

Development Code Amendment to Modification of Approval Section - 9/12/12 Draft

Text proposed to be added is underlined; text for deletion is *struck-through*. Staff comments are *italicized*.

Section 4.1. 1325 Modification of Approval.

- A. An applicant may apply to modify an approval may be modified at any time after a decision becomes final period of 60 days has elapsed from the time a development approval has become final.
- B. 1. A modification that does not have significant additional impacts on surrounding properties shall be reviewed only under the criteria applicable to the aspect(s) of the proposal that are to be modified.
- 2. A modification that has significant additional impacts on surrounding properties shall be reviewed under all criteria applicable to the entire approval and may, at the discretion of the City, require the filing of a new application.
- 3. A modification that is a new proposal shall be filed as a new application.
- 4. A modification shall not be considered to have significant additional impacts on surrounding properties if the identified impact or impacts could be addressed under the applicable provisions of the this Code at the time of future development (e.g. a future Site Plan Review or Conditional Use Permit application).

~~Unless otherwise specified in this Code, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties~~

- C. ~~An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.~~

C.D. An application for a modification of a Type I approval shall be processed as a Type I application. All other modifications shall be processed as a Type II application unless elevated to a Type III process by the Community Development Director.

D.E. ~~The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision. The original approval time limitation is governed by Section 4.1.1310.~~

E. Modifications to Special Plan Districts that are contained in Chapter 2.7 require a Code amendment. Any approved master plan or planned unit development (PUD) that is not included in this Code may be amended as provided in this Section. After 20 years has elapsed since the initial approval of a non-codified master plan or PUD, a property owner within the master plan or PUD may develop the property consistent with the standards and criteria of this Code as an alternative to complying with the previously approved master plan or PUD. Once a property owner elects to develop under the existing Code, the master plan or PUD will no longer be applicable to future development on that property. Nothing in this section limits the rights of property owners to enforce deed restrictions and covenants, conditions and restrictions.

1. Exception: Notwithstanding the other provisions of this Subsection, the following standards were made part of a master plan or PUD to protect the public interest and shall continue to be applicable even if a property owner elects to develop under the existing Code:

- a.
- b.
- c.

F: Criteria for Modification Approval:

1. For modification of approval Modifications of a PUD or master plan Master Planned Subdivision issued prior to the adoption of this ordinance, any proposed modification approved under land use regulations in place prior to August 6, 2006 shall be subject to the criteria in Section 4.5.300C(2)a-f.
2. Modifications of development approvals other than for PUDs and master plans approved prior to August 6, 2006 shall be consistent with the criteria of approval contained in the appropriate corresponding section of this Code (e.g. modification of a Site Plan Review approval is subject to Chapter 4.2; modification of a Conditional Use Permit is subject to Chapter 4.4, etc.).

Staff Note: The Amendments to the Modification of Approval Section necessitate several amendments to the Master Plan Developments Section to eliminate inconsistencies.

4.5.300 Master Planned Developments

A. Applicability. The Master Planned Development designation may be applied over any of the City's land use districts for any property or combination of properties three (3) acres or greater in size. For projects consisting of one or more properties totaling 20 acres or larger at the date of adoption of this ordinance, a Master Neighborhood Development Plan shall be required in conformance with Section 4.5.400; Master Planned Neighborhood Development.

B. Review and Approval Process.

1. Review Steps. There are three required steps for Master Planned Development approval:

Step 1.The approval of a Concept Development Plan. The concept development plan shall include an area plan that depicts the development site concept including the surrounding area within 500 feet, and a facilities plan for sewer, water and transportation, and Park facilities;

Step 2.The approval of a Tentative Development Plan. A tentative development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes, zoning designations and other features; and

Step 3.The approval of preliminary subdivision plat(s) and/or site development review application(s).

2. Approval Process. A Master Planned Development seeks to change one or more of the development standards contained in this ordinance, the underlying zoning and/or Bend Area General Plan designation. Therefore, a Master Planned Development Concept Plan application shall be reviewed using the Type III procedure in accordance with Chapter 4.1; Land Use Review and Procedures.

The Tentative Development Plan may be reviewed using the Type II procedure in accordance with Chapter 4.1; Land Use Review and

Procedures and shall ensure substantial compliance with the approved / proposed MPD Concept Development Plan.

