use shall extend the duration of the one year period until the decision authority has taken action on the request.

17.12.450

VARIANCES

1. **DEFINITION:** A variance is an approved modification to or relief from a specific regulation or set of regulations imposed by provisions of this title. A variance approval is limited to the individual condition and/or instance for which the variance has been requested.
2. **METHOD OF ADOPTION.** ~~Variations shall be adopted~~ pursuant to the requirements of Sections 17.12.370 through 17.12.390. ~~the decision maker shall adopt, by order, variance approvals. All proceedings shall be conducted~~ ~~decisions shall be made~~ in accordance with this title.
3. **VARIANCES ALLOWED:** Subject to the restrictions and provisions contained in this title, the decision authority shall have the power to vary or modify the strict application of any of the regulations or provisions of this title governing:
 - a. **Zoning Requirements:**
 - 1) Lot area.
 - 2) Lot width.
 - 3) Percentage of lot coverage and number of dwelling units or structures permitted on lot.
 - 4) Height of structures.
 - 5) Location of structures.
 - 6) Setbacks.
 - 7) Signs.
 - 8) Parking and loading space.
 - 9) Vision clearance.
 - 10) Dimension restrictions.
 - 11) Accessory uses.
 - 12) Landscaping standards.
 - 13) Expansion of nonconforming uses (limited as cited in Section 17.16.650[4.b]).
 - b. Flood hazard management requirements.
 - c. Land division regulations.
4. **SUBMITTAL REQUIREMENTS:** In order to be accepted as complete and processed in a timely manner by the city, requests for approval of a variance shall include the following materials and information:
 - a. Completed application forms as supplied by the city planner.
 - b. A narrative statement fully explaining the code regulation for which the variance is being sought, the nature of the variance request, and addressing all applicable criteria for approval of a variance.
 - c. One reproducible master and two copies of a site plan drawn to scale showing the property for which the variance is requested, surrounding properties, neighboring streets and roads, existing uses of the property, and, as appropriate, the condition to be varied.
 - d. Other additional information as may be deemed appropriate and suitable by the city planner prior to acceptance of the application.

5. **LIMITATIONS:** The power of the decision authority to grant variances from the strict application of the provisions of this title shall be used sparingly, within the time limits granted the decision authority, within the spirit and intent of this code, and applied reasonably to maintain and not abolish the distinctive zoning classifications and other land use regulations created by this title.

6. **CRITERIA:** A variance is subject to the following general and specific approval criteria. No variance shall be approved without affirmative findings being made that the request fully satisfies these approval criteria.

a. **General Criteria Applicable to All Requests.**

- 1) The granting of the variance would not be materially detrimental to the public health, safety, or welfare, or the overall public interest of the citizens of the city as expressed within this title and the adopted city comprehensive plan.
- 2) The granting of the application complies with the applicable specific approval criteria as defined herein.

b. **Specific Variance Criteria.**

1) **Variance to Zoning Regulations.**

- a) The property is subject to exceptional or extraordinary circumstances, such as lot size, shape, topography, or other similar circumstances over which the property owner has no control and which do not generally apply to other properties in the same zoning district and/or vicinity.
- b) The variance is necessary for the reasonable preservation of a property right of the applicant which is the same as that enjoyed by other landowners in the zoning district.
- c) The variance would conform to the purposes of the applicable zoning regulations and would not generate a significant adverse impact on other property in the same zoning district or vicinity.
- d) Approval of the variance would not create an identifiable conflict with the provisions of the city plan or achieve the same conditions as would result from a new plan designation or zone being placed on the property.
- e) The variance being requested is the minimum relief available to alleviate the difficulty giving rise to the application.
- f) The variance would not have the effect of granting a special privilege not generally shared by other property in the same zoning district.
- g) The request for the variance is not the result of a selfimposed condition or hardship.

2) **Variance to Flood Hazard Regulations.**

- a) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- b) Variances shall not be issued within any designated floodway.
- c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- d) Variances shall only be issued upon:
- i. A showing of good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, ordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Sections 17.16.780 through 17.16.790 of this title, or conflict with existing local laws or ordinances.
 - iv. Consideration of the technical factors identified in subsection e) of this section.
- e) In passing upon flood control regulation variance applications, the decision authority shall consider all technical evaluations, all relevant factors, standards specified in other sections of the flood control provisions of this title (chapter 17.16), and
- i. The danger that materials may be swept onto other lands to the injury of others;
 - ii. The danger to life and property due to flooding or erosion damage;
 - iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. The importance of the services provided by the proposed facility to the community;
 - v. The necessity to the facility of a waterfront location, where applicable;
 - vi. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - vii. The compatibility of the proposed use with existing and anticipated development;
 - viii. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- f) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 6.b.(2)(a) to 6.b.(2)(e) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- g) Upon consideration of the factors 6.b.(2)(a) to 6.b.(2)(e) of this section, the ~~decision authority commission~~ decision authority may attach such conditions to the granting of variances as it deems necessary to further the purposes of this code section.
- h) The city administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

- i) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduce lowest floor elevation.