In order to expedite the process, the review steps, notification and hearings may be combined. The applicant shall submit an application in conformance with the following provisions:

- a. The Master Planned Development shall include, but not be limited to the informational requirements of Chapter 4.3.200; General Requirements of this ordinance, as well as the following elements:
 - i. Existing and planned major street network plans, including proposed arterial, collector and local street alignments within the master planned area and where the streets will connect with the existing street system;
 - ii. Existing and planned water and sewer facilities to serve the master planned area, including line sizes, general location or routes and how the lines will tie into adjacent areas and facilities;
 - iii. Existing and planned pedestrian and bicycle corridors within the master planned area and where these facilities will connect with existing facilities;
 - iv. Public and/or private parks, open space or common areas.
 - v. Planned densities and types of uses within the affected area.
 - vi. A written narrative that explains or describes:
 - I. How the proposed water, sewer and street system will be adequate to serve the size and type of development and uses planned for this area;
 - II. How the location and sizing of water and sewer facilities on-site will be consistent with the existing and planned facilities;
 - III. How adequate water flow volumes will be provided to meet fire flow and domestic demands; and,
 - IV. The function and location of any private utility system.

- vii. Draft Development Code text in a format prescribed by the City, which provides special development standards intended to implement the proposed MPD.
- b. No application for a Master Planned Development shall be approved unless the applicant can explain in a written narrative how the following requirements are met:
 - i. The MPD contributes to orderly development and land use patterns in the area, will be compatible with adjacent developments and will not adversely affect the character of the area.
 - ii. The MPD will not create excessive demand on public facilities and services required to serve the development.
 - iii. The MPD contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and does not conflict with existing public access easements within or adjacent to the development.
 - iv. The MPD provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, designated areas of special interest, and other natural resources to the maximum degree practicable. Preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use district. The term "prevent" in this standard means that the development cannot be designed to avoid the significant tree(s). An inability to achieve maximum permitted density by complying with this subsection shall not in itself be considered to prevent development.
 - v. The MPD conforms to the Bend Area General Plan map, or amendments to the general plan map, text or policies shall be proposed and approved as part of the Master Planned Development plan in conformance with Chapter 4.6 of this ordinance.

C. Applicability of Chapter 3.0 – Development Standards. The development standards of Chapter 3.0 apply to all Master Planned Developments, unless otherwise specified as part of a MPD concept proposal.

1. Concept Development Plan Submission.

- a. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type II or III procedure, as governed by Chapter 4.1; Land Use Review and Procedures. In addition, the applicant shall submit the following information:
 - ii. A statement of planning objectives to be achieved by the Master Planned Development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.
 - ii. A concept schedule indicating the approximate dates when construction of the Master Planned Development and its various phases are expected to be initiated and completed.
 - iii. Narrative report or letter documenting compliance with the applicable approval criteria contained in this ordinance.
 - iv. Special studies or reports prepared by qualified professionals may be required by this ordinance, the City Planning Director, Planning Commission or City Council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.
- b. Additional Information. In addition to the general information described above, the concept development plan application shall include the following exhibits and information:
 - i. Site Analysis map, as defined in Section 4.2.300; Site Development Review Application Submission Requirements;
 - ii. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
 - iii. Grading concept plan (for hillside or sloping properties, or where extensive grading is anticipated);
 - iv. Landscape concept plan and tree preservation plan in accordance with Chapter 3.2;
 - vi. Architectural concept plan (e.g., information sufficient to describe architectural styles, building heights, and general materials);
 - vi. Sign concept plan (e.g., locations, general size, style and materials

of signs);

- vii. Copies of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).
- viii. Facilities plan showing how the planned development will be served by streets, sewer and water.

2. **Concept Development Plan Approval Criteria.** The applicant shall submit a narrative and plans detailing how the following criteria are satisfied. The City shall make findings demonstrating that all of the following criteria are satisfied when approving, or approving with conditions, the concept plan. The City shall make findings demonstrating that one or all of the criteria are not satisfied when denying an application:
 - a. Bend Area General Plan. All relevant provisions of the Bend Area General Plan are met except as proposed to be modified by the applicant in conformance with Section ~~4.5.300~~ 4.5.300.B.2 above.
 - b. Land Division Chapter. All of the requirements for land divisions, as applicable, shall be in conformance with Chapter 4.3; Land Divisions and Lot Line Adjustment Procedures; except as proposed to be modified by the applicant in conformance with Section ~~4.5.300~~ 4.5.300.B.2 above.
 - c. Applicability of Chapter 2.0 and 3.0. All of the land use and design standards contained in Chapter 2.0; Land Use District Administration and Chapter 3.0; Development Standards Administration are met, except as proposed to be modified by the applicant in conformance with Section ~~4.5.300~~ 4.5.300.B.2, above.
 - d. Requirements for Open Space. Public and Private open space within a development is highly encouraged as a public benefit. Open space, consistent with the purpose of this Chapter, shall be designated within a Master Planned Development when:
 - i. The Master Planned Development area is 40 acres or greater; or
 - ii. The applicant is seeking exceptions to Bend Area General Plan, Zoning Designations or the standard development code provisions and/or density.
 - e. Standards for Open Space Designation. The following standards shall apply:

- i. The open space area shall be shown on the concept development plan and recorded with the final plat or separate instrument; and
- ii. The open space shall be conveyed in accordance with one of the following methods:
 - I. By dedication to the Park District or City as publicly owned and maintained open space. Open space proposed for dedication to the Park District or City must be acceptable with regard to the size, shape, location, improvement, environmental condition, and budgetary and maintenance abilities;
 - II. By leasing or conveying title (including beneficial ownership) to a corporation, owners association or other legal entity. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the City.
- f. Standards for Approval. In granting approval for a Master Planned Development concept development plan the applicant must demonstrate that the proposal is consistent with the criteria for land division approval in Chapter 4.3.300; Approval Process
- g. Additional Approval Criteria for Master Planned Development Applications. A recommendation or a decision to approve, approve with conditions or to deny an application for a MPD application shall be based on the criteria listed in Chapter 4.6.300(B), Criteria for Quasi-Judicial Amendments.

D. Administrative Procedures.

1. Land Use District Map Designation. After a Master Planned Development Concept Development Plan and Tentative Development Plan have been approved, the approved Master Planned Development designation for the subject development site shall be shown on a map maintained by the City that illustrates the location of approved Master Planned Developments and the approved MPD overlay text will be added to Chapter 2.7 of this code as a new Planned District.

As a condition of approval, the applicant shall record a Deed Restriction on the subject properties and all future lots and parcels created, noting inclusion in the approved Master Planned Development area.

2. Time Limit for Filing a Tentative Development Plan. Within three years after the date of approval of the concept plan, the applicant or his or her

successor shall prepare and file with the City a tentative development plan, in conformance with the requirements of this Chapter. If the tentative development plan is not submitted within 3-years, the Master Planned Development Concept Plan shall expire.

3. **Extension.** The City shall, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that all of the following are satisfied:
 - a. No changes have been made on the original conceptual development plan as approved;
 - b. There have been no changes to the applicable Bend Area General Plan policies and ordinance provisions on which the approval was based.
4. **Tentative Development Plan Submission Requirements.** The applicant shall submit an application for a Tentative Development Plan. The contents of the application information shall be determined by the conditions of approval for the concept development plan. At a minimum, the tentative development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features, prior to approval of a development permit (e.g., Land Division, Development Review, Site Development Review, etc.). The tentative development plan shall be reviewed using a Type II procedure in conformance with Chapter 4.1; Land Use Review and Procedures.
5. **Tentative Development Plan Approval.** The City shall approve the tentative development plan upon finding that the final plan conforms to the concept plan and all required conditions of approval. Minor changes to the approved concept development plan may be approved with the tentative development plan, if consistent with all of the site development review standards set forth in this ordinance and the following criteria.
 - a. Increase or decrease of residential densities or lot coverage by no more than 15 percent, when such change conforms to the Bend Area General Plan;
 - b. A reduction to the amount of open space or landscaping by no more than 10 percent;
 - c. An increase in lot coverage by buildings or changes in the amount of parking by no more than 15 percent. Greater changes require approval of a modification in conformance with Chapter 4.1; Land Use Review and Procedures;

- d. No change in land use shall be permitted without approving a modification to an approved concept development plan in conformance with Chapter 4.1; Land Use Review and Procedures;
- e. No change that places development within environmentally sensitive areas including ASI's or areas subject to a potential hazard shall be approved without approving a modification to an approved concept development plan in conformance with Chapter 4.1; Land Use Review and Procedures;
- f. The location of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements shall be as proposed on the concept development plan, or as modified through conditions of approval. Changes in the location or alignment of these features by more than 50 feet shall require approval of a modification, in conformance with Chapter 4.1; Land Use Review and Procedures; and
- g. Other changes made to the approved concept development plan shall require approval of a modification, in conformance with Chapter 4.1; Land Use Review and Procedures.

6. **Development Review and Building Permit Approvals.** Upon receiving tentative development plan approval, the applicant may apply for one or more development reviews (e.g., Land Division, Development Review, Site Development Review, etc.). Building permits shall not be issued until all required development permits have been issued and appeal periods have ended.

- a. Development Review. Chapter 4.2; Site Development and Design Review applies to developments requiring Site Development Review or Architectural Design Review. Chapter 4.3; Land Division and Lot Line Adjustment Procedures applies to land divisions (partitions and subdivisions).

7. **Modification of a Master Planned Development.** A modification request shall be subject to a Type II application procedure and the applicable criteria used for the initial approval. The Planning Director may decide to refer the request to the Hearings Body for a hearing as a Type III application if the original approval was determined by a Hearings Body.