3) Variance to Land Division Regulations

- a) Special conditions or circumstances peculiar to the property under consideration make a variance necessary.
- b) The variance is necessary for the proper development of the subdivision or partition and the preservation of property rights and values.
- c) The variance will not be detrimental to the public welfare or injurious to other properties adjacent to or in the vicinity of the subdivision or partition, and the condition varied will remain in compliance with applicable state law (specifically, ORS 92).

7. IMPOSITION OF RESTRICTIONS AND CONDITIONS

- a. The decision authority may prescribe restrictions or limitations for the proposed variance as it deems necessary to fulfill the purpose and intent of the code provisions which are requested to be varied, and the requirements of this code. These restrictions may include but not be limited to the time or duration of the variance, the area to which it is effective within the property of the applicant, and the terms or conditions governing the exercise of the variance approval. Such restrictions or limitations shall be based on evidence and analysis presented during the course of evaluation of the request and shall be made a part of the approval action.
- b. If the variance is granted, the applicant shall exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the decision authority's approval.
- c. A violation of any such condition(s) or limitation(s) shall constitute a violation of this title.

8. **RIGHT MUST BE EXERCISED.** Variances granted under these provisions shall be effective only when the exercise of the right granted therein is commenced within one year of the effective date of that variance, unless a longer period be specified or thereafter allowed by the decision authority. In case such right has not been exercised or extension obtained, the variance shall be void. A written request for an extension of time filed with the city administrator at least thirty (30) days prior to the expiration date of the variance shall extend the duration of the one year period until the decision authority has taken action on the request.

17.12.470

SITE PLAN REVIEW

1. **DEFINITION:** A site plan review is a detailed examination of the physical characteristics of a proposed development or improvement to property, with special attention given to the design of the development or improvement and the potential impacts on adjoining properties or land uses. A site plan review requires the evaluation of specific criteria as cited herein.
2. **METHOD OF ADOPTION:** Site plan reviews shall be subject to the following methods of adoption:
 - a. ~~Site plans shall be adopted pursuant to the requirements of Sections 17.12.370 through 17.12.390. The decision maker shall adopt, by order, site plan review approvals, with the exception noted below. All proceedings shall be conducted in accordance with this title. The decision shall be made in accordance with this title.~~

- b. New development and improvements on land within Commercial districts containing one (1) acre or less or on land within Industrial districts containing three (3) acres or less; and served by public sewer and water facilities; and fronting a public street improved to city engineering standards; shall be reviewed by the city planning staff subject to the following provisions:
 - 1) Staff review of the development shall conform to the review procedures and standards contained in Sections 17.12.470.5 and 6.
 - 2) The planning staff shall provide a written determination of the site plan review to applicant. Development requirements shall be limited to those specifically contained within the Land Use and Development Code.
 - 3) The planning staff shall inform the decision maker within seven (7) days of all site plan applications and determinations.
 - 4) The applicant or the planning staff shall have the option of forwarding staff determined site plan
3. **REQUIREMENTS FOR SITE PLAN REVIEW:** Site plan review approval is required when:
- a. A site plan review overlay district is imposed by the city council as a condition of rezoning the parent or principal zone of a given property or properties.
 - b. Made a conditional of approval of a conditional use.
 - c. Otherwise required by specific provisions of this title.
4. **SITE PLAN REVIEW NOT REQUIRED:** Certain improvements or development of property otherwise subject to site plan review provisions of this title are exempt from review requirements. Such improvements or development include:
- a. Minor improvements to existing development: "Minor" shall be defined as improvements not exceeding 25 percent of existing development by area, not including the area of internal roadways, parking and loading areas, and outside storage areas.
 - b. Internal Improvements: "Internal" shall be defined as improvements which are within the perimeter of current development of the property, excepting roadways, parking and loading areas, and landscaped areas.
 - c. Signs, provided they are for use(s) permitted by the parent zoning district, that they are located within all setback areas of the property, that their surface area (both sides) does not exceed 100 square feet, that they are not illuminated by moving or flashing lights, and that they do not exceed in height the average height of primary structures on the property.
5. **SUBMITTAL REQUIREMENTS:** In order to be accepted as complete and processed in a timely manner by the city, requests for approval of site reviews shall include the following materials and information:
- a. Completed application forms as supplied by the city planner.
 - b. One reproducible master and two copies of a site plan, drawn to scale, showing the property for which the site plan review is requested, surrounding properties, neighboring streets and roads, existing uses of the property, and all details of all proposed development of and/or improvements to the property.

- c. A narrative statement fully explaining the request and fully addressing the criteria for approval of a site plan review permit.
- d. Other additional information as may be deemed appropriate and suitable by the city planner prior to acceptance of the application.

6. **APPROVAL CRITERIA:** The following criteria must be demonstrated as being satisfied by the application:

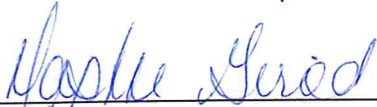
- a. The existence of or ability to obtain adequate utility systems (including water, sewer, surface water drainage, power, and communications), and connections, including easements, to properly serve development on the subject property in accordance with accepted city standards where applicable.
- b. Provisions for safe and efficient internal traffic circulation, including both pedestrian and motor vehicle traffic, and provision for safe access to and from the property to those public streets and roads which serve the property.
- c. Provision of all necessary improvements to local streets and roads, including the dedication of additional right-of-way to the city and/or the actual improvement of traffic facilities to accommodate the additional traffic load generated by the proposed development of the site.
- d. Provision of parking areas and adequate loading/unloading areas and facilities as required by chapter 17.20 of this code; minimization of noise, odors, fumes, or other impacts affecting offsite areas.
- e. The design and placement on the site of buildings and other structural improvements on a site shall provide compatibility in size, scale, and intensity of use between the development proposed and similar development on neighboring properties.
- f. Location, design, and size of the proposed improvements to the site in a manner which will fulfill the intended purpose of the requested use of the site and which will properly serve anticipated customers or clients of the proposed improvements.
- g. Landscaping of the site in a manner consistent with the requirements of chapter 17.20 of this code, and which prevents unnecessary destruction of major vegetation such as trees, preserves unique or unusual natural or historical features, provides for vegetative ground cover and dust control, and presents an attractive interface with adjacent land use and development.
- h. Design of any visual or physical barriers around the property, such as fences, walls, vegetative screening or hedges, in a manner allowing them to perform their intended function and have no undue adverse impact on existing or contemplated land uses.
- i. Lighting sufficient to satisfy the intended use of the property but designed in such a manner as to not present an adverse impact (as measured by excessive brightness or glare) upon adjacent land uses or traffic movements.
- h.j Establishment of continuing provisions for maintenance and upkeep of all improvements and facilities.
- j.k Proof of financial responsibility that the proposed development will be properly implemented as approved. To ensure that required public and/or private improvements are made in a timely and acceptable manner, the applicants may be required by the city to provide acceptable financial assurance to the city consistent with the requirements of chapter 17.20 of this code.

7. **IMPOSITION OF RESTRICTIONS AND CONDITIONS**

- a. The decision authority may prescribe restrictions or limitations for the proposed site plan review approval as it deems necessary to fulfill the purpose and intent of the code provisions which are requested to be varied and the requirements of this code. These restrictions may include but not be limited to the time or duration of the site plan review approval, the area to which it is effective within the property of the applicant, and the terms or conditions governing the exercise of the ~~variance~~ site plan approval. Such restrictions or limitations shall be based on evidence and analysis presented to or generated by the decision authority during the course of its evaluation of the request, and shall be made a part of the approval action.
 - b. If the site plan review is approved, the applicant shall exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the decision authority's approval within one year from the date of final approval.
 - c. A violation of any such condition(s) or limitation(s) shall constitute a violation of this code.
8. **RIGHT MUST BE EXERCISED:** Site plan review approvals granted under these provisions shall be effective only when the exercise of the right granted therein is commenced within one year of the effective date of the approval, unless a longer period be specified or thereafter allowed by the decision authority. In case such right has not been exercised or extension obtained, the ~~variance~~ site plan shall be void. A written request for an extension of time filed with the city administrator at least thirty (30) days prior to the expiration date of the approval shall extend the duration of the one year period until the decision authority has taken action on the request (Ord. 694, October 1991).

Adopted by the Stayton City Council this 2nd day of September, 1997.

Date: 9-9-97

By: 
DAPHNE GIROD, Mayor

Date: 9/9/97

Attest: 
THOMAS L. BARTHEL, City Administrator

APPROVED AS TO FORM:

Date: 9/15/97


DAVID A. RHOTEN, City Attorney

